

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 29, 2002

Call to Order      The regular meeting of the Sussex County Council was held Tuesday, January 29, 2002, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Finley B. Jones, Jr.	President
Lynn J. Rogers	Vice President
George B. Cole	Member
Dale R. Dukes	Member
Vance Phillips	Member
Robert L. Stickels	County Administrator
David Baker	Finance Director
Eugene Bayard	County Attorney

M 064 02      A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the Agenda, as distributed.

Motion Adopted:      4 Yea, 1 Absent.

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

M 065 02      A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to amend the minutes of January 22, 2002, on Page 2, Motion No. M 046 02, by deleting "low bid" and substituting "high bid"; and to approve the Agenda, as amended.

Motion Adopted:      4 Yea, 1 Absent.

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

M 066 02      A Motion was made by Mr. Rogers, seconded by Mr. Cole, to Adopt the Proclamation entitled "PROCLAIMING SATURDAY, JANUARY 26, 2002, AS A DAY TO HONOR THE CARLISLE FIRE DEPARTMENT, INC."

Motion Adopted:      4 Yea, 1 Absent.

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

Carol on The Circle Food Drive Recognition

The County Council recognized the top donors of food items that were collected during the annual Caroling on The Circle Food Drive. Plaques were presented to North Georgetown Elementary School for contributing over 400 items of food; Lewes Middle School for contributing over 1,100 items of food; Sussex County Mobile Home Tenants Association for contributing over 6,300 items of food; and Georgetown Elementary for contributing over 900 items of food. Another top contributor who was not present to receive their plaque was the Sussex Central High School who contributed over 700 items of food. The Caroling on The Circle Food Drive raised over 13,000 items of food.

SCAT Public Service Award

The County Council recognized George H. P. Smith, Mayor of the City of Lewes, with the Sussex County Association of Towns Public Service Award. Mayor Smith has served the public of Delaware for over 50 years. His public service includes over 35 years as a school teacher, two years in the United States Army during the Korean Conflict, 18 years on the City Council of Lewes, and 7 1/2 years as Mayor of the City of Lewes.

Economic Development Slogan Contest

Mr. Stickels reported on the results of the Economic Development Slogan Contest. A committee of three (Mr. Stickels, Mr. Baker, and Mrs. Pettyjohn of the Economic Development Office) reviewed the 148 entries which were received from area students and selected the following five entries for Council's consideration:

*"There's No Business Like Your Business In Sussex County"*  
*"Sussex County – Your Business Is Our Pleasure"*  
*"Sussex County – The Biggest Part Of The First State"*  
*"Sussex County – Taxes Are Low, A Good Place To Grow"*  
*"Sussex County is Your Business Partner"*

The winner will receive a \$100.00 savings bond from Mr. Phillips' Councilmanic Account. Mr. Stickels made the recommendation that the four finalists receive \$50.00 savings bonds, to be funded by a donation of \$25.00 each from Mr. Cole's, Mr. Dukes', Mr. Jones', and Mr. Rogers' Councilmanic Accounts.

Council deferred action for 1-2 weeks on selecting the winning slogan. The slogan selected will replace the slogan "Sussex County Means Business", which was created in the 1980's.

DNREC Waste-water Holding Tank and Septic System Report

Kevin Donnelly and Rodney Wyatt of the Department of Natural Resources and Environmental Control (DNREC), Division of Water Resources, reported on the results of the Wastewater Holding Tank Compliance Inspection Program for the Inland Bays/Atlantic Ocean Basin. Other representatives from DNREC who were involved with the project and present at this meeting were James Bennett, Kathy Bunting Howarth, and Jim Cassidy. Mr. Donnelly stated that, as a result of House Resolution No. 32, the Sussex County Council and Representative Shirley Price both agreed to contribute \$25,000 each for the development of a Holding Tank Compliance Inspection Program to eliminate illegal discharges of

DNREC  
Report  
(continued)

wastewater from holding tanks onto the ground and into the waters of the Inland Bays and Atlantic Ocean Basin.

Mr. Wyatt highlighted the project goals: to create a database for storing all the information from the permits issued in the Holding Tank Program; to inspect each of the holding tanks twice; to develop a map showing where all of the holding tanks are located throughout Sussex County; to obtain 100 percent permit compliance; to reduce the environmental impacts of nutrients and pathogens entering into the Inland Bays Watershed; and to report findings to the public, the Sussex County Council, and the elected officials of the State.

Mr. Wyatt reported on the findings from the first inspection. Two hundred and fifty-eight (258) tanks were inspected – 51 percent were found to be in compliance; 6 percent were found to be in (high) non-compliance; 37 percent were found to be in (medium) non-compliance; and 6 percent were found to be in (low) non-compliance. Tanks were rated as high non-compliance if there was some type of over-flow and/or if gray water lines existed. Tanks were rated as medium non-compliance when there were physical problems with the tanks, such as broken lids and alarms not working. Tanks were rated as low non-compliance when paperwork and/or fees were not up-to-date.

Mr. Wyatt advised that owners of holding tanks in high and medium non-compliance were notified that improvements to the holding tanks were required. Tanks in high non-compliance were required to pump the tank as soon as possible; additional correspondence was sent to owners of tanks in medium non-compliance detailing the problem(s) and providing a schedule to fix the problem(s); and owners of tanks in low non-compliance were requested to update their paperwork and pay any delinquent fees. Second inspections were performed to verify that the required action was taken. As a result of this program, 95 percent of the holding tanks in the Inland Bays area are now in compliance. All improvements/corrections made were paid for by the property owners. It was noted that all tanks in Sussex County have been done; however, this report contains figures for the Inland Bays area, only.

Mr. Wyatt reported that the Program will continue and goals have been established to incorporate the project State-wide; to follow up on non-compliance sites and to bring them into compliance; to secure funding for the Holding Tank Program; to increase public awareness; to increase holding tank owners' awareness of the importance of having tanks pumped and maintained; to start up a voluntary compliance inspection program for small onsite wastewater systems; to update Delaware's regulations governing the design, installation, and operation of on-site wastewater treatment and disposal systems; to work with Delaware Technical & Community College to develop short courses for homeowners on the use of on-site wastewater systems.

Mr. Dukes joined the meeting.

Mr. Wyatt reported on the major changes to the regulations that have been proposed: requiring continuing education courses for all licensed contractors,

DNREC  
Report  
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designers, installers, and soil scientists; site evaluation will be valid for five years unless there is some type of special plan identifying where all of the wells and the septic is going to be located (renewals will be permitted); requirements on advanced treatment for large wastewater systems above 20,000 gallons per day; and requiring community on-site wastewater systems in subdivisions where 55 percent of soils require pressurized systems.

Administrator's  
Report

Representative Shirley Price thanked Council for contributing money to this Program. Representative Price requested a copy of the report (presentation) given at this meeting and further requested that the report be given to the Sussex County Council and other officials who contributed money to the Program.

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

1. Delaware Department of Transportation (DelDOT) Route 1 Public Meeting

The Delaware Department of Transportation is hosting a public information meeting regarding the DelDOT/Sussex County SR1 Land Use and Transportation Study. The meeting will be held on Wednesday, February 6, 2002, at the Rehoboth Convention Hall, Rehoboth Avenue, Rehoboth Beach, Delaware. The snow date for the meeting is Wednesday, February 13, 2002, at the same location.

The SR1 Land Use/Transportation Study is a planning process to increase the mobility of residents in the SR1 Corridor between Five Points and the entrance to Rehoboth Avenue. DelDOT and the Sussex County Council are working as partners to develop a coordinated plan for land use and a supporting transportation system that emphasizes interconnections. The study actively seeks the participation of all local residents in developing recommendations for all types of travel, including automobile, bus, bicycle, and walking.

Representatives from the County, DelDOT, the Public Advisory Committee, and the study team will be available from 3:30 p.m. to 7:00 p.m. to discuss study objectives and concerns. Interested residents are invited to attend at any time. At 4:00 and 6:00 p.m., the study team will provide a presentation that includes an overview of land development in the area and its effect on traffic.

2. Paramedic Recognition

The Nanticoke Rotary Club honored four Sussex County paramedics as "Western Sussex County Paramedic of the Year." The Club presents the award annually to paramedics from each of the four shifts for their efforts in and around the area of western Sussex County. Recognized were:

Administrator's Report  
(continued)

- Don Weber - Don has over 13 years of paramedic experience and has been employed with Sussex County since August of 2000.
- Ronnie Johnson - Ronnie has been with Sussex County Emergency Medical Services for ten years, with the majority of his time being spent providing patient care in western Sussex County.
- Wayne Jester - Wayne has been employed with Sussex County since November 1999, the majority of his service being in western Sussex County.
- Stu Hensley - Stu has been employed with the County since February of 2000.

On behalf of the Sussex County Council and the paramedics, I would like to thank the Nanticoke Rotary Club for the honor they have bestowed on recognizing these individuals.

3. Emergency Response Statistics

I thought the Council would be interested in comparing figures for fire and Emergency Medical Services for calendar year 2001. During calendar year 2001, Sussex County volunteer firemen responded to 5,447 calls. This compares to calendar year 2000 in which there were 5,335 responses. This is a two percent increase. Emergency Medical Services responded to 11,986 calls in calendar year 2001 compared to 12,236 for calendar year 2000. This is a decrease of two percent. The total number of incidents for calendar year 2001 was 17,433. This compares to total incidents in calendar year 2000 of 17,571.

Yacht  
Basin  
Road

Mr. Stewart, Project Engineer, updated the Council on the Yacht Basin Road Sewer Extension Project. He reviewed Change Order Nos. 1 and 2 and the Engineering Department's recommendation to grant Substantial Completion.

M 067 02  
Approve  
Change  
Orders/  
Yacht  
Basin  
Road  
Sewer  
Extension

A Motion was made by Mr. Dukes, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department and contingent upon the approval of the USDA Rural Development Agency, that Sussex County Council approves Change Order No. 1 to the contract with Teal Construction, Inc. for Sussex County Project No. 98-05 entitled "Yacht Basin Road Sewer Extension – Cedar Neck [Bethany Beach] Sanitary Sewer District" in the amount of \$1,875.00, thereby increasing the contract amount from \$184,505.00 to \$186,380.00, and approves the Balancing Change Order No. 2 to the same contract with Teal Construction, Inc. for the same project in the amount of \$4,291.85, thereby decreasing the final contract total amount to \$182,088.15.

Motion Adopted: 5 Yea.

M 067 02 (continued)	Vote by Roll Call:	Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
M 068 02 Grant Substantial Completion/ Yacht Basin Road	A Motion was made by Mr. Dukes, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department and contingent upon approval of the USDA Rural Development Agency, that Sussex County Council grants Substantial Completion to Teal Construction, Inc. for Sussex County Project No. 98-05 entitled “Yacht Basin Road Sewer Extension – Cedar Neck [Bethany Beach] Sanitary Sewer District”.	
	Motion Adopted:	5 Yea.
	Vote by Roll Call:	Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Cedar Neck SSD	At the request of Mr. Cole, Mr. Izzo, County Engineer, reported on the status of the Cedar Neck Sanitary Sewer District Project. Mr. Izzo reported that construction is scheduled to begin in December, 2002. The project is expected to take 18 months to construct, with a completion date of June, 2004.	
SCRWF Building Addition/ Bid Results	Mr. Hudson, Director of Maintenance, South Coastal Regional Wastewater Facility, reported on the bid results for the project entitled “Building Addition to the South Coastal Regional Wastewater Facilities”, as follows:	
	Roberts Construction Frederica, Delaware	\$151,140.00
	J. A. Moore and Son, Inc. Rehoboth, Delaware	\$153,850.00
	Miken Builders, Inc. Millville, Delaware	\$165,840.00
	Engineer’s Estimate	\$154,000.00
	The project includes the construction of three offices and a conference room.	
M 069 02 Award Bid/ SCRWF Building Addition Project	A Motion was made by Mr. Cole, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project No. 00-01 entitled “Building Addition to the South Coastal Regional Wastewater Facilities, be awarded to the low bidder, Roberts Construction, at the bid amount of \$151,140.00.	
	Motion Adopted:	5 Yea.

M 069 02 (continued)	<p><b>Vote by Roll Call:</b> Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</p>
SCADA System/ Change Order	<p>Mr. Hudson discussed Change Order No. 3 to the SCADA System Improvements Project. Mr. Hudson advised that in November, 2001 the County received approval from DEMA for a FEMA Mitigation Project entitled "Sussex Sewer Mitigation Project, #0003. This project is for adding SCADA telemetry at 35 pumping stations in the Long Neck Sewer District. Fifteen (15) stations are already accounted for under the original Phase II SCADA Project. The 23 stations referenced in Change Order No. 3 are for the remaining 20 stations that are covered under the FEMA grant and 3 stations in the West Rehoboth District that have not yet been included in the SCADA system.</p>
M 070 02 Approve Change Order/ SCADA System Improver- ments	<p>A Motion was made by Mr. Cole, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, subject to FEMA approval, that the Sussex County Council approves Change Order No. 3 to the contract with Trijay Systems for Sussex County Project No. 01-06 entitled "Phase II SCADA System Improvements, thereby increasing the contract amount from \$880,272.00 to \$1,054,272.00.</p> <p><b>Motion Adopted:</b> 5 Yea.</p> <p><b>Vote by Roll Call:</b> Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</p>
Amend Agenda	<p>Mr. Stickels requested that the afternoon agenda be amended by altering the order of the public hearings beginning at 1:30 p.m., with Conditional Use No. 1434 to follow Change of Zone No. 1456.</p>
Agenda Item	<p>Cole requested that the Rehoboth Art League be placed on next week's agenda for consideration for councilmanic funding.</p>
M 071 02 Recess	<p>At 11:28 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Rogers, to recess until 1:30 p.m. Motion Adopted by Voice Vote.</p>
Reconvene	<p>Mr. Jones called Council back into session at 1:30 p.m.</p>
Public Hearing (C/U No. 1432)	<p>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 LANDSCAPING BUSINESS WITH RELATED STORAGE OF MATERIALS AND EQUIPMENT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 10.78 ACRES, MORE OR LESS" (Conditional Use No. 1432) filed on behalf Frederick J. Winward. The Planning and Zoning Commission recommended approval of this application, with 2 stipulations, on January 10, 2002. Mr. Lank mentioned that an additional item had been received after the</p>

Public  
Hearing  
(C/U  
No. 1432)  
(continued)

Planning and Zoning Commission's hearing on January 10, 2002; namely, a letter dated January 23, 2002 from the Sussex Conservation District. A previous application by the applicant was reviewed by the Planning & Zoning Commission in July 2000, with the Commission having a similar recommendation of approval. At that time however, the applicant did not appear before Council at its public hearing and, therefore, the application was denied and the applicant could not reapply for 1 year.

The record of the Public Hearing held by the Planning and Zoning Commission was incorporated into the record of this Public Hearing.

There were no public comments in support or in opposition to this application.

The Public Hearing was closed.

M 072 02  
Adopt  
Ordinance  
No. 1519

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to Adopt Ordinance No. 1519 entitled, "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS WITH RELATED STORAGE OF MATERIALS AND EQUIPMENT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 10.78 ACRES, MORE OR LESS" (Conditional Use No. 1432) filed on behalf of Frederick J. Winward, with the following stipulations:

- (1) There shall be no retail sales on the site.
- (2) The site plan shall be subject to review and approval by the Planning and Zoning Commission.
- (3) The dumpster would be placed on the west side of the dirt road as shown on the site plan.

Motion Adopted: 5 Yea.

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

Findings  
of Fact

The Council found that the conditional use was appropriate legislative action based on the following findings of fact:

1. The applicant established by substantial evidence that the proposed use is consistent with the purposes and goals of the Comprehensive Plan, will enable a small local business to grow, and will promote development of agriculture-related growth, all without adverse impact on the character of the neighborhood, property values, traffic or the environment in the area.
2. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.

Public  
Hearing  
(C/U  
No. 1435)

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 RETAIL SALES OF FLOORING AND RELATED HOME ACCESSORIES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 13,500 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1435) filed on behalf of Chris and Sherry Cheeseman. The Planning and Zoning Commission recommended approval of this application, with 5 stipulations, on January 10, 2002. Mr. Lank mentioned that an additional item had been received after the Planning and Zoning Commission hearing on January 10, 2002; namely, a letter dated January 23, 2002 from the Sussex District.

The record of the Public Hearing held by the Planning and Zoning Commission was incorporated into the record of this Public Hearing.

The applicants, as well as Pat Campbell-White (with Remax Realty Group in Rehoboth) were in attendance on behalf of the application. Ms. Campbell-White explained that the Planning and Zoning Commission, in their findings, chose not to approve the "related home accessories" portion of the application. Ms. Campbell-White requested Council's consideration for the inclusion of "related home accessories", to allow for wall coverings.

There were no public comments in support or in opposition to this application.

The Public Hearing was closed.

M 073 02  
Adopt  
Ordinance  
No. 1520  
(C/U  
No. 1435)

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 1520 entitled, "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR RETAIL SALES OF FLOORING AND RELATED HOME ACCESSORIES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 13,500 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1435) filed on behalf of Chris and Sherry Cheeseman, with the following stipulations:

- (1) One lighted ground sign, not exceeding 32 square feet per side or facing, may be permitted.
- (2) There shall be no outside storage.
- (3) Retail sales shall be limited to floor coverings, wallpaper and related support items.
- (4) The site plan shall be subject to review and approval by the Planning and Zoning Commission.
- (5) The site plan shall provide for sufficient parking and delivery area to avoid vehicles backing out onto Rt. 24.

Motion Adopted: 5 Yea.

M 073 02 (continued)	<p><b>Vote by Roll Call:</b> Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</p>
Findings of Fact	<p>The Council found that the conditional use was appropriate legislative action based on the following findings of fact:</p> <ol style="list-style-type: none"><li>1. The applicant established by substantial evidence that the proposed use will enable a small business to better serve its many local commercial and residential customers without adverse impact of any sort, in a mixed residential-commercial area, while consistent with the purposes and goals of the Comprehensive Land use Plan.</li><li>2. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.</li></ol>
Public Hearing (C/U No. 1436)	<p>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 PROFESSIONAL OFFICE BUILDING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 2.77 ACRES, MORE OR LESS" (Conditional Use No. 1436) filed on behalf of Blair A. Jones. The Planning and Zoning Commission held its Public hearing on January 10, 2002, and deferred action. On January 24, 2002, the Commission discussed this application under Old Business. The Planning and Zoning Commission recommended approval of this application, with 3 stipulations, on January 24, 2002. Mr. Lank mentioned additional agency comments had been received, including a letter received on January 14, 2002 from the Sussex County Engineering Department Planning &amp; Permits Division, and a letter from the Sussex Conservation District dated January 23, 2002. Additionally, Mr. Lank mentioned that two letters of opposition, dated January 23 and 25, 2002, had been received from Barbara Hearn. Because these letters were received after the record had been closed by the Planning &amp; Zoning Commission, they were not able to be considered by the Commission. Mr. Lank confirmed that due to an unfortunate oversight, Mrs. Hearn, a near-by resident, had not been notified of this proposed application.</p> <p>The record of the Public Hearing held by the Planning and Zoning Commission was incorporated into the record of this Public Hearing.</p> <p>Mr. John Sergovic, attorney; Mr. Jeff Clark of Land Tech; and Mrs. Blair Jones were in attendance on behalf of the application. Mr. Sergovic explained that after the application was submitted, the need for living quarters on the second floor of the professional medical offices was identified by the oral surgeon, and the concept was introduced at the Commission's hearing. While present zoning would allow for a single-family residence on the property, Mr. Sergovic explained that because this was a conditional use application, they were wanting their proposed use specifically authorized. To better serve clients who may be using transportation services provided by DART or an assisted-living facility, Mrs. Jones stated they were wanting to build a new facility on the site which</p>

Public  
Hearing  
(C/U  
No. 1436)  
(continued)

would allow easier access for patient drop-off and pick-up. She went on to explain that to be an oral surgeon, who also has hospital privileges, the doctor must live within a certain mile radius of the hospital.

There were no public comments in support of this application. Four individuals spoke in opposition of this application. Some concerns expressed included the close proximity of this site to wetlands, children's safety; traffic safety; the inclusion of living quarters; plans to demolish an existing single-family home to construct a new and larger professional building; there are currently no office buildings between located Ebenezer Branch and the entrance to Covey Creek; desire to keep the area residential; notification oversight. It was also noted that two past applications, filed by The Center for Neurology Properties for the adjoining property, had both been denied by the Planning and Zoning Commission.

Mr. Bayard, County Attorney, explained that the County does provide notification as a courtesy to the residents of the County so to encourage public participation, but the County is not specifically required to do so by State law.

By a show of hands, it was noted that 6 persons in attendance were in opposition of Conditional Use No. 1436. Those in opposition were questioned by Council and responded that they would prefer the remodeling of the existing home on the site in lieu of construction of new professional offices.

The Public Hearing was closed and the record left open.

M 074 02  
Defer  
Action  
(C/U  
No. 1436)

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Conditional Use No. 1436 for two weeks.

Motion Adopted: 5 Yea.

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

By allowing the record to stay open for two additional weeks, it was the intent of the Council to allow sufficient time for Mr. Lank to make available to Council, for their review, information regarding the two previous applications of The Center for Neurology, LLC.

Public  
Hearing  
(C/Z  
No. 1456)

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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 27.53 ACRES, MORE OR LESS" (Change of Zone No. 1456) filed on behalf of Forest Reach, LLC. The Planning and Zoning Commission recommended approval of this application, with 7 stipulations, on January 10, 2002. Mr. Lank mentioned that two additional letters had been

Public  
Hearing  
(C/Z  
No. 1456)  
(continued)

received after the Planning and Zoning Commission's hearing on January 10, 2002; namely, a letter received on January 14, 2002 from the Sussex County Engineering Department, as well as a letter from the Sussex Conservation District.

Mr. Cole did not participate in the Public Hearing due to a possible conflict of interest.

The record of the Public Hearing held by the Planning and Zoning Commission was incorporated into the record of this Public Hearing.

Mr. James Fuqua, attorney; Mr. Michael Lynn, President of RDM and member of Forest Reach, LLC; and Mr. Jeff Clark, of Land Tech, were in attendance on behalf of the application. Mr. Fuqua stated that the density for this application was lower than most all other developments in the area. It was also mentioned that although the Comprehensive Land Use Plan would allow 4 units to an acre, this application is proposing 2.1 units per acre.

There were no public comments in support of or in opposition to this application.

The Public Hearing was closed.

M 075 02  
Adopt  
Ordinance  
No. 1521  
(C/Z  
No. 1456)

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1521 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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 27.53 ACRES, MORE OR LESS" (Change of Zone No. 1456) filed on behalf of Forest Reach, LLC, with the following stipulations:

- (1) The maximum number of residential lots shall not exceed 58.
- (2) The development shall be served by a central water system and a County sewer district.
- (3) The construction of recreational improvements shall begin by occupancy of the 25<sup>th</sup> home.
- (4) The Littleton property shall be treated in the following manner: The area to the rear and northeast property lines will be buffered with trees (type and extent to be determined by the Owner). Split rail fence will be installed along the northeast property line on the Littleton property. Future water and sewer connections will be brought to the property line. No storm water retention pond will be installed directly adjacent to the rear property line and the storm water pond along the northeast corner of the property will be designed to minimize, as much as it is feasible, the impact along the property line.

M 075 02 (continued)

- (5) Little Bay Ditch located with the development will be maintained as an existing tax ditch.
- (6) Streets (excluding alleys) shall be constructed to Sussex County construction standards.
- (7) The community design shall include streetlights and sidewalks.
- (8) No site preparation, site disturbance, site excavation or other site construction shall be commenced until all permits required by all other laws, ordinance, rules and regulations shall have been issued and the approved final site plan is recorded, except such site work for which a permit has been issued by the Sussex Conservation District. The site work authorized by the Sussex Conservation District Permit may be commenced upon submission of copies of the Applications for Permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning and Submission of a Bond in an amount equal to 125 percent of the costs of site work authorized by the Sussex Conservation District Permit and in a form acceptable to the County Attorney. The Bond shall be released upon the issuance of all other permits and the filing of an approved master plan.

Motion Adopted: 4 Yea; 1 Absent.

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

Mr. Cole was not present during the Public Hearing on Change of Zone No. 1456.

**Findings of Fact** The Council found that the change of zone was appropriate legislative action based on the following findings of fact:

1. The proposed development's location is appropriate for MR/RPC zoning.
  - a. MR zoning is appropriate for this parcel of land. The purpose of the MR Zoning District is to provide medium-density residential development in areas expected to become generally urban in character and where central water and sewer may be available. The application is consistent with the stated purpose of MR zoning.
  - b. A Residential Planned Community (RPC) designation is appropriate for this parcel of land. The purpose of an RPC is to encourage larger scale developments using design ingenuity to create superior living environments while protecting existing and future developments and achieving the goals of the Comprehensive Plan. This application is consistent with the stated purpose of an RPC zoning designation.

Findings  
of Fact  
(continued)

2. The proposed development is in accordance with the 1997 Sussex County Comprehensive Plan in that:
  - a. It is located in the designated development district where future growth is directed.
  - b. The site is located in an area served by County sewer and central water where future growth is anticipated.
  - c. The adjacent and nearby properties are already developed with extensive residential uses and the site is adjacent to the Town of Ocean View.
  - d. The site is consistent with the development patterns recognized in the State of Delaware proposed strategies for State Policies and spending.
  - e. The site is consistent with Comprehensive Plan's Future Land Use Map.
3. The requested change of zone promotes the health, safety, morale, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County based on evidence and testimony presented by the applicant including the following:
  - a. DelDOT indicated that the proposed development will have no significant impact on traffic.
  - b. Adequate fire and police protection are available nearby.
  - c. The development is consistent with the historical trend of development in the area and with the intended plan for future development as stated in the Comprehensive Plan.
  - d. That adequate central water (from Tidewater Utilities, Inc.) and public sewer (from Sussex County) facilities and capabilities are available and that there will be no adverse impact on nearby properties.
  - e. That adequate utility services, schools, medical facilities, and shopping areas are available near the site.
  - f. That the property is located in an existing mixed residential area designated as the development district and the proposed development will have no adverse effect on the uses or values of existing property and will conserve property values.
  - g. Natural resources will be conserved and there will be no adverse environmental impact. Central sewer and water will be provided, storm water will be provided, storm water management will be

Findings  
of Fact  
(continued)

designed in full compliance with the requirements of all State and County agencies.

- h. The proposed density of the MR/RPC is approximately 2.1 units per acre which is the same as in a traditional AR Development and is generally consistent with or less than existing residential density in the area.
- i. That the Sussex County Planning and Zoning Commission held a public hearing on the proposed application, and unanimously recommended to the County Council that the application be approved with conditions.
- j. That the Office of State Planning Coordination had indicated by letter that the State had no technical or regulatory objection to the proposed rezoning.
- k. The findings and conclusions stated herein are based on substantial evidence comprised of the reasons stated above, the testimony and evidence presented by the applicant and the findings of the Planning and Zoning Commission's recommendation of approval.

Public  
Hearing  
(C/U  
No. 1434)

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 MULTI-FAMILY RESIDENTIAL DWELLING STRUCTURES (130 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 17.0 ACRES, MORE OR LESS" (Conditional Use No. 1434) filed on behalf of Grady, Inc. The Planning and Zoning Commission held its Public Hearing on January 10, 2002, and deferred action. On January 24, 2002, the Commission discussed this application under Old Business. The Planning and Zoning Commission recommended approval of this application, with 2 stipulations, on January 24, 2002. Mr. Lank mentioned that an additional agency comment had been received after the Planning and Zoning Commission's hearing on January 10, 2002; namely, a memorandum dated January 23, 2002 from the Sussex Conservation District.

The record of the Public Hearing held by the Planning and Zoning Commission was incorporated into the record of this Public Hearing.

Ms. Heidi Balliet, Esquire; Mr. Zac Crouch, Project Engineer with Davis, Bowen & Friedel, Inc.; and Mr. Jeff Clark, of Land Tech, were in attendance on behalf of the application. Ms. Balliet presented Council with proposed findings in support of the proposed application, which will be made part of the record.

There were no public comments in support of this application. Mr. Bayard read a letter of opposition into the record that was received from Mabel Granke. Two individuals spoke in opposition to this application. Some concerns expressed

Public  
Hearing  
(C/U  
No. 1434)  
(continued)

included high density; deterioration of air quality which will impact the quality of life, impact on existing water and sewer system; and traffic.

Council was presented with several pieces of correspondence that will be made part of the record, including a letter from the President of The Plantations Owner's Association, information from the SR 1 Study Group, and a newspaper article from the Cape Gazette.

The Public Hearing was closed and the record left open.

M 076 02  
Defer  
Action  
(C/U  
No. 1434)

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to defer action on Conditional Use No. 1434 and to leave the record open for written testimony.

Motion Adopted: 5 Yea.

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

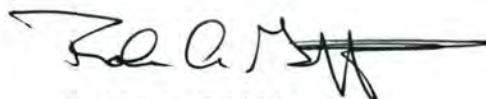
Agenda  
Item

This item will be placed back on the agenda in two weeks for discussion purposes only, with no vote being taken.

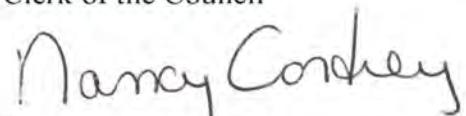
M 077 02  
Adjourn

At 4:23 p.m., a Motion was made by Mr. Phillips, seconded by Mr. Dukes, to adjourn. Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith  
Clerk of the Council



Nancy J. Cordrey  
Assistant Clerk of the Council