

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 4, 2003

**Call to
Order**

The regular meeting of the Sussex County Council was held Tuesday, February 4, 2003, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

**M 063 03
Approve
Agenda**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the Agenda, as distributed.

Motion Adopted: 5 Yea.

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

**M 064 03
Approve
Minutes**

A Motion was made by Mr. Jones, seconded by Mr. Dukes, to approve the minutes of January 28, 2003, as distributed.

Motion Adopted: 5 Yea.

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

**Adminis-
trator's
Report**

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

1. County Council Meeting Schedule

The Sussex County Council will be taking a winter recess on Tuesday, February 11, 2003. The next scheduled County Council meeting will be at 10:00 a.m. on Tuesday, February 18, 2003, in the Council Chambers, County Administrative Building, Georgetown, Delaware.

2. Local Match – Delaware Agricultural Lands Preservation Program

The FY '03 State of Delaware Bond Bill put forth language for the

**Administrator's
Report
(continued)**

State to match local contributions to the Delaware Agricultural Lands Preservation Program. Each county in Delaware is eligible to have up to \$1,000,000 set aside for preservation easements in its county, contingent upon its own contribution of an equal amount.

On Tuesday, October 8, 2002, the County Council pledged to contribute a matching dollar amount up to the \$500,000 raised by the Sussex County Land Trust. The Sussex County Land Trust would solicit funding from the private sector. I am pleased to inform the Council that the Land Trust was successful in raising \$300,000 which will be matched by the County contribution in an equal amount. This will bring a contribution from Sussex County in the amount of \$600,000.

I have been informed by Wendy Baker, Executive Director of Sussex County Land Trust, that they are still waiting to hear from approximately ten more contributors. The Department of Agriculture had set a deadline for notification of Monday, February 3, 2003. However, there may be a window of opportunity until February 28, 2003, for smaller amounts.

I will keep Council informed if additional funding is made available.

**Airport
Presentation**

Mr. Steve Masten, Director, Sussex County Economic Development and Industrial Airpark, reported to Council that Sussex County Airport neighbors have been invited to participate in a tour of the Sussex County Industrial Airpark on Wednesday, February 5, 2003. Included in the tour will be DeCrane Aircraft as well as the new airport terminal building. Mr. Masten stated that, with the possible expansion of the runway in the future, the tour was scheduled to keep area residents informed about what activities are taking place, to hear plans, and to show the need for the extension of the runway.

Council viewed a video regarding the value of public use and general aviation airports and the economic impact these airports have on the regions they serve. The video highlighted the positive impact of airports; the negative impact when airports close; and the need to preserve local airports.

**West
Rehoboth
Expansion/
Regional
Effluent
Disposal
Study/
Contract
Modification**

Mr. Izzo, County Engineer, discussed Modification No. 3 to a contract with George, Miles and Buhr for consulting services to review various treatment and disposal alternatives for the Wolfe Neck Regional Wastewater Facility. Mr. Izzo advised Council that he previously came before Council with Mayor Cooper of the City of Rehoboth to discuss a grant that the City was applying for from the Wastewater Advisory Council. The City was seeking the funds to take their outfall from the Lewes and Rehoboth Canal and look at another method of discharge. At the same time, the County was submitting a grant request to the Wastewater Advisory Council for the purpose of expanding the Wolfe Neck Regional Wastewater Facility.

West
Rehoboth
Expansion/
Regional
Effluent
Disposal
Study/
Contract
Modifi-
cation
(continued)

Mr. Izzo advised that as a result of the two funding requests to the Wastewater Advisory Council, DNREC approached the County and asked if some form of joint solution between the two entities might be cheaper than the two individual solutions. At that point, it was decided that the City of Rehoboth would apply for a \$200,000 planning grant. A 50 percent grant was received making the cost to the City of Rehoboth and the County \$100,000.

Mr. Izzo advised that Stearns & Wheeler is the consulting engineer for the City and George, Miles & Buhr (GMB) is the consulting engineer for the County. It was decided that Stearns & Wheeler would best be able to do the joint work and that GMB would best be able to do the work at the Wolfe Neck Regional Wastewater Facility since they designed it.

Mr. Izzo reported that, out of the \$200,000 project, the amount of work specific to the Wolfe Neck Regional Wastewater Facility would be in the amount of \$29,000. Mr. Izzo proposed that a contract be executed with GMB in the amount of \$29,000 to perform the work specific to Wolfe Neck. Mr. Izzo advised that the project is grant eligible and therefore, the County's cost would be approximately \$14,500.

M 065 03
Execute
Contract
with
GMB for
Consulting
Services/
Wolfe
Neck
Regional
Wastewater
Facility

A Motion was made by Mr. Dukes, seconded by Mr. Cole, based on the recommendation of the County Engineering Department, that the County Council authorizes the Council President to execute a contract with George, Miles and Buhr to provide consulting services to review various treatment and disposal alternatives for the Wolfe Neck Regional Wastewater Facility, in conjunction with the City of Rehoboth and its corresponding planning grant.

Motion Adopted: 5 Yea.

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

Real
Estate
Broker
Agreement

Mr. Izzo stated that, also in regards to the Wolfe Neck Expansion of the Dewey Beach Sanitary Sewer District. if the County and the City of Rehoboth are unable to reach some form of joint agreement, the Wastewater Treatment Plant still needs to be expanded. Right now, capacity exists for approximately 4 million gallons per day (mgd); ultimately, capacity will be needed for 7.5 mgd. Mr. Izzo stated that, due to the rate at which land is being developed in the area and the cost of that land, it would make sense to look for land now. Mr. Izzo advised that previously, the Engineering Department tried to perform this work in-house by contacting realtors and landowners. There was not much response and it was decided that it might be better to make use of a real estate agent. Mr. Izzo advised that the County previously utilized the services of Sea Coast Realty when land was needed for the Wolfe Neck Wastewater Facility. Mr. Izzo proposed that the County again enter into an

**Real
Estate
Broker
Agreement
(continued)**

agreement with Sea Coast Realty and hire Mr. Skip Valliant to look for land for the Wolfe Neck Regional Wastewater Facility and also, to eventually look for additional lands for the Piney Neck Regional Wastewater Facility, the Inland Bays Regional Wastewater Facility, and the Angola area.

**M 066 03
Execute
Agreement
with
Sea
Coast
Realty to
Assist
with
Land
Acquisition**

A Motion was made by Mr. Jones, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, that the Council President be authorized to execute an Agreement with Sea Coast Realty, Inc. who will assist Sussex County with acquisition of land for the expansions of the Wolfe Neck, Piney Neck and Inland Bays Regional Wastewater Facilities.

Motion Adopted: 3 Yea, 2 Abstentions.

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

**Wastewater
Facilities**

Mr. Thomas Baker of the Utility Construction Division discussed wastewater facilities constructed in various sewer districts.

**M 067 03
Grant
Beneficial
Acceptance/
Lighthouse
View**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 271, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in Lighthouse View, located in the Fenwick Island Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

**M 068 03
Execute
Agreements/
Bayville
Shore,
Phase V**

A Motion was made by Mr. Jones, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 294, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between the Sussex County Council and Bayville Shore, LLC, for the wastewater facilities to be constructed in Bayville Shore, Phase V, located in the Fenwick Island Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

M 069 03
Grant
Beneficial
Acceptance/
Villages
of Five
Points

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 229, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in the Villages of Five Points, RPC, Phases II, III, and VIII, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

M 070 03
Grant
Beneficial
Acceptance/
DMV
Partnership/
Heron
Bay

A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 203, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in DMV Partnership/Heron Bay, located in the Bethany Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

M 071 03
Execute
Agreements/
The Keys
of Marsh
Harbor

A Motion was made by Mr. Jones, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 280, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between the Sussex County Council and Rebay Associates, LLC, for the wastewater facilities to be constructed in The Keys of Marsh Harbor, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

Procedural
Change/
Beneficial
Acceptances

Mr. Jones proposed a procedural change to the approval of Beneficial Acceptances for the construction of wastewater facilities. Mr. Jones suggested that the fact sheets be included in Council's packages the Friday prior to the meeting; that the fact sheets would be entered into the record of the County Council meeting; and that action would be taken at the Council meeting. However, a representative from the Utility Construction Division would not be required to be present unless the Council has questions.

**P.A.P.I.
and
R.E.I.L.
Contract/
Change
Order**

Mr. Sapp, Project Engineer, discussed Change Order No. 1 to Project Number 02-06, P.A.P.I. and R.E.I.L. Lights. The proposed change order, in the amount of \$750.00, is for additional surveying work to locate any aerial obstructions. The Contractor found aerial obstructions during the initial survey and the County needs to have them identified and located on the plans and in the field. This work was not called for in the original contract since obstructions were not anticipated.

**M 072 03
Approve
Change
Order
No. 1/
P.A.P.I.
and
R.E.I.L.
Contract**

A Motion was made by Mr. Jones, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Change Order No. 1 for Project Number 02-06, Sussex County Airport, Furnish and Install P.A.P.I. and R.E.I.L. Lights, to increase the current contract \$750.00 from \$74,980.00 to \$75,730.00, pending approval from the FAA and DelDOT.

Motion Adopted: 5 Yea.

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

**Fox
Hollow
Street-
lighting
District**

Mr. McCabe, Director of Public Works, reported that the Engineering Department has received and verified petitions from property owners in the Fox Hollow Subdivision who are interested in the establishment of a streetlighting district. Thirty-two percent (32%) of the petitions received were positive; 20% or greater is required to: (1) establish that an interest exists in the community and (2) proceed with obtaining cost estimates and administering a referendum.

**M 073 03
Circulate
Petitions
and
Obtain
Estimates
of Costs/
Fox
Hollow
Street-
lighting
District**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, that the Sussex County Council has determined that the subdivision known as Fox Hollow satisfies the criteria of a Suburban Community, as defined in Paragraph 95-1 of the Sussex County Code and has authorized the Sussex County Engineering Department to circulate the attached petition form for the purpose of establishing a streetlighting district, as required by Chapter 95 of the Sussex County Code; and further, that the Sussex County Engineering Department has received and verified petitions from improvement owners of Fox Hollow Subdivision requesting Sussex County Council to obtain estimates of costs and charges for installation of streetlighting for the purpose of establishing a streetlighting district and administering a streetlighting district referendum; and further that the Sussex County Council authorizes the Sussex County Engineering Department to obtain estimates of costs and charges for installation of streetlighting within the Fox Hollow Subdivision for the purpose of establishing a streetlighting district and administering a streetlighting district referendum.

Motion Adopted: 5 Yea.

**M 073 03
(continued)**

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

**Public
Hearing
Relating
to Fees
Charged
by the
Sheriff**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY TO ADD CERTAIN FEES CHARGED BY THE SHERIFF OF SUSSEX COUNTY". This Ordinance will allow the Sheriff to collect an advance deposit (\$250.00 - personal property; \$500.00 - commercial property) against costs which are incurred in connection with sales of real estate and personal property, in order to avoid situations in which the Sheriff's office suffers a loss when sales are not completed.

Mr. Stickels explained that, for many years, the Sheriff's office has been charging an advance deposit when requested to sell property. The reason is that a fair amount of advertising is required by law before the sale takes place, which the Sheriff sometimes pays for in advance, or at least promises to pay upon sale. In some instances, particularly with respect to personal property, the sale does not bring enough money to pay the costs, or the sale does not take place, perhaps because the debt is paid directly to the creditor, and the sale is cancelled. In any of those events, the Sheriff does not have funds in his possession to pay all the advertising costs. Although the seller is technically liable for the costs, if they still remain unpaid, the Sheriff is left with no alternative but to have the County legal staff sue someone for those costs, creating even greater expenses

Public comments were heard. Mr. Dan Kramer questioned whether the \$250.00 would cover the actual costs. Sheriff Reed responded that in most cases it will cover the costs.

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

**M 074 03
Adopt
Ordinance
No. 1582**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 1582 entitled "AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY TO ADD CERTAIN FEES CHARGED BY THE SHERIFF OF SUSSEX COUNTY".

Motion Adopted: 5 Yea.

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

**Public
Hearing/
Sheriff
Fees**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY TO ADD CERTAIN FEES CHARGED BY THE SHERIFF OF SUSSEX COUNTY".

**Public
Hearing
Relating
to Fees
Charged
by the
Sheriff
(continued)**

This Ordinance will assure that deeds are prepared and recorded within a reasonable period of time after confirmation of a Sheriff's sale.

Mr. Stickels explained that this Proposed Ordinance also stems from a long-standing problem. When purchasers at Sheriff's sales are represented by attorneys, the buyer's attorney typically prepares a Sheriff's deed and sends it to the Sheriff's office for signature after the sale is confirmed by the Superior Court. There are instances, though, in which the buyer never presents a deed. The result is that a break in the chain of title occurs, and if and when the buyer seeks to resell the property, there is no evidence of his ever having owned it. Then, when he goes back to the Sheriff's office for a deed, it is much more difficult to reconstruct the chain of events from years past. It becomes even more complicated if the property owner dies, and the problem has to be corrected during the probate process. More often, though, is the situation in which an individual tries to prepare his or her own deed. A poorly drafted deed, or a legally insufficient deed, results in the same problems described above. This Ordinance gives buyers a reasonable period of time to have a deed prepared and submitted to the Sheriff for his signature. A \$200.00 deposit is collected at the sale, and if an appropriate deed is provided, the buyer is reimbursed for that \$200.00 deposit. If the buyer does not provide a deed, the Sheriff can utilize the \$200.00 to have a deed prepared and recorded. The \$200.00 deposit is sufficient within the Sussex County Legal Community to cover the costs of preparing a Sheriff's deed and current recording costs.

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

**M 075 03
Adopt
Ordinance
No. 1583**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 1583 entitled "AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY TO ADD CERTAIN FEES CHARGED BY THE SHERIFF OF SUSSEX COUNTY".

Motion Adopted: 5 Yea.

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

**Introduction
of Proposed
Ordinance**

Mr. Jones 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 C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 1.407 ACRES, MORE OR LESS" (Change of Zone No. 1505) filed on behalf of Nanticoke Tribe #21/Improved Order of Redmen. The Proposed Ordinance will be advertised for Public Hearing.

**M 076 03
Council-
manic
Grant**

A Motion was made by Mr. Jones, seconded by Mr. Dukes, to give \$750.00, (\$500.00 from Mr. Jones' Councilmanic Account, \$200.00 from Mr. Dukes' Councilmanic Account, and \$50.00 from Mr. Phillips' Councilmanic Account) to the Town of Bridgeville to help defray the cost of the preparation of land use regulations

Motion Adopted: 5 Yea.

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

**M 077 03
Youth
Activity
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to give \$500.00, \$100.00 from each Youth Activity Grant Account, to the Delaware Heritage Commission for the Hands on Heritage Camp.

Motion Adopted: 5 Yea.

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

Request

Action was deferred on the grant request from Delaware Magic.

**M 078 03
Council-
manic
Grant**

A Motion was made by Mr. Jones, seconded by Mr. Dukes, to give \$200.00 from Mr. Jones' Councilmanic Account to Greenwood Youth and Family Night for expenses.

Motion Adopted: 5 Yea.

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

**M 079 03
Council-
manic
Grant**

A Motion was made by Mr. Jones, seconded by Mr. Dukes, to give \$500.00, \$100.00 from each Councilmanic Account, to Kent-Sussex Industries, Inc. for the 2004 KSI Wall Calendar.

Motion Adopted: 5 Yea.

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

**M 080 03
Council-
manic
Grant**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$500.00, \$250.00 each from Mr. Jones' and Mr. Rogers' Councilmanic Accounts, to Sussex Central High School for the German-American Exchange Program.

Motion Adopted: 5 Yea.

**M 080 03
(continued)**

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

Request

Action was deferred on the funding request from the Delmarva Shorebirds.

**M 081 03
Council-
manic
Grant**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$1,000.00, \$200.00 from each Councilmanic Account, to the American Cancer Society for Relay for Life "2003".

Motion Adopted: 5 Yea.

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

**M 082 03
Recess**

At 11:40 a.m., a Motion was made by Mr. Phillips, seconded by Mr. Dukes, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene

Mr. Rogers called Council back into session at 1:30 p.m.

Abstention

Mr. Dukes announced that he would not be participating in the Public Hearing on Conditional Use No. 1471 due to a possible conflict of interest.

**Public
Hearing
C/U
No. 1471**

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 MANUFACTURING COUNTER-TOPS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.01 ACRES, MORE OR LESS" (Conditional Use No. 1471) filed on behalf of Joseph and Anne Pleasanton.

The Planning and Zoning Commission held a Public Hearing on this application on January 23, 2003 at which time they recommended approval with conditions. The record of the Planning and Zoning Commission was made a part of the record of this Public Hearing.

The Council found that Joseph Pleasanton was present on behalf of his application. Mr. Pleasanton stated that he started the business two years ago; that he employs three people; that all of his work is local; and that all of his neighbors with the exception of one are in support of his application. Mr. Pleasanton stated that he does not have any problem with the conditions recommended by the Planning and Zoning Commission.

Letters from Virgil and Mary Wilson, Steve Wallace, Richard J. Harris and Richard H. Harris, and Donna Henry were submitted in support of the application.

**Public
Hearing
(continued)**

Public comments were heard. John and Jackie Samara spoke in support of the application. There were no further public comments and the Public Hearing was closed.

**M 083 03
Adopt
Ordinance
No. 1584
(C/U
No. 1471)**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Ordinance No. 1584 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MANUFACTURING COUNTER-TOPS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.01 ACRES, MORE OR LESS" (Conditional Use No. 1471) filed on behalf of Joseph and Anne Pleasanton, with the following conditions:

1. One unlighted sign, not exceeding 32 square feet per side or facing, may be permitted.
2. Business hours shall be from 8:00 a.m. to 8:00 p.m. weekdays and 8:00 a.m. to 1:00 p.m. Saturdays. There shall be no Sunday business hours.
3. The existing shop building shall not be expanded. Any proposed additions to the shop building shall require a new application for conditional use.
4. The material storage shed shall not exceed 12' by 16'. The shed shall be completed within 30 days of approval.
5. There shall be no deliveries after 6:00 p.m.
6. The number of employees shall not exceed three (3).
7. The dumpster shall be concealed from view from Road 463 and neighboring properties.
8. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion Adopted: 4 Yea, 1 Abstention.

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

**Findings
of Fact**

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

1. The findings of fact and recommendations of the Planning and Zoning Commission are hereby incorporated into the record and the findings of the Sussex County Council.
2. The approval of the conditional use is appropriate legislative action and will promote the health, safety, and morals of the present and future inhabitants of the County in that the approval will bring an unapproved non-conforming use into zoning compliance.
3. The approval will promote convenience, order, prosperity and welfare in that it will have a positive economic impact.

**Findings
of Fact
(continued)**

4. Traffic will be controlled or lessened by the fact that the approval will not have an adverse impact on traffic in the area as there will be no retail sales on site.
5. Water and sewer will be provided from existing on-site private systems.
6. The approval will have no effect on tax ditches and there are no flood hazard areas on the property.

**Public
Hearing
C/U
No. 1472
and
C/U
No. 1473**

A Public Hearing was held on the Proposed Ordinances entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (48 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 12.58 ACRES, MORE OR LESS” (Conditional Use No. 1472) and the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (160 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 40.74 ACRES, MORE OR LESS” (Conditional Use No. 1473) filed on behalf of Caldera Properties, L.P.

A copy of the site plan for both applications was distributed to Council.

The Planning and Zoning Commission held a Public Hearing on these applications on January 23, 2003 at which time they deferred action. The record of the Planning and Zoning Commission was made a part of the record of this Public Hearing.

Mr. Lank, Director of Planning and Zoning, advised that since the Public Hearing held on January 23, 2003, the only correspondence received has been from the Sussex County Engineering Department, Planning and Permits Division, in reference to the system design assumption for the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District:

Relating to Conditional Use No. 1472

- 4 units per acre.
- The site is within the Cedar Neck Expansion area.
- Wastewater capacity is available.
- Ordinance 38 construction will be required.
- The system connection charge rate is \$2,159.00 per EDU.
- The location and the size of laterals will be determined by the Engineering Department during the Ordinance 38 process.
- All construction for the district is scheduled for completion by June, 2004.

**Public
Hearing
C/U
No. 1472
and
C/U
No. 1473
(continued)**

Relating to Conditional Use No. 1473

- Wastewater capacity is not available for the 160-unit parcel proposal.
- The site has been calculated for 123 EDUs.
- The applicant does not address EDU assessment for the existing wood-frame dwelling.
- Ordinance 38 construction will be required.
- The same system connection charge rate of \$2,159.00 per EDU will be required.
- The location and the size of laterals will be determined by the Engineering Department for connection points.

(The comments from the Engineering Department were received on January 29, 2003.)

The Council found that James Fuqua, Attorney, was present on behalf of the application along with Dan McGreevy, one of the principals of the project, and Ross Harris of ECI. Testimony was presented on both projects since they are similar and contiguous.

Conditional Use No. 1472 – The Courts of Old Mill

The proposed Courts of Old Mill will be located on a parcel of land containing 13 acres; 48 residential units are proposed; the land is currently zoned GR General Residential and the zoning will remain the same; GR zoning already permits 4 units per acre which is consistent with the zoning that is requested; twelve 4-unit buildings are proposed with access from one entrance off of Road 357.

Conditional Use No. 1473 – The Lakes of Old Mill

The proposed Lakes of Old Mill will be located on a parcel of land containing 40 acres; 160 residential units are being proposed; the land is currently zoned partially GR General Residential and partially C-1 General Commercial and the zoning will remain the same; 114 condominium units and 46 townhouses are proposed with access from one entrance off of Road 357.

The recreational facilities for both projects will be located on “The Lakes of Old Mill” site and will contain two tennis courts, a tot playground lot, a swimming pool, bathhouse, and a community center. The community center will actually be the existing “Old Mill Crabhouse” building, which will be maintained on the site. A permit has been approved for a pier to be located to the west of the proposed recreational facilities. The two developments will be connected by a pedestrian access. Water will be provided by Sussex Shores Water Company and sewer service will be served as part of Sussex County’s sanitary sewer district.

Public
Hearing
C/U
No. 1472
and
C/U
No. 1473
(continued)

Mr. Fuqua referred to the comments made in the letter from the Engineering Department. The letter cited that the applicant is seeking 160 units and the Engineering Department states that their calculations provided EDUs at 127. Mr. Fuqua stated that more clarification may be needed from the Engineering Department because the site of Conditional Use No. 1473 is partially zoned GR (which currently permits 4 units per acre) and partially zoned C-1 (which currently permits 12 units per acre). Mr. Fuqua stated that, based on this information, the existing zoning already permits in excess of what is being requested. He noted that the net development proposed comes out to 5.1 units per acre, not counting the non-tidal wetlands.

Mr. Fuqua stated that the traffic impact is no greater than the uses that are currently permitted by the existing zoning and in fact, this proposal generates less traffic than the current zoning permits. DelDOT did not require a traffic impact study for this proposal; however, DelDOT will require improvements to County Road 357 as part of the development, and specifically, DelDOT will require that the road be widened from the northern limit of the project to the intersection with Road 360.

Mr. Cole questioned what the current level of service for Cedar Neck Road is. This information was not available.

Mr. Fuqua stated that no endangered species or archaeological sites have been found on the sites and that there are no adverse environmental impacts from this proposal. Mr. Fuqua stated that the wetlands delineation has been approved by the Army Corps of Engineers. A 50-foot setback buffer from the State of Delaware wetland line will be provided. There are federal wetlands, which are located adjacent to the State wetlands. Mr. Fuqua advised that none of the wetlands are being encroached upon.

Mr. Fuqua stated that the applicant is asking for conditional use approval for the purpose of spreading the density over the entire site instead of having mixed density.

In reference to the Engineering Department's comments relating to Conditional Use No. 1473 and the fact that wastewater capacity is not available for the 160-unit parcel, Mr. Ross Harris responded that the nearby Bethany Lakes project had a capacity of approximately 130 EDU's and the actual usage is 88 EDU's. Therefore, according to Mr. Harris, there are 42 EDU's of capacity available and it is his opinion that they can provide enough engineering information to show that there will be adequate capacity within the sewer district to meet the needs of the 160-units proposed.

Mr. Fuqua submitted proposed conditions for Council's consideration.

**Public
Hearing
C/U
No. 1472
and
C/U
No. 1473
(continued)**

Mr. Fuqua referred to a letter from the owner of Pine Tree Campground regarding a boundary dispute. Mr. Fuqua advised that this matter has been resolved between the parties.

Mr. Fuqua referred to concerns expressed about the hours of construction and in response to this concern, the applicant has agreed to follow the same restrictions regarding construction as outlined by the Town of Ocean View's Ordinance. Mr. Fuqua stated that one of the proposed conditions submitted to Council states that "site preparation, site disturbance, excavation, or similar construction activity, and no interior or exterior construction of buildings or dwellings shall occur on regular weekdays between the hours of 7:00 p.m. and 7:00 a.m. of the following morning; on Saturdays and holidays before 8:00 a.m. and after 7:00 p.m.; and on Sundays, no activity shall occur at any time."

At the conclusion of the applicant's comments, public comments were heard.

William Payne, Faith Fitzgerald, Michael Megee, Mark Culp and Sarah Fitzgerald spoke in opposition to the applications. Concern was expressed that the project is not compatible with other uses in the area; that there has been an onslaught on the Inland Bays with contamination and pollution; that the application has met the 50 foot wetlands setback but has not met the other wetlands requirements; that there are no multi-family, condos, or townhouses on Cedar Neck Road; that single family homes would be preferred; and that Road 357 is in need of improvements;

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

**M 084 03
Defer
Action on
C/U
No. 1472
and
C/U
No. 1473**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to defer action on Conditional Use No. 1472 and Conditional Use No. 1473, filed on behalf of Caldera Properties, L.P.

Motion Adopted: 5 Yea.

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

**Request
Informa-
tion on
C/U
No. 1472
and
C/U
No. 1473**

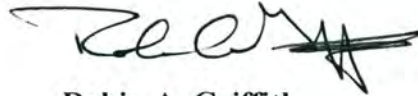
It was the consensus of Council to request the following information to be submitted by February 14, 2003:

- Information from DelDOT regarding the level of service.
- Information from DelDOT regarding planned infrastructure improvements on Road 357.
- A phasing plan.
- Specific information on sewer allocations.
- Information on extra EDUs.

(continued) Comments on the information submitted will be accepted through February 21, 2003.

M 085 03 A Motion was made by Mr. Dukes, seconded by Mr. Cole, to adjourn at
Adjourn 3:20 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Griffith', with a stylized flourish at the end.

Robin A. Griffith
Clerk of the Council