

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 12, 2002

Call to Order The regular meeting of the Sussex County Council was held Tuesday, February 12, 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
Dale R. Dukes	Member
Vance Phillips	Member
Robert L. Stickels	County Administrator
David Baker	Finance Director
Eugene Bayard	County Attorney

M 095 02 A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to amend the
Amend Agenda by deleting the following item:
and
Approve Steve McCabe, Director of Public Works
Agenda

1. Acceptance of Joy Beach Subdivision into the Suburban Community Improvement Program

; and to approve the Agenda, as amended.

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

M 096 02 A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve
Approve the minutes of February 5, 2002, as distributed.
Minutes

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

Notice of Mr. Stickels presented for Council's consideration an appeal to the Sussex
Appeal/ County Planning and Zoning Commission's decision to deny an application
Subdivision of Gary Watson for the subdivision of land in an AR-1 Agricultural
No. 2001-7 Residential District in Broad Creek Hundred, by dividing 41.86 acres into
 37 lots, located north of Road 465, 2,340 feet west of Road 479 (Subdivision
 Application No. 2001-7 – Silverbell Estates). This application was
 previously before the County Council on an appeal to the decision of the

**Notice of
Appeal
(continued)**

Planning and Zoning Commission. The Council remanded the matter to the Commission for a more definitive statement of the reasons for denial of the application. The Commission again denied the application and articulated further reasons. A letter from Moore & Rutt, P.A. was received requesting Council to again accept an appeal of the Commission's decision and stating the basis for the appeal request.

**M 097 02
Schedule
Public
Hearing/
Subdivision
No. 2001-7**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to schedule a Public Hearing on an appeal to the Sussex County Planning and Zoning Commission's decision to deny the application of Gary Watson for the subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, by dividing 41.86 acres into 37 lots, located north of Road 465, 2,340 feet west of Road 479 (Subdivision Application No. 2001-7 – Silverbell Estates).

Motion Adopted: 3 Yea, 1 Abstention, 1 Absent

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

**Public
Hearing**

Mr. Stickels announced that the Public Hearing will be scheduled for March 26, 2002 at 11:00 a.m.

**Withdraw
of C/U
No. 1439**

Mr. Stickels reported that a letter was received from Walter T. Wilson in which it was stated that he was withdrawing his application (Conditional Use No. 1439) for multi-family dwelling structures (18 units) to be located on a certain parcel of land lying and being in Broadkill Hundred.

**Request
to Extend
Public
Comment
Period/
C/Z
No. 1454
and
C/U
No. 1434**

Mr. Bayard read a letter into the record from Mabel Granke, Director, Citizens Coalition, Inc.; Richard Anthony, Director, Delaware Chapter, Sierra Club and Secretary, Southern Delaware Group; Pat McCrea Torelli, President, Plantations Civic Association; and Lawrence Wadman, President, Plantations Condo-Homeowners Association. The letter referred to the County Council's decision to defer action on Change of Zone No. 1454 (Elmer Fannin) and Conditional Use No. 1434 (Grady, Inc.) and to leave the public record open for a fixed period to receive additional comments. The authors of the letter requested that the closing dates for public comment on both issues be extended to the close of business on February 22nd for the submission of additional evidence from expert witnesses. The groups opposing the project stated in the letter that their expert witnesses were unable to meet the previously established deadlines and provide accurate and meaningful comments due to the scope and nature of the infrastructure assessments.

Mr. Bayard summarized correspondence received from Gerard Esposito of Tidewater Utilities, Inc. and James Griffin of Griffin & Hackett, P. A. In his letter, Mr. Esposito disputed the opposition's claim that Tidewater Utilities, the supplier of central water to the area, did not have an adequate

**Extension
Request
(continued)**

water supply for the project. Mr. Griffin opposed the extension of the closing date for public comment stating that it was unfair to the applicant and that the groups requesting the extension are well aware of the requirements for presenting evidence to support their positions.

Council members expressed concern that granting the extension would set a bad precedent.

**M 098 02
Grant
Extension
Request
(Denied)**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to grant the request to extend the closing dates for public comment on Change of Zone No. 1454 and Conditional Use No. 1434.

Motion Denied: 4 Nay, 1 Absent.

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

**Adminis-
trator's
Report**

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

1. Government Closing

Sussex County government offices will be closed Monday, February 18, 2002, to allow employees to observe Presidents' Day. Offices will reopen Tuesday, February 19, 2002, at 8:30 a.m. There will be a regularly scheduled Council meeting in the Council Chambers at 10:00 a.m. that day.

2. Ellendale Sanitary Sewer District

Groundbreaking ceremonies will take place on Wednesday, February 13, 2002, at 9:00 a.m. for the Ellendale Sanitary Sewer District. The ceremony will take place at the Ellendale Town Hall at 300 McCauley Avenue. I would encourage the residents of the area to attend this long-awaited ceremony.

3. Surplus Equipment

Included with this report is a copy of the notice of sale of surplus equipment. The sale will take place in the Administrative Building on Thursday, February 21, 2002, from 8:30 a.m. to 4:30 p.m. Items that are not sold that day will be taken to Wilson's Auction for sale on March 2, 2002. Anyone wishing additional information should contact Frank E. Shade, Purchasing Agent, at 302-854-5382.

4. Mapping and Addressing

As a result of the resignation of Dennis Norwood, I have named Matt

**Administrator's
Report
(continued)**

Laick as Acting Supervisor of Mapping and Addressing. Mr. Laick has a Bachelor of Science degree in Earth Science Meteorology from California University of Pennsylvania and a Master of Applied Geography degree from New Mexico State University. His previous work experience includes mapping range land improvements for the Bureau of Land Management at the Las Cruces Field Office in New Mexico.

Eddie Sparpaglione will continue his responsibilities as Systems Administrator. These duties include managing the computing environment and infrastructure for the County and managing the IT staff that is responsible for maintaining and troubleshooting the County's network and the PC's connected to it. Additional responsibilities include managing the Internet and Intranet with emerging web-based technology to help the County provide more services at little to no cost with the infrastructure that we have in place. Eddie's staff is also assisting the 911 Center to manage the technical aspects of the new Computer Aided Dispatch (CAD) system.

**Update/
Re-
addressing**

Matt Laick, Acting Supervisor of Mapping and Addressing, advised Council that he will be meeting with Verizon on February 20th to discuss issues pertaining to the readdressing project and to try to resolve and finalize Section 1. He also reported that he is planning to deliver an accurate database to Section 3 by May and to move forward with field checks in Sections 2 and 4 so that an accurate database can be developed for that area and addresses delivered.

**Old
Business
(C/Z
No. 1455)**

Change of Zone No. 1455 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 105.47 ACRES, MORE OR LESS" filed on behalf of Bridle Ridge Properties, LLC was discussed.

The Planning and Zoning Commission held a Public Hearing on this application on December 13, 2001 at which time they recommended that the application be approved since the use is in accordance with the Comprehensive Plan and the Strategies for State Policies and Spending Document.

The County Council held a Public Hearing on this application on January 8, 2002 at which time action was deferred for the purpose of developing findings of fact.

Mr. Lank, Director of Planning and Zoning, and Mr. Stickels reviewed the proposed findings of fact.

**M 099 02
Adopt
Ordinance
No. 1522**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1522 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 105.47 ACRES, MORE OR LESS" (Change of Zone No. 1455) filed on behalf of Bridle Ridge Properties, LLC.

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

**Findings
of Fact**

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

A. The proposed development's location is appropriate for MR zoning:

1. 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.
2. MR zoning is appropriate for this parcel of land due to its proximity to C-1 Commercial property directly across S275 from this land upon which Lewes is located and operated as a commercial business. MR zoning provides a transition zoning between the C-1 Commercial property and the nearby single family AR-1 subdivisions.

B. The proposed development is in accordance with the 1997 Sussex County Comprehensive Plan ("Plan") in that:

1. It is located in the designated Development District where future growth is directed.
2. The site is located in an area served by County sewer and central water where future growth is anticipated.
3. The adjacent and nearby properties are already developed with extensive commercial and residential uses including Lowes, the proposed Home Depot, a multi-family and single family community and several single family communities.
4. The development is consistent with the Plan's housing element and community design element in that it provides a range of housing for

**Findings
of Fact
(continued)**

permanent residents and second home owners to serve the existing and projected demand for housing in the area. The Plan projects an increase in the number of households in Sussex County during the 1990 to 2020 time period from 43,483 to 73,292, establishing a need for additional housing units.

5. The MR zoning permits 10,000 square foot lots which is consistent with the Plan's housing element and community design element which will preserve open space, not be detrimental to rural character and will be an efficient use of land.
6. The MR zoning permits 10,000 square foot lots that will provide a mixed growth pattern as required in the Plan in combination with:
(i) the existing single family developments on larger lots, (ii) the single family and multi-family developments in mixed use communities, and (iii) the existing commercial developments all of which are located near the property.
7. The Plan recognizes that higher residential density is appropriate for sites in the Development District in order to obtain the Plan's goal of preserving agricultural areas and natural resources by concentrating development in the planned Development District through the expansion of central wastewater facilities, which is being undertaken by the developer.
8. The site is in a developing area and is consistent with the development patterns recognized in the Delaware's Strategies for State Policies and Spending.
9. The site is consistent with the Comprehensive Plan's Future Land Use Map.
10. The property is shown as Potential Future County District Public Wastewater Systems in the Plan and the County has agreed to serve the property with public sewer.
11. The site is located in a multi-modal investment area under DelDOT's Statewide Long Range Transportation Plan.
12. The development will be conducive to travel by transit, bicycles, and walking as required by the Plan's Community Design Element.
13. The development will provide MR zoning for single family housing on 10,000 square foot lots that will be compatible with the adjacent land uses and development patterns as required by the Plan's Community Design Element.
14. The development is consistent with the Plan's Guidelines for Density of four units per acre for single family detached homes in

**Findings
of Fact
(continued)**

the Development District where public water and wastewater systems are available or planned and where past trends indicate that growth will occur.

15. The development will provide a dedication of property for bicycle and pedestrian needs consistent with the Plan's Mobility Growth Management Strategies.
- C. 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 the Plan and the evidence and testimony presented by the applicant including the following:
1. It is Del DOT's position stated in the September 10, 2001 letter, that the proposed development is in a Multi-modal Investment Area with respect to DelDOT's Statewide Long Range Transportation Plan (SLRTP) and in a Developing Area with respect to the Cabinet Committee on State Planning Issues, (CCSPI's) Strategies for State Policies and Spending. Developments like the proposed single family houses can be appropriate in such areas if provisions are made for multiple modes of travel including automobile, transit, bicycle and pedestrian traffic. Therefore DelDOT is not opposed to the development of this project as long as alternative transportation options are encouraged and traffic is not adversely affected.
 2. It is DelDOT's overall conclusion, stated in its September 10, 2001 letter, that this project would have a relatively small impact on congestion in the study area, is consistent with DelDOT's SLRTP and the CCSPI's strategies for State Policies and Spending, and its construction could include at least one of the connector road options identified in DelDOT's SRI Grid Study. For these reasons, DelDOT does not oppose the subject rezoning.
 3. DelDOT stated that this project is in the Developing Area in Delaware's Strategies for State Policies and Spending where the State seeks to accommodate existing development and orderly growth by linking development plans to available infrastructure, and promoting a variety of housing types while protecting natural resources.
 4. DelDOT and the TIS prepared on behalf of the applicant analyzed the traffic effects based upon nationally recognized traffic criteria.
 5. DelDOT and the TIS prepared on behalf of the applicant considered a number of committed developments and addressed projected growth in areas surrounding the proposed zoning classification by examining the Existing Conditions (2002), Conditions that would exist in 2003 without the project developed and Conditions that would exist in 2003 with the project fully developed.

**Findings
of Fact
(continued)**

6. DelDOT and the applicants agreed to the conditions contained in DelDOT's letter, dated September 20, 2001 as amended by the email dated December 12, 2001, from Randy Duplechain, PE to Dave Duplessis and the response from Dave Duplessis to Randy Duplechain on December 13, 2001.
7. DelDOT and the TIS prepared on behalf of the applicant determined that the rezoning of the property did not cause the threshold level of service to be exceeded because: (i) the level of service was not exceeded in 2003 with the project developed or (ii) where the threshold level of service was exceeded, it was exceeded in 2000 before the project was proposed or would be exceeded in 2003 without the project being developed.
8. The TIS proposes a four point signal at the intersection of Shady Road and Plantations Road and site entrance to improve the LOS to C and the applicants have agreed to enter into a signal agreement if that signal is warranted.
9. The benefits that would accrue to the public by approving the rezoning are:
 - A. The applicant's voluntary agreement (without being requested by DelDOT) to dedicate a 70-foot right of way for the construction of one of the connector roads identified in DelDOT's SR 1 Grid Study.
 - B. Applicant's agreement to: (i) construct a sidewalk along S275, (ii) dedicate sufficient right of way to DelDOT for future construction of a bike lane and sidewalk along S285 and across the entire frontage of the out parcel on the corner of S285/S275.
 - C. Natural resources will be protected and conserved as there will be no adverse environmental impact in that no Federal or State wetlands are contained on the property; the soils are well drained and all stormwater management over predevelopment run-off rate will be controlled on site. Central water and sewer will be provided and stormwater management will be designed in full compliance with requirements of all State and County agencies.
 - D. The project will serve the marketplace by helping to meet the continuing need for housing in the area for year-round residents and second homeowners.
 - E. The applicant will increase revenues from taxes.

**Findings
of Fact
(continued)**

- F. The applicant of this project will construct, at its costs, a regional pump station that will serve this property and other nearby properties located within the Expansion Study Area.
10. The character of the area is appropriate for a single family detached residential development and the site is located in an area appropriate for a MR zoning. There are existing residential developments nearby. The general area consists of substantial commercial developments along Route 1 and the property is adjacent to Lowes. The proposed development is consistent with the character of the area and due to the existing patten of development and the goal of the Comprehensive Plan is suitable for the proposed use.
 11. 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.
 12. Adequate central water (from Tidewater Utilities, Inc.) and public sewer (from Sussex County) facilities and capacities are available and there will be no adverse impact on nearby properties, since this development is consistent with the pattern of growth in the area.
 13. Adequate utility services, schools, medical facilities, and shopping areas are available near the site.
 14. The property is located in an existing mixed commercial/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.
 15. The Sussex County Planning and Zoning Commission held a public hearing on the proposed application on December 13, 2001, and unanimously recommended to the County Council that the application be approved.
 16. The content of the August 5, 1999 DelDOT letter which stated no further uses would be allowed in the Five Points area which would significantly impact the seasonal Saturday Peak hour did not conflict with the September 10, 2001 DelDOT letter that concluded that this project would have a relatively small impact on congestion in the study area. The impact of the Lowe's traffic was considered in the DelDOT review of the TIS prepared on behalf of the applicant for this property, dated May 2001, subsequent to DelDOT's August 5, 1999 letter. Thus, DelDOT's September 10, 2001 letter was the result of additional comprehensive traffic evaluation and analysis.

**Findings
of Fact
(continued)**

17. The applicant voluntarily agreed to dedicate the 70-foot right of way for the connector road prior to any suggestion to do so by DelDOT thereby eliminating any preemption of Council's final decision based upon the recommendation of the SR1 Study Committee.
18. The statement by DelDOT in the September 10, 2001 letter refers to the third lane on Route 1 as it affects the Five Points intersection and is not inconsistent with the statement on Page 10 which refers to the third lane on Route 1 as it affects the Shady Road and Route One intersection.
19. The 13-acre out-parcel noted as other lands of Bridle Ridge Properties, LLC was not part of the rezoning and no traffic generation from that out-parcel was included in the TIS or DelDOT's review of the TIS.
20. The Opposition's reference to details in the DelDOT letter of September 10, 2001 does not contradict the overall statement of DelDOT contained in the conclusion to the report.
21. The Opposition's reference to the Plan's intent for growth was relevant to Town Centers only, not to a Development District, which is the type of Growth Management District in which this property is located.
22. 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.

**Lagoon
Liner
Replace-
ment
Project**

Mr. Loran George, District Manager, South Coastal Regional Wastewater Facility, discussed Change Order No. 1 to Sussex County Project No. 00-04 entitled "Lagoon Liner Replacement". The Change Order is for the replacement of the remaining lagoon liner which is worn and damaged and needs to be replaced. The lagoon was filled with sludge at the time of the original contract and the condition of the liner was unknown.

**M 100 02
Approve
Change
Order/
Lagoon
Liner
Replace-
ment
Project**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, based on the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Change Order No. 1 in the amount of \$20,438.00 for Sussex County Project No. 00-04 entitled "Lagoon Liner Replacement" for the purpose of relining "B" Lagoon.

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

**Terminal
Building
Project/
Change
Order**

Mr. Derek Sapp, Project Engineer, discussed Change Order No. 3 to Sussex County Project No. 98-04 entitled Sussex County Airport Terminal Building Construction. The change order, in the amount of \$5,656.66, is a result of miscellaneous items needed for completion of the building and site construction, including an additional ten days of construction time.

**M 101 02
Approve
Change
Order/
Terminal
Building
Project**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Change Order No. 3 for Sussex County Project Number 98-04 entitled Sussex County Airport Terminal Building Construction, for an increase in construction time of ten calendar days and \$5,656.66 to increase the contract amount from \$1,055,334.40 to \$1,060,991.06.

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

**Dolphin
Manor**

Mr. Green, Director of Utility Construction, discussed the construction of wastewater facilities in Dolphin Manor which is located in the Bethany Beach Sanitary Sewer District.

**M 102 02
Grant
Beneficial
Acceptance/
Dolphin
Manor**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 224, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in Dolphin Manor, located in the Bethany Beach Sanitary Sewer District.

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

**Flood
Mitigation
Grant
Program/
Bid
Awards**

Mr. Mike Brady of the Engineering Department requested that Council approve the bid awards for three contracts under the FEMA Flood Mitigation Grant Program. The purpose of this Program is to elevate homes (to an elevation above the 100-year flood) in special flood-hazard areas that have been subject to repetitive flooding. Mr. Brady advised that the three contracts, which include nine homes, will complete the Grant Program.

**M 103 02
Award
Contract**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project No. 01-08, Sussex County Flood Mitigation Grant Program, Contract No. 3, be awarded to the lowest responsive bidder, Sun

M 103 02
Award
Contract/
Flood
Mitigation
Grant
Program

Marine Maintenance, Inc. of Bayard, Delaware, at the bid amount of \$183,000.00

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

M 104 02
Award
Contract/
Flood
Mitigation
Program

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project No. 01-08, Sussex County Flood Mitigation Grant Program, Contract No. 4, be awarded to the lowest responsive bidder, Sun Marine Maintenance, Inc. of Bayard, Delaware, at the bid amount of \$257,000.00.

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

M 105 02
Award
Contract/
Flood
Mitigation
Program

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project No. 01-08, Sussex County Flood Mitigation Grant Program, Contract No. 5, be awarded to the lowest responsive bidder, Venture Crane, Inc. of Frederica, Delaware, at the bid amount of \$93,000.00.

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

M 106 02
Council-
manic
Grant

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$500.00, \$100.00 from each Councilmanic Account, to the Minority Leadership Alliance for an alumni basketball game held to raise funds for scholarships.

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

M 107 02
Grant

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to give \$250.00 from Mr. Rogers' Councilmanic Account to the Ellendale Community Civic Improvement Association, Inc. for the fourth annual

M 107 02 fundraiser (for sewer hook-up fees) and honoree banquet.

**Council-
manic
Grant
(continued)**

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

**Request/
Deferred** Action on the grant request from Sussex Central High School for the athletic schedule poster was deferred.

**Grant/
S.C.
Science
Fair** The grant request from the Cape Henlopen School District for the Sussex County Science Fair was discussed. Mr. Stickels advised that \$500.00 from County Council Grants has already been appropriated in this year's budget.

M 108 02 A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to give \$100.00 from Mr. Dukes' Youth Activity Account, to the Sussex Chix (fastpitch softball team) for expenses (uniforms, equipment, etc.)

**Youth
Activity
Grant**

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

M 109 02 A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$500.00, \$250.00 each from Mr. Rogers' and Mr. Jones' Councilmanic Accounts, to the Milford Memorial Hospital Auxiliary for the 45th Milford Memorial Hospital Fair.

**Council-
manic
Grant**

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

M 110 02 A Motion was made by Mr. Dukes, seconded by Mr. Jones, to give \$100.00 from Mr. Jones' Councilmanic Account to the Sussex Central High School Music Boosters for the 4th Annual Dinner & Auction Fundraiser.

**Council-
manic
Grant**

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

M 111 02 A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to give \$800.00, \$160.00 from each Councilmanic Account, to the Sussex County

Grant

M 111 02 **Fire Chiefs' Association to send the President of the Association to Indianapolis.**

**Council-
manic
Grant
(continued)**

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

M 112 02 **A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$500.00, \$100.00 from each Youth Activity Account, to the Boy Scouts of America for the 2002 Annual Fundraising and Enrollment Campaign.**

**Youth
Activity
Grant**

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

Request **Action on the grant request from Cub Scout Pack 87 was deferred.**

M 113 02 **A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$1,000.00, \$200.00 from each Councilmanic Account, to the Sussex County Veterans Council for flags to be placed on veterans' graves.**

**Council-
manic
Account**

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

**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 HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT/RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.59 ACRE, MORE OR LESS" (Change of Zone No. 1467) filed on behalf of Providence Land, Ltd. The Proposed Ordinance will be advertised for Public Hearing.**

M 114 02 **A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt the Proclamation entitled "PROCLAIMING TUESDAY, FEBRUARY 12, 2002 AS A DAY TO HONOR AARON CHAFFINCH".**

**Adopt
Procla-
mation**

Motion Adopted: 4 Yea, 1 Absent

**M 114 02
(continued)**

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

**Positive
Growth
Alliance/
Workshop**

Mr. Rich Collins of the Positive Growth Alliance announced that a workshop has been scheduled for Thursday, February 21, 2002 at the CHEER Center in Georgetown, starting at 7:00 p.m. Some of the topics to be discussed are impact fees, the Sussex County Land Use Plan, transfer of development rights, new regulations for freshwater wetlands, and the overall impact of Governor Minner's *Livable Delaware* on landowners.

**M 115 02
Recess**

At 11:10 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.

Reconvene

Mr. Jones called Council back into session at 1:37 p.m.

**Public
Hearing
(C/U
No. 1437)**

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 DEMOLITION OF MANUFACTURED HOMES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 5.74 ACRES, MORE OR LESS" (Conditional Use No. 1437) filed on behalf of Jimmie L. McWilliams.

The Planning and Zoning Commission held a Public Hearing on this application on January 24, 2002 at which time action was deferred. The record of the Planning and Zoning Commission was incorporated into the record of this Public Hearing.

Mr. McWilliams was present on behalf of his application and stated that he currently demolishes manufactured homes off-site; that he needs a parcel of land on which he can demolish the units on-site; that, on an average, he would be bringing two mobile homes to the site per week; that two demolished mobile homes and parts would be leaving the site per week; that 33 units are currently located on the site including the one he lives in; and that none of his neighbors oppose the application.

Mr. Dukes questioned how many units the applicant proposes to have stored on the site. Mr. McWilliams responded that he would like to have permission to store 40 units on the site.

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

**Public
Hearing
(C/U
No. 1438)**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR CONTINUATION OF CONDITIONAL USE NO. 992 AND CONDITIONAL USE NO. 1114 (BORROW PITS) TO BE LOCATED ON A CERTAIN PARCEL OF

**Public
Hearing
(C/U
No. 1438)
(continued)**

LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 11.40 ACRES, MORE OR LESS" (Conditional Use No. 1438) filed on behalf of the State of Delaware – Department of Transportation.

The Planning and Zoning Commission held a Public Hearing on this application on January 24, 2002 at which time action was deferred and the Commission asked the staff to get permission to review and inspect the site. The record of the Planning and Zoning Commission was incorporated into the record of this Public Hearing.

Mr. Lank, Director of Planning and Zoning, stated that he, along with Mr. Allen and Mr. Gordy (Planning and Zoning Commissioners) met with two DelDOT representatives and looked at the site. The DelDOT representatives suggested that one of the originally-imposed stipulations be amended to allow for the placement of a dry hydrant on Nero Lane so that the fire company can access it without entering the borrow pit area.

Mr. Lank reviewed the original stipulations:

- The pit shall only be utilized by the State Highway Department.
- All handling and hauling shall be performed on weekdays, during daytime hours, unless there is an emergency.
- Dust control shall be implemented when needed.
- The State will maintain the road serving the site from Route 70.
- Some material may be stockpiled on the site.
- As digging is completed in an area, that area, that area be reclaimed.
- The first area to be dug will be to the rear portion of the site.
- No materials will stored on any access roads or buffer areas.
- Markers will be placed at all borrow pit corners.
- No fuel shall be stored on-site.
- No stumps, branches, or debris will be buried on-site.
- No dredging of materials will be allowed.
- All materials will be removed by drag line or crane.
- The pit shall not exceed ten feet in depth below the water line.
- Four life preservers shall be stored on-site.
- Dry fire hydrants shall be installed.
- Site shall be fenced; type and style at the discretion of the State Highway Department.
- Materials removed from the site shall be utilized only in Sussex County.
- The Planning and Zoning Commission shall review, comment, and approve or disapprove the site plan.
- The conditional use shall terminate ten years from date of site plan approval.

Mr. Jeff Reed, a representative of DelDOT was present on behalf of the application and stated that this application is for the renewal of a dirt pit that is in operation to maintain the roadways in Sussex County and that the

**Public
Hearing
(C/U
No. 1438)
(continued)**

Department requests that the use be extended for another ten years or for an unlimited period of time.

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

**Public
Hearing
(C/Z
No. 1457)**

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 MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 23.46 ACRES, MORE OR LESS" (Change of Zone No. 1457) filed on behalf of Penny Lane Development, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on January 24, 2002 at which time they recommended that the application be approved since the site is located in a Development District, according to the Comprehensive Plan, and since the site is adjacent to the Town of Ocean View. The record of the Planning and Zoning Commission was incorporated into the record of this Public Hearing.

Mr. Stickels advised Council that Mr. Cole has asked that Council defer action on this application for the purpose of giving him the opportunity to listen to the taped proceedings of the Public Hearing and the opportunity to participate in the vote on the application.

Mr. Lank, Director of Planning and Zoning Commission, noted that in a letter from the Office of State Planning Coordination, reference was made that the County should cooperate with the Town of Ocean View. Mr. Lank advised that no comments have been received from the Town.

Mr. Clinton Bunting, co-owner of Penny Lane Development, and Zach Crouch, Project Engineer with Davis, Bowen and Friedel, were present on behalf of the application and stated that the parcel is located within a Development District; that the application is for a maximum of 65 single family lots, which equates to 2.8 units per acres; that the parcel is neighbored by Savannah's Landing, Hunters Run, and Providence, all ranging from 2.2 units per acre to 4 units per acre; and that the application contains quality site design and amenities.

Mr. Lank reported that the applicant applied for the rezoning and subdivision approval at the same time, and therefore; if the applicant wants more than 65 units, they would have to reapply.

Mr. Bunting addressed Mr. Cole's comments regarding deferring action on the application. He stated that it is important to move forward as quickly as possible (on the project) to hit the spring selling market.

**Public
Hearing
(C/Z
No. 1457)
(continued)**

An adjoining property owner expressed interest in connecting sewer to his property by way of this project.

Mr. Bunting was advised that the project is not located within the boundaries of any existing sewer district and that he will be required to file a petition for a boundary extension of the Bethany Beach Sanitary Sewer District.

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

**M 116 02
Adopt
Ordinance
No. 1522**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1522 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 23.46 ACRES, MORE OR LESS" (Change of Zone No. 1457) filed on behalf of Penny Lane Development, LLC.

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

**Findings
of Fact**

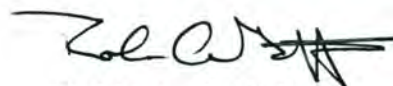
The Council found that the change of zone was appropriate legislative action based on the following findings of fact:

1. The applicant established by substantial evidence that the change of zone is consistent with the purposes and goals of the Comprehensive Plan, consistent with the goals of *Livable Delaware* and consistent with the character of the neighborhood as developed, without adverse impact of any sort.
2. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.

**M 117 02
Adjourn**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to adjourn at 2:25 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith
Clerk of the Council