



Sussex County Council Agendas & Minutes

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 13, 2007

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 13, 2007 at 5:50 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

M 145 07 Amend and Approve Agenda

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to amend the Agenda by striking the grant request from "Delmarva Clergy United in Social Action, Inc." and to approve the Agenda, as amended.

Motion Adopted: 5 Yea.

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

M 146 07 Authorize Executive Session

At 5:53 p.m., a Motion was made by Mr. Rogers, seconded by Mr. Phillips, to recess the Regular Session and go into Executive Session for the purpose of discussing Collective Bargaining and Personnel Matters.

Motion Adopted: 5 Yea.

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

- Executive Session** **At 5:54 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Sussex County Council Chambers for the purpose of discussing Collective Bargaining and Personnel Matters.**
- M 147 07 Reconvene Regular Session** **At 6:20 p.m., a Motion was made by Mr. Rogers, seconded by Mr. Phillips, to come out of Executive Session and to reconvene the Regular Session.**
- Motion Adopted: 3 Yea, 2 Absent.**
- M 147 07 (continued)** **Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Absent; Mr. Rogers, Yea; Mr. Jones, Absent; Mr. Dukes, Yea**
- M 148 07 Approve Minutes** **A Motion was made by Mr. Jones, seconded by Mr. Dukes, to approve the minutes of February 13, 2007.**
- Motion Adopted: 5 Yea.**
- Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Yea**
- Correspondence** **Mr. Griffin read the following correspondence:**
- ROGER JONES, STATE DIRECTOR OF THE NATURE CONSERVANCY, WILMINGTON, DELAWARE.**
- RE: Letter thanking the Council for the \$428,000 grant made to the Sussex County Land Trust in January in support of the conservation easement purchase of the Burton Farm.**
- ROBERT L. REED, GREENWOOD, DELAWARE.**
- RE: Letter to the Council regarding items used under the “Deputy Bob Program”.**
- Airport Lease Amendment/ Georgetown Air Services** **Mr. Baker announced that he would be recommending three actions in regards to a hangar at the Sussex County Airport. First, he reported on the history of the hangar. In approximately 1998, the County loaned \$400,000 to the Patrick Family Foundation to construct the 10,000 square foot hangar. In 1992, Georgetown Air Services, John Kenney’s business, purchased the hangar from the Patrick Family Foundation. The hangar is currently owned by Georgetown Air Services. The \$400,000 loan made by the County was transferred over to Georgetown Air Services. Georgetown Air Services currently subleases the hangar to Kimbles Aviation, which is owned by Sean Carroll and Kimbles Aviation is currently occupying the hangar.**
- Mr. Baker advised that the hangar is ideal for the Airframe Mechanics**

Program, which is to be offered by Delaware Technical & Community College (DTCC). DTCC's goal is that the program will start in the Spring of 2008. Representatives from DTCC have inspected the hangar; however, the FAA must also review the facility and approve the training program.

Mr. Baker stated that the County is recommending the purchase of the property. He noted that, at the October 24, 2006 County Council meeting, the Council discussed its intent to work with DTCC to obtain a hangar site for the Airframe Mechanics Program.

**Airport
Lease
Amend-
ment/
George-
town
Air
Services
(continued)**

Mr. Baker reviewed the following list of recommendations:

- **Amend the County's lease with Georgetown Air Services to exclude the parcel that includes the block hangar.**
- **Purchase the block hangar building from Georgetown Air Services for a payment of \$25,000 and the cancellation of the existing loan for \$400,000. (The building has been appraised at \$475,000.)**
- **Lease the hangar to Kimble's Air Service until August 16, 2007, at \$1,000 per month.**
- **At the termination of the lease with Kimble's Air Service, the County would renovate the hangar for Delaware Technical & Community College.**
- **Thereafter, the County would lease the renovated hangar to Delaware Technical & Community College for the Airframe Mechanics Program at a minimal rate.**

Mr. Baker noted that, when renovation estimates are available, they will be presented to the Council for its approval.

**M 149 07
Approval
of Airport
Lease
Amendment
& Purchase
Agreement
with
Georgetown
Air Services
and
Approval
of Airport
Lease
Agreement
with
Kimble's
Aviation**

A Motion was made by Mr. Cole, seconded by Mr. Jones, that the Sussex County Council approves the following actions:

- 1) **A Lease Amendment with Georgetown Air Services, LLC which will delete Lot 833 from the Agreement.**
- 2) **A Purchase Agreement to purchase the block hangar building on Lot 833 for a total of \$425,000, which will be paid by the cancellation of a \$400,000 loan and a payment of \$25,000.**
- 3) **Approval of a Lease with Kimble's Air Service for the hangar on Lot 833 at \$1,000 per month, until August 16, 2007.**

Motion Adopted: 5 Yea.

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

**Discussion
of Density
Trade
Ordinance**

Mr. Baker noted that the next order of business was “Discussion of Density Trade Ordinance”. Mr. Phillips advised that he requested that this be placed on the Agenda for discussion purposes only.

Mr. Baker distributed copies of Ordinance No. 1842, adopted on April 4, 2006, entitled “AN ORDINANCE TO AMEND CHAPTER 115 SECTION 25 OF THE CODE OF SUSSEX COUNTY ALLOWING FOR AN INCREASE OF DENSITY IN AR-1 DISTRICTS WITHIN COMPREHENSIVE PLAN GROWTH AREAS, PROVIDING FOR SPECIFIC CIRCUMSTANCES, FEES AND/OR CONDITIONS FOR OBTAINING SUCH AN INCREASE IN DENSITY AND PROVIDING AN INCENTIVE FOR THE PRESERVATION OF OPEN SPACE IN SUSSEX COUNTY” (the *Density Trade* ordinance).

**Discussion
of Density
Trade
Ordinance
(continued)**

Mr. Baker explained that a proposal has been made to amend the Density Trade Ordinance. This Ordinance currently permits an increase in density for cluster developments in Development Zones “if the developer has proffered to Sussex County for the purpose of creating open space preservation/active and passive recreation acres a development fee per unit for every unit in excess of two units per acre”.

Mr. Baker explained that the proposal would allow the County to consider multi-family construction in cluster developments as part of the Density Trade Ordinance. Currently the Ordinance only allows single family home construction. He stated that the proposal would also increase the open space requirement from 30 percent to 40 percent, if multi-family units are constructed.

Mr. Phillips explained his reasons for asking that this matter be placed on the Agenda for discussion. He stated that it has been brought to his attention that there is an opportunity to increase the amount of open space required in addition to creating more affordable housing if multi-family housing is included in the Density Trade Ordinance (in a designated Development District). He stated that this would make the Density Trade Ordinance more applicable and it would bring in revenue that could be used for conservation purposes.

It was the consensus of the Council that Mr. Phillips would meet with the County’s legal staff and Rick Kautz, the County’s Land Use Planner, to consider standards for the draft ordinance, prior to asking the County’s legal staff to actually draft an ordinance. Mr. Phillips stated that he would report back to the Council in several weeks. The Council agreed with Mr. Baker that the County’s Land Use Consultant should be asked to comment on any draft ordinance.

**Adminis-
trator’s
Report**

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

1. Recorder of Deeds – Information Systems Improvements

The Sussex County Information Systems Department has worked with the Recorder of Deeds and its contractor, ACS, to provide County maintained and operated hardware for the Recorder of Deeds Office. They have completed work that will enable Recorder of Deeds records to be stored on County servers, added the Recorder of Deeds to the new County phone system, and provided more public terminals for information access for title searchers and the public. We would like to thank Mr. Eddie Sparpaglione and the Information Systems Department for their hard work that brought about this change and these improvements.

Adminis-
trator's
Report
(continued)

2. Sussex County Advisory Committee for the Aging and Adults with Physical Disabilities

Enclosed is a copy of the agenda for March 19, 2007, for the next meeting of the Sussex County Advisory Committee for the Aging and Adults with Physical Disabilities. A review of a senior transportation study and information regarding fees for transport of patients will be discussed. The meeting will be held at the Sussex County West Administrative Complex at 10:00 a.m.

3. Beneficial Acceptance

The Engineering Department has granted Beneficial Acceptance to the following projects:

- Seagrass Plantation, Agreement No. 502, was granted Beneficial Acceptance on March 5, 2007. The developer is Centex Homes and the project is located on County Road 348, Irons Lane, in the Holts Landing Sanitary Sewer District, consisting of 51 single-family lots.
- Forest Landing, Phase 1 (off-site), Agreement No. 343, was granted Beneficial Acceptance on March 5, 2007. The developer is Forest Landing Development, L.L.C., and the project is located at the intersection of County Road 368 and County Road 84 in the Miller Creek Sanitary Sewer District, consisting of off-site construction.
- Eagle Point (Section II), Agreement No. 325, was granted Beneficial Acceptance on March 8, 2007. The developer is Eagle Point II, L.L.C., and the project is located on Shady Road in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, consisting of 13 townhouse buildings.
- Rehoboth Crossing (previous Ames Plaza Redevelopment), Agreement No. 435, was granted Beneficial Acceptance on March 8, 2007. The developer is Rehoboth Beach Associates II, L.L.C.,

and the project is located on Route 1, northbound, in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, consisting of a 147-unit townhouse development.

Included with this report is a fact sheet on each of the projects.

4. Michael M. Moore

(continued)

It is with deep regret that we note the passing of Michael M. Moore, a Sussex County employee for the last 25 years. Mr. Moore worked as a Planner I, Engineering Technician, Utility Construction Technician II, and Public Works Technician II. We will certainly miss Mr. Moore and wish to express our heartfelt sympathy, especially to his wife and son.

Wastewater Agreements Mr. Godwin presented wastewater agreements for the Council's consideration.

M 150 07
Execute
Agreements/
Ashley
Manor,
Phase 1
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. 539, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Beazer Homes Corporation, for wastewater facilities to be constructed in Ashley Manor – Phase 1 – Onsite, located in the Fenwick Island Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

M 151 07
Execute
Agreements/
Ashley
Manor,
Phase 2
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. 539-2, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Beazer Homes Corporation, for wastewater facilities to be constructed in Ashley Manor – Phase 2, located in the Fenwick Island Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

M 152 07
Execute
Agreements/
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. 446, that the Sussex County

Hopkins-Pettyjohn Subdivision Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and ADC Builders for wastewater facilities to be constructed in Hopkins – Pettyjohn Subdivision – Onsite (North Pump Station only), located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

Local Law Enforcement Grant Program/Requests for Funding Mr. Godwin, presented the following requests for funding through the Revenue Sharing for Local Law Enforcement Grant Program:

Blades	\$24,616.26	Various equipment for police station, police vehicles and police officers.
Dagsboro	\$25,000.00	Convert existing garage into police station.
Ocean View	\$15,874.02	Various equipment for new police station.

M 153 07 Approve Local Law Enforcement Grants A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the Local Law Enforcement Grants, as presented.

Motion Adopted: 5 Yea.

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

Presentation on Joint Use Libraries Carol Fitzgerald, County Librarian, introduced Anne Norman, Director, Delaware Division of Libraries, and Richard Waters, Library Consultant, Providence Associates. Mrs. Fitzgerald stated that, over two years ago, the State Library hired consultants to take a look at libraries throughout the State. As a result, the consultants presented a Master Plan that included libraries of various sizes in the State and it addressed community libraries, regional libraries, and anchor libraries. One of the possibilities discussed was to modify the library at Delaware Technical & Community College to become an anchor library and joint use facility.

Mrs. Fitzgerald explained that the presentation was for informational purposes only and that they were not requesting funding or implementation.

Mr. Waters gave a presentation on a conceptual space plan of the existing Betze Library at Delaware Technical & Community College (in

Georgetown) to make it a joint-use library which would serve the needs of the College and the general public, perhaps as an anchor library.

Recon- sideration of Seacoast Investment's Almshouse Subdivision Application Lawrence Lank, Director of Planning and Zoning, presented a request submitted to the County Council for its confirmation that Almshouse (Subdivision No. 2005-04), an application of Seacoast Investment, LLC has been approved as an MPHU-qualified development and to instruct the Planning and Zoning Commission to proceed with the consideration of the Almshouse Subdivision Application for compliance with the applicable subdivision review criteria.

Recon- sideration of Seacoast Investment's Almshouse Subdivision Application under MPHU Ordinance Mr. Lank reported that on February 20, 2007, the Planning and Zoning Commission held a Public Hearing on the Almshouse Subdivision Application. On that date, the Commission deferred action to clarify whether the land qualifies for consideration as part of a Moderately Priced Housing Unit (MPHU) project. It was noted that the County Council is responsible for deciding whether or not a project qualifies. The Commission stated that they would like the Council to clarify its decision, since there seems to be some questions about whether it qualifies, and because this is the first project of its kind under the new Ordinance.

(continued) Mr. Lank explained that the Cluster Ordinance makes reference to developing areas being described as Town Centers, Development Districts and Environmentally Sensitive Areas. He stated that the issue was that the site is not located within any of the three areas. Mr. Lank explained that the site is located across the road from where the County's Comprehensive Plan Map shows the boundaries of the Development District around the Town of Georgetown. Mr. Lank noted that he has seen the Proposed Comprehensive Plan Map outlining future annexations of the Town of Georgetown and that it does include this area.

Mr. Lank reported that a letter was received on this date from Fuqua and Yori, P.A., who represent the applicant. In the letter, Mr. Fuqua makes reference to the Town of Georgetown's future annexation area. The letter stated that "The Town of Georgetown has previously expressed interest in the possible annexation of the property and in providing water and sewer service to the site. Although not currently in the Town's annexation area, the site is designated for growth as a future annexation area in the Town's draft revision of its Comprehensive Plan Map."

Mr. Lank advised that on April 25, 2006, the County Council voted to accept the Request for Proposal (RFP) from Seacoast Investments, LLC for the MPHU Program and authorized the proposed project to move forward to Planning and Zoning and the State PLUS process.

M 154 07 Motion Withdrawn A Motion was made by Mr. Phillips, that the Planning and Zoning Commission has asked for clarification as to whether Subdivision No. 2005-04 is situated upon qualifying land as a Moderately Priced Housing Unit Project under Chapter 72 of the Sussex County Code and that upon further

consideration, the location of the project is in an area destined to become a Development Area under either the Town of Georgetown's Comprehensive Plan or the County's Comprehensive Plan as a result of its location next to Route 113 and other uses, and that the County desires to promote Moderately Priced Housing Units for its citizens; therefore, Sussex County confirms that Subdivision No. 2005-04 is a Moderately Priced Housing Unit Project under Chapter 72 of the Sussex County Code.

Mr. Phillips withdrew his Motion to allow for further discussion.

**Recon-
sideration
of Seacoast
Investment's
Almshouse
Subdivision
Application
under
MPHU
Ordinance
(continued)**

Mr. Rogers stated that he believes this project was erroneously approved by the Council as a MPHU Project on April 25, 2006 since it is not located in a Town Center or a Development District although it could be construed as being environmentally sensitive.

Bill Lecates, Director of Community Development, stated that the County Council has the right to disqualify an applicant at any time and that the MPHU Ordinance does not supersede the County's Planning and Zoning Ordinances or the State PLUS process.

Mr. Fuqua stated that the application was filed prior to the adoption of the MPHU Ordinance and that once the Ordinance was approved, the Applicant wanted to participate and include MPHUs as bonus density. Mr. Fuqua clarified that the Subdivision Application is for 161 units and that, if the MPHU units are approved, the total number of units would be 205. Mr. Fuqua referenced the Town of Georgetown's Proposed Comprehensive Plan Map and he stated that it does bring the site within the Town's annexation area. Under the State Strategies Map, the site is partially in a Level 4 Area and partially in a Level 3 Area. Mr. Fuqua stated that, within the MPHU Ordinance, there are provisions that authorize the Council to modify zoning and subdivision regulations to meet the objectives of the Ordinance. Mr. Fuqua stated that the goal of the Ordinance is the creation of Moderately Priced Housing Units and he noted that the Subdivision will proceed with or without the MPHU portion of it.

Councilmembers questioned if they could override an Ordinance and questioned if the project does or does not meet the criteria of the MPHU Ordinance.

Mr. Griffin quoted a section of the MPHU Ordinance that authorizes the Council to modify the provisions of the County's Zoning Ordinance and Planning and Zoning regulations and process, as needed, to achieve density incentives and specific design elements.

Mr. Fuqua also quoted a section of the MPHU Ordinance that the Council views this Ordinance as a living document that will be modified as needed to respond to economic, housing, development, land use and other trends in the County and to Best Practices in MPHU Programs.

Mr. Cole questioned if the proposal is in compliance with the MPHU Ordinance. Mr. Griffin responded that it currently does not and that if the Council wishes to approve MPHUs for this project, they may wish to consider an amendment to the Ordinance.

Mr. Rogers stated he knows the Council is in favor of MPHUs; however, the question is whether the site is “in or out” of the developing area.

(continued) Mr. Lank responded that the site is not located in a developing area (Town Center, Development District, and Environmentally Sensitive Development District).

**M 155 07
Confirm
that
Subdivision
No. 2005-04
as a MPHU
Project
(Denied)**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, that the Planning and Zoning Commission has asked for clarification as to whether Subdivision No. 2005-94 is situated upon qualifying land as a Moderately Priced Housing Unit Project under Chapter 72 of the Sussex County Code and that upon further consideration, the location of the project is in an area destined to become a Development Area under either the Town of Georgetown’s Comprehensive Plan or the County’s Comprehensive Plan as a result of its location next to Route 113 and other uses, and that the County desires to promote Moderately Priced Housing Units for its citizens; therefore, Sussex County confirms that Subdivision No. 2005-04 is a Moderately Priced Housing Unit Project under Chapter 72 of the Sussex County Code.

Motion Denied: 4 Nay, 1 Yea.

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

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

**M 156 07
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to Peninsula Bluegrass for festival expenses.

Motion Adopted: 5 Yea.

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

**M 157 07
Council-
manic**

A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$500.00 from Mr. Rogers’ Councilmanic Grant Account to Casa San Francisco for educational programs for homeless adults and low-income households in

Grant Sussex County.

Motion Adopted: 5 Yea.

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

The grant request from the American Cancer Society was tabled.

**M 158 07 A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give
Community \$5,000.00 from Mr. Dukes' Community Improvement Grant to the Laurel
Improve- Historical Society for renovations to the Studley House.**

**ment
Grant Motion Adopted: 5 Yea.**

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

**M 159 07 A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$500.00
Council- (\$100.00 from each Councilmanic Grant Account) to the Greater
manic Georgetown Chamber of Commerce for the Summer Festival.**

Grant Motion Adopted: 5 Yea.

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

**M 160 07 A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give
Community \$2,500.00 from Mr. Phillips' Community Improvement Grant Account to
Improve- the Seaford Mission for program expenses.**

**ment
Grant Motion Adopted: 5 Yea.**

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

**M 161 07 A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give
Community \$1,200.00 from Mr. Cole's Community Improvement Grant Account to the
Improve- Rehoboth Bay Tenants Association for a plaque or some type of memorial
ment honoring the late Charlie Marsch.**

Grant Motion Adopted: 4 Yea, 1 Abstention.

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

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

M 162 07
Council-
manic
Grant **A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$250.00 (\$50.00 from each Councilmanic Grant Account) to Sussex Technical High School for scholarship funding.**

Motion Adopted: 4 Yea, 1 Absent.

M 162 07
(continued) **Vote by Roll Call: Mr. Cole, Absent; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea**

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

M 163 07
Council-
manic
Grant **A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$125.00 from Mr. Jones' Councilmanic Grant Account to the Delaware Quarter Horse Association for Futurities Programs Sponsorship.**

Motion Adopted: 4 Yea, 1 Absent.

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

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

M 164 07
Community
Improve-
ment
Grant **A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$5,000.00 from Mr. Jones' Community Improvement Grant Account to the Woodbridge Little League for concession stand construction costs.**

Motion Adopted: 5 Yea.

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

M 165 07
Council-
manic
Grant **A Motion was made by Mr. Jones, seconded by Mr. Rogers, to give \$500.00 (\$250.00 each from Mr. Jones' and Mr. Rogers' Councilmanic Grant Accounts) to the Milford Senior High School for their After-Prom Party.**

Motion Adopted: 5 Yea.

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

M 166 07 Councilmanic Grant **A Motion was made by Mr. Jones, seconded by Mr. Cole, to give \$500.00 from Mr. Jones' Councilmanic Grant Account to the Georgetown Fire Company for their golf tournament fundraiser.**

Motion Adopted: 5 Yea.

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

M 167 07 Councilmanic Grant **A Motion was made by Mr. Jones, seconded by Mr. Cole, to give \$200.00 from Mr. Jones' Councilmanic Grant Account to the Woodbridge Elementary School for their Reading Program.**

Motion Adopted: 5 Yea.

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

M 168 07 Councilmanic Grant **A Motion was made by Mr. Jones, seconded by Mr. Cole, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to Kent-Sussex Industries, Inc. to sponsor their 2008 calendar.**

Motion Adopted: 5 Yea.

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

M 169 07 Councilmanic Grant **A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$250.00 from Mr. Rogers' Councilmanic Grant Account to the Cape Henlopen High School for the "Run for Science" Fundraiser.**

Motion Adopted: 5 Yea.

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

Introduction of Proposed Ordinance **Mr. Rogers introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.66 ACRES, MORE OR LESS" (Conditional Use No. 1739) filed on behalf of Eric Sugrue; Big Trips, LLC. The Proposed Ordinance will be advertised**

for Public Hearing.

- Introduction of Proposed Ordinance** Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A COMMUNITY CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 41,651 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1740) filed on behalf of Cynthia A. Brittingham and Monroe E. Brittingham, Jr. The Proposed Ordinance will be advertised for Public Hearing.
- Introduction of Proposed Ordinance** Mr. Jones introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR BORROW PIT EXCAVATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 199.50 ACRES, MORE OR LESS” (Conditional Use No. 1741) filed on behalf of David G. Horsey & Sons, Inc. The Proposed Ordinance will be advertised for Public Hearing.
- Introduction of Proposed Ordinance** Mr. Dukes introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EXPANSION OF EXISTING MANUFACTURED HOME PARK/CAMPGROUND BY ADDING 24 CAMPSITES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 4.0 ACRES, MORE OR LESS” (Conditional Use No. 1742) filed on behalf of Pine Acres, Inc. The Proposed Ordinance will be advertised for Public Hearing.
- Introduction of Proposed Ordinance** Mr. Dukes introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MOTOR VEHICLE SERVICE, RESTORATION, TOWING, AND SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.0 ACRES, MORE OR LESS” (Conditional Use No. 1743) filed on behalf of John and Michelle Beaver. The Proposed Ordinance will be advertised for Public Hearing.
- Introduction of Proposed Ordinance** Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE FOR AN ARCHITECTURE FIRM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 14,972 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1744) filed on behalf of Stephen Wagner. The Proposed Ordinance will be advertised for Public Hearing.

Introduction of Proposed Ordinance	Mr. Dukes introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING AND GARDEN CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.702 ACRES, MORE OR LESS” (Conditional Use No. 1745) filed on behalf of Gray’s Creative Touch. The Proposed Ordinance will be advertised for Public Hearing.
Introduction of Proposed Ordinance	Mr. Dukes introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 1321 (ORDINANCE NO. 1361) TO ALLOW AN OFFICE, SHOWROOM, AND AN ARTISANS/ARTISTS SPACE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 36,000 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1746) filed on behalf of JCBB, LLC. The Proposed Ordinance will be advertised for Public Hearing.
Additional Business	<p>Under <i>Additional Business</i>, Dan Kramer commented that the County does not need to spend money on land for parks and recreation since there is sufficient State lands for this purpose, including five State parks, thousands of acres of trails, sports fields, etc.</p> <p>Mr. Kramer also referred to signs that are being put up on the weekends and he questioned why the County does not enforce their sign laws.</p> <p>Under <i>Additional Business</i>, Joe Warnell of Lincoln asked the County Council to consider the wishes of the residents of Lincoln and (1) oppose the Route 113 North – South Bypass through Lincoln and (2) oppose the fact that they propose a limited access highway which would limit the mobility of farm machinery, emergency vehicles, etc.</p>
Recess	At 8:22 p.m., Mr. Dukes declared a 5 minute recess.
Reconvene	Mr. Dukes called the Council back into session at 8:30 p.m.
Public Hearing/ C/Z No. 1609	A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 115.29 ACRES, MORE OR LESS” (Change of Zone No. 1609) filed on behalf of Oak Creek, LLC.

Mr. Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on February 22, 2007 at which time they deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated February 22, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Lank read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.

**Public
Hearing/
C/Z
No. 1609
(continued)**

Jim Fuqua, Attorney, was present on behalf of the Applicant. Also present was Rob Baker of Chase Communities. Mr. Fuqua stated that Oak Creek, LLC is an entity owned by Chase Communities; that the application is for a 226 lot residential planned community; that the application is already an approved subdivision recorded in Sussex County; that they are requesting the RPC approval for the sole purpose of modifying the front and side yard setbacks; that, in an RPC, the setbacks can be reduced at the Council's discretion; that they are requesting the front yard setbacks be modified from the required 30 feet to a 15 foot setback and the side yard setback be modified from the required 10 feet to a 5 yard setback; that Warrington Creek, which is an adjacent MR-RPC was approved with the 15 foot and 5 yard setbacks; that the Oak Creek and Warrington Creek projects have street interconnections; and that they propose to create uniformity in the design and layout of the combined projects by requesting the same setbacks throughout.

Mr. Fuqua noted that the only other change made to the approved site plan is a pedestrian/golf cart bridge to connect the Development with Kings Creek Country Club. He noted that the bridge would require DNREC approval; as of this date, that approval has not yet been received. Mr. Baker stated that they have executed an agreement with Kings Creek Country Club with regards to the bridge.

Mr. Fuqua submitted proposed conditions and findings of fact for the Council's consideration. Mr. Fuqua explained that the Proposed Conditions 1 through 10 are existing conditions of Oak Creek Subdivision and that Conditions 11 and 12 are new conditions for the RPC application:

- 1. There shall be no more than 226 lots within the Subdivision.**
- 2. The Applicant shall cause to be formed a Homeowners Association to be responsible for the maintenance of streets, roads, any buffers, stormwater management facilities, and other common areas.**
- 3. The stormwater management system shall meet or exceed the requirements of the State and County.**
- 4. All entrances shall comply with all of DelDOT's requirements.**
- 5. A system of streetlighting shall be provided by the Applicant, and the location of the street lights shall be shown on the final site**

**Public
Hearing/
C/Z
No. 1609
(continued)**

- plan.
6. Sidewalks shall be installed on both sides of all streets within the Subdivision.
 7. The Applicant shall maintain as many existing trees as possible. The undisturbed forested areas shall be shown on the Final Site Plan.
 8. No wetlands shall be included within any lot lines.
 9. Within one (1) year of the issuance of the first building permit, the Developer shall construct a community swimming pool and community center.
 10. The development shall be served as part of the West Rehoboth Sanitary Sewer district in accordance with Sussex County Engineering Department specifications and regulations.
 11. Minimum setbacks shall be front - 15 feet; side - 5 feet; and rear - 10 feet.
 12. The proposed bridge connecting the Development to Kings Creek Country Club shall be subject to the approval of the appropriate Kings Creek entity, DNREC and any other applicable agency. The proposed bridge shall be for pedestrian and golf cart use only. All other types of motorized vehicles shall be prohibited.

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

**M 170 07
Defer
Action
on C/Z
No. 1609**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Change of Zone No. 1609, filed on behalf of Oak Creek, LLC.

Motion Adopted: 5 Yea.

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

**Public
Hearing
C/Z
No. 1610**

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 INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 41.94 ACRES, MORE OR LESS” (Change of Zone No. 1610) filed on behalf of Burton’s Pond Communities, LLC.

Mr. Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on February 22, 2007 at which time they deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated February 22, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Lank read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.

Mr. Lank read a letter dated March 5, 2007 from Mark and Joanne Woodruff stating that they would like to rescind their opposition to the proposed zoning change.

Mr. Lank read an email received on March 13, 2007 from David Rankin in opposition to the proposed development.

Public
Hearing
C/Z
No. 1610
(continued)

Jim Fuqua, Attorney, was present on behalf of the Applicant. Also present was the Applicant and Developer, Michael Lynn, President of RDM, Inc., which is a member of the Burton Pond Communities, LLC.

Mr. Fuqua noted that he would not be repeating all of the information presented during the Public Hearing before the Planning and Zoning Commission and that he would not be calling on all of the witnesses that spoke during that Public Hearing. Mr. Fuqua stated that the record of the Public Hearing before the Planning and Zoning Commission was very thorough and that the minutes of that meeting and the Exhibit Books cover all of the information.

Mr. Fuqua stated that the Public Hearing before the County Council would be on the Change of Zone application only and not the subdivision application, which was also heard by the Planning and Zoning Commission. Both applications were deferred by the Commission.

Mr. Fuqua introduced several people who contributed to the design of the proposed development: Scott Aga of McCrone Inc.; Derrick Kennedy of Orth Rodgers Associates, Inc.; Todd Fritchman of Envirotech Environmental Consulting, Inc.; Glenn Mellon of Heite Consulting, Inc.; and Jerry Esposito of Tidewater Utilities, Inc.

Exhibit Books were distributed to the Council. The books contained a summary and data regarding the proposed development; also included was a *Rare and Endangered Species Study*. Mr. Fuqua reported that a large Appendix Book was also submitted into the record and that some of the reports and studies prepared in connection with the development are included in that book, including a Soils and Reconnaissance Report prepared by Eastern Shore Soil Services; a wetlands investigation prepared by Environmental Consultants, Inc.; a Burton Pond *Environmental Assessment and Environmental Management Plan* prepared by Envirotech; a Traffic Impact Study prepared by Orth-Rodgers Associates; a *Cultural and Archaeological Study* prepared by Heite Consulting; an *Economic Impact Study*; the conclusion summaries of a Phase 1 and limited Phase II Environmental Site Assessment prepared by Hillis-Carnes Engineering Associates.

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No. 1610
(continued)

Mr. Fuqua reported that the site of the proposed project is located on Route 24, south of Burton Pond; that Burton Pond Communities is comprised of two parcels of land, a rezoning from AR-1 to MR-RPC on the east side of Route 24 and a cluster subdivision on the west side of Route 24; that the RPC site is located in the Environmentally Sensitive Development District Overlay Zone, a growth area under the County's Land Use Plan; that they are proposing 102 multi-family units located in 15 separate buildings on approximately 42 acres; that the style of the buildings is called the "Big House" and they are designed to have an architectural appearance of a large single family residential home; that the maximum permitted density could be 174 units but they are only requesting 102 units (a gross density of 2.43 units per acre); that the proposal results in 31.8 acres of open space (75 percent of the 42 acre parcel); that central water and sewer are proposed; that the site plan was altered and revised to respond to the PLUS recommendations; that the proposed road improvements will be at the developer's expense and the improvements will be done first (before any occupancy of the proposed units); that there would be one Burtons Pond Homeowners Association which would provide for the management of all the common areas and the recreational facilities; that the site is undeveloped land surrounded by an extensively developed residential area (an in-fill parcel); and that the developers are also purchasing Burton's Pond.

Mr. Fuqua stated that it was his perception at the Public Hearing before the Planning and Zoning Commission that there was very little concern expressed by the area residents regarding the single family subdivision portion of the application and that concerns seemed to be directed to the MR-RPC application. Mr. Fuqua stated that in light of the opposition expressed, it is "certainly fair to wonder" (1) why is the Applicant requesting a MR-RPC, (2) what does the MR-RPC accomplish, and (3) why doesn't the Applicant drop the MR-RPC application and re-file for a cluster single-family subdivision. He stated that they believe that dropping the MR-RPC application and replacing it with a single-family subdivision would be a bad land use planning decision and contrary to everything that the State and County planning recommendations and goals have been over the last ten years. He stated that they feel very strongly that the site conditions, the applicable land use laws and regulations, and the stated goals and objectives of the County and State, relative to Land Use policies, are fully met and best served by the MR-RPC application. He stated that their application follows the five principles of the Livable Delaware Agenda: (1) guide growth to areas most prepared to accept it in terms of infrastructure and thoughtful planning (they will be financing infrastructure for the site); (2) preserve farmland and open space (they have gone to extensive measures to protect open space); (3) promote infill and redevelopment (this site is an infill area where existing residential developments exist); (4) facilitate attractive, affordable housing (they propose that 20 of the 102 units will be MPHU units – not bonus density); and (5) protect quality of life while slowing sprawl (this is in a growth area as designated by Sussex County's Land Use Plan).

Mr. Fuqua referred to the original PLUS letter of September 15, 2005 in which the State indicated that it has “no objection to the portion of the project located east of Route 24 within the Environmentally Sensitive Developing Area”. Mr. Fuqua reported that in the follow-up PLUS letter of December 7, 2005, the State again indicated that they do not oppose the proposal. Another comment in that letter was that the Division of Historical and Cultural Affairs and DNREC commends the developer for avoiding and protecting the areas identified as possible archaeological sites and environmental areas.

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No. 1610
(continued)

Michael Lynn stated that along the western boundary of the project is Route 24, that along the southern boundary is a standing wood line of over 12 acres; that along the northern boundary is substantial upland, a forested wetlands and wetlands area; that there would be significant setbacks between the development and the wetlands; that they plan to share Burton Pond; that they identified features and site assets; that once they established the boundaries of the site, they identified, mapped and worked to protect the site assets; that no wetlands were identified on the eastern portion of the project; that in accordance with the Traffic Impact Study, Hollymount Road will be improved to State Local Road Standards; that the developers will comply with all of DelDOT’s recommendations and determinations; that no rare or threatened species were found on the site; that sewer would be handled through an on-site wastewater treatment facility owned and operated by Tidewater Utilities; that DNREC has approved feasibility for the wastewater treatment facility and rapid infiltration basins; that the wastewater treatment facility and central water system will be designed to serve these projects only; that the pond is a part of the community’s overall amenity plan but its acreage was not included in any density calculations nor was it counted as open space; that they will be stewards of the pond and they will establish the means and methods to do four things: (1) continue its use as a source for the local area’s recreation and fishing, (2) ensure the continued viability of its ecosystem, (3) improve the current conditions that exist in the pond, and (4) minimize the impacts of the proposed development; that after extensive field research, a 3-tiered management program for Burton’s Pond was developed; that the clustering that is inherent in the RPC application would create significant amounts of open space and large buffering areas; that the RPC would provide an opportunity for alternative housing types in addition to the single-family homes on the western tract; that the multi-family proposal would meet an existing need; that they are committing 20 of the 102 units to the County’s MPHU Program; that they plan significant setbacks from the woodlands and road frontages along Route 24 and Sloan Road; that parking will meet or exceed the Code; that the buildings will probably be 90 feet in length with a 40 foot separation between buildings; that the historic cemetery site will be preserved and protected; that a 6 foot fence is proposed along the Brandywood Subdivision boundary; that 5.75 acres of land which contains upland woods and is of prehistoric archaeological significance is included in the density calculation but will be preserved from any development and will

act as a buffer; that the cluster development will allow them to preserve 12 acres of upland woods; that the project will bring \$1.9 million worth of road improvements to Sloan Road, Route 24 and Hollymount Road, which is to be done at the inception of the project; that these improvements are not included in any of DelDOT's Capital Improvement forecasts; and that the proposed community received PLUS approval.

Mr. Fuqua submitted proposed conditions and findings of fact for the Council's consideration.

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No. 1610
(continued)

There were no public comments in support of the application.

Public comments were heard in opposition to the application from Bob Maegerle, Michael Tyler (President of Citizen's Coalition and representative for Pinewater), Mary Ann Scott, John Davidson, John Furbush, Mary Lippiatt, and John Hukill. They stated that the local residents do not want this rezoning; that they feel that the Environmentally Sensitive Developing District Overlay Zone should be protected from significant additional human waste so that the ground water quality can be improved and the Inland Bays will again support marine life; that the on-site waste disposal system is environmentally wrong; that the proposal removes the zoning protection that the residents of the area want to retain; that the site is zoned AR-1 and they would like to see it stay that way; that this proposal is out of context with the County's 2003 Comprehensive Plan Update; that the 2007 Comprehensive Plan Update needs to provide clearer restrictions for this type of high density development; that the Big Houses create high density; that petitions signed by 120 residents were presented to the Planning and Zoning Commission in objection to the rezoning; that the Inland Bays should be protected by wastewater systems and not on-site systems; that MPHUs should be single family homes, not condominiums and not apartments; that it should not be a part of the County's MPHU Ordinance; that condominiums are out of character with the area; that there was a letter dated September 15, 2005 from the Office of State Planning Coordination that does not include positive comments regarding the proposal; that the site is located in a Level 4 area, a low density area; that the site is a good recharge area and should be protected; that multi-family housing is out of character with the surrounding area; that they are concerned about the cumulative impact of 410 units; that the intersection is designated as an "F", which means failing; that there will be serious environmental impacts to the area; that the application should be denied in its current configuration; that the whole project is going to drain into the water (Burton Pond); that if the Application is approved, the Applicant should be required to make the road improvements prior to any site work being started; that Route 24 is already congested and the project would increase traffic on the road; that the intersection is extremely dangerous; that there is nothing in writing stating that the public will have access to Burton Pond in perpetuity; that there is concern as to who will take care of the pond – the Homeowners Association or DelDOT; and that the application should be put on a waiting list until the Comprehensive Plan Update has been completed.

Mr. Cole expressed concern about the proliferation of small wastewater systems in the County and private utilities within the County's sewer district. He asked Mr. Fuqua if the Applicant would be willing to abandon their wastewater system when the County expands to that area.

Mr. Fuqua responded that, once an investment has been made in a utility, he doesn't think Tidewater would want to hand it over to the County, because that is called a taking.

**Public
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(continued)**

Mr. Cole stated that there should be some agreement between the Sussex County Engineering Department and the private utility. He stated that the County Engineering Department has recommended that when Sussex County provides sewer service, it is required that a treatment system be abandoned and a direct connection made to the County's system at the developer's or the Homeowner Association's expense.

Gerard Esposito, President of Tidewater Utilities, Inc. and Tidewater Environmental Services, Inc., responded to a question raised by Mr. Phillips regarding the level of wastewater treatment. He stated that the treatment plant proposed is not a septic system; that the treatment plant will be a sequencing batch reactor system; that the wastewater would be highly treated; and that the wastewater would exceed drinking water standards.

Michael Tyler stated that "The Retreat" said they would turn their system over to the County since the big concern was in protecting Love Creek.

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

**M 171 07
Defer
Action
on C/Z
No. 1610**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to defer action on Change of Zone No. 1610 filed on behalf of Burton's Pond Communities, LLC.

Motion Adopted: 5 Yea.

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

**M 172 07
Adjourn**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to adjourn at 10:58 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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