

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 19, 2002**

**Call to Order**      The regular meeting of the Sussex County Council was held Tuesday, March 19, 2002, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

**M 177 02**      A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to amend the  
**Amend**      Agenda by striking "Russell Archut, Assistant County Engineer, 1. West  
**and**      Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, A.  
**Approve**      Henlopen Landing – Request to Post Notices", and to approve the Agenda,  
**Agenda**      as distributed.

**Motion Adopted:**      5 Yea.

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

**M 178 02**      A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve  
**Approve**      the minutes of March 12, 2002, as distributed.  
**Minutes**

**Motion Adopted:**      5 Yea.

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

**Delaware**      Jane Pierantozzi, Executive Director, Delaware Humane Association, was  
**Humane**      present to solicit Council's support of the Association's new Mobile  
**Association**      Spay/Neuter Clinic. The Clinic consists of a fully-equipped mobile surgical  
                                 van staffed by veterinarians. The van will visit communities to provide  
                                 spay/neuter surgeries for companion animals of people with limited income  
                                 and those caring for cat colonies. These services will be offered free or for a  
                                 small donation.

Ms. Pierantozzi reported on statistics of abused and homeless animals and animals which are euthanized at local shelters. She reported that the



**Delaware  
Humane  
Association  
(continued)**

Delaware Humane Association is Delaware's first and only no-kill animal shelter and that their goal is to ensure that no adoptable animal is euthanized due to the lack of a good home.

Ms. Pierantozzi reported that a van has been purchased for \$150,000 and that the Association needs another \$150,000 to \$200,000 to operate the van four days a week throughout the State. Ms. Pierantozzi asked Council for a \$10,000 grant to assist with the program in Sussex County.

Mr. Stickels advised that the County does not traditionally fund programs that are not under the County's control and that animal control is under the State's jurisdiction. Mr. Stickels suggested that the State could raise funds for this program by requiring a license for cats and by raising fees on dog licenses.

Councilmembers advised that the Association's request will be taken into consideration during the Fiscal Year 2003 budget process.

**Sussex  
County  
Land  
Trust  
Foundation**

Wendy Baker, Executive Director, Sussex County Land Trust Foundation, reported that the following are the members of the Board of Trustees of the Foundation:

Craig Hudson, Chairman  
Preston Schell, Vice Chairman  
John Schroeder, Treasurer  
Dennis Forney, Secretary  
Randall C. Willin, Jr., Trustee  
Lynda Messick, Trustee  
James Fuqua, Trustee  
Michael Rawl, Trustee  
Thomas Draper, Trustee

Ms. Baker reported that the bylaws have been drafted and will be reviewed by the Board of Trustees at their next meeting on March 26, 2002.

Mr. Stickels distributed and reviewed a draft ordinance authorizing the County to participate with the Sussex County Land Foundation in the acquisition of land or the purchase of development rights in order to promote the public purpose of protecting, improving, enhancing, and preserving the natural resources and open space in the County.

**Proposed  
Ordinance/  
Land  
Trust**

Mr. Rogers introduced the Proposed Ordinance entitled "AN ORDINANCE AUTHORIZING SUSSEX COUNTY TO ASSIST THE SUSSEX COUNTY LAND FOUNDATION IN PROTECTING, IMPROVING, ENHANCING AND PRESERVING THE NATURAL RESOURCES AND OPEN SPACE IN SUSSEX COUNTY". The Proposed Ordinance will be advertised for Public Hearing.



**Register  
of Wills/  
Courthouse  
Lease**

Mr. Stickels discussed a Lease Agreement between the Department of Administrative Services of the State of Delaware and Sussex County Council for a certain designated space within the Sussex County Courthouse to be used and occupied by the County for the sole purpose of housing the Register of Wills Office. The basic term of the lease will be one year beginning January 1, 2002, and ending on December 31, 2002. The annual rental amount for the one-year term of the lease is \$8,981.00. The State will be responsible for all utilities with the exception that the County will be responsible for telephone service.

**M 179 02  
Lease  
Agreement/  
State of  
Delaware/  
Register  
of Wills**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, that the Sussex County Council authorizes the President to enter into a Lease Agreement with the Department of Administrative Services of the State of Delaware for space in the Sussex County Courthouse for the Register of Wills.

Motion Adopted: 5 Yea.

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

**Adminis-  
trator's  
Report**

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

1. **Airport Committee Meeting**

The Sussex County Airport Committee will meet Wednesday, April 3, 2002, at the Sussex County Administrative West Complex Conference Room starting at 10:00 a.m. The media as well as the general public are encouraged to attend this meeting.

2. **Building Code Workshop**

Please be advised that on April 3 and 4, 2002, the Lower Delaware Building Officials Association will be sponsoring a class on comparing present Sussex County Codes to the International Building & Residential Code. Currently, the Sussex County Council utilizes the Council of American Building Officials 1992 edition for residential requirements and the 1994 edition of the Southern Standard Building Code for commercial requirements.

The April 3 class will be structured for contractors, and the April 4 class will be structured for city and County officials. Both classes are scheduled from 8:30 a.m. to 4:30 p.m.

The classes will take place at the Georgetown Fire Hall located on South Bedford Street. There is a \$50.00 charge for the class, and lunch and breaks will be provided.



**Administrator's  
Report  
(continued)**

Additionally, the County Council will be holding a workshop on Tuesday, April 23, 2002, starting at 1:30 p.m., at which time Mr. Lindsey Carter will give a comparison to the Council between the current codes and the International Building & Residential Code.

**C/U  
No. 1434/  
Grady,  
Inc.**

The County Council discussed the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY RESIDENTIAL DWELLING STRUCTURES (130 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 17.0 ACRES, MORE OR LESS" (Conditional Use No. 1434) filed on behalf of Grady, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on January 10, 2002; on January 24, 2002, the Commission recommended that the application be approved with two stipulations.

The Sussex County Council held a Public Hearing on this application on January 29, 2002 at which time they deferred action and left the record open for written testimony for a period of two weeks.

Mr. Lank reported that he forwarded a memorandum to the Council which included copies of the only comments received since January 29th. The only comments received were from the Sussex County Engineering Department.

Mr. Bayard advised that a letter was received from the Attorney for the Applicant, dated March 18, 2002. Mr. Bayard noted that the Public Hearing record was closed and therefore Council was to disregard the letter. The letter was not made a part of the record.

Mr. Lank advised that the proposed site plan identifies a small graveyard area. Council discussed whether a stipulation should be imposed requiring (1) that adequate public access should be provided for the maintenance of and visitation to the burial site; (2) that an adequate buffer zone surrounding the burial site should be provided; and (3) that the area should not be disturbed by construction of the project. It was discussed whether the developer should contact the State Historic Preservation Office to identify and delineate the boundaries of the burial site.

Mr. Bayard advised that it is a matter of State law that a cemetery shall not be disturbed and that some form of access must be preserved.

Mr. Cole reported that he has received a number of letters regarding the Native American graveyard and that the stipulations need to address this issue.



C/U  
No. 1434/  
Grady,  
Inc.  
(continued)

Mr. Brian Page, Sussex County's Historic Planner, will be asked to give the Council guidance on how the graveyard should be preserved and protected.

Mr. Cole asked for clarification of the sewer assumption. Mr. Lank referred to a letter received from Russ Archut, Assistant County Engineer, received on February 6, 2002. The letter references the site and location of this application and the number of units proposed. The letter states that the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District is the location of the site and that the system design assumption is four units per acre. In reference to capacity, there was a letter dated June 7, 2001, addressed to the applicant, which references sewer capacity and requirements to receive sewer service. The letter stated that the West Rehoboth capacity evaluation allocated a total of 48 dwelling units to the referenced parcels; that the proposed project exceeds the planning study assumption of four dwelling units per acre; that this results in 81 additional dwelling units for an approximate total density of 8.7 units per acre; and that based on the West Rehoboth capacity evaluation, the proposed project will place an additional burden on previously identified pipeline deficiencies. The letter further states that the project will not cause additional pipelines to become deficient and therefore, capacity is available to serve the proposed project of 130 units.

Mr. Lank reported that DelDOT was supportive of the project because it creates an interconnection to the rear of the Home Depot site; however, they made substantial references to the project (trip generations, traffic impact studies). Mr. Lank reported that DelDOT requested that five things be done if the project is approved by Council.

The discussion concluded. It was decided that once a recommendation has been received from Mr. Brian Page, Sussex County's Historic Planner, the application will be placed back on the Agenda.

C/Z  
No. 1454/  
Elmer  
Fannin

The County Council discussed a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HR-RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 30.63 ACRES, MORE OR LESS (Change of Zone No. 1454) filed on behalf of Elmer Fannin.

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 denied since the rezoning would be out of character with the immediate neighborhood; since there are no recreational amenities; and since there are too many units proposed on this parcel compared to the surrounding area.



**C/Z  
No. 1454/  
Elmer  
Fannin**

The Sussex County Council held a Public Hearing on this application on January 8, 2002 at which time they deferred action and left the record open for written testimony for a period of thirty days.

Mr. Stickels advised that proposed conditions and proposed findings of fact had been prepared and they were read into the record.

Mr. Cole expressed his opinion that he disagreed with many of the findings; that many of the findings were not appropriate; and that weaknesses existed in the proposed findings. He expressed concern that the character of the area was based on a study area which included the Route One corridor when the immediate area surrounding Woods Cove is single-family developments. Mr. Cole stated that the study area was not realistic and that it is too large of a geographic area. Mr. Cole expressed concern about the historical precedent being set in terms of density. Mr. Cole also expressed his opinion that the record does not justify the proposed conditions.

**M 180 02  
Adopt  
Proposed  
Ordinance  
(C/Z  
No. 1454)**

A Motion was made by Mr. Cole to Adopt 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-RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 30.63 ACRES, MORE OR LESS" (Change of Zone No. 1454) filed on behalf of Elmer Fannin, with the conditions as proposed, with the exception that the first condition should read "The maximum number of residential units shall not exceed 125 units." The Motion died for the lack of a Second.

**M 181 02  
Adopt  
Ordinance  
No. 1528  
(C/Z  
No. 1454)**

A Motion was made by Mr. Dukes seconded by Mr. Phillips, to Adopt Ordinance No. 1528 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HR-RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 30.63 ACRES, MORE OR LESS" (Change of Zone No. 1454) filed on behalf of Elmer Fannin, with the following conditions:

1. The maximum number of residential units shall not exceed 185.
2. The RPC shall be served as an extension of the West Rehoboth Wastewater Facility, with all costs related to the amendment to the district boundaries and the extension of service to this development to be paid for by the applicant.
3. The RPC shall be served by Tidewater Utilities, Inc., a public water supplier providing water for domestic consumption and fire protection



**M 181 02  
(continued)**

**under applicable regulations and approvals of DNREC, the State Fire Marshal and the Public Service Commission.**

**4. As recommended in DelDOT's letter dated November 20, 2000, the applicant shall be required to allow space for a right-of-way through the property for the future construction of the north-south local road in the event such road is subsequently constructed by DelDOT, with the location of the right-of-way being subject to DelDOT review and approval in the site plan process for the construction phase that includes the proposed right-of-way.**

**5. As recommended in DelDOT's letter dated November 20, 2000, the applicant shall be required to include pedestrian walkways along the project's internal streets by constructing a pedestrian walkway/bikeway along at least one side of each street in the community.**

**6. Prior to recording the plan for any phase of construction, the applicant shall submit a landscape plan, prepared by a registered landscape architect and provide proof that the landscaping will be permanently maintained either by the applicant or the homeowner's association.**

**7. Natural resources will be conserved and there will be no adverse environmental impact in that the site will provide a 100-foot building setback line along the easterly boundary adjoining the Maplewood Subdivision and will preserve most of the existing forested areas and hedgerows on the northerly and southerly boundaries as part of the building setback areas, except in the area where the interconnection to Aydelotte Estates will be made. If DelDOT locates the north-south local road within the 100-foot building setback line, there shall be a minimum buffer of 25-feet reserved between the right-of-way and Maplewood Subdivision.**

**8. All stormwater will be contained on site and will be designed in full compliance with the requirements of all State and County agencies.**

**9. The applicant will provide the following recreational facilities upon completion of 50% of the construction of the multi-family condominium units and the sale of 50% of the courtyard homes:**

- Picnic pavilion with off-street parking and picnic tables.
- BBQ pits.
- Outdoor shuffleboard.
- Horseshoes.
- Croquet Court.
- Badminton Court.
- Bocci Court.
- Fitness trail with stations along the pedestrian/bike paths.
- Playground.



**M 181 02  
(continued)**

**10. All entrance improvements required by DelDOT shall be completed by the applicant.**

**11. All streets shall be constructed in accordance with the County's Street Design Standards in Ordinance No. 99.**

**12. Road naming and property addressing shall be submitted to the County Mapping and Addressing Division for review and approval.**

**13. The applicant shall provide transit accommodations as required by DelDOT.**

**14. The site plan for each phase shall be reviewed and approved by the Sussex County Planning and Zoning Commission.**

**15. No site preparation, site disturbance, site excavation or other site construction shall be commenced until all permits required by all other laws, ordinances, rules and regulations shall have been issued and the approved final site plan is recorded, except such site work for which a permit has been issued by the Sussex Conservation District. The site work authorized by the Sussex Conservation District permit may be commenced upon submission of copies of the applications for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning and submission of a bond in an amount equal to 125% of the costs of site work authorized by the Sussex Conservation District permit and in a form acceptable to the County Attorney. The bond shall be released upon the issuance of all other permits and the filing of an approved master plan.**

**Motion Adopted: 3 Yea, 1 Nay, 1 Absent.**

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

**Conflict  
of Interest**

**Mr. Rogers was not present during the discussion and vote on Change of Zone No. 1454, due to a possible conflict of interest.**

**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 HR/RPC zoning.**

**1. HR/RPC zoning is appropriate for this parcel of land. The purpose of the RPC zoning district is to encourage large scale developments as a means of creating a superior living environment through unified developments and to provide for the application of design ingenuity while protecting existing and future developments and**



**Findings  
of Fact  
(continued)**

achieving the goals of the comprehensive plan. This application is consistent with the stated purpose of the RPC zoning designation.

2. HR/RPC zoning will provide for residential densities appropriate for an area that will be served by public sanitary sewer and water systems and is well located with respect to major thoroughfares, shopping facilities and centers of employment. Further, it is located on County Road 275, also known as Plantations Road, where other multi-family structures are located in the Plantations Development.

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

1. It is located in the designated development district where future growth is directed under the Plan.

2. Although the site is located adjacent to the area presently served by the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, sufficient EDU capacity is available to serve this development by connecting it through an existing main in the adjacent Maplewood Subdivision.

3. The site is located in an area served by central water provided by Tidewater Utilities, which is a public utility regulated by the Public Service Commission and Tidewater has verified that sufficient supply exists to serve the site without adverse impact on adjoining properties.

4. Adjacent and nearby properties are presently developed with extensive commercial, recreational and residential uses, including the multi-family residential developments known as Plantations East and West.

5. The development is consistent with the housing element and community design element of the Comprehensive Plan in that it will provide housing for permanent residents, second homeowners and retirees to serve the existing and projected demand for housing in the area. The Comprehensive Plan projects an increase in the number of households in Sussex County, during the 1990-2020 time period from 43,483 to 73,292, establishing a need for additional housing units.

6. The proposed number of dwelling units are less than the number permitted by the Comprehensive Plan, which states that with public sewer, 12 units per acre are permitted for multi-family housing, such as the multi-story condominiums proposed by the applicant.

7. The plan recognizes that higher residential density is appropriate for sites located in the development district in order to obtain the Plan's goal of preserving agricultural areas by concentrating development in the development district, where planned growth is expected to occur.



**Findings  
of Fact  
(continued)**

- 8. The site is in a Developing Area and is consistent with development patterns recognized in the State of Delaware's proposed Strategies for State Policies in Spending and is located in a multi-modal investment area under DelDOT's Statewide Long Range Transportation Plan.**
- 9. The site is consistent with the Comprehensive Plan's future land use map.**
- 10. Adequate fire and police protection is available nearby.**
- 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 are available and there will be no adverse impact on nearby properties and the cost of extending the sewer system to this development will be paid for by the applicant.**
- 13. Adequate utility services, schools, medical facilities and shopping areas are available near the site.**
- 14. The development will provide a substantial direct economic impact to Sussex County in terms of jobs in the construction and real estate industries, sewer fees and usage charges, building permit and review fees, transfer taxes, property taxes and school taxes and will provide a substantial secondary economic impact to area businesses through future building and grounds maintenance.**
- 15. The property is located in an existing mixed use area of commercial, recreational and residential uses and an area designated as a development district and the proposed development will not have an adverse effect on the uses or values of existing property and will conserve property values.**
- 16. Natural resources will be conserved and there will be no adverse environmental impact in that the site will provide a forested buffer from the adjoining Maplewood Development on the easterly boundary of the property and will preserve most of the existing forested areas along the north and south boundaries of the properties.**
- 17. There will be no adverse environmental impact through the discharge of stormwater off-site, in that all stormwater management will be located with the development site and will be designed in full compliance with the requirements of all State and County agencies.**
- 18. Although a letter from DelDOT dated October 16, 2000 recommended a traffic impact study, a subsequent letter from DelDOT**



**Findings  
of Fact  
(continued)**

dated November 20, 2000 revised the earlier letter by stating that the Department had enough information from a traffic impact study from another project and that the level of service of Road 275 has remained at level of service "D" and that it is not likely to change soon and that the Department believes that the construction of the proposed Grid Road would be a benefit to people who live, work, shop and recreate in the block formed by Route 1, Route 24, Roads 275 and 283 and that the proposed Grid Road would allow residents of the proposed project and other developments on Road 275 to avoid the Route 24 and Road 275 intersection on trips where they otherwise could not do so in a practical way.

19. Although DelDOT recommended in its November 20, 2000 letter that this application be denied, it stated that the recommendation was based on factors beyond the applicant's control; specifically, they were concerned about encouraging development that may create more traffic in an area they had identified as operating at unacceptable levels of service in summer peak hours. At the time of DelDOT's letter, the applicant was proposing 214 units, whereas the applicant has now lowered its density request to 193 units. However, in a letter report dated October 10, 2001, on the Henlopen Landing (Knapp property) project, also located on Plantation Road, DelDOT stated that in regard to the Route 24, Plantations Road and Warrington Road intersection, an acceptable Level of Service D could be achieved by optimizing signal phase timings as recommended in the TIS for the Henlopen Landing project and that if such signal timing changes were made, the intersection would operate at an acceptable Level of Service D through the 2003 summer peak traffic season. DelDOT's November 20, 2000 letter also stated that the County should require as part of any approval of the project the following: (1) space for a 50 foot right-of-way through the property for future construction of a north to south local road (Grid Road) with the location subject to DelDOT review and approval in the site plan review process, (2) the dedication of either rights-of-way or easements at and around the site entrance such that the entrance is built on Road 275, others can subsequently reconnect it to a future street without obtaining further easements for rights-of-way from the subject property, (3) the design and construction of the site entrance in a manner that will accommodate bicycle traffic on Road 275, (4) the design and construction of sidewalks along the projects internal streets.

20. DelDOT's recommendations appearing in the foregoing paragraph as Items (2) and (3) have already been adequately addressed in that DelDOT required that all vehicular access to the applicant's development occur through the existing entrance approved by DelDOT for the adjacent Aydelotte Estates Subdivision, so that all issues related to dedication of rights-of-way and design and construction features have already been addressed in connection with construction of that entrance by the developer of Aydelotte Estates.



**Findings  
of Fact  
(continued)**

21. In connection with DelDOT's approval of Aydelotte Estates, it required the developer to dedicate sufficient land to create an East-West Extension of the proposed North-South Grid Road.

22. The applicant has agreed to design his project so as to provide a 100 foot buffer area along the northerly portion of the proposed development to allow construction of the proposed North-South Grid Road connecting Postal Lane and Route 24, (with the location of right-of-way being subject to DelDOT approval), with that portion of the 100 foot buffer not required for the grid road being used as a forested buffer for the Maplewood Development.

23. Approval of the project will comply with the Memorandum of Understanding for Land Development and Coordination between Sussex County Council and DelDOT dated June 1988 in that it will not cause the threshold level of service to be exceeded.

24. The rezoning is consistent with the Comprehensive Plan's housing and community design elements in that it will provide townhouse courtyard town-homes and stacked multi-family condominium units for permanent residents, second home owners and retirees.

25. The development will be professionally landscaped by the applicant and maintained by him or the homeowners association.

26. The applicant will provide on-site recreational amenities.

27. The Planning and Zoning Commission recommended that the application be denied since the rezoning was out of character with the immediately surrounding single family developments; since there were no recreational amenities; and since there were too many units proposed. Opposition from existing single family developments in the immediate area included residents of Maplewood and Sandy Brae, both of which were developed many years ago and prior to the adoption of the Comprehensive Land Use Plan placing the applicant's property in a Development District. Further, the applicant has now proposed recreational amenities and has voluntarily reduced the proposed density, thereby adequately addressing the reasons for the Commission's recommendation of denial.

**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 USED CAR SALES LOT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 1.24 ACRES, MORE OR LESS" (Conditional Use No. 1453) filed on behalf of Joseph E. Bowman, Jr. The Proposed Ordinance will be advertised for Public Hearing.



**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 MEDICAL OFFICES WITH SMALL WAREHOUSE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 2.061 ACRES, MORE OR LESS" (Conditional Use No. 1454) filed on behalf of Richard M. Quill. The Proposed Ordinance will be advertised for Public Hearing.

**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 AMENDMENT TO CONDITIONAL USE NO. 241 BY ADDING ADDITIONS TO EXISTING BUILDINGS AND RELOCATION OF THE STORAGE AREA TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 6.23 ACRES, MORE OR LESS" (Conditional Use No. 1455) filed on behalf of National Concrete Products, L.L.C. The Proposed Ordinance will be advertised for Public Hearing.

**Proposed  
Ordinance**

Mr. Cole 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 B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 10.36 ACRES, MORE OR LESS" (Change of Zone No. 1470) filed on behalf of Trout, Segall & Doyle Development Co., L.L.C. The Proposed Ordinance will be advertised for Public Hearing.

**Proposed  
Ordinance**

Mr. Cole 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 MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 109.51 ACRES, MORE OR LESS" (Change of Zone No. 1471) filed on behalf of Gladys A. Swann/Trout, Segall & Doyle Development Co., L.L.C. The Proposed Ordinance will be advertised for Public Hearing.

**Proposed  
Ordinance**

Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.387 ACRES, MORE OR LESS" (Change of Zone No. 1472) filed on behalf of Pierce Hardy



**Ordinance (continued)**      **Limited Partnership.** The Proposed Ordinance will be advertised for Public Hearing.

**Proposed Ordinance**      Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A HR-RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A HR-RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 81.93 ACRES, MORE OR LESS" (Change of Zone No. 1473) filed on behalf of Preston Lynch Dyer. The Proposed Ordinance will be advertised for Public Hearing.

**Wastewater Facilities**      Mr. Baker, Utility Construction Division, discussed wastewater facilities constructed in The Sanctuary and in Bethany Bay.

**M 182 02  
Execute  
Agreements/  
The  
Sanctuary**      A Motion was made by Mr. Cole, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 246, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Waterworks Development, L.L.C., for wastewater facilities to be constructed in The Sanctuary, located in the Bethany Beach Sanitary Sewer District.

**Motion Adopted: 5 Yea.**

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

**M 183 02  
Grant  
Beneficial  
Acceptance/  
Bethany  
Bay**      A Motion was made by Mr. Rogers, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department for Sussex County Project No. 81-04, Agreement No. 245, that the Sussex County Council grant Beneficial Acceptance, for the wastewater facilities constructed in Bethany Bay, Sections 1.2B and 1.6, located in the Proposed North Millville Sanitary Sewer District.

**Motion Adopted: 5 Yea.**

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

**M 184 02  
Grant**      A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$200.00, \$100.00 from Mr. Jones' Councilmanic Account and \$50.00 each from Mr. Phillips' and Mr. Rogers' Councilmanic Accounts, to Sussex Central Softball for warm-up suits.



**M 184 02  
Council-  
manic  
Grant  
(continued)**

**Motion Adopted: 5 Yea.**

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

**M 185 02  
Council-  
manic  
Grant**

**A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$500.00, \$100.00 from each Councilmanic Account, to the Georgetown Lions Club for the Christmas Party for the Visually Impaired in Sussex County.**

**Motion Adopted: 5 Yea.**

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

**M 186 02  
Council-  
manic  
Grant**

**A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$150.00 from Mr. Jones' Councilmanic Account to Greenwood Youth and Family Night for expenses (facilities rental, equipment, supplies, snacks, etc.)**

**Motion Adopted: 5 Yea.**

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

**M 187 02  
Council-  
manic  
Grant**

**A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$250.00 from Mr. Phillips' Councilmanic Account to Blessed Giving for the food pantry.**

**Motion Adopted: 5 Yea.**

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

**M 188 02  
Council-  
manic  
Grant**

**A Motion was made by Mr. Cole to give \$500.00, \$100.00 from each Councilmanic Account, to First State Community Action Agency for the Group Workcamp Project.**

**Mr. Phillips amended Mr. Cole's Motion, seconded by Mr. Rogers, to give \$1,000.00, \$200.00 from each Councilmanic Account, to First State Community Action Agency for the Group Workcamp Project.**

**Motion Adopted: 5 Yea.**

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



**M 189 02  
Youth  
Activity  
Grant**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to give \$500.00 from Mr. Rogers' Youth Activity Grant Account to the Milton Little League for field improvements.

**Motion Adopted: 5 Yea.**

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

**M 190 02  
Council-  
manic  
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to give \$300.00, \$200.00 from Mr. Dukes' Councilmanic Account and \$100.00 from Mr. Phillips' Councilmanic Account, to the Laurel Fireworks Celebration for the 4th of July Fireworks Display.

**Motion Adopted: 5 Yea.**

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

**M 191 02  
Council-  
manic  
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$600.00, \$400.00 from Mr. Dukes' Councilmanic Account and \$200.00 from Mr. Phillips' Councilmanic Account, to the Laurel Chamber of Commerce for the Independence Day Celebration.

**Motion Adopted: 5 Yea.**

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

**M 192 02  
Youth  
Activity  
Grant**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$500.00, \$250.00 each from Mr. Rogers' and Mr. Jones' Youth Activity Grant Accounts, to Milford Magic for uniforms, equipment and tournament fees.

**Motion Adopted: 5 Yea.**

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

**M 193 02  
Council-  
manic  
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$500.00, \$250.00 each from Mr. Cole's and Mr. Phillips' Councilmanic Accounts, to the Indian River High School Band for their annual band trip.

**Motion Adopted: 5 Yea.**



**M 193 02  
Grant  
(continued)**

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

**M 194 02  
Council-  
manic  
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$1,500.00 (\$500.00 from Mr. Dukes' Councilmanic Account, \$500.00 from Mr. Phillips' Councilmanic Account, \$250.00 from Mr. Rogers' Councilmanic Account, and \$250.00 from Mr. Jones' Councilmanic Account) to the Georgetown Charter School for operations and expenses.

**Motion Adopted:** 3 Yea, 1 Nay, 1 Abstention.

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

**M 195 02  
Youth  
Activity  
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$250.00 from Mr. Phillips' Youth Activity Grant Account to People to People Student Ambassador Program for Joshua Hudson's trip to Australia.

**Motion Adopted:** 5 Yea.

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

**Livable  
Delaware**

Mr. Stickels referred to Mr. Cole's earlier request to provide information on *Livable Delaware*. Mr. Stickels offered Mr. Cole a copy of Executive Order No. 14, *Livable Delaware Department Strategies*. Mr. Stickels stated that the entire document is too lengthy to reproduce; however, it is available to the Councilmen at any time for their perusal.

Mr. Cole questioned the definition of an Executive Order and how it affects the County's land use decisions.

Mr. Bayard advised that the Executive Order is a directive from the Governor's Office establishing a policy that the executive branch of government wants promoted and followed; that it is not a law; and that in this Order, the executive branch is recommending that a number of laws be introduced and passed.

Mr. Stickels advised that some bills have been passed: i.e. the Quality of Life Act, Impact Fee legislation, and others.

Mr. Cole expressed concern in citing *Livable Delaware* as a reason for approving a land use application.



**M 196 02**      **At 12:15 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Rogers,**  
**Recess**           **to recess until 1:30 p.m. Motion Adopted by Voice Vote.**

**Reconvene**      **Mr. Jones called Council back into session at 1:30 p.m.**

**Public**           **A Public Hearing was held on the Proposed Ordinance entitled “AN**  
**Hearing**       **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN**  
**(C/U**           **AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR USED CAR**  
**No. 1444)**      **AND TIRE SALES TO BE LOCATED ON A CERTAIN PARCEL OF**  
                 **LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX**  
                 **COUNTY, CONTAINING 19,526 SQUARE FEET, MORE OR LESS”**  
                 **(Conditional Use No. 1444) filed on behalf of Alfonso Matos.**

The Planning and Zoning Commission held a Public Hearing on this application on February 28, 2002 at which time the Commission recommended that the application be denied since the site is not an appropriate location for a used car sales lot; since the building is too close to the right-of-way of Route 20; and since the property does not lend itself to commercial use.

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

The Council found that Alfonso Matos was present with an interpreter and stated in his presentation that there has always been a small business on the site; that the small business did not negatively impact the area residents; that he will not be living on the site; and that he is applying for a conditional use to permit the sale of used cars and tires.

There were no public comments in favor of the application.

Public comments were heard in opposition to the application. Concern was expressed that the area is a residential neighborhood; that the use would impact the environment; that property values would be negatively impacted; that the current traffic situation is not good and is only going to get worse; and that there are school bus stops in the immediate area.

The Public Hearing was closed.

**M 197 02**      **A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to Adopt the**  
**Adopt**       **Proposed Ordinance entitled “AN ORDINANCE TO GRANT A**  
**Proposed**      **CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL**  
**Ordinance**     **RESIDENTIAL DISTRICT FOR USED CAR AND TIRE SALES TO BE**  
**(C/U**           **LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN**  
**No. 1444)**      **BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 19,526**  
                 **SQUARE FEET, MORE OR LESS” (Conditional Use No. 1444) filed on**  
                 **behalf of Alfonso Matos.**

**Motion Denied: 5 Nay.**



**M 197 02  
(continued)**

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

**Reasons  
for  
Denial**

**The Council denied the conditional use based on the following reasons:**

- 1.    The use would affect the property values in the immediate area.**
- 2.    The closest commercial activity is a mile away.**
- 3.    The original use was a grandfathered use.**
- 4.    The site is not an appropriate location for the commercial use.**
- 5.    Additional traffic will negatively impact a road that already experiences many accidents.**

**Public  
Hearing  
(C/U  
No. 1445)**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MEDICAL AND/OR OFFICE BUILDING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.2 ACRES, MORE OR LESS” (Conditional Use No. 1445) filed on behalf of Mark Grahne.**

**The Planning and Zoning Commission held a Public Hearing on this application on February 28, 2002 at which time the Commission recommended that the application be approved with nine stipulations.**

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

**The Council found that Mark Grahne, Applicant; James Fuqua, Attorney; and Doug Warner of ECI were present on behalf of the application. The information presented was the same information included in the record of the Planning and Zoning Commission.**

**It was noted that, at the Public Hearing before the Planning and Zoning Commission, Mr. Richard Ross was opposed to the application. Council was advised that Mr. Ross no longer opposes the application as long as the approval of the application is contingent on the conditions outlined by the Commission and as long as a six-foot solid fence is erected along the rear property line.**

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



**M 198 02  
Adopt  
Ordinance  
No. 1529  
(C/U  
No. 1445)**

**A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1529 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MEDICAL AND/OR OFFICE BUILDING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.2 ACRES, MORE OR LESS" (Conditional Use No. 1445) filed on behalf of Mark Grahne, with the following conditions:**

- 1. The use shall be limited to medical and professional offices.**
- 2. Water and septic systems shall comply with all requirements of the State DNREC.**
- 3. A 10-foot wide landscaped buffer shall be provided along the rear property line.**
- 4. The entrance location and design shall be subject to the review and approval of DelDOT.**
- 5. The dumpster location shall be screened by appropriate sized fencing.**
- 6. The building shall not exceed 6,000 square feet or 1-story in height.**
- 7. One lighted ground sign, not exceeding 32 square feet per side or facing, may be permitted.**
- 8. Parking lighting shall be directed so that the lighting does not impact travelling motorists or neighboring residential properties.**
- 9. The site plan shall be subject to review and approval by the Planning and Zoning Commission.**
- 10. Applicant shall construct a six-foot high solid fence along the rear property line.**

**Motion Adopted: 5 Yea.**

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

**Findings  
of Fact**

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

- 1. The proposed conditional use for medical and professional offices is an appropriate use at this location in that it is located in an area where the population is expanding and the need for medical and other professional services is increasing. In addition, Beebe Medical Hospital is constructing a**



**Findings  
of Fact  
(continued)**

facility on Route 24 near the area where the site is located, further increasing the need.

2. The site is located immediately adjacent to a parcel of land zoned commercial which is operated as the Peddlers Village Shopping Center comprised of numerous retail and service establishments. In addition, across Route 24 is a parcel of land zoned B-1 neighborhood business on which is located an Exxon Gas Station and Convenience Store. The proposed conditional use is consistent with existing adjacent uses.

3. The site will contain on-site septic and well, and based on preliminary soil analysis, such use will have no negative impact on the site or neighboring properties.

4. The rear of the site which borders a residential area will contain a 10-foot landscaped buffer minimizing the visual impact of the use on the neighboring properties; in addition, no parking will be located in the rear of the property adjacent to the residential uses.

5. Although the site is not located in the Development District, the Development District is located on the south side of Route 24, therefore the site is located immediately adjacent to the Development District. The site is also located immediately adjacent to commercial land also outside of the Development District and it would be a continuation of the commercial use. In addition, the proposed use is consistent with the Land Use Plan in that there are no negative environmental impacts; the use will provide services to area residences; and the site is located adjacent to other commercial uses and is a natural extension of those existing uses.

**Conflict  
of Interest**

Mr. Dukes left the meeting due to a possible conflict of interest with Change of Zone No. 1460, an application of Bunting-Gray, LLC.

**Public  
Hearing  
(C/Z  
No. 1460)**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 219.42 ACRES, MORE OR LESS" (Change of Zone No. 1460) filed on behalf of Bunting-Gray, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on February 28, 2002; on March 14, 2002 the Commission recommended that the application be approved with the following stipulations:

1. The maximum number of dwelling units shall not exceed 343, of which no more than 56 shall be multi-family units.



**Public  
Hearing  
(C/Z  
No. 1460)  
(continued)**

2. The maximum area of commercial development shall be one acre per 100 dwelling units.
3. Residential building permits shall not exceed 60 per year.
4. Site plan review is required for each phase of development.
5. The interior street design shall include sidewalks, bike paths, and rolled curbs.
6. All entrances, intersections, roadway improvements and multimodal facilities shall be constructed as required by DelDOT.
7. Recreational facilities, e.g., swimming pool, tennis courts, etc., shall be constructed and open for use by the residents at the time of the completion of the first 60 units.
8. The RPC shall be served by an existing Sussex County Sanitary Sewer District.
9. The RPC shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
10. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements. If it is determined that additional areas are required for stormwater management, parking, or other use, the additional area shall be taken from lot areas, not designated State and Federal wetlands or open space areas.
11. State wetlands shall not be included in individual lots. State and Federal wetlands shall be maintained as non-disturbance areas, except as may be authorized by a valid Federal or State permit. There shall be no construction in any wetlands without valid permits.
12. No individual boat dock or boat launching facilities shall be permitted. A community boat launching facility may be constructed upon receipt of all applicable permits, site plan review and compliance with all applicable rules and regulations.
13. No site preparation, site disturbance, site excavation or other site construction shall be commenced until all permits required by all other laws, ordinances, rules and regulations shall have been issued and the approved final site plan is recorded, except such site work for which a permit has been issued by the Sussex Conservation District. The site work authorized by the Sussex Conservation District permit may be commenced upon submission of copies of the application for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning and submission of a bond in an amount equal to 125 percent of



**Public  
Hearing  
(C/Z  
No. 1460)  
(continued)**

the cost of the site work authorized by the Sussex Conservation District permit and in a form acceptable to the County Attorney. The bond shall be released upon the issuance of all other permits and the filing of an approved master plan or final site plan.

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

The Council found that the applicant had submitted, prior to the meeting, a packet of information similar to the packet submitted to the Planning and Zoning Commission with corrected plots showing a 50-foot setback from tidal wetlands.

The Council found that Coleman Bunting and Ron Gray, applicants; David Hackett, Attorney; Mike Wigley and Jerry Friedel of Davis, Bowen & Friedel, Inc., and Mike Green with Environmental Consulting Services, Inc. were present on behalf of the application. The information presented was the same information included in the record of the Planning and Zoning Commission, with the exception of the aforementioned property line setback corrections.

The applicant stated that the name of the project is The Refuge at Dirickson Creek and that the project is for the development of 343 units (287 single-family and 56 multi-family), with numerous recreational facilities and 3.43 acres of commercial area to serve the project and the area. Mr. Bunting noted that the project is for a density of 1.84 units per acre.

Mr. Hackett referred to the conditions proposed by the Planning and Zoning Commission and asked that some of the conditions be modified:

**Condition No. 3**

“Residential building permits shall not exceed 60 per year.”

The applicant would like Condition No. 3 to be modified, as follows:

“Residential building permits for the Development shall not exceed 60 per year until such limitation is no longer required. Permitted building permits not issued in any one year may be carried over to the following year(s).”

**Condition No. 1**

“The maximum number of dwelling units shall not exceed 343, of which no more than 56 shall be multi-family units.

The applicant would like Condition No. 1 to be modified, as follows:

“The maximum number of residential units shall not exceed 343.”



**Public  
Hearing  
(C/Z  
No. 1460)  
(continued)**

Mr. Bayard explained that Condition No. 1 could not be modified as proposed due to the fact that when an application is made for a Residential Planned Community, part of that application is a preliminary site plan. As a part of Council's approval of a RPC zoning application; the preliminary site plan is also approved. Based on the judgement of the Director of Planning and Zoning as to whether the changes to the site plan are major or minor, the request for modification of the site plan must go to the Commission or to the Council for approval.

**Condition No. 5**

"The interior street design shall include sidewalks, bike paths, and rolled curbs."

The applicant would like Condition No. 5 to be modified, as follows:

"All streets shall be constructed in accordance with the County's Street Design Standards in Ordinance 99. Interior street design shall include sidewalks, bike paths, and rolled curbs, as and where proposed by Applicant in connection with its Application."

Two persons (Craig Lednum and Gerald Pepper) spoke in support of the application.

Public comments were heard in opposition to the application. Concern was expressed about the negative environmental impact the project will have on the area; that the potential environmental problems should be addressed; that the current traffic situation is not good and is only going to get worse; that traffic will be in a state of permanent grid-lock; that emergency response vehicles will have difficulty responding; and that Route 54 is the area's only evacuation route and the hazardous situation that would exist as it would take over 20 hours to evacuate in an emergency.

It was noted that questions were raised about sewer capacity and it was the consensus of Council to defer action and to leave the record open for a period of 15 days for comments from the Engineering Department relating to sewer capacity and for any further written public comment. The public record will be closed at the end of the 15 days.

**M 199 02  
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to adjourn at 3:35 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,



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