



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 22, 2011

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 22, 2011, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Vance Phillips	Councilman
David Baker	County Administrator
Susan M. Webb	Finance Director
David Rutt	Assistant County Attorney

The Invocation and Pledge of Allegiance were led by Mr. Vincent.

Mr. Vincent called the meeting to order.

M 145 11 Amend and Approve Agenda

A Motion was made by Mr. Phillips, seconded by Mr. Deaver, to amend the Agenda by deleting "Approval of Minutes"; by deleting "Executive Session – Personnel, Pending/Potential Litigation and Land Acquisition"; and by deleting "Possible Action on Executive Session Items; and to approve the Agenda, as amended. Motion Adopted by Voice Vote.

Corre- spondence

Mr. Rutt read the following correspondence:

ROXANA VOLUNTEER FIRE COMPANY, ROXANA, DELAWARE.

RE: Letter in appreciation of the Council's support of the smoke detector program.

ALLEN CHORMAN, ALLEN CHORMAN & SON, INC., MILTON, DELAWARE.

RE: Letter in appreciation of Council presenting him the Proclamation for receiving the Distinguished Service to Delaware Agriculture Award.

U.S. SENATOR THOMAS R. CARPER, WASHINGTON, D.C.

RE: Letter to Jim Hickin, Airport Manager, thanking him for his help in setting up the press conference announcing the Senate passage of the Aviation Jobs Bills.

**Airport
Lease/
Bennett**

Mr. Baker reviewed a proposed airport lease with Everett and James Bennett. The Bennett's previously leased a lot at the airport with a hangar that originally was the property of New Process Fibre Company. Suggested terms for the lease are (1) ten-year term effective February 18, 2010; (2) rent at \$6,000 per year subject to the Consumer Price Index increases, with a maximum three percent increase per year; (3) maintenance of the hangar and lot to be handled by the tenant; (4) tenant to provide aircraft liability insurance; and (5) any subleases must be approved by the County Council. It was noted that the County will retain ownership of the hangar. Mr. Baker stated that some minor issues still need to be resolved, i.e. liability and insurance. Mr. Baker advised that if any major changes to the lease are proposed, the lease will be brought back to the Council for consideration.

**Airport
Lease/
Bennett
(continued)**

Mr. Baker provided background information on the lease of the property: in 1984, the County entered into a 15-year lease with New Process Fibre Company; the New Process Fibre Company constructed a hangar on the leased lot; their lease was extended for two additional five year terms which expired on August 9, 2009; the Bennett's purchased the hangar from the New Process Fibre Company on approximately August 18, 2008; the original lease expired at which time the improvements on the land including the hangar reverted to the County; the Council approved a six month lease agreement extension to lease the hangar to the Bennett's; and the second lease expired on February 18, 2010.

**M 146 11
Authorize
Airport
Lease
with
Everett
and
James
Bennett**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, that the Sussex County Council authorizes a Lease with Everett and James Bennett for Lot B at the Sussex County Airport for a ten year term effective February 18, 2010 with rent beginning at \$6,000 per year subject to the Consumer Price Index with the maintenance of the hangar and the lot to be handled by the tenant and the tenant to provide the required insurance.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Board of
Adjustment**

The Council discussed the expired terms of two Board of Adjustment members.

**M 147 11
Reappoint-
ment to
Board of
Adjustment**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to reappoint John Mills to the Board of Adjustment; Mr. Mills term will expire on June 30, 2013.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;

**Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**M 148 11
Reappoint-
ment to
Board of
Adjustment**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to reappoint Dale Callaway to the Board of Adjustment; Mr. Callaway's term will expire on June 30, 2013.

Motion Adopted: 4 Yeas, 1 Nay.

**Vote by Roll Call: Mrs. Deaver, Nay; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Adminis-
trator's
Report**

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

1. Federal Emergency Management Agency Flood Insurance Map Study Results

As per the attached notification, a meeting will be held on March 30 from 3:00 to 5:00 p.m. at the Sussex County Council Chambers to review the revised flood insurance rate maps. The maps will be available then for review by the public. The maps are also available at www.rampp-team.com/de.htm, as per the attached notice.

2. Airport Advisory Committee Agenda

Attached is an agenda for the Sussex County Airport Advisory Committee for March 23, 2011, at 7:00 p.m. at the Emergency Operations Center. As noted on the agenda, there will be an update regarding NASCAR, emergency response, wildlife management, as well as review of airport policies.

3. County Administrator Position Process

We would like to provide information regarding the County Administrator position process. At the January 18, 2011, meeting, the current County Administrator, Mr. Baker, announced his retirement from County government. Thereafter, advertisements for the County Administrator position were posted on the County's website in January, and it was advertised in local newspapers as well as the National Association of Counties newsletter. In open session, the President of the County Council was authorized to establish a search committee. County Council President Mr. Michael Vincent established a search committee including all members of the County Council; Ms. Karen Brewington, Director of Personnel; Mr. Everett Moore, County Attorney; and Mr. David Baker, County

Administrator.

**Adminis-
trator's
Report
(continued)**

Interviews were held in Executive Session, after being properly noticed as personnel issues, on February 22 and February 23, 2011, with eight applicants. During the interviews, questions were posed by a staff member. The questions were compiled by staff. Those same questions were asked of each interviewee, with some follow-up questions by committee members.

As of this time, no decision has been made regarding the replacement for County Administrator. This process was also discussed at the March 15, 2011, County Council meeting in open session. Any decision regarding filling the County Administrator position will be made in open session of the County Council with discussion regarding the candidates. This topic will be on the March 29, 2011, agenda.

[Attachments to the Administrator's Report are not attachments to the minutes.]

**Surplus
Property/
Bid
Results**

Hal Godwin, Deputy County Administrator, reported that on January 4, 2011, the Council authorized staff to advertise a portion of 16 Daisey Avenue in Ocean View for sale to the public. County procedure was followed to advertise the property and one bid was received. Mr. Godwin reviewed the bid received and the contingencies and conditions which must be met by the purchaser; after the purchaser has met all the contingencies and conditions, the County will consider transferring the property to the purchaser (Robert Whiting) at settlement of full payment of the bid price of \$20,500.00. Mr. Godwin recommended that the contingencies and conditions be satisfied by March 31, 2012 or the sale may be reconsidered by the County.

**M 149 11
Approve
Bid for
Surplus
Property/
16 Daisey
Avenue/
Ocean
View**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council accepts and approves the bid of Robert Whiting to purchase a portion of land (75 feet by 242 feet) known as 16 Daisey Avenue in Ocean View in the amount of \$20,500.00; the bidder, Robert Whiting, must satisfy all contingencies and conditions by March 30, 2012 and upon completion, Mr. Whiting will notify Sussex County Council for the purpose of requesting approval to settle all transfers of property and title between himself and Sussex County.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Legislative
Update**

Hal Godwin, Deputy County Administrator, reported that House Bill No. 31 passed the House. This Bill would align when Sussex County's taxes are due and payable with Sussex County's budget year. The Bill will now

proceed to the Senate.

Legislative Update (continued)

Mr. Godwin reviewed draft legislation regarding the licensing and certification of assessors that the Council authorized on September 8, 2010. The draft legislation would relieve counties and municipalities from the requirement of retraining assessors to be certified appraisers, as required in Title 24, Chapter 40, Section 4019. Mr. Godwin noted that the draft legislation pertains to all three counties and all municipalities. Mr. Godwin stated that, with the Council's approval, he would seek support from the other two counties and he would seek sponsors for the Bill. It was the consensus of the Council to proceed with the legislation.

EOC Renewable Energy Project

Steve Hudson, Director of Technical Engineering, reviewed a Change Order request for Sussex County Grant Project 3654, Sussex EOC/Airport Solar Energy Installation Project. He reported that when bids were opened, it was noted that the bids were \$150,000 below the total grant provided by the Department of Energy. Mr. Hudson stated that staff felt it prudent to go back and look at the possibility of expanding the project. He stated that negotiations were made with Flexera and a Change Order was proposed whereby the size of the system would be increased from 85 kilowatts to 109 kilowatts. The equipment would be retained in the same area and therefore, the project's footprint would remain the same (approximately 1 acre). The net return of the 85 kilowatts after 25 years would be approximately \$893,000; the net return of the 109 kilowatts after 25 years would be approximately \$1 million. Mr. Hudson stated that it is estimated that the investment costs would be satisfied within 10 years. Mr. Hudson advised that the amount of the requested Change Order is \$101,590 and the new contract amount would be \$545,800. The expected life of the solar panels is 25 to 30 years. It was noted that this project is funded 100 percent by the federal government.

M 150 11 Approve Change Order/ EOC Renewable Energy Project

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for Sussex County Project No. 10-04, Sussex County EOC/Airport Solar Energy Installation Project, be approved in the amount of \$101,590.00, subject to the approval of the United States Department of Energy, and the receipt of full contract documents and bonds from the contractor.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

Draft Ordinance/ Temporary Extensions

Lawrence Lank, Director of Planning and Zoning, reviewed a draft ordinance entitled "AN ORDINANCE PROVIDING FOR THE TEMPORARY EXTENSION OF TIME FOR SUBDIVISION APPLICATIONS, CONDITIONAL USE APPLICATIONS, AND

RESIDENTIAL PLANNED COMMUNITY DISTRICTS” and he noted that he left several dates in the draft ordinance blank for the purpose of allowing the Council to establish those dates

**Draft
Ordinance/
Temporary
Extensions
(continued)**

Mr. Lank noted that the Council discussed this concept on February 1, 2011. At that time, a presentation was made by SEDAC requesting the extension of permits granted by the Sussex County Council and/or the Planning and Zoning Commission for preliminary and final approvals for subdivisions, Residential Planned Communities, and Conditional Uses.

Currently, after preliminary approval by the Planning and Zoning Commission, an applicant has three years to attain final approval by the Commission, including approval of all agencies; the applicant must also record the subdivision or RPC within this three-year period; the applicant subsequently has five years from recording the subdivision or RPC to begin construction. For Conditional Uses, an applicant has three years from County Council approval to begin construction. During this three year period, the applicant must attain preliminary site plan approval, agency approvals, and final site plan approval, as well as begin construction.

The draft ordinance would add a two year additional timeframe before expiration of approvals for Conditional Uses, subdivisions, or RPC projects that have been approved and are still active. It would be applicable to those projects which are currently approved and are not sun-setting as of a particular date. The date was left blank in the draft ordinance. It was also noted that there are options for the effective date, including the effective date of approval of the ordinance, a retroactive date such as January 1, 2011, or some other option.

Mr. Cole expressed concerns about offering this extension to everyone and he stated that minimum standards should be met. Additionally, he said the draft ordinance would be unfair to the projects that sun-setted last year. Mr. Cole suggested that the Council offer extensions on a case by case basis.

**Introduction
of Proposed
Ordinance**

Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE PROVIDING FOR THE TEMPORARY EXTENSION OF TIME FOR SUBDIVISION APPLICATIONS, CONDITIONAL USE APPLICATIONS, AND RESIDENTIAL PLANNED COMMUNITY DISTRICTS” (with a retroactive date of January 1, 2010).

**Old
Business/
C/Z
No. 1697**

The Council discussed Change of Zone No. 1697 filed on behalf of Land Tech Receiver Services, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on November 18, 2010 at which time they deferred action. On January 27, 2011 the Commission recommended approval of the application for the following reasons, but modified from the proposal set forth by the Applicants:

Old
Business
C/Z
No. 1697
(continued)

1. A. Clubhouse must be built, as promised by the original developers. That promise was relied upon by the County and by those purchasing lots within The Peninsula Development.
2. A Receiver has been appointed by the Court of Chancery to maintain and operate the entire Peninsula Development, including the Clubhouse. Land Tech, the Receiver, has made positive steps in continuing with the development of the Project.
3. The Development and Club currently have a lot of substantial amenities. Many of these amenities would be included in a clubhouse, including a grill, pro shop, health and fitness center, locker rooms, swimming pools and other facilities.
4. Based on the governing documents of The Peninsula and the Peninsula Country Club, neither the developer nor Land Tech are members of the Club. Only members pay dues based upon the budget determined by the Club each year.
5. Construction of the Clubhouse would place an undue burden on not only the Developer or Receiver, but also on the individual members, which are homeowners in the development. They would be required to carry the costs of the Clubhouse and its operation and maintenance. Similarly, the increased dues associated with the Clubhouse would adversely affect the marketability of future sales within the development, which are necessary to maintain its viability. All purchasers of residential units within The Peninsula are required to be Club members.
6. The County has received many letters in support of the Applicant's request to delay construction of the Clubhouse. In contrast, only one property owner has objected to the proposal.
7. The Applicant has stated that the required number of members necessary to construct, operate and maintain the Clubhouse will be achieved in 3 to 4 years.
8. The Applicant's proposal for determining the timeframe to construct the Clubhouse based upon membership is not appropriate. The proposal places too much control over the timing in the hands of the Developer, the Applicant or the Club owner at the time. Instead, the County should set a specific date that is known to everyone for completion of the Clubhouse.
9. The Escrow Agreement proposed by the Applicant is not the best means to guarantee the completion of the Clubhouse. The County's Ordinances require bonds or letters of credit as guarantees for completion. In this case, that means of guarantee should be used as well.
10. Condition No. 10 to Change of Zone No. 1475 as amended by Change of Zone No. 1697 should be as follows:
 - A. Recreational facilities, e.g. tennis courts, swimming pool, community buildings, pathways, trails, and beaches shall be constructed and open to use by the residents within two (2) years of the issuance of the first building permit.
 - B. The Nature Center shall be constructed and open to use by May 30, 2011.

- (continued)
- C. Construction of the Clubhouse shall commence no later than one (1) year from the date Sussex County Council approves Change of Zone No. 1697, with construction to be completed 12 months thereafter. A bond, cash bond, or letter of credit shall be provided to Sussex County in the amount of 125% of the cost of completion of the Clubhouse within sixty (60) days of the date of that Sussex County Council approves Change of Zone No. 1697.
 - D. The site plan for the Clubhouse shall be subject to review and approval by the Planning and Zoning Commission.

M 151 11
Amend
Condition
B of
Draft
Ordinance

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to amend Condition B by inserting the date “September 30, 2011” in lieu of “May 30, 2011”.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

M 152 11
Amend
Condition
C of
Draft
Ordinance

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to amend Condition C by inserting “three (3) years” in lieu of “one (1) year”.

Motion Adopted: 4 Yeas, 1 Nay.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Nay; Mr. Wilson, Yea;
Mr. Vincent, Yea

M 153 11
Adopt
Proposed
Ordinance/
C/Z
No. 1697

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO MODIFY CONDITION NO. 10 IMPOSED ON ORDINANCE NO. 1573 FOR CHANGE OF ZONE NO. 1475, THE APPLICATION OF RIBERA-ODYSSEY, LLC, AS AMENDED BY ORDINANCE NO. 2018 FOR CHANGE OF ZONE NO. 1697, THE APPLICATION OF PENINSULA AT LONG NECK, LLC FOR “THE PENINSULA”, A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, TO EXTEND THE TIME TO CONSTRUCT AND OPEN FOR USE THE GOLF CLUBHOUSE AND NATURE CENTER FACILITIES” (Change of Zone No. 1697) filed on behalf of Land Tech Receiver Services, LLC, with the amended conditions.

Motion Denied

Mr. Phillips referenced the County’s Clean Hands Ordinance and he raised a question regarding outstanding taxes owed by The Peninsula.

A Vote was called on the Motion:

Motion Denied: 3 Nays, 2 Yea.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Nay; Mr. Wilson, Nay;
Mr. Vincent, Nay

Discussion Mr. Phillips requested the addition of a condition requiring that the Developer/Receiver be in compliance with the County's Clean Hand Ordinance.

M 154 11 A Motion was made by Mr. Cole, seconded by Mr. Phillips, to add the
Add following Condition E: "The Developer shall be in compliance with the
Condition County's Clean Hands Ordinance."
to Draft

Ordinance Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

M 155 11 A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt
Adopt Ordinance No. 2180 entitled "AN ORDINANCE TO MODIFY CONDITION
Ordinance NO. 10 IMPOSED ON ORDINANCE NO. 1573 FOR CHANGE OF ZONE
No. 2180 NO. 1475, THE APPLICATION OF RIBERA-ODYSSEY, LLC, AS
(C/Z AMENDED BY ORDINANCE NO. 2018 FOR CHANGE OF ZONE NO.
No. 1697) 1697, THE APPLICATION OF PENINSULA AT LONG NECK, LLC FOR
"THE PENINSULA", A MR-RPC MEDIUM DENSITY RESIDENTIAL
DISTRICT – RESIDENTIAL PLANNED COMMUNITY, TO EXTEND
THE TIME TO CONSTRUCT AND OPEN FOR USE THE GOLF
CLUBHOUSE AND NATURE CENTER FACILITIES" (Change of Zone No.
1697) filed on behalf of Land Tech Receiver Services, LLC, with the following
amended conditions:

- A. Recreational facilities, e.g. tennis courts, swimming pool, community buildings, pathways, trails, and beaches shall be constructed and open to use by the residents within two (2) years of the issuance of the first building permit.
- B. The Nature Center shall be constructed and open to use by September 30, 2011.
- C. Construction of the Clubhouse shall commence no later than three (3) years from the date Sussex County Council approves Change of Zone No. 1697, with construction to be completed 12 months thereafter. A bond, cash bond, or letter of credit shall be provided to Sussex County in the amount of 125% of the cost of completion of the Clubhouse within sixty (60) days of the date that Sussex County Council approves Change of Zone No. 1697.
- D. The site plan for the Clubhouse shall be subject to the review and approval by the Planning and Zoning Commission.

E. The Developer/Receiver shall be in compliance with the County's Clean Hand Ordinance.

Motion Adopted: 5 Yeas.

M 155 11
(continued)
Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

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

M 156 11
Community Grant
A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$300.00 from Mrs. Deaver's Community Grant Account to Teen Missions to sponsor Sara Wood in outreach programs.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

M 157 11
Community Grant
A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$1,000.00 (\$200.00 from each Community Grant Account) to VFW Dept. Delaware Up-Link for the VFW Operation Uplink Program.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

M 158 11
Community Grant
A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 (\$100.00 from each Community Grant Account) to Delaware Envirothon for the 2011 competition event.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

M 159 11
Community Grant
A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to give \$1,000.00 from Mrs. Deaver's Community Grant Account to Clear Space Theatre Company for operating costs.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;

**Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Introduction of Proposed Ordinance
Introduction of Proposed Ordinance
(continued) **Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LAWN MAINTENANCE AND TREE CUTTING COMPANY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.735 ACRES, MORE OR LESS” (Conditional Use No. 1893) filed on behalf of Toby L. Schlick. The Proposed Ordinance will be advertised for Public Hearing.**

Additional Business **Under Additional Business, Carole Somers of the League of Women Voters stated that last week was “Sunshine Week”, a period of recognition of the importance of Freedom of Information and Open Government. Ms. Somers presented and reviewed the League’s second annual Observer Report, covering meetings held from February 2010 through January 2011. The document reports on three Sussex County public bodies (County Council, Planning and Zoning Commission, and Board of Adjustment) from the perspective of those attending the meetings.**

Jo Klinge referenced the draft ordinance on temporary extensions of time for subdivision applications, etc. and she stated that a map should be readily available for the purpose of showing application sites that have already been approved.

Sandy Spence expressed concerns about the redistricting process and she requested that the Council hold a public hearing/meeting on the matter. Ms. Spence advised that State law prohibits the County from adopting a redistricting plan for County Council until after the conclusion of the redistricting of the Legislature. Ms. Spence noted that she has sent letters to the County Council President regarding this matter.

Mr. Vincent stated that the reason he has not responded to Ms. Spence’s letter is that the Council has had no discussion regarding redistricting or the redistricting process.

The Council directed Mr. Rutt to provide information to the Council in memo form regarding the law on the redistricting process

Ralph Joseph spoke in regards to the cost of applying for a variance for a property on Old State Road, Laurel. Mr. Joseph stated that the variance is for the purpose of remodeling a porch and that it is an old house and there is not enough setback from the road. Mr. Joseph stated that the cost of applying for a variance is the same, no matter the size or cost of a project and he asked that the Council consider reducing the cost, at least for smaller projects.

M 160 11 At 11:41 a.m., a Motion was made by Mrs. Deaver, seconded by Mr.

Recess Phillips, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

**M 161 11 A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to reconvene
Reconvene at 1:34 p.m.
Public A Public Hearing was held on the Proposed Ordinance entitled “AN
Hearing/ ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF
C/Z SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL
No. 1700 DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A
CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE
HUNDRED, SUSSEX COUNTY, CONTAINING 1.3328 ACRES, MORE OR
LESS” (Change of Zone No. 1700) filed on behalf of Stephen Bilobran.**

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on February 24, 2011 at which time action was deferred. On March 10, 2011, the Commission recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated February 24 and March 10, 2011.)

Mr. Lank read a summary of the Commission’s Public Hearing.

Mr. Lank distributed copies of an Exhibit Book provided by the Applicant.

The Council found that Stephen Bilobran was present on behalf of his application and he stated that he proposes to relocate his office and a shop to this location; that the parcel is located across the street from a 13 acre commercially zoned parcel; that he will be conforming to seven other commercial/business uses along Burbage Road; that a master plan community, Millville-By-The Sea, is being developed immediately adjacent to his property; that the master plan community also permits business activities; that the master plan community is proposing 3,500 homes; that only 14 homes are currently being built per year based on the current market; that he did not apply for a Conditional Use since he had no firm commitment from the County as to when sewer would be available; that the project will not impact traffic on public roads or the neighborhood; that the proposed building will contain his real estate office, his wholesale business which is operated on-line, and a third rental store front; that the proposed building will contain 3 apartments; that Burbage Road is being widened; that there are 13 parcels in close proximity that are not within the boundaries of the Town of Millville and that some of those parcels are utilized for a repair shop, storage, commercial, real estate, mini-storage, carpet sales and installation, scooter shop and storage, and some conditional uses and general business uses; that the existing dwelling on the site will be expanded and altered to provide for the store fronts and residential use; that the site is located in an area where the Town wants to expand; and that the neighbors have no objection to the proposal.

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

M 162 11 Adopt Ordinance M 162 11 Adopt Ordinance No. 2181 (C/Z No. 1700) (continued)	A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to Adopt Ordinance No. 2181 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 1.3328 ACRES, MORE OR LESS” (Change of Zone No. 1700) filed on behalf Stephen Bilobran.
	Motion Adopted: 4 Yeas, 1 Abstention.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Abstained;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

(Mr. Cole was out of the room during the discussion and therefore did not participate in the vote.)

Public Hearing/ C/Z No. 1701	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 20.94 ACRES, MORE OR LESS” (Change of Zone No. 1701) filed on behalf of CMF Bayside, LLC.
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Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on February 24, 2011 at which time action was deferred. On March 10, 2011, the Commission recommended that the application be approved with conditions.

(See the minutes of the meeting of the Planning and Zoning Commission dated February 24 and March 10, 2011.)

Mr. Lank read a summary of the Commission’s Public Hearing.

Mr. Lank distributed copies of an Exhibit Book provided by the Applicant.

The Council found that Doug Brown was present on behalf of CMF Bayside, LLC with Jim Fuqua, Attorney; Jim Willey of George, Miles & Buhr; and Ed Launay of Environmental Resources, Inc.

Mr. Fuqua stated that the application is for a MR-RPC containing 55 residential units which would be comprised of 17 townhouses and 38 single families that would be in a condominium form of ownership. that the density

**Public
Hearing/
C/Z
No. 1701
(continued)**

would be approximately 3.0 units per acre; that the site is in the middle of the Americana Bayside RPC development; that the Applicants are the same developer; that the existing RPC has extensive recreational facilities throughout the project; that they attempted to purchase this site as a part of their original application, but were unsuccessful; that central water with fire protection capabilities will be provided by Tidewater Utilities; that public central sewer will be provided by Sussex County; that the site will be served by the Fenwick Island Sanitary Sewer District; that the approved County sewer concept plan allocated 56 EDUs for this parcel and they are proposing 55 units; that shopping areas are in close proximity; that this project will be an extension to the existing RPC and the residents will be allowed to utilize the existing recreational facilities and amenities; that there will be an onsite park area; that sidewalks and paths are proposed throughout the project; that wetlands have been delineated and that the Army Corps of Engineers has verified those wetlands; that 50-foot buffers will be provided from State designated wetlands and 25 foot buffers will be provided from all non-tidal Federal wetlands; that roadway improvements have already been completed; that DelDOT has issued a Letter of No Objection for the site entrance; that the project will have a separate condominium association with membership in the Americana Bayside Master Association; that the use complies with the Environmentally Sensitive Developing District Overlay Zone; that an Environmental Assessment Report was prepared and submitted; that the proposed MR-RPC zoning is consistent with the MR-RPC adjacent zoning and should be considered an in-fill; and that the site is located in an Investment Level 3 Area according to State Strategies.

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

**M 163 11
Adopt
Ordinance
No. 2182/
C/Z
No. 1701**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to adopt Ordinance No. 2182 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 20.94 ACRES, MORE OR LESS” (Change of Zone No. 1701) filed on behalf of CMF Bayside, LLC., with the following conditions:

1. The maximum number of residential dwelling units shall be 55, consisting of townhouses and single-family detached condominiums.
2. The development shall be served as part of a Sussex County Sanitary Sewer District.
3. The Developer shall comply with all requirements and specifications of the County Engineering Department.
4. The RPC will be served by central water.
5. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner consistent with Best Management Practices.

**M 163 11
Adopt
Ordinance
No. 2182/
C/Z
No. 1701
(continued)**

- 6. The Final Site Plan for each phase of the development shall contain the approval of the Sussex Conservation District upon it.**
- 7. The project will be incorporated as part of the existing Americana Bayside MR-RPC (Change of Zone No. 1393) and shall be subject to and benefited by the conditions imposed upon that development except as modified herein.**
- 8. All entrance, roadway, intersection and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's standard determinations.**
- 9. The interior street design and parking areas shall meet or exceed Sussex County street design specifications and requirements.**
- 10. The Applicant shall form a Condominium Association to be responsible for the maintenance of streets, roadways, buffers, stormwater management areas and community areas.**
- 11. All road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
- 12. The Final Site Plan shall include a landscape plan for all the buffer areas, showing all the landscaping and vegetation to be included in those areas.**
- 13. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
C/U
No. 1881**

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 TO OPERATE BUSINESSES RELATED TO GRASS CUTTING, POWER WASHING, MARINE SERVICES AND SALES, AND CONSTRUCTION SERVICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.5188 ACRES, MORE OR LESS" (Conditional Use No. 1881) filed on behalf of Harold R. Ennis, Jr. and Dick Ennis, Inc.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on February 24, 2011 at which time action was deferred. On March 10, 2011, the Commission deferred action again.

(See the minutes of the meeting of the Planning and Zoning Commission dated February 24 and March 10, 2011.)

Mr. Lank read a summary of the Commission's Public Hearing.

Mr. Lank distributed copies of a revised Exhibit Book provided by the Applicant. It was noted that the book was revised to include additional information and a revised site plan. Shannon Carmean, Attorney, noted that the site plan was revised following the Commission's Public Hearing.

Public
Hearing/
C/U
No. 1881
(continued)

The Council found that Dick Ennis was present with Shannon Carmean, Attorney. Ms. Carmean submitted into the record ten additional emails and/or letters in support of the application. Ms. Carmean stated that the Applicant is seeking a Conditional Use to continue to operate existing businesses relating to grass cutting, power washing, marine services and sales, and construction services on the property; that the property is currently improved by a residential structure which is currently used and occupied by the Applicant as a residence and as a model home and office for his existing businesses; that the Applicant proposes to construct a one-story structure for his business operations and for storage related to the businesses; that the proposed use is in character with the existing uses in the area; that the adjoining property is residential and the owner of the property has submitted a letter in support of the application; that the property across the street has a conditional use for a wastewater treatment facility; that there is a landscaping business on a nearby property; that the use should not adversely affect neighboring uses; that the Applicant has been operating his businesses for the past ten (10) years and he has received no complaints from neighboring property owners; that the Applicant does repair boats, but there is no storage of boats on the property; that the grass cutting, power washing and marine service and sales are, for the most part, seasonal businesses and operate approximately 6 months out of the year; that there is an existing tree line around the perimeter of the property which will serve as a buffer; that there will be no adverse impact on traffic in the area; that a Traffic Impact Study was not recommended; that the Applicant received a Letter of No Objection from DelDOT with regard to the proposed entrance; that there will be no storage of boats on the property; that the Applicant intends to have no more than five employees at the property at any one time; that the proposed hours of operation are seven days per week with hours on Monday through Saturday from 8:00 a.m. to 5:00 p.m. and on Sunday from 9:00 a.m. to 2:00 p.m.; that there was a sign located on the site for the modular home business; that the sign was removed at the request of the County; that if the Conditional Use is approved, the Applicant requests permission to replace the sign; that the sign would comply with the Code and would advertise the four businesses; that the property is served by an individual on-site well and septic system; and that the Applicant received notices of violations and that is why the application was filed.

(Harold) Dick Ennis explained the marine services he provides.

Jim Gallagher and Charles Grose spoke in support of the application. They stated that the use will benefit the area; that the Applicant is a good employer; and that the Applicant is a hard worker and should be allowed to

continue his business.

There were no comments in opposition to the application.

The Public Hearing was closed.

M 164 11 **A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to defer**
Defer **action on Conditional Use No. 1881 filed on behalf of Harold R. Ennis, Jr.**
Action on **and Dick Ennis, Inc.**
C/U

No. 1881 **Motion Adopted: 5 Yeas.**

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
 Mr. Phillips, Yea; Mr. Wilson, Yea;
 Mr. Vincent, Yea

Public **A Public Hearing on the Proposed Ordinance entitled “AN ORDINANCE**
Hearing/ **TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1**
C/U **AGRICULTURAL RESIDENTIAL DISTRICT TO REPLACE 260**
No. 1862 **MOBILE HOME LOTS WITH 367 SEASONAL RV/CAMPER SITES TO**
 BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND
 BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY,
 CONTAINING 50.81 ACRES OF A 138 ACRE TRACT” (Conditional Use
 No. 1862) filed on behalf of Nanticoke Shore Associates, LLC.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on February 24, 2011 at which time action was deferred. On March 10, 2011, the Commission deferred action again.

(See the minutes of the meeting of the Planning and Zoning Commission dated February 24 and March 10, 2011.)

Mr. Lank read a summary of the Commission’s Public Hearing.

Mr. Lank distributed copies of an Exhibit Book provided by the Applicant.

Mr. Lank noted that a letter of opposition was received from Pat Weyl by fax on March 21, 2011. The letter was made a part of the record.

The Council found that Richard Berman and David Podlaseck were present on behalf of Nanticoke Shores Associates, LLC, with Gene Bayard, Attorney, and Byron Jefferson, Project Engineer.

Mr. Bayard stated that the application is for the new development of an approved un-developed 260 lot section of an existing park on approximately 51 acres; that they are proposing to convert 260 manufactured home lease lots into 367 RV/camper sites; that all public infrastructure is either available or in place; that DelDOT has determined there is less traffic

Public
Hearing/
C/U
No. 1862
(continued)

impact created by the development of a seasonal RV park/campground than there would be created by the development of a 260 lot addition to the Rehoboth Shores Mobile Home Community; that the Long Neck Sanitary Sewer District has allocated more than sufficient sewer capacity for this project; that more than 160 EDUs will be returned to the district if this project is developed; and that the project is served by the Long Neck Water Company.

Byron Jefferson stated that PLUS had no objection to the project; that DelDOT stated that the existing entrance is adequate to handle the campsite; that the campsite would only be occupied during the months of April through October; that the campsites are not 100 percent occupied during weekdays; that a split rail fence is proposed; that the split rail fence is not a security fence; that there is a 50 foot buffer around the campsite area; that the Applicant is proposing an additional 6 foot high wooded buffer; that a new office is proposed for the campsite; that a bathhouse and dumpsters are proposed in two locations; that every campsite will be hooked up to sewer; that a pool and clubhouse is proposed; that stormwater management will direct outfall to tidal waters; that they do not propose to attract transient campers; that the site is located in the Environmentally Sensitive Development District Overlay Zone; that there will be no detrimental effect on property values and there will be no effect on public transportation; that 39 percent of the site will be open space; that the use is compatible with other uses in the area; that there is no existing camping sites available in the area; and that there will be at least 50 feet between a camping site and a mobile home site.

David Podlaseck reported on the Rehoboth Shores market conditions: total number of lots is 494; total number of vacant lots is 80; total number of lots rented in 2009 is 3; total number of lots rented in 2010 is 1; total number of repossessed homes in 2009 is 17; total number of repossessed homes in 2010 is 15; total number of repossessed homes in 2011 is 5; total repossessed homes purchased from lenders is 30. Factors affecting manufactured home sales is the current economic crisis, stringent lending requirements by lenders offering mobile home loans, fewer lending institutions offering financing for manufactured homes at significantly higher interest rates; cost of purchasing a manufactured home on rented property versus purchasing a stick built home; and equity considerations of a stick built home over a manufactured homes.

Mr. Podlaseck stated that the amenities that exist in Rehoboth Shores will be available to the RV tenants including the pool, the boat docks, playground, and pavilion; that there will be a separate office for the RV park with an on-site manager; and that they intend to install security gates.

Mr. Podlaseck referenced the objections made at the Public Hearing before the Planning and Zoning Commission and in response to those objections he stated that background and credit checks will be required for all seasonal RV residents; that DelDOT determined that 367 RV sites will create less

traffic than 260 additional mobile home lots; that in regards to crime, crime is everywhere and it comes from outside; and that security measures will be taken.

Mr. Bayard stated that no lots in Rehoboth Shores are threatened by this proposal and no lots will be eliminated; that the proposal will have less impact than a residential year round community; and that this application is for the development of 51 acres.

Public
Hearing/
C/U
No. 1862
(continued)

There were no public comments in support of the application.

Hal Campbell, Neal Dickerson, Vicki Rollison, Roberta Hemmerich, Debbie Irwin, John Walsh, Vincent Rice, Tom Hinderliter, and Barbara Duff spoke in opposition to the application. They stated that a RV/camper park will only generate more crime; that water pressure problems will increase; that traffic will increase and traffic problems will increase; that they were previously told that there would be separate amenities in the RV/camper park; that they oppose sharing the one entrance with Rehoboth Shores; that they question who will pay for water and sewer usage; that the Applicant is proposing a rent of \$99 per month and that tenants in Rehoboth Shores are paying \$500 per month or more and that this is unfair; that this proposal is an attempt to “change the rules of the game after the cards have been dealt”; that the Rehoboth Shores community is poorly managed; that when they moved into the community, they had no idea this would be proposed; that no one in the community is in favor of the proposal; that emergency service providers will have difficulty getting through the parks; that already, realtors won’t sell in Rehoboth Shores; that amenities are over-used; that campers are noisy; and that RVs are proposed to be placed where they live permanently.

David Rutt stated that, at 3:10 p.m., he was given a note from Sandy Spence stating that the Applicant took so long with his presentation that she had to leave for an important appointment. Ms. Spence asked that the record be held open for 48 hours for her to submit a statement in writing from herself and from Gina Meserindino.

M 165 11
Leave
Record
Open on
C/U
No. 1862

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to close the Public Hearing on Conditional Use No. 1862 filed on behalf of Nanticoke Shore Associates, LLC, with the exception of leaving the record open for 48 hours (until the close of business on Thursday, March 31st) for the purpose of allowing statements submitted by Sandy Spence.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

M 166 11 A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action

**Defer
Action on
C/U
No. 1862** **on Conditional Use No. 1862 filed on behalf of Nanticoke Shores Associates, LLC.**
Motion Adopted: 5 Yeas.

**M 166 11
(continued)** **Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
Casino
Moratorium
Ordinance** **A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE PROVIDING FOR A SIX MONTH MORATORIUM ON APPLICATIONS FOR CASINO AND/OR GAMBLING OR GAMING VENUES IN SUSSEX COUNTY”.**

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on February 24, 2011 at which time the Commission recommended that the County Council not act on this Ordinance and to encourage the County Council to put forward an actual Ordinance on casinos, gambling and gaming, rather than a moratorium.

(See the minutes of the meeting of the Planning and Zoning Commission dated February 24, 2011.)

Mr. Lank read a summary of the Commission’s Public Hearing.

It was noted that the initial casino moratorium ordinance expired two months ago.

The Council discussed whether or not to reinstate the moratorium ordinance. Mr. Cole questioned if the draft ordinance regarding casinos is being written. Mr. Phillips stated that it is hard for the County to craft an ordinance when the County does not know what type of legislation the General Assembly will pass. Mr. Cole stated that the County’s ordinance needs to address casinos through a land use approach, i.e. parcel size, infrastructure needs, etc. Mr. Wilson stated that under State Law, casinos are not permitted in Sussex County except at racetracks.

Mr. Lank stated that the casino ordinance is being worked on.

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

**M 167 11
Adopt
Ordinance
No. 2183** **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2183 entitled “AN ORDINANCE PROVIDING FOR A SIX MONTH MORATORIUM ON APPLICATIONS FOR CASINO AND/OR GAMBLING OR GAMING VENUES IN SUSSEX COUNTY”.**

Motion Adopted: 5 Yeas.

Vote by Roll Call: **Mrs. Deaver, Yea; Mr. Cole, Yea;**
 Mr. Phillips, Yea; Mr. Wilson, Yea;
 Mr. Vincent, Yea

M 168 11 **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adjourn at**
Adjourn **4:36 p.m. Motion Adopted by Voice Vote.**

Respectfully submitted,

Robin A. Griffith
Clerk of the Council