

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 25, 1997

Call to Order The regular meeting of the Sussex County Council was held Tuesday, March 25, 1997, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Dale R. Dukes	President
George J. Collins	Vice President
George B. Cole	Member
Finley B. Jones	Member
Lynn J. Rogers	Member

The meeting was opened by repeating the Lord's Prayer and Pledge of Allegiance to the Flag.

M 122 97 A Motion was made by Mr. Jones, seconded by Mr. Collins, to approve the Agenda with the following amendment:
Approve Agenda With Amendment Delete under Robert C. Green, Director of Utility Construction, the item entitled "Savannahs Landing, Beneficial Acceptance".

Motion Adopted: 5 Yea.

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

M 123 97 A Motion was made by Mr. Collins, seconded by Mr. Jones, to approve the minutes of the previous meeting, dated March 18, 1997.
Approve Minutes

Motion Adopted: 5 Yea.

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

Correspondence Mr. Bayard, County Attorney, read the following correspondence:

SUSSEX COUNTY CHAPTER, NATIONAL FEDERATION OF THE BLIND OF DELAWARE, GEORGETOWN, DELAWARE.

RE: Request for financial assistance to send delegates to the NFB National Convention.

CURTIS BROCK, ATHLETIC DIRECTOR, DELAWARE TECHNICAL & COMMUNITY COLLEGE, GEORGETOWN, DELAWARE.

RE: Letter of appreciation for Council's grant that was used for the annual spring training trip.

Corre-
spondence
(con't)

SUSSEX COUNTY CONVENTION & TOURISM COMMISSION, GEORGETOWN,
DELAWARE.

RE: Letter complimenting Diana Pettyjohn for her quick action
and assistance on March 12th when a seminar had to be relocated
due to a bomb threat at Delaware Technical & Community College.

PAUL RODIO, ATHLETIC DIRECTOR, ST. AUGUSTINE PREP, RICHLAND, NEW
JERSEY.

RE: Letter of appreciation for Council's financial support of
the Slam Dunk to the Beach Tournament.

JIM FENERTY, ATHLETIC DIRECTOR, GERMANTOWN ACADEMY, FORT
WASHINGTON, PENNSYLVANIA.

RE: Letter of appreciation for Council's financial support of
the Slam Dunk to the Beach Tournament.

COLLEEN COX, ATHLETIC DIRECTOR, TOWSON CATHOLIC ATHLETICS,
TOWSON, MARYLAND.

RE: Letter of appreciation for Council's financial support of
the Slam Dunk to the Beach Tournament.

Clear-
water
Develop-
ment

Mr. Green, Director of Utility Construction, discussed Beneficial
Acceptance for the wastewater facilities constructed in Clear-
water Development - Phase IV, located in the South Bethany
Sanitary Sewer District.

M 124 97
Grant
Bene-
ficial
Accep-
tance/
Clear-
water
Develop-
ment

A Motion was made by Mr. Cole, seconded by Mr. Collins, based
upon the recommendation of the Sussex County Engineering Depart-
ment, for Sussex County Project No. 81-04, that the Sussex
County Council grant Beneficial Acceptance for the wastewater
facilities constructed in Clearwater Development - Phase IV,
located in the South Bethany Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

Land
Use
Plan

Mr. Stickels, County Administrator, and Mr. Shafer of Whitman,
Requardt & Associates, reviewed and discussed suggested re-
visions to the Draft Sussex County Comprehensive Land Use
Plan. Mr. Stickels distributed copies of the following three
documents: (1) Listing of Sussex County Land Use Meetings,
(2) Recap of Minutes from the March 18, 1997 Workshop Meeting,
(3) Implementation Proposals, (4) Suggested Changes, dated
March 31, 1997 and (5) Sussex County Comprehensive Land Use
Plan, dated March 31, 1997.

Land
Use
Plan
(con't)

Mr. Stickels, County Administrator, reviewed the recap of the minutes from the March 18, 1997 Workshop Meeting, as follows:

1. Farmland Preservation

- Support the Delaware Agricultural Lands Preservation Foundation.
- Recommend the Delaware General Assembly modify and/or expand existing program.
- Study a volunteer program for parcels of land less than 200 acres in areas that do not qualify for the State program.

(Page 14 of the Plan is affected.)

2. AR-1 Lot Size - On-Site Septic Systems

- All lots unsewered be a minimum of 3/4 of an acre.

(Page 11 of the Plan is affected.)

3. Development District Map

- Expand Development Districts to a one mile radius for towns that did not have a Development District in the 1988-1990 Land Use Plan.
- Remaining Development Districts will mirror 1988-1990 Land Use Plan Development District.

(Future Land Use map will be affected.)

4. Conservation District (On-Site Septic Systems)

- Develop ordinance requiring minimum lot size of two acres for unsewered areas in the Conservation District, supported by an ordinance for the Inland Bays and tidal waters.

(Pages 12 and 24 of the Plan are affected.)

5. Strip Development

- Four lots per parcel on non-arterial roads and one lot for every additional ten acres, with a maximum of four being allowed to be developed per year.
- All minor subdivisions on arterial roads must go before the Planning and Zoning Commission.

(Page 14 of the Plan is affected.)

Land
Use
Plan
(con't)

6. Manufactured Home Placement

- 3/4 acre lots for AR-1 multi-sectional units, except where prohibited by private restrictions, and wherever permitted in a GR, and on a farm of ten acres or more.
- Grandfather existing single-wide units to allow replacement with a manufactured home not more than five years old.

(Pages 6, 7, 8, 11, 13, and 31 of the Plan are affected.)

7. Sunsetting Subdivisions

- Five years after final plan recordation of subdivisions.
- No grandfathering of previously recorded subdivisions.

(Page 14 of the Plan is affected.)

8. TDR (Transfer of Development Rights)

- Study feasibility of TDR Program.

(Page 14 of the Plan is affected.)

9. Density - Bonus or Credit

- Study possible program as recommended by consultant.

(Pages 7 and 8 of the Plan are affected.)

10. Intergovernmental Coordination

- Boundary agreements between municipalities and County.
- One mile from incorporated limits.

(Page 33 of the Plan is affected.)

Mr. Stickels, County Administrator, presented the following suggested changes to the Land Use Plan, dated March 31, 1997, as follows:

- Page 4, left-hand column, first paragraph, fourth line from end of paragraph, insert after "require" and before "37,223", "may require up to".
- Page 5, right-hand column, last paragraph, strike second sentence that starts "The Development District is..."; the next sentence in the paragraph would start "In addition..."

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Land
Use
Plan
(con't)

- Page 12, right-hand column, second paragraph, third line, after the words "high-water line", strike "or adjacent flood-plains".
- Page 18, left-hand column, second paragraph, eight lines down, after the word "roads", insert a period and strike remaining paragraph.
- Page 21, right-hand column, second paragraph, twelfth line down, after "however it", strike "will" and insert "may", and after "necessary", strike "for the County".
- Page 29, left-hand column, the last point, after the word "maintained", insert a period and strike "and Sussex County's visual and cultural heritage are protected."
- Page 31, right-hand column, second bullet, eighth line down, after the word "sites", insert a period and strike remaining paragraph.
- Page 31, right-hand column, fourth bullet, fourth line, strike "tax incentives or".
- Page 38, right-hand column, fifth bullet, after "reuse of historic buildings", insert a period and strike remaining paragraph.
- Page 42, right-hand column, fourth bullet, insert before "Develop" the words "Encourage the State to".

Mr. Rogers suggested that the following changes also be made:

- Page 6, left-hand column, third paragraph, ten lines down, after the words "important to respect their", strike "visual and cultural".
- Page 8, right-hand column, second paragraph, eleven lines down, after the words "will maintain and enhance", strike "visual and cultural".
- Page 8, right-hand column, second paragraph, twenty-four lines down, after the words "extending the community's", strike "visual and cultural".
- Page 9, right-hand column, last sentence, after the words sites and/or structures, insert a period and strike remainder of sentence.
- Page 24, first paragraph, last sentence, strike "program's" and insert "CCMP's".

Land
Use
Plan
(con't)

Mr. Stickels, County Administrator, reviewed Implementation Proposals that are especially important to the State. He explained that the State's comments are based on the September 3, 1997 submittal of the Sussex County Comprehensive Land Use Plan and not the recent drafts. Mr. Stickels advised that the law states that Council must consider the Cabinet Committee's comments; however, Council is not required to implement the comments.

- Adopt legislation that provides for sunseting previously recorded subdivisions.

This has been included on Page 14 of the Land Use Plan.

- Revise the Zoning Ordinance for on-site septic systems to increase the minimum lot size to one acre and provide a limitation on the number of permits in a specific area.

It is the consensus of Council that lot sizes are a Land Use decision and additional land needed for septic systems is an environmental issue which is DNREC's responsibility. (Lot size has been increased in the Land Use Plan.)

- Revise the Zoning Ordinance and Subdivision Regulations to employ flexible development regulations, innovative site design, best management practices, and mitigation measures in order to protect the natural environment.

This is to be addressed in proposed ordinances; Council is looking at including RPC's in the subdivision ordinance.

- Revise the Zoning Ordinance and Subdivision Regulations to require the provision of active and passive recreational facilities and quality open space for large-scale developments.

This is to be addressed in proposed ordinances.

- Revise Subdivision Regulations to be consistent with the Comprehensive Plan, incorporating mixed use and cluster development, multi-modal transportation alternatives, access management, visual quality, and environmental impact.

This is to be addressed in proposed ordinances; Council is looking at including RPC's in the subdivision ordinance.

- Determine property assessments and property taxes based on zoning category rather than on land use to discourage speculation and premature approvals.

This is addressed on Page 14 of the Land Use Plan. It is a practice the County is already implementing.

Land
Use
Plan
(con't)

- Establish an Intergovernmental Coordination Zone for each municipality.

This is addressed on Page 33 of the Land Use Plan and will be addressed in proposed ordinances.

- Land Use Map concerns.

- Inland Bay Area - Development District

Full buildout conflicts with Comprehensive Conservation and Management Plan (CCMP).

The Inland Bay Area - Development District has been reduced. DNREC has provided the County with a map delineating where the County needs to provide central sewer.

- Western Sussex - Development District

Expansion of existing development should not occur until completion of Western Sussex Water and Wastewater Plan.

The Western Sussex Water and Wastewater Plan has been completed and will be released soon.

- The Cabinet Committee also believes that a large lot minimum zoning requirement is critical to protection of agricultural activities and should be incorporated into the final plan and its implementing ordinances.

Testimony from the agricultural community disputes the State's beliefs on this issue.

Mr. Stickels, County Administrator, advised that if Council adopts the Comprehensive Land Use Plan, as proposed, it will be presented to the Cabinet Committee on State Planning Issues on March 31, 1997. Further, the Cabinet Committee has asked to meet with Council on April 15, 1997.

Mr. Schrader, Assistant County Attorney, provided the following information regarding the legal procedures that relate to the adoption of the Comprehensive Land Use Plan. Under the Quality of Life Act, which was amended with the Shaping Delaware's Future Act, the County is required to authorize the submittal of the Comprehensive Land Use Plan to the Cabinet Committee on State Planning Issues no later than March 31, 1997. For a period of sixty days after the submittal, the Cabinet Committee has the opportunity to review and comment on the Plan. Once the comments of the Cabinet Committee have been received, Council is to revisit the issues identified by the Committee.

Land Use Plan (con't) Council may adopt or reject the recommendations of the Cabinet Committee; however, reasons for rejection must be provided. Once any resulting changes are incorporated in the Comprehensive Land Use Plan, the Plan is to be adopted as an Ordinance. In addition, the County's attorneys will develop a plan for the adoption of an Implementation Program including ordinances supporting the Comprehensive Land Use Plan. The Implementation Program must take place within one year of the formal adoption of the Comprehensive Land Use Plan.

M 125 97 Submit Comprehensive Land Use Plan Document to Cabinet Committee A Motion was made by Mr. Collins, seconded by Mr. Jones, to submit the Comprehensive Land Use Plan document, as amended, as Sussex County's final Comprehensive Land Use Plan to the Cabinet Committee on State Planning Issues.
Motion Adopted: 5 Yea.
Vote by Roll Call: Mr. Cole, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea; Mr. Collins, Yea;
Mr. Dukes, Yea

Review Plan It was the consensus of Council that the Comprehensive Land Use Plan document will be reviewed continually.

Old Business/ Proposed Ordinance Relating to Sub-division of Land The Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED "SUBDIVISION OF LAND", TO AMEND PROVISIONS RELATING TO THE DEFINITION OF MAJOR AND MINOR SUBDIVISIONS AND TO AMEND PROVISIONS RELATING TO THE APPROVAL OF CERTAIN SUBDIVISIONS" was discussed. A Public Hearing was held on this Proposed Ordinance on February 18, 1997, at which time action was deferred. Since that time, the form of the Proposed Ordinance has been rewritten to make it consistent with the Comprehensive Land Use Plan.

M 126 97 Adopt Ordinance No. 1130 A Motion was made by Mr. Collins, seconded by Mr. Jones, to Adopt Ordinance No. 1130 entitled "AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED "SUBDIVISION OF LAND", TO AMEND PROVISIONS RELATING TO THE DEFINITION OF MAJOR AND MINOR SUBDIVISIONS AND TO AMEND PROVISIONS RELATING TO THE APPROVAL OF CERTAIN SUBDIVISIONS".

Motion Adopted: 5 Yea.

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

Old Business/ Proposed Ordinance The Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ENTITLED "ZONING", TO AMEND PROVISIONS RELATING TO THE PLACEMENT AND REGULATION OF MOBILE HOMES AND TO PROVIDE MINIMUM STANDARDS FOR MOBILE HOMES IN CERTAIN DISTRICTS" was discussed. A Public Hearing was held

Old Business (con't) on this Proposed Ordinance on February 18, 1997 at which time action was deferred. Since that time, the form of the Proposed Ordinance has been rewritten to make it consistent with the Comprehensive Land Use Plan.

M 127 97 Adopt Ordinance No. 1131 A Motion was made by Mr. Collins, seconded by Mr. Jones, to Adopt Ordinance No. 1131 entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ENTITLED "ZONING", TO AMEND PROVISIONS RELATING TO THE PLACEMENT AND REGULATION OF MOBILE HOMES AND TO PROVIDE MINIMUM STANDARDS FOR MOBILE HOMES IN CERTAIN DISTRICTS".

Motion Adopted: 5 Yea.

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

Presiding Officer Mr. Dukes turned the meeting over to Mr. Collins due to a possible conflict of interest with the agenda item entitled "Subdivision Approval - No. 96-18 - Donald M. Martin".

Sub-division Application No. 96-18/ Appeal A discussion was held on an appeal of the Sussex County Planning & Zoning Commission's decision to deny an application (Sub-division Application No. 96-18) of Donald M. Martin for the subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred by dividing 4.58 acres into four lots, located at the end of Pit Road, 1,720 feet southeast of Road 530. A Public Hearing was held on this appeal on February 18, 1997 at which time action was deferred.

Proposed Findings of Fact Mr. Schrader, Assistant County Attorney, read the following proposed Findings of Fact that were prepared by the County's legal counsel.

"On November 26, 1996, the Sussex County Planning & Zoning Commission conducted a Public Hearing on the preliminary Subdivision Application of Donald M. Martin. The Application sought to subdivide 4.58 acres in Nanticoke Hundred, zoned AR-1 Agricultural Residential into four residential building lots, located at the end of Pit Road, 1,720 feet southeast of Road 530.

On December 5, 1996, the Sussex County Planning & Zoning Commission voted unanimously to deny the Subdivision Application. The record reviewed by Council consists of Mr. Martin's Subdivision Application, certain subdivision plats prepared by Miller-Lewis Surveyors, the Technical Advisory Committee Report of October 16, 1996, additional comments received from DNREC Division of Parks and Recreations, DNREC Wetlands and Subaqueous Land Branch and the Sussex County Engineer - Historic Preservation Planner, together with earlier letters from Lawrence Lank to the applicant and the minutes of the Planning & Zoning Commission meeting of November 21, 1996.

Proposed Findings of Fact (con't)

When the Commission voted to deny, the reason stated by the Commission in support of its denial of the application was that the applicant is not and has not been in conformity with the Sussex County Comprehensive Zoning Ordinance. The Commission further found that once the applicant brought his property into conformity with the ordinance, he would be allowed to apply for preliminary subdivision application approval.

The Planning & Zoning Commission has the authority, pursuant to Sussex County Code, §99-9(A), to "either tentatively approve or disapprove or conditionally approve the plot subject to specific changes or modifications". In exercising this authority, the role of the Planning & Zoning Commission is administrative, not legislative. East Lake Partners v. City of Dover, Del. Super., 655 A.2d 821, 825 (1994); J and M Realty Co. v. City of Norwalk, Conn. Supr., 239 A.2d 534, 536 (1968).

This means that the Planning & Zoning Commission must apply the subdivision ordinance to the subdivision application. If the subdivision application meets all of the requirements of the subdivision ordinance, then the Planning & Zoning Commission must approve the application. RK Development v. City of Norwalk, Conn. Supr., 242 A.2d 781, 784 (1960); Broward County v. Narco Realty, Inc., 359 So.2d 509, 510 (1978).

There is substantial evidence in the record before the Sussex County Council that suggests that Mr. Martin's application cannot go forward, because the real property which is the subject of the application is presently in violation of the County's Comprehensive Zoning Ordinance. The Planning & Zoning Commission's stated reason for denying Mr. Martin's application is based on sound policy, since it makes no sense for a planning body to approve new land use overlaying an existing violation of the zoning ordinance, with no assurance that the underlying violation will be corrected. There is substantial evidence to support the Planning & Zoning Commission's findings and its decision must be upheld; East Lake Partners v. City of Dover, 655 A.2d 821. Therefore, the decision of the Planning & Zoning Commission denying approval of Subdivision Application No. 96-18 is affirmed."

M 128 97
Deny
Sub-
division
Applica-
tion No.
96-18
(Denied)

A Motion was made by Mr. Jones, seconded by Mr. Collins, to deny Subdivision Application No. 96-18, an application of Donald M. Martin.

Motion Denied: 3 Nay, 1 Yea, 1 Abstention.

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

Reasons
for
Denial

The majority of Council voted against the denial of Sub-division Application No. 96-18 for the following reasons:

1. The applicant has followed proper procedures.
2. The applicant has expressed that he is willing to comply with any procedures/stipulations imposed.
3. The applicant is willing to bring the property into conformity with the Sussex County Comprehensive Zoning Ordinance.

Officer

Mr. Collins turned the meeting back over to Mr. Dukes.

Sub-
division
Applica-
tion No.
96-24

A discussion was held on an appeal of the Sussex County Planning & Zoning Commission's decision to deny an application (Subdivision Application No. 96-24) of Timothy Ramia (Timothy Ramey Construction) for the subdivision of land in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred by dividing 22.28 acres into 31 lots, located on the west side of an unnamed road, 175 feet west of Johnson's Drive within Patty Cannon Estates Subdivision, on the south side of Road 78, 1,260 feet southeast of Road 490A. A Public Hearing was held on this appeal on February 18, 1997 at which time action was deferred.

Proposed
Findings
of Fact

Mr. Schrader, Assistant County Attorney, read the following proposed Findings of Fact that were prepared by the County's legal counsel.

"On December 5, 1996, the Sussex County Planning & Zoning Commission conducted a Public Hearing on the preliminary Sub-division Application of Timothy Ramia. The application sought to subdivide 22.28 acres in Broad Creek Hundred, zoned AR-1 Agricultural Residential, into 31 residential building lots, located on the west side of an unnamed road, 175 feet west of Johnson's Drive within Patty Cannon Estates Subdivision on the south side of Road 78, 1,260 feet southeast of Road 490A.

On January 9, 1997, the Sussex County Planning & Zoning Commission voted unanimously to deny the subdivision application, offering in support of denial one reason "there are at least 14 vacant lots in Patty Cannon Estates and that those lots should be developed prior to the approval of any additional lots". Mr. Ramia has timely appealed that decision to Sussex County Council. A Hearing on Mr. Ramia's appeal was conducted by Sussex County Council on February 18, 1997. Mr. Abbott appeared on behalf of the Planning & Zoning Commission and Mr. Ramia appeared to speak in his own behalf. The record reviewed by Council consists of Mr. Ramia's subdivision application, certain subdivision plats prepared by Miller-Lewis Surveyors, the Technical Advisory Com-

Proposed Findings of Fact (con't)

mittee Report of November 13, 1996, additional comments received from DNREC Conservation Service and the minutes of the Planning & Zoning Commission Meeting of December 5, 1996 and January 9, 1997.

The Planning & Zoning Commission has the authority, pursuant to Sussex County Code, § 99-9(A), to "either tentatively approve or disapprove or conditionally approve the plot subject to specific changes or modifications." In exercising this authority, the role of the Planning & Zoning Commission is administrative, not legislative. East Lake Partners v. City of Dover, Del. Super., 655 A.2d 821, 825 (1994); J and M Realty Co. v. City of Norwalk, Conn. Supr., 239 A.2d 534, 536 (1968).

This means that the Planning & Zoning Commission must apply the subdivision ordinance to the subdivision application. If the subdivision application meets all of the requirements of the subdivision ordinance, then the Planning & Zoning Commission must approve the application. RK Development v. City of Norwalk, Conn. Supr., 242 A.2d 781, 784 (1960); Broward County v. Narco Realty, Inc., 359 So.2d 509, 510 (1978).

There is no evidence in the record before the Sussex County Council that in any way suggests that Mr. Ramia's subdivision application does not comply with the Sussex County Subdivision Ordinance. Moreover, the Planning & Zoning Commission's stated reason for denying the subdivision application is based on matters not even provided for in the subdivision ordinance and do not constitute proper, lawful basis for denial of the application. It is well-settled law in Delaware that where there is not substantial evidence to support the Planning & Zoning Commission's findings, its decision must be reversed. East Lake Partners v. City of Dover, 655 A.2d 821, 825. Therefore, based upon the findings of fact and conclusions of law set forth herein, the decision by the Planning & Zoning Commission denying approval of Subdivision Application No. 96-24 is hereby reversed because there is no substantial evidence in the record supporting that decision. Subdivision Application No. 96-24 is hereby granted preliminary subdivision approval."

M 129 97
Approve
Sub-
division
Applica-
tion
No.
96-24

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to reverse the decision of the Sussex County Planning & Zoning Commission to deny Subdivision Application No. 96-24, an application of Timothy Ramia (Timothy Ramey Construction) and to adopt the Findings of Fact prepared by legal counsel.

Motion Adopted: 4 Yea, 1 Nay.

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

Sub-
division
Applica-
tion No.
96-22

A discussion was held on an appeal of the Sussex County Planning & Zoning Commission's decision to deny an application (Sub-division Application No. 96-22) of Norris L. Niblett for the subdivision of land in a GR General Residential Zoning District in Little Creek Hundred by dividing 53.33 acres into 77 lots, located on the south side of Road 515, 2,065 feet west of Road 13A. A Public Hearing was held on this appeal on February 25, 1997 at which time action was deferred.

Proposed
Findings
of Fact

Mr. Schrader, Assistant County Attorney, read the following proposed Findings of Fact that were prepared by the County's legal counsel.

"On August 21, 1996, Norris Niblett submitted an application to the Planning & Zoning Commission for a major subdivision pursuant to the Sussex County Subdivision Ordinance, Sussex County Code, §99-1. Mr. Niblett sought to subdivide 53.33 acres of land zoned "General Residential" into 77 lots. The proposed subdivision is located on the south side of County Road 515, approximately 2,065 feet west of U.S. Route 13A. It will have private streets, central water and sewer systems, fenced-in stormwater management ponds, lot sizes averaging 12,000 square feet, and a single entrance.

In response to Mr. Niblett's subdivision application, the Planning & Zoning Commission received comments from a number of agencies comprising the Technical Advisory Committee. The Department of Natural Resources, Division of Water Resources, based upon a feasibility study prepared by Delaware Environmental, 41 logged borings, percolation tests, and topographical and soil maps, concluded that the soils of the proposed subdivision would be feasible for an on-site septic system under the current regulations governing the design, installation and operation of on-site wastewater treatment and disposal systems, dated January 4, 1985, provided that a community wastewater disposal system is utilized. Dennis L. Schrader, the Assistant County Attorney, concluded that the restrictive covenants submitted with the subdivision application do provide for the maintenance of the streets, stormwater areas and sediment control, as required by Sussex County Code §99-24 and 27. The Sussex County Engineering Department, after suggesting a few minor revisions, recommended that preliminary approval of the subdivision application be considered. Mark Reyburn, a Historic Preservation Planner with the Sussex County Engineering Department, concluded that there were no known archeological sites or historic properties within or close to the proposed subdivision. He also concluded that the proposed subdivision would be unlikely to affect significant cultural resources. None of the agencies recommended that the subdivision application be denied.

Proposed Findings of Fact (con't)

On December 5, 1996, the Planning & Zoning Commission held a hearing to consider Mr. Niblett's subdivision application. After consideration of the matters previously discussed herein, and comments from the public, the Planning & Zoning Commission voted 4-0 to deny Mr. Niblett's subdivision application because "the subdivision would be out of character with the area, and that there is no need for additional lots in the area." Mr. Niblett then filed an appeal of the Planning & Zoning Commission's decision to the Sussex County Council pursuant to Sussex County Code §99-39.

The Planning & Zoning Commission has the authority, pursuant to Sussex County Code, §99-9(A), to "either tentatively approve or disapprove or conditionally approve the plot subject to specific changes or modifications." In exercising this authority, the role of the Planning & Zoning Commission is administrative, not legislative. East Lake Partners v. City of Dover, Del. Super. 655 A.2d 821, 825 (1994); J and M Realty Co. v. City of Norwalk, Conn. Supr., 239 A.2d 534, 536 (1968).

This means that the Planning & Zoning Commission must apply the subdivision ordinance to the subdivision application. If the subdivision application meets all of the requirements of the subdivision ordinance, the Planning & Zoning Commission must approve the application. RK Development v. City of Norwalk, Conn. Supr., 242 A.2d 781, 784 (1960); Broward County v. Narco Realty, Inc., 359 So.2d 509, 510 (1978).

There is no evidence in the record before the Sussex County Council that in any way suggests that Mr. Niblett's subdivision application does not comply with the Sussex County Subdivision Ordinance. Moreover, the Planning & Zoning Commission's stated reasons for denying the subdivision application are based on matters not even provided for in the subdivision ordinance and do not constitute proper, lawful basis for denial of the application. It is well-settled law in Delaware that where there is not substantial evidence to support the Planning & Zoning Commission's findings, its decision must be reversed. East Lake Partners v. City of Dover, 655 A.2d 821, 825. Therefore, based upon the findings of fact and conclusions of law set forth herein, the decision by the Planning & Zoning Commission denying approval of Subdivision Application No. 96-22 is hereby reversed because there is no substantial evidence in the record supporting that decision. Subdivision Application No. 96-22 is hereby granted preliminary subdivision approval."

M 130 97 Motion Died

A Motion was made by Mr. Collins to refer Subdivision Application No. 96-22, an application of Norris L. Niblett, back to the Sussex County Planning & Zoning Commission. The Motion died for the lack of a second.

M 131 97
Approve
Sub-
division
Applica-
tion No.
96-22

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to reverse the decision of the Sussex County Planning & Zoning Commission to deny Subdivision Application No. 96-22, an application of Norris L. Niblett and to adopt the Findings of Fact proposed by legal counsel.

Motion Adopted: 4 Yea, 1 Nay.

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

Adminis-
trator's
Report

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

1. Sussex County Volunteer Firemen's Association

The Gumboro Fire Company will host the monthly Sussex County Volunteer Firemen's Association meeting at the Gumboro Fire Hall on Tuesday, March 25, 1997, at 7:30 p.m.

2. Bartley v. Sussex County

I have received notification from Dennis L. Schrader, Assistant County Attorney, that the suit brought by Terrance H. Bartley and Erin Bartley against Sussex County Council and Seabright Village Associates, General Partnership, has been dismissed with prejudice. This suit cannot be reentered. Mr. James A. Fuqua, Jr., was the lead counsel representing the applicant.

3. Delaware Statewide Wastewater Management Conference

The Delaware League of Women Voters Education Fund and the Wastewater Facilities Advisory Council will be presenting a Statewide Wastewater Management Conference on Wednesday, April 9, 1997. As part of the Wastewater Management Conference, the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District Wolfe Neck Treatment Plant will host an Open House from 10:00 a.m. to 2:00 p.m. The Wastewater Management Conference will start with registration at 3:30 p.m. at the Sheraton Inn in Dover. Included with this report is a copy of the brochure. Anyone wishing to attend the conference should contact the Delaware League of Women Voters.

4. Emergency Medical Services Director

It is with some regret that I inform the Council that Mr. William Stevenson, Emergency Medical Services Director, submitted his resignation on March 24, 1997. Mr. Stevenson has accepted the position of Emergency Medical Services Director for the State of Delaware. His last day of employment with the County will be April 30, 1997.

Adminis-
trator's
Report
(con't)

Effective Tuesday, March 25, 1997, Mr. George Torbert will fill the position of Acting Emergency Medical Services Director. Mr. Torbert was born and raised in Bridgeville where he attended high school in the Woodbridge School District. In his senior year of high school he attended classes at Delaware Technical & Community College and later transferred to Salisbury State University where he obtained a Bachelor of Arts degree in Communications.

His involvement in EMS started in March 1981 when he joined the Bridgeville Fire Company where he was a firefighter and an ambulance attendant. In 1990 he was hired by Sussex County as a Paramedic Trainee and was in the first class of students to go to Kent General Hospital in Dover to receive his paramedic training. After graduating he was assigned as a Field Paramedic until September of 1991 when he was promoted to Supervisor. In 1995, he was promoted to Division Manager of Operations. Before being employed with the County he worked for a communications company in Salisbury, Maryland.

He currently lives in Bethel with his wife Vicki and their two children. Included with this report is a complete resumé for Mr. Torbert.

Proposed Ordinance Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A MULTI-FAMILY DWELLING STRUCTURE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 29,476 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1180) filed on behalf of Mary O. Rizk. The Proposed Ordinance will be advertised for Public Hearing.

Proposed Ordinance Mr. Jones introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FLORAL AND CRAFT SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 1.08 ACRES, MORE OR LESS" (Conditional Use No. 1181) filed on behalf of Acorn Properties, Ltd. 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 A C-1 GENERAL COMMERCIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 37.80 ACRES, MORE OR LESS" (Change of Zone No. 1296) filed on behalf of Howard W. Pepper. The Proposed Ordinance will be advertised for Public Hearing.

Proposed Ordinance Mr. Collins introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 15.10 ACRES, MORE OR LESS OF A 70.22 ACRE TRACT (Change of Zone No. 1297) filed on behalf of Frank J. and Ruth W. Morris. The Proposed Ordinance will be advertised for Public Hearing.

M 132 97 Councilmanic Grant A Motion was made by Mr. Collins, seconded by Mr. Cole, to give \$300.00 from Mr. Collins' Councilmanic Account to the Delmar Junior-Senior High School to help defray expenses associated with students attending a National Youth Leadership Forum on Medicine in Boston, Massachusetts.

Motion Adopted: 5 Yea.

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

Workshop Mr. Collins requested that a workshop be scheduled for the purpose of discussing the subdivision ordinance.

M 133 97 Councilmanic Grant A Motion was made by Mr. Cole, seconded by Mr. Jones, to give \$200.00 from Mr. Dukes' Councilmanic Account to the Seaford Basketball Club to help defray the cost of jackets for the Seaford Bluejays Boys' Basketball Team.

Motion Adopted: 5 Yea.

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

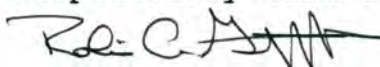
M 134 97 Councilmanic Grant A Motion was made by Mr. Rogers, seconded by Mr. Jones, to provide two porta-potties, at an approximate cost of \$350.00, at Broadkill Beach from Memorial Day through Labor Day, with the cost to be deducted from Mr. Rogers' Councilmanic Account.

Motion Adopted: 5 Yea.

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

M 135 97 Adjourn A Motion was made by Mr. Collins, seconded by Mr. Jones, to adjourn at 12:45 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith
Clerk of the County Council