

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 25, 2003

Call to Order The regular meeting of the Sussex County Council was held Tuesday, March 25, 2003, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Lynn J. Rogers	President
Dale R. Dukes	Vice President
George B. Cole	Member
Finley B. Jones, Jr.	Member
Vance Phillips	Member
Robert L. Stickels	County Administrator
David Baker	Finance Director
James D. Griffin	County Attorney

M 162 03 A Motion was made by Mr. Jones, seconded by Mr. Phillips, to amend the
Approve Agenda by deleting "Introduction of Proposed Zoning Ordinances" and to
Agenda approve the Agenda, as amended.

Motion Adopted: 5 Yea.

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

M 163 03 A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the
Approve minutes of March 18, 2003, as distributed.
Minutes

Motion Adopted: 5 Yea.

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

Corre- Mr. Griffin read the following correspondence:
spondence

JIM GRAY AND CARMEN GRAY-KIMPER, MILFORD COMMUNITY PARADES, INC., MILFORD, DELAWARE.

RE: Letter thanking Council for its past support of Milford Community Parades and requesting funding for this year's event scheduled for October 29th.

SENATOR GEORGE H. BUNTING, JR., DOVER, DELAWARE.

RE: Letter thanking Council and the County Administrator for the "informative breakfast and your efficient governing with fiscal responsibility".

**Corre-
spondence
(continued)**

**JENNIFER W. DAVIS, BUDGET DIRECTOR, STATE OF DELAWARE,
DOVER, DELAWARE.**

**RE: Letter referring to the Governor's Fiscal Year 2004 Recommended
Budget which contains a proposal that changes the funding allocation for
County paramedic services.**

**Center for
the Inland
Bays
Update**

**Mr. Bruce Richards, Executive Director, and Mr. Jim Alderman,
Restoration Coordinator, of the Delaware Center for the Inland Bays were
present to provide an update on the James Farm Ecological Preserve (a
cooperative project with Sussex County Council) and what has been
accomplished in the first five years:**

- **Parking Area Installed**
- **Observation Platforms Constructed**
- **Beach Boardwalk and Deck Constructed**
- **Three Miles of Marked Trails Completed**
- **Kiosk Constructed**
- **Signs Erected**

**Mr. Alderman noted that most of the labor and material have been donated
for these improvements.**

**Mr. Alderman reported on the many activities that take place at the James
Farm:**

- **Teacher Workshops**
- **Educational Programs**
- **Restoration Efforts (planting of trees, grasses, wildflowers)**
- **Demonstration and Research Projects (oyster, clam, scallop and eel
grass plots)**
- **Horseshoe Crab Sanctuary (tagging program)**
- **Oyster Reef Project**
- **Restoring Pasture Point**

**Mr. Richards and Mr. Alderman thanked Council, Mr. Stickels, and
Michael Izzo and Michael Moore of the Engineering Department for their
continued support.**

**Economic
Develop-
ment
Stimulus
Loan
Program**

**Mr. Stickels announced that the County is working on establishing an
Economic Development Stimulus Loan Program to assist municipalities in
Sussex County with a low-interest loan for the development of economic-
beneficial programs. In recent years, both the State and Federal
governments have had to reduce traditional assistance programs that have
been beneficial for local governments in this area. While local governments
will need to develop greater financial self-sufficiency, not all local officials
have the resources of the community. Increasing population, heightened
economic activities, and more intense development are all major concerns
that local governments in Sussex County are dealing with.**

**Economic
Develop-
ment
Stimulus
Loan
Program
(continued)**

The Economic Development Stimulus Loan Program will be established during the budget process with a budgeted amount of \$500,000 - \$1,000,000. Future funding of this account will be determined each budget year. The establishment of this program will be beneficial to local governments, as well as the County government. A successful economic development program would be beneficial in increasing revenues for local governments and County government, as well as the school districts.

Mr. Stickels reviewed the criteria for eligible application requirements, eligibility, eligible projects, determination of eligibility, loan limitation, and terms of loan.

Mr. Stickels advised that a Loan Committee will be established and will consist of the President of the Sussex County Council, County Attorney, County Administrator, County Finance Director, and Director of the Sussex County Economic Development Office.

Mr. Stickels concluded by saying that the Sussex County Council will vote on recommendations made by the Loan Committee at regularly scheduled Council meetings.

Mr. Cole expressed concern for the towns that may not have experience in applying for funds, which may result in the larger towns receiving more funding. Mr. Stickels responded that each town could be limited to one application annually.

**Adminis-
trator's
Report**

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

1. **Beneficial Acceptance**

On March 20, 2003, the Sussex County Engineering Department granted Beneficial Acceptance to Sussex County Project No. 81-04, South Bethany Sanitary Sewer District, The Village at Bear Trap Dunes, Phase III, Agreement No. 232.

On March 21, 2003, the Sussex County Engineering Department granted Beneficial Acceptance to Sussex County Project No. 81-04, West Rehoboth Sanitary Sewer District, Canal Corkran, Phase II, Agreement No. 243.

(Included with the report were summaries of the activities for these projects.)

2. **Presidents' Day Snowstorm**

The Federal Emergency Management Agency (FEMA) has officially declared the Presidents' Day snowstorm that paralyzed Delaware for several days in February as a disaster, freeing Federal relief funds for expenses related to the storm. The declaration makes the State eligible for a maximum of \$5 million in reimbursements through the Federal Emergency Management Agency for snow removal costs. The State Department of Transportation alone spent more than \$4 million digging

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

out from the storm which dropped as much as 31 inches statewide.

FEMA will provide reimbursement to the State and local government agencies for 75 percent of the total eligible cost for equipment contracts and personal overtime related to emergency services in dealing with the snow during the 48-hour period. Local governments seeking reimbursement should contact the Sussex County Emergency Operations Center.

3. Sussex County Airport Committee

The Sussex County Airport Committee will meet on Wednesday, April 2, 2003, at the Sussex County West Administrative Complex, North DuPont Highway, Georgetown, Delaware, at 10:00 a.m. The general public as well as the media is encouraged to attend. An activity report on the expansion of the runway and airport will be on the agenda.

**Lease/
Hudson
Thompson
Aviation,
LLC**

Mr. Baker, Finance Director, reviewed a proposal to terminate the County's lease with Georgetown Aircraft Development Corporation and to execute a new lease with Hudson Thompson Aviation, LLC. The current lease for Lot 10 at the Industrial Airpark provides rental income at a rate of \$600.00 annually. The proposed new lease will provide rental income of \$2,377.50 per year, with CPI increases. Mr. Baker noted that the hangar on Lot 10 has been vacant for approximately fourteen (14) months. Hudson Thompson Aviation, LLC plans to lease space for corporate airplanes; normal airplane maintenance services may be provided in the future.

**M 164 03
Terminate
Lease/
Georgetown
Aircraft
Develop-
ment
Corporation**

A Motion was made by Mr. Jones, seconded by Mr. Dukes, that the Sussex County Council approve a Termination Agreement of the 1985 lease between Sussex County and Georgetown Aircraft Development Corporation, subject to approval by the County Attorney and County Administrator.

Motion Adopted: 5 Yea.

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

**M 165 03
Execute
Lease/
Hudson
Thompson
Aviation,
LLC**

A Motion was made by Mr. Jones, seconded by Mr. Dukes, that the Sussex County Council approve a Lease Agreement between Sussex County and Hudson Thompson Aviation, LLC, for Lot 10 in the Sussex County Industrial Airpark at an initial rate of \$2,377.50 per year, subject to approval by the County Attorney, County Administrator, County Engineer, and County Finance Director.

Motion Adopted: 5 Yea.

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

C/U
No. 1472/
Caldera
Properties,
L.P.

The County Council discussed Conditional Use No. 1472 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (48 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 12.58 ACRES, MORE OR LESS" and Conditional Use No. 1473 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (160 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 40.74 ACRES, MORE OR LESS" filed on behalf of Caldera Properties, L.P.

The Planning and Zoning Commission conducted Public Hearings on these applications on January 23, 2003. On February 13, 2003 the Commission discussed the applications and made a recommendation that they be approved, with conditions.

The Sussex County Council held a Public Hearing on these applications on February 4, 2003. The County Council deferred action for the purpose of obtaining additional information relating to sewer capacity in the Cedar Neck area; road capacity; any planned road improvements; and a phasing plan. This information was provided to Council at the March 18, 2003 meeting.

Mr. Stickels referred to the report given by Mr. Izzo, County Engineer, relating to sewer capacity. He noted that Mr. Izzo's calculations of 4 EDU's per acre in the Development District and 6.67 EDU's per acre in commercial zoning were first adopted in the performance of the West Rehoboth Sewer Planning Study and have become the County standard. In his report, Mr. Izzo also suggested that one possibility to address the situation would be to cap the amount of EDUs permitted above the standard; for example, a cap of 10% would allow for 135 EDUs (Conditional Use No. 1473); the number of EDUs permitted without the additional 10 percent would be 123.

Mr. Stickels reported on several changes that have taken place since the completion of the West Rehoboth Sewer Planning Study:

- Bethany Lakes subdivision was approved for 89 EDUs and the study indicated that 130 EDUs was assigned to the site, leaving an additional capacity of 41 EDUs.
- A parcel containing 82.7 acres was purchased by the State of Delaware, leaving an additional capacity of 271 EDUs, which had been assigned to that parcel.

C/U
No. 1472/
Caldera
Properties,
L.P.
(continued)

Mr. Stickels noted that these two changes result in an additional capacity availability of 312 EDUs in the Cedar Neck area.

Mr. Cole stated that Council should follow the advice of the information contained in the memorandum from the Engineering Department and that the residential units for Conditional Use No. 1473 should be limited to 123.

Mr. Stickels responded that he had met with Mr. Izzo and that the initial report did not take into consideration the 271 EDUs available from the State property and the 41 EDUs available from the Bethany Lakes project.

It was also noted that Mr. Izzo stated in his memo that the 4 EDU and 6.67 EDU figures were not expected to be hard caps and that Council can allow some flexibility in the decision-making process.

M 166 03
Adopt
Ordinance
No. 1588
(C/U
No. 1472)

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1588 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (48 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 12.58 ACRES, MORE OR LESS" (Conditional Use No. 1472) filed on behalf of Caldera Properties, L.P., with the following conditions:

1. The maximum number of residential units shall not exceed 48.
2. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.
3. Recreational facilities, e.g. tennis courts, swimming pool and community buildings shall be constructed and open to use by residents of both Conditional Use No. 1472 and Conditional Use No. 1473 within two years of issuance of the first building permit for either project.
4. The development shall be served as part of the Sussex County Cedar Neck Sewer District.
5. The development shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
6. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
7. Site plan review for each phase of development shall be subject to approval of the Planning and Zoning Commission.
8. The interior street design shall be in accordance with or exceed Sussex County street design requirements.
9. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
10. A 50-foot wide buffer shall be provided from the State wetland line.
11. No site preparation, site disturbance, site excavation or other site construction shall be commenced until all permits required by all other

**M 166 03
(continued)**

laws, ordinances, rules and regulations shall have been issued and the approved final site plan is recorded, except 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 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.

12. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off, or to the property shall only occur during the hours of 7:00 a.m. to 7:00 p.m.
13. Road naming and addressing shall be approved by the County's Addressing Department.

Motion Adopted: 5 Yea.

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

**Findings
of Fact**

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

1. The use is of a public or semi-public nature in that it will provide housing.
2. The Office of State Planning Coordination is not opposed to the application.
3. DelDOT is not opposed provided road improvements are in accordance with their requirements.
4. The proposed density is less than the number of units that could be constructed under the existing zoning.
5. The use proposed is in accordance with the Comprehensive Land Use Plan and consistent with the housing and community design elements by providing a range of housing to meet the existing and projected demand.
6. The findings and conditions proposed by the Commission, as modified by Council, will lessen potential impacts on adjoining owners.
7. Recreational facilities will be provided, consistent with the goal of the Comprehensive Plan.
8. The proposed use will promote the health, safety, morals, convenience, order and general welfare of the present and future residents of the County.
9. Adequate fire and police protection is available nearby.
10. There will be central water and sewer service available to serve the development.
11. Shopping is conveniently available on Cedar Neck Road.

**M 167 03
(Motion
Died)**

A Motion was made by Mr. Cole that the maximum number of residential units for Conditional Use No. 1473 be limited to 123 (instead of 160). The Motion died for the lack of a second.

**M 168 03
Adopt
Ordinance
No. 1589
(C/U
No. 1473)**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1589 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (160 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 40.74 ACRES, MORE OR LESS" (Conditional Use No. 1473) filed on behalf of Caldera Properties, L.P., with the following conditions:

1. The maximum number of residential units shall not exceed 160.
2. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.
3. Recreational facilities, e.g. tennis courts, swimming pool and community buildings shall be constructed and open to use by residents of both Conditional Use No. 1472 and Conditional Use No. 1473 within two years of issuance of the first building permit for either project.
4. The development shall be served as part of the Sussex County Cedar Neck Sewer District.
5. The Conditional Use shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
6. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
7. Site plan review for each phase of development shall be subject to approval of the Planning and Zoning Commission.
8. The interior street design shall be in accordance with or exceed Sussex County street design requirements.
9. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
10. A 50-foot wide buffer shall be provided from the State wetland line.
11. 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 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 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.

**M 168 03
(continued)**

- 12. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off, or to the property shall only occur during the hours of 7:00 a.m. to 7:00 p.m.**
- 13. Road naming and addressing shall be approved by the County's Addressing Department.**

Motion Adopted: 4 Yea, 1 Nay.

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

**Findings
of Fact**

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

- 1. The use is of a public or semi-public nature in that it will provide housing.**
- 2. The Office of State Planning is not opposed to the application.**
- 3. DelDOT is not opposed provided road improvements are in accordance with their requirements and will generate less traffic than development under existing zoning.**
- 4. The proposed density is less than the number of units that could be constructed under the existing GR and C-1 zoning.**
- 5. The use proposed is in accordance with the Comprehensive Land Use Plan and consistent with the housing and community design elements by providing a range of housing to meet the existing and project demand.**
- 6. The findings and conditions proposed by the Commission, as modified by Council, will lessen potential impacts on adjoining owners.**
- 7. Recreational facilities will be provided, consistent with the goal of the Comprehensive Plan.**
- 8. Adequate fire and police protection is available nearby.**
- 9. There will be central water and sewer available.**
- 10. Shopping for the residents is conveniently available on Cedar Neck Road.**
- 11. The proposed use will promote health, safety, morals, convenience, order and general welfare of the present and future residents of the County.**
- 12. The proposed use is consistent with development patterns recognized in the State Policies and spending strategies.**
- 13. There are existing residential developments located nearby including a manufactured home community and a campground along with numerous commercial uses.**
- 14. Approval will not have an adverse impact on the uses or values of surrounding properties.**
- 15. The nature of the development is consistent with the design, variety and community interaction goals of the Comprehensive Plan.**

**Wastewater
Facilities**

Mr. Green discussed wastewater facilities constructed in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

M 169 03
Execute
Agreements/
CHS
Associates

A Motion was made by Mr. Jones, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 267, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and CHS Associates for wastewater facilities to be constructed in CHS Associates, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

Requests

Mr. Stickels presented funding requests for Council's consideration.

M 170 03
Youth
Activity
Grant

A Motion was made by Mr. Jones, seconded by Mr. Dukes, to give \$2,000.00 (\$400.00 from each Youth Activity Grant Account) to Delaware District III for the Major League Softball Eastern Region Tournament.

Motion Adopted: 5 Yea.

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

M 171 03
Youth
Activity
Grant

A Motion was made by Mr. Jones, seconded by Mr. Dukes, to give \$750.00 from Mr. Jones' Youth Activity Grant Account to the Woodbridge Little League for operating expenses.

Motion Adopted: 5 Yea.

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

M 172 03
Council-
manic
Grant

A Motion was made by Mr. Jones, seconded by Mr. Dukes, to give \$750.00 (\$150.00 from each Councilmanic Account) to the March of Dimes WalkAmerica in sponsorship of the "Orange Juice Toast".

Motion Adopted: 5 Yea.

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

M 173 03
Grant

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$750.00 (\$500.00 from Mr. Jones' Youth Activity Grant Account, \$100.00 from Mr. Rogers' Youth Activity Grant Account; \$100.00 from Mr. Dukes' Youth

M 173 03 Youth Activity Grant (continued) **Activity Grant Account; and \$50.00 from Mr. Phillips' Youth Activity Grant Account) to the Georgetown Little League to clear the new field site.**

Motion Adopted: 5 Yea.

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

M 174 03 Councilmanic Grant **A Motion was made by Mr. Dukes, seconded by Mr. Cole, to give \$200.00 from Mr. Rogers' Councilmanic Account to the Friends of Prime Hook National Wildlife Refuge for the Centennial Celebration.**

Motion Adopted: 5 Yea.

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

M 175 03 Councilmanic Grant **A Motion was made by Mr. Jones, seconded by Mr. Dukes, to give Broadkill Beach Preservation Association funding from Mr. Rogers' Councilmanic Account in an amount not to exceed \$500.00 for portable toilets at Broadkill Beach.**

Motion Adopted: 5 Yea.

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

M 176 03 Recess **At 11:30 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Jones, to recess until 1:30 p.m. Motion Adopted by Voice Vote.**

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

Public Hearing (C/U No. 1477) **A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A PUBLIC UTILITY (WATER) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 4.10 ACRES, MORE OR LESS" (Conditional Use No. 1477) filed on behalf of Carl M. Freeman.**

The Planning and Zoning Commission held a Public Hearing on this application on January 30, 2003 at which time they deferred action. On February 13, 2003 the Commission recommended that the application be approved with stipulations.

**Public
Hearing
(C/U
No. 1477)
(continued)**

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

No additional comments have been received since February 13, 2003.

James Fuqua, Attorney; Steve Smith of Carl M. Freeman Communities, LLC; Liz Brown and Chuck Hauser of Davis, Bowen and Friedel; and Gerald Esposito of Tidewater Utilities. were present on behalf of the application.

Mr. Fuqua referred to the comments made in opposition to the project by Ed Chason, an adjoining landowner. Mr. Fuqua stated that since the Public Hearing before the Planning and Zoning Commission, Tidewater Utilities has met with Mr. Chason and they have jointly agreed on the following:

- Tidewater Utilities has agreed that they will provide and maintain a tree buffer along Mr. Chason's property.
- Tidewater Utilities will construct a water service line from the main line to the border of Mr. Chason's property so that he can tie into it if and when he cares to.
- Tidewater Utilities will notify Mr. Chason of any construction activities on the site prior to them happening.
- Tidewater Utilities has agreed to discuss with Mr. Chason in the future possible reimbursement for any negative effect this site might have on his property values, if and when he feels that has happened.

Mr. Fuqua reported that, since the Public Hearing before the Planning and Zoning Commission, a letter has been submitted from John D. Hines & Associates, Geo-technical and Environmental Consultants, which indicates that the site is an appropriate location for the water tower.

Mr. Fuqua noted that concern was expressed whether the industry standards for water towers can withstand extreme weather conditions. Mr. Fuqua presented evidence of a water tower that withstood hurricane forces while other surrounding structures were leveled (in Homestead, Florida).

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

**M 177 03
Adopt
Ordinance
No. 1590
(C/U
No. 1477)**

A Motion was made by Mr. Jones, seconded by Mr. Cole, to Adopt Ordinance No. 1590 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A PUBLIC UTILITY (WATER) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 4.10 ACRES, MORE OR LESS" (Conditional Use No. 1477) filed on behalf of Carl M. Freeman, with the following conditions:

**M 177 03
(continued)**

1. The maximum capacity of the water tower shall be 300,000 gallons.
2. The maximum height of the water tower shall be 150 feet.
3. Lighting at the water tower shall be limited to normal security lighting and safety lights required by the FAA on the tower.
4. The water tower shall be painted a sky neutral color and lettering shall be limited to identification of the development "Bayside" and the water company "Tidewater".
5. The water facility shall be surrounded by a security fence at least six (6) feet in height.
6. The structural design and operation of the water facility shall comply at a minimum with WWA/standard D 100-96 requirements.
7. The applicant has offered to allow placement of antenna on the water tower by the State, the County, or the local Fire Company at no charge, with at least half of the capacity to remain available for public use.
8. The site plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission.

Motion Adopted: 5 Yea.

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Jones, Yea;
Mr. Rogers, 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 elevated water tower and treatment facility will be operated by Tidewater Utilities, Inc. and is within the approved Americana Bayside RPC.
2. The proposed use will generate very little traffic and will not have an impact on the area roadways.
3. The proposed use is in accordance with the Comprehensive Plan.
4. The use is consistent with the public purpose requirement for a conditional use.
5. The facility will be operated under the jurisdiction of the PSC, DNREC, Division of Public Health and the Office of the State Fire Marshall which will insure protection of the public welfare.
6. The concerns of an adjoining landowner are being accommodated by the applicant.
7. The use will not adversely affect uses or values of surrounding properties.
8. The tower will be constructed in compliance with WWA Standard D 100-96 which will insure safety from high winds and tank collapse.
9. Lighting on the tower will conform to FAA regulations to provide visibility to aircraft.

**Public
Hearing
(C/U
No. 1479)**

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 RESTORATION AND RESALE OF MOTORCYCLES, AND RETAIL

**Public
Hearing
(C/U
No. 1479)
(continued)**

SALES OF PARTS, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GUMBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.0149 ACRES, MORE OR LESS, OF A 78.92 ACRE TRACT” (Conditional Use No. 1479) filed on behalf of Jeremy and Anastasia M. Day.

The Planning and Zoning Commission held a Public Hearing on this application on February 20, 2003 at which time action was deferred. On March 13, 2003 the Commission recommended that the application be approved with stipulations.

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

The Council found that Jeremy and Anastasia Day were present on behalf of the application.

There were no public comments in support of the application.

Public comments were heard in opposition to the application. Opponents expressed concern about motorcycles being test driven on public roads in the area; concern that the motorcycles are unlicensed; concern about motorcycle noise; questioning how the applicant will enforce a restriction that no one will be permitted to test drive a motorcycle on public roads; concerns about children’s safety; concern that the area is residential in nature and a commercial site should not be permitted in the area; and that the project should be located on a major roadway.

A petition containing 32 signatures was presented in opposition to the application.

The Public Hearing was closed.

Mr. Phillips asked that action be deferred to give him the opportunity to revisit the site.

**M 178 03
Defer
Action on
C/U
No. 1479**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to defer action on Conditional Use No. 1479, an application of Jeremy and Anastasia M. Day.

Motion Adopted: 5 Yea.

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

**Public
Hearing
(C/U
No. 1480)**

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 AN OFFICE BUILDING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX

**Public
Hearing
(C/U
No. 1480)
(continued)**

**COUNTY, CONTAINING 24,944 SQUARE FEET, MORE OR LESS”
(Conditional Use No. 1480) filed on behalf of Wilgus Associates, Inc.**

The Planning and Zoning Commission held a Public Hearing on this application on February 20, 2003 at which time they recommended approval with stipulations.

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

Mr. Lank read two additional letters of correspondence that have been received since the Public Hearing before the Planning and Zoning Commission: (1) a letter from the Sussex County Engineering Department, Planning and Permits Division, stating that the property is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and that wastewater capacity is available, and (2) a letter from James Short, a resident of the area, including a copy of his letter to the Planning and Zoning Commission stating that their proposed conditions should include a comment regarding the location of the building from Savannah Road; requiring that the building be compatible with the adjacent structures; and that residents should be given the opportunity to review final plans.

The Council found that Michael Wilgus and David Wilgus were present with David Rutt, Attorney, on behalf of the application.

Mr. Rutt referred to the Commission’s stipulation that “a five foot landscaped buffer be required next to the parking lot and on the east side adjacent to the office of Dr. Nicodemus”. Mr. Rutt requested that this stipulation be eliminated or amended to require a two foot landscaped buffer or with a suggestion that there be no extension of the parking lot closer than what actually exists.

Mr. Cole recommended that the two front parking spaces be eliminated and that trash containers be at least 15 feet from the property line. Mr. Wilgus agreed to these stipulations.

Public comments were heard. It was noted that traffic on Savannah Road is over 18,000 cars a day.

The Public Hearing was closed.

**M 179 03
Adopt
Ordinance
No. 1591
(C/U
No. 1480)**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 1591 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE BUILDING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 24,944 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1480) filed on behalf of Wilgus Associates, Inc., with the following stipulations:

**M 179 03
(continued)**

1. The proposed structure shall not exceed 4,200 square feet as shown on the preliminary site plan.
2. The structure to be built shall be architecturally compatible with the existing residences and businesses in the neighborhood.
3. The hours of operation shall be limited to 8:30 a.m. to 5:00 p.m. Monday through Saturday and on Sunday, by appointment only.
4. All parking shall be on the eastern boundary of the property and shall be landscaped adjacent to Savannah Road.
5. Signage shall be limited to one ground sign not to exceed 32 square feet with directional lighting.
6. The number of employees shall not exceed 10.
7. All trash containers shall be placed at the rear of the building and screened from view and shall be at least 15 feet from the property line.
8. The use shall be limited to a single tenant real estate and insurance office.
9. The site plan shall be subject to review and approval by the Planning and Zoning Commission.
10. The existing buffer adjacent to the parking lot on the easterly property line shall be maintained and landscaped.
11. There shall be no parking within 40 feet of Savannah Road.
12. A landscape plan shall be submitted with the site plan for review and approval by the Planning and Zoning Commission.

Motion Adopted: 5 Yea.

**Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Jones, Yea;
Mr. Rogers, 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 use, as an office building, is consistent with the public purpose requirement for a conditional use.
2. Although this portion of Savannah Road now operates at Level of Service E during peak traffic times, the proposed use is not an intense use and will not generate significant traffic.
3. Council adopted and incorporated the conditions proposed by the Commission, with some additional modifications and additions.
4. There was no opposition to the application.
5. This use is similar to the numerous other office uses now existing along Savannah Road.
6. The use will not adversely affect uses or values of surrounding properties.
7. Although the site is in an Environmentally Sensitive Developing Area, the proposed use will not have an adverse impact on wetlands and will not produce excessive amounts of runoff.

**Public
Hearing
(C/Z
No. 1486)**

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 C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.83 ACRES, MORE OR LESS" (Change of Zone No. 1486) filed on behalf of David Ritter.

The Planning and Zoning Commission held a Public Hearing on this application on January 30, 2003 at which time they deferred action. On February 13, 2003 the Commission recommended that the application be approved since commercial zoning exists on both sides of the site and since a conditional use for commercial use is immediately in front of the site.

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

The Council found that David Ritter, Applicant, and Tim Willard, Attorney, were present on behalf of the application. Mr. Willard advised that the applicant proposes to rezone this site so that he may use the site for boat storage and that the site was previously rezoned for Full Tilt Marine, which is owned by Mr. Ritter.

Mr. Willard submitted letters of support from area property owners.

Mr. Willard advised that the applicant is offering a restrictive covenant to be recorded stating that the properties are each restricted for use for single family dwellings or a boat storage and that these restrictions can only be modified with the consent of the Delaware Department of Transportation. The restrictive covenant would be provided prior to site plan review.

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

Mr. Cole expressed concern that the restrictive covenant proposed by the applicant would be contract zoning and that the legality of this action should be researched by the County Attorney. Mr. Cole expressed further that he does not believe Council should change its rules on this application without a final opinion from the County Attorney.

**M 180 03
Adopt
Proposed
Ordinance
(C/Z
No. 1486)
(Denied)**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, 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 C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.83 ACRES, MORE OR LESS" (Change of Zone No. 1486) filed on behalf of David Ritter.

Motion Denied: 3 Nay, 2 Yea.

**M 180 03
(continued)**

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

**Public
Hearing
(C/Z
No. 1491)**

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 C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 19.0 ACRES, MORE OR LESS” (Change of Zone No. 1491) filed on behalf of Jesse and Julie Hall, t/a Bayside Auto Sales.

(Mr. Rogers did not participate in the Public Hearing.)

The Planning and Zoning Commission held a Public Hearing on this application on February 20, 2003 at which time they recommended that the application be approved.

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

The Commission found that Jessie and Julie Hall were present with Tim Willard, Attorney, and Kevin Burdette of McCrone, Inc. Mr. Willard asked that Council consider the requested reduced parcel of 6 acres and not the 19 acres originally applied for. Mr. Willard advised that the applicants want to expand their Bayside Auto Sales facility, which they have been operating since 2000.

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

**M 181 03
Adopt
Ordinance
No. 1592
(Change
of Zone
No. 1491)**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Ordinance No. 1592 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 INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 19.0 ACRES, MORE OR LESS” (Change of Zone No. 1491) filed on behalf of Jesse and Julie Hall, t/a Bayside Auto Sales, as amended to contain 6 acres, more or less.

Motion Adopted: 4 Yea, 1 Absent.

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

**Findings
of Fact**

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

**Findings
of Fact
(continued)**

1. The proposed use is an expansion of an existing commercial use to an auto sales and repair facility and will provide two pad sites for other uses.
2. The application included 19 acres, but 13 were withdrawn, limiting it to approximately 6 acres along Route 24.
3. There are numerous existing commercial uses in the area, which is near the intersection of Routes 24 and 5.
4. The site will have traffic access from both Routes 24 and 5, which make the site more accessible.
5. The site will have central sewer and water.
6. The applicant will comply with all DelDOT regulations relating to entrances.
7. The approval will have a positive impact on the economy by providing for a business expansion and providing service to the public.
8. The application was supported by adjoining property owners.

**Public
Hearing
(C/Z
No. 1492)**

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 GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 13.40 ACRES, MORE OR LESS” (Change of Zone No. 1492) filed on behalf of Darlene Miller & Others.

The Planning and Zoning Commission held a Public Hearing on this application on February 20, 2003 at which time they recommended that the application be approved.

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

The Council found that Raymond and Darlene Miller Spruill were present with James Waehler, Attorney. Mr. Waehler advised that the applicants are requesting the rezoning of 13 lots within Coolspring Farms; that this portion of Coolspring Farms is zoned AR-1 and the rest of Coolspring Farms is zoned GR; and that they propose to place a double-wide mobile home on Lot #6.

The applicant submitted a petition signed by all 13 lot owners requesting the rezoning.

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

**M 182 03
Adopt
Ordinance
No. 1593
(C/Z
No. 1492)**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 1593 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED,

M 183 03 **SUSSEX COUNTY, CONTAINING 13.40 ACRES, MORE OR LESS”**
(continued) **(Change of Zone No. 1492) filed on behalf of Darlene Miller & Others.**

Motion Adopted: **5 Yea.**

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

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

1. **The purpose of the application was to make the zoning category of the applicant's 13 lots consistent with that of the rest of the Cool Spring Farms Development, which is GR.**
2. **The Office of State Planning Coordination had no objection to the request.**
3. **Other lot owners in the development signed a petition in support of the application.**
4. **The approval will not adversely affect the uses or values of surrounding properties.**
5. **The existing development pre-dates the Comprehensive Plan, but provides for residential densities that are appropriate to the area.**

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. 1485) **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. 1485) filed on behalf of Pierce Hardy
 Limited Partnership.

(Mr. Dukes did not participate in this Public Hearing.)

The Planning and Zoning Commission held a Public Hearing on this application on January 30, 2003 at which time they deferred action; on February 13, 2003 the Commission recommended that the request to rezone Parcel A be approved and that the request to rezone Parcel B be denied.

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

The Council found that John Sergovic, Attorney; Joseph Hardy, Christina Torres, and Bob Bossard of 84 Lumber Company; and Richard Polk and Dawn Riggi of Davis, Bowen & Friedel, Inc., were present on behalf of the application.

Mr. Sergovic stated that Pierce Hardy Limited Partnership is a land-owning arm of 84 Lumber. Mr. Sergovic presented informational booklets

**Public
Hearing
(C/Z
No. 1485)
(continued)**

pertaining to the application. Mr. Sergovic advised that there is a need to expand the existing 84 Lumber facility. He noted that the facility's success has caused problems for its neighbors. 84 Lumber's current lands are inadequate to allow parking or unloading of more than one tractor trailer supply truck on-site. Tractor trailer drivers have parked vehicles in neighbors' parking lots and along Route 26. Mr. Sergovic advised that 84 Lumber is seeking this rezoning to alleviate the problems.

Mr. Sergovic advised that the applicant has applied for C-1 zoning for two parcels. Parcel A of 47,916 square feet (1.1 acres) is owned by PHLP and is located immediately to the rear of the existing C-1 property of PHLP. Parcel A was originally believed to be included within the C-1 zoning classification, but was discovered to be zoned AR-1 in the process of applying to rezone Parcel B.

Mr. Sergovic stated that the applicant also seeks the rezoning of approximately 6,947± and 14,792 square feet (Parcel B) which land is under contract with John C. Harmon and Winifred J. Harmon. This rezoning seeks to allow the retail user, 84 Lumber Company, to improve its existing operation and make its existing operations more efficient by expanding the amount of land devoted to 84 Lumber's building and material supply business.

Mr. Sergovic emphasized that 84 Lumber is seeking this rezoning to alleviate traffic congestion within its facility and to eliminate truck parking on Route 26 or on its neighbors' properties.

Public comments were heard. There were no comments in support of the application. Area residents expressed concern that the site may become a distribution center for area 84 Lumber stores; truck traffic and noise; increased traffic created by the expansion of the business; lack of roadway improvements; impact on infrastructure; the lack of acceleration and deceleration lanes; lack of visual and sound barriers; the narrowness of Route 26; that the septic serving the site will be under the proposed truck access; parking on properties owned by others; that ponding attracts mosquitoes; maintenance of tax ditches; loss of wildlife; loss of trees; that the existing gate is an easement area; damages to adjoining properties (trash and debris); and that the property is not an appropriate size for the business and should relocate to a major highway.

The Public Hearing was closed.

**M 183 03
Defer
Action
on
C/Z
No. 1485**

A Motion was made by Mr. Cole, seconded by Mr. Jones, to defer action on Change of Zone No. 1485 filed on behalf of Pierce Hardy Limited Partnership.

Motion Adopted: 4 Yea, 1 Absent.

**M 183 03
(continued)**

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

**M 184 03
Recess**

At 5:35 p.m., a Motion was passed by Mr. Jones, seconded by Mr. Phillips, to recess for thirty minutes. Motion Adopted by Voice Vote.

Reconvene

At 6:10 p.m., Mr. Rogers called Council back into session.

**Public
Hearing
(C/Z
No. 1487)**

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 LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 138.78 ACRES, MORE OR LESS” (Change of Zone No. 1487) filed on behalf of Caldera Properties.

The Planning and Zoning Commission held a Public Hearing on this application on January 30, 2003 at which time they deferred action; on March 13, 2003 the Commission recommended that the application be approved with conditions.

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

The Council found that James Fuqua, Attorney; Dan McGreevy, one of the developers; Ross Harris of ECI, and Ed Lanay of Environmental Resources, were present on behalf of the application.

Mr. Fuqua stated that the gross AR-1 Agricultural Residential density of this site could reach 276 lots; that they prepared a subdivision layout of 0.5 acre lots on this parcel and established that the site could be developed with central sewer with 161 lots; that they then prepared a residential planned community with the same number of lots and felt that this clustered design was more appropriate since it created more open space and more amenity areas with no wetland encroachments and, that by changing from AR to MR-RPC zoning, an additional 40 acres of open space can be provided on the site. Mr. Fuqua stated that the same density is permitted under the current zoning.

Public comments were heard. There were no public comments in support of the application. Area residents speaking in opposition to the application expressed concerns relating to traffic impacts; that greater buffers are needed to protect Love Creek and existing developments; questioning DelDOT’s comments that there would be no traffic impact; TMDL reductions; the impacts of development on the Inland Bays and Love Creek; that the plans show lots encroaching into environmentally sensitive existing tree buffers; spot zoning; that the use will adversely affect water quality

Public
Hearing
(C/Z
No. 1487)
(continued)

and adversely impact the tidal water bodies; loss of habitat for wildlife; impacts on riparian forests; that the County should adopt an overlay zone for the environmentally sensitive development areas and should evaluate the riparian buffer along the waters and perennial non-tidal rivers and non-tidal streams; that the plans do not show mean high water line of tidal water; that the plans do not show the conservation zone properly; that the required 50-foot buffer is not shown; that lots fronting along wetlands are not the required 150-foot width; that the plans only show a 25-foot buffer, not the required 30-foot; that the sewer pump station and treatment plant should have an uninterrupted power supply to prevent overflow during a power outage; that a planned buffer zone should be provided to shield the pump station and treatment plant from housing and neighboring communities; that development should be adjacent to existing municipalities and rural communities; that the amount of impervious surfaces may cause runoff into Love Creek; that eastern Sussex County is being systematically destroyed by development; that the 1997 Comprehensive Plan locates this project in an Agricultural District; that the Strategies for State Policies and Spending map locates this project in a Rural Area; that the Department of Agriculture's comments should be considered since the site is highly to very highly suitable for agricultural preservation; that the Department of Agriculture opposes this application due to the site's location next to an Agricultural Preservation District and the presence of viable agricultural activities in the area; that the project is located in an excellent recharge area; that the majority of the forest buffer along Love Creek on the southwest side of the site is part of the Inland Bays State Resource Area; that DNREC recommends that any planned development include protection of the existing riparian buffer along Love Creek; that portions of the site are located within the 100-year floodplain of Love Creek; that ponding breeds mosquitoes; that Indian artifacts have been found on the site; that development should be delayed until central sewer comes to the area; that no one should have access to the water; that the proposed development is out of character with the primarily agricultural area; that all applications for change of zones and conditional uses should be turned down until all studies (environmental, watersheds, wastewater) have been completed; that the proposed recreation area is offending; that the proposed development is a prime example of haphazard sprawl; that the proposed development does not comply with County Ordinance No. 774; that the proposed development will adversely affect the quality of life in the area; and that the application should be denied, as presented.

A copy of a memorandum from Randall Arendt, dated February 12, 2003 regarding "Constructive Critique of "The Retreat" Subdivision Proposal" was highlighted and entered into the record. Council was also encouraged to study and apply concepts proposed by Randall Arendt in his book entitled Designing Open Space Developments in Sussex County, Delaware, and dated 1999.

The Public Hearing was closed.

**Public
Hearing
(C/Z
No. 1487)
(continued)**

Mr. Phillips referred to the Conservation Easement Agreement contained in the informational packet provided to Council and noted that Point No. 5 states that "Grantee (the County) shall assume responsibility for managing the Easement Area and enforcing the terms of this Easement Agreement..." Mr. Fuqua stated that the County would not be responsible for the perpetual maintenance of the Conservation Easement and that the language of the Conservation Easement Agreement would be revised to reflect that the responsibility would be bore by the developer or the homeowners association.

Mr. Cole asked that the applicant prepare an alternative plan that is more environmentally sensitive; to more centrally locate the development on the site; and to avoid encroachments on environmentally sensitive areas.

**M 185 03
Defer
Action on
C/Z
No. 1487**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to defer action on Change of Zone No. 1487 filed on behalf of Caldera Properties; to permit the applicant to submit to the County an alternative plan with a narrative within a period of ten days (April 4th); and to permit the submission of written comments on the alternative plan for an additional ten days (April 14th).

Motion Adopted: 5 Yea.

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

Recess

At 8:50 p.m., Mr. Rogers declared a ten minute recess.

Reconvene

At 9:00 p.m., Mr. Rogers called Council back into session.

**Public
Hearing
(C/Z
No. 1490)**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL 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 124.80 ACRES, MORE OR LESS" (Change of Zone No. 1490) filed on behalf of Daniel McGreevy – Caldera Properties, L.P.

The Planning and Zoning Commission held a Public Hearing on this application on February 27, 2003 at which time they deferred action; on March 13, 2003 the Commission recommended that the application be approved with conditions.

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

The Council found that Dan McGreevy, applicant; James Fuqua, Attorney;

**Public
Hearing
(C/Z
No. 1490)
(continued)**

and Ross Harris of ECI of were present on behalf of the application.

Mr. Fuqua stated that the application is for the development of the site with 120 townhouses, 184 duplex units, and 49 single family lots for a total of 353 units and that the gross density equals 2.8 units per acre. Mr. Fuqua stated that the site could permit approximately 400 units based on the calculation method for a RPC.

Mr. Fuqua referred to the condition recommended by the Commission which states that "Residential building permits shall not exceed 120 units per year commencing with the date of final approval of this application by the Sussex County Council." Mr. Fuqua asked that this condition be amended to permit 120 building permits per year cumulative beginning with the date of adoption.

Council discussed when the count for building permits should start. Mr. Fuqua noted that this is a matter that needs to be addressed by Council and that a standard should be established for all applications.

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

**M 186 03
Adopt
Ordinance
No. 1594
(C/Z
No. 1490)**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to Adopt Ordinance No. 1594 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL 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 124.80 ACRES, MORE OR LESS" (Change of Zone No. 1490) filed on behalf of Daniel McGreevy – Caldera Properties, L.P., with the following conditions:

1. The maximum number of dwelling units shall not exceed 353. This shall be comprised of 120 townhouse units, 184 duplex units, and 49 single-family lots. Each phase of development will include construction of each type of housing.
2. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
3. Recreational facilities and amenities shall be constructed and open to use by residents of the development within 2 years of the issuance of the first building permits. These amenities shall include a swimming pool, tot lot, tennis courts, sidewalks on at least one side of all streets, trees between all streets and sidewalks, and streetlighting.
4. The development shall be served as part of the appropriate Sussex County Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.
5. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
6. Stormwater management and erosion and sediment control shall be

**M 186 03
(continued)**

- constructed in accordance with applicable State and County requirements.
7. Site plan review for each phase of development shall be subject to the approval of the Planning and Zoning Commission.
 8. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications.
 9. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
 10. 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 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% of 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.
 11. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur during the hours of 7:00 a.m. and 6:00 p.m.
 12. State and Federal wetlands shall be maintained as non-disturbance areas, except for disturbance authorized by a valid Federal or State permit. There shall be no construction in any wetlands without valid permits.
 13. No more than 120 residential building permits shall be issued for the project in any single calendar year.

Motion Adopted: 5 Yea.

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

**Findings
of Fact**

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

1. MR zoning is appropriate, as it will provide for greater residential densities than those allowed under the existing GR zoning.
2. The RPC overlay is appropriate in that it will allow flexibility in the planning and design of the subdivision.
3. The land is located in an Environmentally Sensitive Development Area.
4. The project will be served by public sewer and water.
5. It provides for a range of housing to serve existing and projected demand in keeping with the housing element of the Comprehensive Plan.

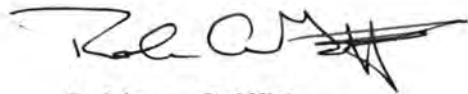
**Findings
of Fact
(continued)**

6. The Office of State Planning Coordination said the proposed development of the site is consistent with existing and future patterns in the area.
7. The development will meet the Comprehensive Plan's goal of passive and active recreation in that recreational amenities will be provided, including a pool, bathhouse, and tennis courts.
8. Adequate fire and police protection are available nearby.
9. Entrance and roadway improvements will be in accordance with the requirements of DelDOT.
10. The development will provide an economic impact.
11. Approving the application will promote the prosperity and welfare of present and future inhabitants of the County.

**M 187 03
Adjourn**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to adjourn at 9:40 p.m. Motion Adopted by Voice Vote.

Respectfully submitted



Robin A. Griffith
Clerk of the Council