

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 9, 2002

Call to Order The regular meeting of the Sussex County Council was held Tuesday, April 9, 2002, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

M 214 02 A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the
Approve Agenda, as distributed.
Agenda

Motion Adopted: 5 Yea.

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

M 215 02 A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the
Approve minutes of March 19, 2002, as distributed.
Minutes

Motion Adopted: 5 Yea.

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

M 216 02 A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the
Approve minutes of March 26, 2002, as distributed.
Minutes

Motion Adopted: 5 Yea.

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

Corre- Mr. Bayard read the following correspondence:
spondence

Corre-
spondence
(continued)

AMERICAN CANCER SOCIETY, RELAY FOR LIFE.
RE: Letter in appreciation of grant funding.

SHEILA LEE PARHAM.

RE: Letter commending County employee, Angie Townsend, for her friendly and professional attitude.

Return
Day
Committee
Presentation

Rosalee Walls, on behalf of the Sussex County Return Day Committee, presented the hatchet (used to "bury the hatchet" from the 2000 Return Day) and a Return Day afghan to the Sussex County Council in appreciation of Council's past support of the Return Day event.

Adminis-
trator's
Report

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

1. Open Space Ordinance

Please be advised that the Public Hearing for "AN ORDINANCE AUTHORIZING SUSSEX COUNTY TO ASSIST THE SUSSEX COUNTY LAND FOUNDATION IN PROTECTING, IMPROVING, ENHANCING AND PRESERVING THE NATURAL RESOURCES AND OPEN SPACE IN SUSSEX COUNTY" has been rescheduled for April 23, 2002, at 10:45 a.m. in the Council Chambers. Because of a scheduling conflict and the required advertising time, the meeting was rescheduled to this date.

2. State Route 1 Land Use/Transportation Study

The next meeting of the Public Advisory Committee for the State Route 1 Land Use/Transportation Study will be held on Wednesday, April 10, 2002, starting at 6:00 p.m. at the Rehoboth Convention Center. The public as well as the media is welcome to attend this meeting.

3. 25th Annual Sussex County Council Prayer Breakfast

The 25th Annual Sussex County Council Prayer Breakfast will be held on Tuesday, May 7, 2002. The breakfast will start at 7:30 a.m. and will be held at the CHEER Center located on the corner of East Market Street and Sand Hill Road, Georgetown, Delaware.

This year's speaker will be Dr. Leonard N. Smith, Senior Minister, Mount Zion Baptist Church, Arlington, Virginia. Dr. Smith is the Chaplain of the Arlington County Fire Department, who was the first responding agency to the Pentagon on 9/11. Dr. Smith played an active role in both the incident and the recovery of this terrible tragedy.

Tickets may be obtained at a cost of \$11.00 each from the County Council Office during normal working hours, or by contacting Carol Lewis at 855-7801.

Proposed
Ordinances
for Funding

Mr. Baker discussed two proposed ordinances authorizing the issuance of general obligation bonds, as follows:

- 1) For the design, construction and equipping of certain improvements to and expansion of the South Coastal Regional Wastewater Facilities. The maximum aggregate principal amount to be borrowed from the State of Delaware Revolving Fund Loan is not to exceed \$13,000,000. The term of the loan will be twenty years with a 3.2 percent interest rate.
- 2) For the design, construction and equipping of the wastewater collection, transmission and treatment facilities for the Ellendale Sanitary Sewer District. The maximum aggregate principal amount to be borrowed from the State of Delaware 21st Century Fund is not to exceed \$1,000,000. The term of the loan will be twenty years with a 0% interest rate. The County could also receive additional loans and grants from the Rural Development Agency for the project.

Introduction
of Proposed
Ordinances

Mr. Dukes introduced the Proposed Ordinances entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR DESIGN, CONSTRUCTION, AND EQUIPPING OF IMPROVEMENTS TO AND EXPANSION OF THE SOUTH COASTAL REGIONAL WASTEWATER FACILITIES AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH" and "AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE CONSTRUCTION AND EQUIPPING OF THE ELLENDALE SANITARY SEWER DISTRICT AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH". The Proposed Ordinances will be advertised for Public Hearing.

Audit
Agreement
Extension

Mr. Baker advised Council that the County's current contract with Jefferson, Urian, Doan & Sterner, P. A. for auditing and accounting services will expire on June 30, 2002. Jefferson, Urian, Doane & Sterner, P. A. has submitted the following option for renewal: a three-year proposal with the total estimated cost for the first year to be \$86,067; the total estimated cost for the second year to be \$88,799; and the total estimated cost for the third year to be \$91,681. The audit will cover the annual audit of County finances, the A133 Audit of federal funds, audits for the eleven county libraries, and any additional work required. Mr. Baker recommended that the County renew the contract for a period of three years. Mr. Baker advised that his recommendation is based on the fact that Jefferson, Urian, Doane & Sterner, P. A. offers substantial experience in governmental auditing and has an excellent working relationship with the County. Further, as a local firm, they can provide personalized service on a timely basis without additional costs for travel.

M 217 02
Authorize
Extension

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to authorize the extension of the Audit Agreement for a three year term with Jefferson, Urian, Doane & Sterner, P. A., subject to approval by the County Attorney.

M 217 02
(continued)

Motion Adopted: 5 Yea.

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

Commercial
Lease
Assignment/
Hol-Krist/
Patrick
Power
Products

Mr. Masten, Acting Director of Economic Development, discussed a Commercial Lease Assignment at the Sussex County Industrial Airpark whereby Hol-Krist, LLC (Lessee) conveys, transfers, assigns and sets over unto Patrick Power Products, Inc., (Assignee) all of Lessee's right, title and interest in and to that certain Commercial Lease by and between Sussex County and Thermal American Fused Quartz Company, dated June 1, 1977, as assigned to Thompson and Thompson (Edgehill) dated April 7, 1992 and subsequently assigned to Lessee by Assignment dated June 9, 2000 for the real property identified as Lot 25B. It is further agreed that Assignee shall assume the responsibility for twenty percent (20%) of the rent currently payable by Lessee. Patrick Power Products, Inc. is developing a portable generator that could be used for military equipment and could save the military a substantial amount of money.

M 218 02
Authorize
Commercial
Lease
Assignment/
Hol-Krist/
Patrick
Power
Products

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, that the Sussex County Council President is authorized to execute an Assignment of Commercial Lease with Hol-Krist, LLC and Patrick Power Products, Inc.

Motion Adopted: 5 Yea.

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

C/U
No. 1413/
Edward
J. Kaye

The Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR EXPANSION OF AN EXISTING BORROW PIT (CONDITIONAL USE NO. 954 AND NO. 1079) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 200.5 ACRES, MORE OR LESS" (Conditional Use No. 1413) filed on behalf of Edward J. Kaye, was discussed.

The Planning and Zoning Commission held a Public Hearing on this application on August 9, 2001, at which time they deferred action. On September 13, 2001, the Commission recommended that the application be approved with 18 stipulations.

The Sussex County Council held a Public Hearing on this application on August 28, 2001, at which time action was deferred.

Mr. Stickels read into the record, and Council debated, proposed stipulations and proposed findings of fact.

M 219 02
Adopt
Ordinance
No. 1530

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to Adopt Ordinance No. 1530 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR EXPANSION OF AN EXISTING BORROW PIT (CONDITIONAL USE NO. 954 AND NO. 1079) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 200.5 ACRES, MORE OR LESS" (Conditional Use No. 1413) filed on behalf of Edward J. Kaye, with the following conditions:

- 1) Before commencing operations in the C/U 1413 area, the required berming and landscaping work shall be provided and upon substantial completion, will activate the permit. Borrow extraction for off-site use may not commence until all required berms or buffers are in place and have been planted for at least one growing season, which is April through September.
- 2) The applicant shall make a good faith attempt to secure permission from the applicable governing authorities to construct a vehicular traffic bridge as noted on the drawing. If the applicant receives all necessary approvals, the bridge shall be constructed and shall be the only access to the proposed area. No traffic shall be allowed through the existing entrance on County Road #531.
- 3) In the event the applicant is denied permission to construct the bridge described in stipulation #2, access to the site shall be from the existing entrance onto County Road #531 with left hand turns only and no traffic allowed on County Road #531 west of the site nor Sanfillipo Road, except for local deliveries to properties on County Road #531 west of the site and Sanfillipo Road. A conveyor belt system shall be permitted upon proper permitting from governing authorities.
- 4) Excavation, storage, and transportation of borrow pit material shall be the only permitted activity on the site. There shall be no asphalt batching, concrete recycling, mulching or shredding operations, or storage of any kind other than borrow and other related activities on the site.
- 5) The boundaries of the borrow pit excavation area shall be as noted on the drawing, except that the setback from the wetlands delineation line shall be increased from 25 feet to 50 feet to provide additional protection of that sensitive area.
- 6) A minimum setback of 400 feet shall be maintained from any dwelling not on the premises.
- 7) No material shall be stored on any access roads or buffer areas within the project area.
- 8) No de-watering shall be permitted.

M 219 02
Adopt
Ordinance
No. 1530
(continued)

- 9) Fuel shall be stored in storage tanks within confinement areas as required by DNREC and the Office of the State Fire Marshal.
- 10) A water truck shall be on-site at all times for dust control.
- 11) Reclamation shall be a continuous process as excavation proceeds.
- 12) Concrete monuments shall be placed at all pit boundaries as phases are developed. The monuments shall be placed by a licensed Delaware land surveyor.
- 13) The public highway entrance shall be required to be re-evaluated by DelDOT and the applicant shall be required to comply with all requirements imposed by DelDOT.
- 14) Hours of operation shall not exceed 6:00 a.m. to 6:00 p.m. during the month of March; 7:00 a.m. to 5:00 p.m. during all other remaining months; and Saturdays 7:00 a.m. to 12:00 noon. There shall be no Sunday hours.
- 15) Bonding shall be required at 125% of the reclamation cost and such amount and upon such terms as approved by the Planning and Zoning Commission.
- 16) Final approval of the site plan shall be required by the Planning and Zoning Commission and shall include receipt of all agency approvals and permits.
- 17) The location of any machinery and any storage of materials shall be in the pit areas, not the buffers. Stockpiling of materials shall not exceed ground level of the undisturbed areas.
- 18) Every five (5) years after the start of digging, the Planning and Zoning Department shall perform an inspection of the site and shall request written comments from all appropriate State Agencies so that the Planning and Zoning Commission can review the comments to verify compliance with all then-existing regulations.
- 19) After fifteen (15) years, the property owner shall complete and pay for an Environmental Impact Study, as the phrase is defined by DNREC, or any successor. Upon certification of DNREC of owner's compliance with then-existing regulations, the permit shall be extended for an additional ten (10) years. This permit shall terminate upon the expiration of twenty-five (25) years from the date of enactment.

Motion Adopted: 3 Yea, 2 Nay.

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

Findings
of Fact

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

- 1) The applicant established by substantial evidence that the proposed use will serve an area need for gravel and borrow and is consistent with the purposes and goals of the Comprehensive Plan. With the conditions heretofore set forth, impacts, if any, are minimized.
- 2) The application is for an expansion of an existing conditional use.
- 3) The current borrow pit operation is not in violation of the current conditional use or of any other governmental regulations.
- 4) The recommended conditions satisfy the need for the protection of the surrounding natural resources and to mitigate traffic in this rural area.
- 5) The existing borrow pit makes this application acceptable since it has operated without detrimental effect or incident.
- 6) The record of the Planning and Zoning Commission is incorporated herein.

C/U
No. 1434/
Grady, Inc.

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

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

The Sussex County Council held a Public Hearing on this application on January 29, 2002, at which time they deferred action and left the record open for written testimony for a period of two weeks. Mr. Stickels advised that a memorandum has been received from Brian Page, Sussex County Historic Planner, dated March 20, 2002, regarding recommendations with respect to the cemetery on the site.

Discussion was held regarding the maximum number of dwelling units to be permitted.

M 220 02
Establish
of
Units/
C/U
No. 1434

A Motion was made by Mr. Cole, seconded by Mr. Dukes, that the maximum number of dwelling units for Conditional Use No. 1434, filed on behalf of Grady, Inc., shall not exceed 68.

Motion Adopted: 4 Yea, 1 Nay.

M 220 02
(continued)

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

Mr. Cole expressed concern regarding the amenity package. In addition, he felt that the June 25, 2001, letter from the Delaware Department of Transportation in reference to Conditional Use No. 1434 should be specifically incorporated into the findings of fact of the application.

Heidi Balliet, Attorney for the applicant of Conditional Use No. 1434, stated that the applicant would like to withdraw the application.

M 221 02
Withdraw
Application/
C/U
No. 1434

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to allow the applicant of Conditional Use No. 1434, filed on behalf of Grady, Inc., to withdraw the application.

Motion Denied: 3 Nay, 2 Yea.

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

M 222 02
Amend
Conditions/
C/U
No. 1434/
Grady, Inc.

A Motion was made by Mr. Cole, seconded by Mr. Dukes, that the proposed conditions for Conditional Use No. 1434, filed on behalf of Grady, Inc., be amended by changing number 17 to reflect number 18 and inserting a new number 17 to read as follows:

17. After half, or 34 of 68, of the building permits have been issued for the project, construction of the community pool shall be required to begin.

Motion Denied: 4 Nay, 1 Yea.

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

M 223 02
Adopt
Ordinance
No. 1531
(C/U
No. 1434)

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 1531 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY RESIDENTIAL DWELLING STRUCTURES (130 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 17.0 ACRES, MORE OR LESS (Conditional Use No. 1434) filed on behalf of Grady, Inc., with the following conditions:

1. The maximum number of residential units shall not exceed 68.

M 223 02
(continued)

2. The project shall be served as an extension of the West Rehoboth Wastewater Facility, with all costs related to this development to be paid for by the applicant.
3. The project shall be served by a public water supplier providing water for domestic consumption and fire protection under applicable regulations and approvals of DNREC, the State Fire Marshal, and the Public Service Commission.
4. Entrance and road improvements, including interconnection and sidewalks, shall be subject to the approval of DelDOT, per the June 25, 2001, letter.
5. Prior to recording the plan for any phase of construction, the applicant shall submit a landscape plan, prepared by a registered landscape architect, and provide proof that the landscaping will be permanently maintained either by the applicant or the homeowner's association.
6. All stormwater will be contained on site and will be designed in full compliance with the requirements of all State and County agencies.
7. All streets shall be constructed in accordance with the County's street design standards in Ordinance No. 99.
8. Road naming and property addressing shall be submitted to the County Mapping and Addressing Division for review and approval.
9. The applicant shall provide transit accommodations if required by DelDOT.
10. A State approved archaeologist shall delineate the boundaries of the cemetery on the site.
11. The cemetery shall be fenced and the corners of the cemetery shall be marked with permanent markers.
12. The applicant shall provide a designated access to the cemetery with a minimum of a 10-foot wide walking easement on the record plat of the approved final site plan.
13. Two parking spaces shall be added to the site plan in close proximity to the cemetery and designated for parking for those parties wanting to go to the cemetery.
14. There shall be no construction activity within 40 feet of the cemetery boundaries.
15. A preservation covenant for the cemetery shall be provided in the deed to the property. The format of the preservation covenant shall be subject to review and approval by the County Attorney.

M 223 02
(continued)

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

Motion Adopted: 3 Yea, 2 Nay.

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

Findings
of Fact

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

1. The proposed development's location is appropriate for multi-family use.
2. The proposed development is in accordance with the 1997 Sussex County Comprehensive Plan in that:
 - It is located in the designated Development District where future growth is directed under the Plan.
 - The site is located in an area presently served by the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and sufficient EDU capacity is available to serve this development.
 - The site is located in an area served by central water provided by Tidewater Utilities, which is a public utility regulated by the Public Service Commission, and Tidewater has verified that sufficient supply exists to serve the site without adverse impact on adjoining properties.
 - Adjacent and nearby properties are presently developed with extensive commercial, recreational, and residential uses, including the multi-family residential developments known as Plantations East and West.
 - The development is consistent with the housing element and community design element of the Comprehensive Plan in that it will provide housing for permanent residents, second homeowners, and retirees to serve the existing

Findings
of Fact
(continued)

and projected demand for housing in the area. The Comprehensive Plan projects an increase in the number of households in Sussex County during the 1990-2020 time period from 43,483 to 73,292, establishing a need for additional housing units.

- The proposed number of dwelling units are less than the number permitted by the Comprehensive Plan, which states that with public sewer 12 units per acre are permitted for multi-family housing, such as the multi-story condominiums proposed by the applicant.
- The Plan recognizes that higher residential density is appropriate for sites located in the Development District in order to obtain the Plan's goal of preserving agricultural areas by concentrating development in the Development District where planned growth is expected to occur.
- The site is in a developing area and is consistent with development patterns recognized in the State of Delaware's proposed Strategies for State Policies and Spending document and is located in a multi-modal investment area under DelDOT's Statewide Long-Range Transportation Plan.
- The site is consistent with the Comprehensive Plan's future land use map.
- Adequate fire and police protection is available nearby.
- The development is consistent with the historical trend of development in the area and with the intended plan for future development as stated in the Comprehensive Plan.
- Since adequate central water from Tidewater Utilities, Inc., and public sewer from Sussex County are available, there will be no adverse impact on nearby properties, and the cost of extending the sewer system to this development will be paid for by the applicant.
- Adequate utility services, schools, medical facilities, and shopping areas are available near the site.
- The development will provide a substantial direct economic impact to Sussex County in terms of jobs in the construction and real estate industries, sewer fees and usage charges, building permit and review fees, transfer taxes, property taxes, and school taxes, and will provide a substantial secondary economic impact to area businesses through future building and grounds maintenance.
- There will be no adverse environmental impact through the discharge of stormwater off-site, in that all stormwater management will be located within the development site and will be designed in full compliance with the requirements of all State and County agencies.

Recess At 12:12 p.m., Mr. Jones declared a brief recess.

Reconvene Mr. Jones called Council back into session at 12:20 p.m.

C/Z
No. 1460/
Bunting-
Gray, LLC

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

The Planning and Zoning Commission held a Public Hearing on this application on February 28, 2002; on March 14, 2002, the Commission recommended that the application be approved with 13 stipulations as set out in the Sussex County Council minutes of March 19, 2002.

The Sussex County Council held a Public Hearing on this application on March 19, 2002, at which time they deferred action and left the record open for a period of 15 days for comments from the Sussex County Engineering Department relating to sewer capacity and for any further written public comment.

Discussion was held regarding construction in State and Federal wetlands, as well as commercial activity.

M 224 02
Adopt
Ordinance
No. 1532
(C/Z
No. 1460)

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to Adopt Ordinance No. 1532 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 219.42 ACRES, MORE OR LESS” (Change of Zone No. 1460) filed on behalf of Bunting-Gray, LLC, with the following conditions:

1. The maximum number of dwelling units shall not exceed 343, of which no more than 56 shall be multi-family units.
2. The maximum area of commercial development shall be one acre per 100 dwelling units.
3. Residential building permits shall not exceed 60 per year.
4. Site plan review is required for each phase of development.
5. The interior street design shall include sidewalks, bike paths, and curbing.
6. All entrances, intersections, roadway improvements, and multi-modal facilities shall be constructed as required by DelDOT.

M 224 02
(continued)

7. Recreational facilities, e.g. swimming pool, tennis courts, etc., shall be constructed and open for use by the residents at the time of the completion of the first 60 units.
8. The RPC shall be served by an existing Sussex County sanitary sewer district.
9. The RPC shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
10. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements. If it is determined that additional areas are required for stormwater management, parking, or other use, the additional area shall be taken from lot areas, not designated State and Federal wetlands or open space areas.
11. State wetlands shall not be included in individual lots. State and Federal wetlands shall be maintained as non-disturbance areas, except for infrastructure as may be authorized by a valid Federal or State permit.
12. No individual boat dock or boat launching facilities shall be permitted. A community boat launching facility may be constructed upon receipt of all applicable permits, site plan review, and compliance with all applicable rules and regulations.
13. No site preparation, site disturbance, site excavation, or other site construction shall be commenced until all permits required by all other laws, ordinances, rules, and regulations shall have been issued and the approved final site plan is recorded, except such site work for which a permit has been issued by the Sussex Conservation District. The site work authorized by the Sussex Conservation District permit may be commenced upon submission of copies of the application for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning and submission of a bond in an amount equal to 125 percent of 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.
14. The applicant shall establish a 60-foot building setback along Route 54.
15. There shall be no direct access from the commercial area onto Route 54, except from the existing entrance location serving the site.

Motion Adopted: 4 Yea, 1 Absent.

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

Conflict

Mr. Dukes was not present during the discussion and vote on Change of Zone No. 1460, filed on behalf of Bunting-Gray, LLC, due to a possible conflict of interest.

Findings
of Fact

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

1. The proposed MR-RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Development District as established by the 1997 Sussex County Comprehensive Plan.
2. MR zoning is appropriate for the proposed project site because medium density residential development is appropriate for areas where central sewer and water are available.
3. The RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large-scale development as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses.
4. The subject property is in an area along Route 54 that has developed with residential projects with densities similar to, or greater than, the proposed project. The proposed project is in character with the nature of the area.
5. According to a letter from DelDOT dated October 10, 2001, it is important to begin planning now for improvements to Route 54; that most of the improvements would address problems that go beyond the expected impacts of the project, and it would be unfair to hold the applicant responsible for them; that there are incremental improvements that can be made to improve traffic conditions that are directly related to the project traffic; that if the County is inclined to approve the project, the Department recommends that the County grant the requested rezoning only if it first receives assurances, in the form of binding deed restrictions, based on the Department's recommendations.

Councilman

Mr. Dukes rejoined the meeting.

Grant
Requests

Mr. Stickels recommended that action on the grant requests be deferred until the April 16, 2002, Council meeting.

Change
Order/
SCRWF

Mr. Izzo, County Engineer, presented to Council Change Order No. 1 for the building addition to the South Coastal Regional Wastewater Facility. Opportunities for cost savings were discovered when going through the contract that included deleting some of the shop drawings from requiring an engineer's seal, removing some concrete and soil testing, and deletion of the requirement of the building permit.

M 225 02
Change
Order

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for Sussex County Project No. 00-01, building addition to the South Coastal

M 225 02
Authorize
Change
Order/
SCRWF
(continued)

Regional Wastewater Facility, be approved in the credit amount of \$4,021.00, which decreases the contract total from \$151,140.00 to \$147,119.00.

Motion Adopted: 5 Yea.

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

Contract B
Bid Award/
Ellendale
Sanitary
Sewer
District

Mr. Izzo, County Engineer, discussed the bid award of Contract B for two pump stations and a force main to Georgetown to serve the Ellendale Sanitary Sewer District. The engineer's estimate was \$1,500,000.00, and nine bids were received. The apparent low bidder was Teal Construction of Dover, Delaware, in the amount of \$1,165,420.00. Mr. Izzo noted that the second low bidder, Zellen Associates, Inc., of Jessup, Maryland, has filed a formal protest against the apparent low bidder relating to the amount listed for contingent bid items. Mr. Izzo also stated that there were discrepancies in the bid documents submitted by Zellen Associates. After conferring with Assistant County Attorney Dennis Schrader and the engineering consultant for the project, Mr. Izzo advised that he will be writing a letter to Zellen Associates rejecting their bid, as well as the protest, and stating the reasons for same.

M 226 02
Award
Bid/
Pump
Stations
and Force
Main to
Georgetown/
Ellendale
Sanitary
Sewer
District

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, based upon the recommendation of the engineering consultants, Whitman, Requardt & Associates, LLP, and the Sussex County Engineering Department, that Sussex County Project No. 89-16B, pump stations and force main to Georgetown, be awarded to Teal Construction, Inc., of Dover, Delaware, at the bid amount of \$1,165,420.00, contingent upon the receipt of approval from the USDA Rural Utility Service.

Motion Adopted: 5 Yea.

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

M 227 02
Authorize
Amendment/
Bethany
Lakes/
Cedar
Neck
Expansion

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council authorize its President to execute an Amendment No. 13 to its contract with Whitman, Requardt & Associates, LLP, to perform redesign of the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District to accommodate the Caldera Development known as Bethany Lakes, with all said costs to be incurred by the developer.

Motion Adopted: 5 Yea.

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

M 228 02
Authorize
Amendment/
Yacht Basin
Road Sewer
Extension

A Motion was made by Mr. Cole, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council authorize its President to execute an Amendment No. 12 to its contract with Whitman, Requardt & Associates, LLP, to oversee construction for Sussex County Project No. 98-05, Yacht Basin Road Sewer Extension of the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

M 229 02
Execute
Amendment/
Modification
of Sewer
Lines/
Fenwick
Island
Sanitary
Sewer
District

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council authorize its President to execute an Amendment No. 15 to its contract with Whitman, Requardt & Associates, LLP, to oversee construction for the modification of existing sewer lines in the Fenwick Island Sanitary Sewer District to accommodate DelDOT's SR 54 Corridor Project.

Motion Adopted: 5 Yea.

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

Request
to Post
Notices/
Bridle
Ridge
Associates

Mr. Archut, Assistant County Engineer, presented to Council a request to prepare and post notices for an extension of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District to include lands of Bridle Ridge Associates. Discussion was held regarding the availability of spray irrigation sites to handle additional expansion. As no treatment plant is built for the ultimate build-out of a sewer district, Mr. Archut advised that other methods of discharge are actively being explored for wastewater treatment.

M 230 02
Post Notices/
Bridle
Ridge
Associates/
WREDBSSD
Expansion

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, that the Sussex County Engineering Department is authorized to prepare and post notices for the extension of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District boundary to include lands of Bridle Ridge Associates, as presented on April 9, 2002.

Motion Adopted: 5 Yea.

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

M 231 02
Execute
Construction
Agreements/

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department for Sussex County Project No. 81-04, Agreement No. 261, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex

M 231 02
Execute
Agreements/
Villages
of Old
Landing
(continued)

County Council and Atlantic Land Company, L.L.C., for wastewater facilities to be constructed in The Villages of Old Landing, Section II, Phase V, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

Motion Adopted: 4 Yea, 1 Absent.

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

Airport
Terminal
Building
Construction

Mr. Sapp, Project Engineer, presented to Council Change Order No. 4 for the Sussex County Airport Terminal Building construction. Factors affecting the time of completion include kitchen equipment approval and the installation of additional drains required by the Delaware Division of Public Health.

M 232 02
Approve
Change
Order/
Airport
Terminal
Building
Construction

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approve Change Order No. 4 for Project No. 98-04, Sussex County Airport Terminal Building Construction, for an increase in construction time of 76 calendar days and \$35,730.72, to increase the contract amount from \$1,060,991.06 to \$1,096,721.78.

Motion Adopted: 4 Yea, 1 Absent.

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

Airport
Terminal
Apron
Expansion

Mr. Sapp, Project Engineer, discussed Change Order No. 3 for the Sussex County Airport Terminal apron expansion. The change order is requested due to encountering poor soil conditions under the existing asphalt, lack of stone sub-base, and substantial crack repair required.

M 233 02
Approve
Change
Order/
Airport
Terminal
Apron
Expansion

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approve Change Order No. 3 for Project No. 01-09, Sussex County Airport Terminal Apron Expansion, for \$63,378.00, to increase the contract amount from \$745,902.75 to \$809,280.75, and to extend the contract time by seven days, to a total of 106 days, contingent upon receipt of DelDOT and FAA approval.

Motion Adopted: 4 Yea, 1 Absent.

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

M 234 02
Lagoon
Liner

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council grant Substantial Completion for Project No. 00-04, sludge lagoon

M 234 02
Grant
Substantial
Completion/
Lagoon
Liner
(continued)

liner replacement.

Motion Adopted: 4 Yea, 1 Absent.

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

Proposed
Ordinance

Mr. Dukes introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR REPAIRS TO SMALL BOATS, BOAT TRAILERS, BOAT MOTORS AND SMALL ENGINES, AND RESALE OF BOATS, TRAILERS, AND BOAT MOTORS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 2.47 ACRES, MORE OR LESS" (Conditional Use No. 1456) filed on behalf of Boyd Taylor. The Proposed Ordinance will be advertised for Public Hearing.

Proposed
Ordinance

Mr. Dukes introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND 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 INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 303 ACRES, MORE OR LESS" (Change of Zone No. 1474) filed on behalf of A.A.S.C.D. Ventures. The Proposed Ordinance will be advertised for Public Hearing.

M 235 02
Recess

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

Reconvene

Mr. Jones called Council back into session at 1:40 p.m.

Public
Hearing
(C/U
No. 1446)

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS WITH EQUIPMENT STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.0 ACRES, MORE OR LESS" (Conditional Use No. 1446) filed on behalf of Scott Shubert.

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

1. There shall be no retail sales of stone and mulch from the site.
2. One non-lighted on-premise ground sign, not exceeding 32 square feet per side or facing, may be permitted.

Public
Hearing
(C/U
No. 1446)
(continued)

3. Business hours shall be from 7:30 a.m. to 5:00 p.m. There shall be no Sunday hours.
4. There shall be no grinding of mulch on the site.
5. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

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

The Council found that Scott Shubert was present on behalf of the application. Mr. Shubert requested that due to the fact his business is subject to weather conditions, the hours of operation be extended to 6:30 p.m. instead of 5:00 p.m., as recommended by the Planning and Zoning Commission.

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

M 236 02
Adopt
Ordinance
No. 1533
(C/U 1446)

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to Adopt Ordinance No. 1533 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS WITH EQUIPMENT STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.0 ACRES, MORE OR LESS" (Conditional Use No. 1446) filed on behalf of Scott Shubert, with the following conditions:

1. There shall be no retail sales of stone and mulch from the site.
2. One non-lighted on-premise ground sign, not exceeding 32 square feet per side or facing, may be permitted.
3. Business hours shall be from 7:00 a.m. to 7:00 p.m. There shall be no Sunday hours.
4. There shall be no grinding of mulch on the site.
5. The site plan shall be subject to 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. Rogers, Yea;
Mr. Jones, Yea

Findings
of Fact

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

Findings
of Fact
(continued)

1. The applicant established by substantial evidence that the proposed use is consistent with the purposes and goals of the Comprehensive Land Use Plan, will have no adverse impact of any sort, and will better serve the convenience of residents of southeastern Sussex County.
2. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.

Public
Hearing
(C/Z
No. 1462)

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 NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 53.7 ACRES, MORE OR LESS" (Change of Zone No. 1462) filed on behalf of Helen E. Passwaters.

The Planning and Zoning Commission held a Public Hearing on this application on March 14, 2002, at which time the Commission recommended that the application be approved since the application conforms to the 1997 Sussex County Comprehensive Land Plan, the 1999 Strategies for State Policies and Spending, and the recently adopted Bridgeville Comprehensive Plan; since DelDOT proposes to realign the intersection of U.S. Route 13 and Route 404 and create service roads; and since the realignment of the intersection and the creation of service roads on the site will make it difficult to farm the site.

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

The Council found that Earl and Coulter Passwaters; James Fuqua, Attorney; and Gordon Meade of Davis, Bowen & Friedel, Inc., were present on behalf of the application. The information presented was the same information included in the record of the Planning and Zoning Commission.

The exhibits and proposed findings presented by Mr. Fuqua were made a part of the record of the Public Hearing. The findings were clarified to reflect that the Town of Bridgeville will provide emergency police protection only. Otherwise, police protection will be provided by the Delaware State Police.

Comments were heard in support of the application from Steve Cannon, speaking on behalf of Virgil and Emily Cannon, adjoining landowners. By a show of hands, there were four people present in support of the application.

There were no comments in opposition to the application and the Public Hearing was closed.

M 237 02
Adopt
Ordinance

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1534 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL

M 237 02
Adopt
Ordinance
No. 1534
(C/Z
No. 1462)
(continued)

RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 53.7 ACRES, MORE OR LESS" (Change of Zone No. 1462) filed on behalf of Helen E. Passwaters.

Motion Adopted: 5 Yea.

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

Findings
of Fact

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

- A. The area proposed for rezoning is appropriate for C-1 Commercial zoning. The purpose of the Commercial District is to provide for retail shopping, personal services, and a wide variety of commercial and miscellaneous service activities generally serving a community-wide area. These uses are generally located along major arterial roadways where a mixture of commercial and service activities already exist. The site of the rezoning is located along State Route 404 and State Route 13, being two major arterial north, south, east, west roadways in Sussex County. The area along Route 13 located north of the site, as well as the area along Route 13 located east of the site, is already zoned commercial and extensively developed.
- B. The proposed development is in accordance with the 1997 Sussex County Comprehensive Plan in that:
 1. It is located in the designated Development District where future growth is directed;
 2. This site is located in the area that will be served by central sewer provided by the Town of Bridgeville;
 3. Adjacent nearby properties are already developed commercially;
 4. The site is consistent with the Comprehensive Plan future land use map.
- C. The proposed development is in accordance with the Delaware Strategies for State Policies and Spending document in that:
 1. It is located in what is designated as a developing area where State investment in transportation improvements and other infrastructure improvements are planned;
 2. The site is located in the developing areas as shown on the State Strategies Map;

Findings
of Fact
(continued)

3. The development of the site will involve the realignment of Route 404 at the intersection of Route 13, which is deemed by DelDOT to be a considerable improvement that will address safety and traffic concerns.
- D. The proposed development is in accordance with the Town of Bridgeville Comprehensive Plan in that:
1. The Plan recognizes growth trends, including the area surrounding Routes 13 and 404;
 2. The Plan specifically recognizes a developing area to include the northern portions of the Passwaters farm, being the area requested for rezoning, and the cluster of commercial uses at the Route 13 and Route 404 intersection;
 3. The Plan recognizes that the Town wishes to cooperate with the Department of Transportation in planning service roads along the Route 13 corridor, and that by providing service roads traffic and safety will be improved on Route 13;
 4. The Plan recognizes as a goal that the intersection of Routes 13 and 404 should be realigned in order to provide a 90-degree intersection rather than the sharp angled intersection that currently exists, and the realignment of this intersection will increase the safety and traffic movement of the intersection;
 5. That the growth map for the Town of Bridgeville designates the area as being in a growth area and a developing area.
- E. That the requested change of zone promotes the health, safety, morals, convenience, order, prosperity, and welfare of present and future inhabitants of Sussex County based on the evidence and testimony presented by the applicant, including the following:
1. Comments received by DelDOT indicate that the realignment of the Route 404 and Route 13 intersection will be a safety improvement for not just local traffic, but all users of this main north, south, east, west intersection; that the site is located near the Town of Bridgeville which will be providing central sewer to the site, as well as potential for adequate fire and emergency police protection; otherwise, police protection will be provided by Delaware State Police Troop 5, less than three miles away;
 2. That the character of the area is appropriate for commercial rezoning in that extensive commercial zoning currently exists north of this site and east of the site;
 3. The development is consistent with the historical trend of development in the area and the intended plan for future development as stated in the County, State, and Town of Bridgeville Comprehensive Plans;
 4. The development provides substantial direct economic impact to Sussex County in terms of jobs, payrolls, and taxes;

Findings
of Fact
(continued)

5. That natural resources will be conserved in that there will be no adverse environmental impact from the site;
6. That the Sussex County Planning and Zoning Commission held a public hearing on the proposed application on March 14, 2002, and unanimously recommended to the County Council that the application be approved;
7. That the Office of State Planning Coordination indicated in the letter dated March 13, 2002, that the parcel is located in a developing area and in areas where the State would normally want commercial development to be located;
8. That the findings and conclusions stated herein are based on substantial evidence comprised of the reasons stated above in testimony and evidence presented by the applicant in the findings of the Planning and Zoning Commission's recommendation of approval.

Public
Hearing
(C/Z
No. 1458)

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-RPC GENERAL RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 722.316 ACRES, MORE OR LESS" (Change of Zone No. 1458) filed on behalf of Baywood, LLC, and Tunnell Companies, L.P.

The Planning and Zoning Commission held a Public Hearing on this application on March 14, 2002; on April 4, 2002, the Commission recommended that the application be approved with 13 conditions.

It was noted that due to the agricultural nature of the area, a condition of the Commission's recommendation for approval states that no townhouse or multi-family units shall be permitted in that portion of the project west of State Route 24.

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

The Council found that John Sergovic, Jr., Attorney; Frank Kea, Consultant; Jerry Friedel and Dawn Riggi of Davis, Bowen & Friedel, Inc.; and Rob Tunnell, developer, were present on behalf of the application. The information presented was the same information included in the record of the Planning and Zoning Commission.

The exhibits and density calculations submitted by Mr. Sergovic were made a part of the record of this Public Hearing.

Mr. Cole expressed concerns regarding lack of amenities for the project, especially west of Route 24, and whether the location of the pedestrian bridge would serve the northern portion of the western community. Mr. Cole also requested clarification of the term "Rural Community District." Mr. Bayard will consult with staff and prepare

Public
Hearing
(continued)

a memorandum for Council's information.

Public comments were heard in support of the application from Gail Rumberger, Dick Sharp, and Tom Seeds.

Public comments were heard in opposition to the application from Til Purnell and Michael Tyler, President of the Citizens Coalition, Inc. Concerns included traffic issues, lack of infrastructure, sewer capacity, the fact that it is an environmentally sensitive area, the negative impact on the inland bays, ill-timing of the project, and no pressing need for expansion at this time.

Mr. Cole suggested that a phasing scheme for the project be considered and that comments from the Department of Natural Resources and Environmental Control be requested regarding the viability of the sewer treatment facility.

Mr. Lank, Director of Planning and Zoning, was asked to prepare an update regarding the status of other development activity in the area and report back to Council.

M 238 02
Defer
Action/
C/Z
No. 1458

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to close the Public Hearing and defer action on Change of Zone No. 1458, filed on behalf of Baywood, LLC, and Tunnell Companies, L.P., and that the record be left open until April 30, 2002, to allow for comments from the Delaware Department of Natural Resources and Environmental Control relative to the sewer treatment facility.

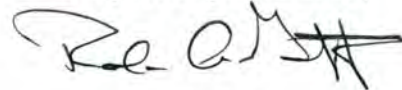
Motion Adopted: 5 Yea.

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

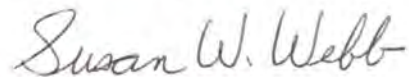
M 239 02
Adjourn

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to adjourn at 4:16 p.m.
Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith
Clerk of the Council



Susan W. Webb
Acting Clerk of the Council