

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 16, 2002

**Call to
Order**

The regular meeting of the Sussex County Council was held Tuesday, April 16, 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 240 02
Approve
Agenda**

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

Motion Adopted: 5 Yea.

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

**M 241 02
Approve
Minutes**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the minutes of April 9, 2002, as distributed.

Motion Adopted: 5 Yea.

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

**Corre-
spondence**

Mr. Bayard read the following correspondence:

**THE GOLDEN KNIGHTS MUSIC BOOSTERS, GEORGETOWN,
DELAWARE.**

RE: Letter in appreciation of Grant and Sussex County flag.

**MEMORIAL VOLUNTEER FIRE COMPANY, INC., SLAUGHTER
BEACH, MILFORD, DELAWARE.**

**RE: Letter commending the Sussex County Emergency Operations Center
for their assistance at the March 10th marsh fire and commending Director
Joe Thomas and Dispatcher Joey Pepper for their assistance with the
communications operations.**

**M 242 02
Adopt
Procla-
mation**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to adopt the Proclamation entitled "PROCLAIMING APRIL 14 THROUGH 20, 2002, AS 'NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS WEEK'".

Motion Adopted: 5 Yea.

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

**Sussex
County
EOC**

The Proclamation describes public safety dispatchers as the first and most critical contact citizens have with emergency services. Mr. Joe Thomas, Emergency Operations Director, reported that dispatchers received 78,594 "911" calls and 109,056 non-emergency calls in 2001.

**M 243 02
Adopt
Procla-
mation**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt the Proclamation entitled "PROCLAIMING APRIL 28 THROUGH MAY 5, 2002, AS 'SOIL AND WATER STEWARDSHIP WEEK'".

Motion Adopted: 5 Yea.

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

**Sussex
Conser-
vation
District**

Mr. Vanderwende, Mr. Buehl, and Ms. Absher were in attendance representing the Sussex Conservation District. Mr. Vanderwende reported that this year's theme is "The Gift of Trees" since trees play a major role in sustaining life and beautifying the planet; since they reduce the "greenhouse effect" and prevent urban heat islands from developing; since trees help restore streams, maintain clear water, improve wildlife habitat and reduce soil erosion; and since the products from trees surround each of us and add utility and beauty to our lives.

**Reim-
bursable
Transpor-
tation
Program**

Mr. Stickels discussed the funding requests for the Reimbursable Transportation Program for FY 2003. Mr. Stickels advised that this is usually brought before Council for approval in July, after the State's budget has been adopted. However, because of the State's budget situation, the Delaware Transit Corporation has asked (1) that the Council decide what funding scenario they support and (2) whether the County is willing to make up any of the difference.

Mr. Stickels reported that the funding requests for FY 2003 are as follows:

Sussex County Senior Services	\$625,034
Cape Henlopen Senior Center	39,710
Easter Seal Rehabilitation Center	48,243
Indian River Senior Center	2,100

**Reim-
bursable
Transportation
Program
(continued)**

La Esperanza Community Center	\$ 85,465
Laurel Senior Center	95,204
Lewes Senior Citizens Center	24,000
Nanticoke Senior Center	<u>36,373</u>
	\$956,129

Mr. Stickels reported that the \$956,129 includes a new request from La Esperanza Community Center. He noted however, that it has been determined that La Esperanza Community Center will not be eligible for funding under this program. This program is for senior citizens and handicapped citizens. This reduces the total requested amount from \$956,129 to \$870,736, an increase of \$174,497 over the FY '02 funding level.

Mr. Stickels reviewed two options of funding, as follows:

<u>Agency</u>	<u>FY '03 Funding Option</u>	<u>FY '02 Funding Level</u>
Sussex County Senior Services	\$499,777	\$466,226
Cape Henlopen Senior Center	31,752	39,710
Easter Seal Rehabilitation Center	38,575	45,550
Indian River Senior Center	1,679	2,100
La Esperanza Community Center	0	0
Laurel Senior Center	76,125	85,393
Lewes Senior Citizens Center	19,190	21,600
Nanticoke Senior Center	<u>29,084</u>	<u>35,660</u>
	\$696,182	\$696,239

Mr. Stickels advised Council that the State of Delaware, under the Reimbursable Transportation Program, has said it can only provide \$696,239 in the FY '03 budget, the same amount allocated in the FY '02 budget. Based on this information, Mr. Stickels made the recommendation that the funding remain at the FY '02 level.

Mr. Cole asked that the County's budget committee look at the figures and make a recommendation on providing additional funding for the transportation program.

Mr. Stickels advised that, based on the Fiscal Year 2003 budget process, the County will be unable to make up the shortfalls of the State without impacting the County's operations.

Marissa Chavez, Program Coordinator, La Esperanza and Brian Olson, Executive Director, La Red Health Center, addressed Council and explained the type of services their organizations offer and their need for transportation funding.

Program (continued) Arlene Littleton, Executive Director of Sussex County Senior Services (CHEER), advised that without additional funding, they will not be able to maintain the same level of service.

M 244 02 A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to recommend
Recommend the distribution of funds for the Reimbursable Transportation Program for
Distribution FY 2003 in the same amount as FY 2002.
of Funds/

Reim- Motion Adopted: 4 Yea, 1 Nay.

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

Council will make a final determination on providing additional transportation funding during the FY 2003 budget process.

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

1. Sussex County CDBG Audit Report for FY '01

I have received notice from the Delaware State Housing Authority that they have completed the audit report for the County's Community Development Block Grant Program for FY '01. The report was reviewed for compliance with the requirements set forth in the Single Audit Act and the Office of Management and Budget Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. I am pleased to inform the Council that the Housing Authority indicated there was general acceptance and that all audit standards have been met for FY '01.

I would like to compliment William Lecates and his staff for once again providing an excellent program.

2. Building Code Workshop

A reminder that the County Council will be conducting a public workshop on Tuesday, April 23, 2002, starting at 1:30 p.m. in the Council Chambers. The purpose of the workshop will be to allow the general public to give comments on consideration of changing the County's Building Code. Currently, the County Council utilizes the Council of American Building Officials 1992 edition for residential requirements and the 1994 edition of the Southern Standard Building Code for commercial requirements. The Council is considering the International Building & Residential Code. Mr. Lindsay Carter will present the difference between the building codes.

**Report
(continued)**

I would encourage members of the building industry to attend the meeting, if possible, to let the Council know their feelings on the potential conversion.

**Group
Hospital
Benefit
Recommen-
dation**

Mr. Denny Cordrey, Personnel Director, and Mr. Dave Smith, President of Integra Administrative Group, reported that quotes were received from nine carriers for the County's Health Insurance.

The following information was provided and recommendations offered:

<u>Current Reinsurance Carrier</u>	<u>Recommended Reinsurance</u>
Peoples Benefit Life	United Healthcare
<u>Current Specific Deductible</u>	<u>Recommended Specific Deductible</u>
\$50,000	\$75,000
<u>Current Fixed Costs</u>	<u>Fixed costs w/recommendation</u>
\$451,913	\$435,808
<u>Current Maximum Annual Cost</u>	<u>Maximum w/recommendation</u>
\$4,424,926	\$4,806,110
<u>Current Plan Administrator</u>	<u>Recommended Plan Administrator</u>
Integra Administrative Group	Integra Administrative Group

Mr. Cordrey and Mr. Smith also reviewed the County's health plan, outlining a change in the County's prescription card provider from Express Scripts to PCS with higher co-payments for some prescriptions. Several changes to other co-payments were also outlined, i.e. doctors visits, out-patient surgery, and accidental injury. The estimated savings resulting from the plan changes is \$42,976. The estimated savings by changing to PCS is \$11,295; guaranteed manufacturer rebates with PCS result in an estimated savings of \$16,972; and the estimated savings by increasing the co-pay on brand drugs is \$85,200; resulting in a total estimated savings of \$156,443.

**M 245 02
Authorize
Employee
Health
Plan**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, that the Sussex County Council authorizes the following for the Employee Health Plan for the plan year May 1, 2002 to April 30, 2003:

- 1) The continuance of Integra Administrative Group as the County's Group hospital administrator;

**M 245 02
(continued)**

- 2) The approval of United Healthcare Insurance Company as the provider of the Group Hospital Reinsurance;
- 3) The increase of the Group Hospital Reinsurance deductible from \$50,000 to \$75,000;
- 4) PCS as the Prescription Card provider effective July 1, 2002; and
- 5) Co-pay increases on out-patient surgery, accidental injury, office visits, and brand prescription drugs as recommended effective July 1, 2002.

Motion Adopted: 4 Yea, 1 Nay.

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

**Subdivision
No. 2001-7/
Appeal**

Council discussed the appeal of the Sussex County Planning and Zoning Commission's decision to deny an application of Gary Watson for the subdivision of land in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred, Sussex County, by dividing 41.86 acres into 37 lots, located north of Road 465, 2,340 feet west of Road 479 (Subdivision No. 2001-7). A Public Hearing on this appeal was held by the Sussex County Council on the March 26, 2002, at which time action was deferred.

Mr. Cole expressed his opinion that the reasons given by the Commission were not sufficient reasons to deny the application.

Mr. Phillips argued that the Commission followed the law (subdivision ordinance).

**M 246 02
Reverse
Decision/
Vote
2-2-1/
Appeal
Denied**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to reverse the Planning and Zoning Commission's decision on Subdivision No. 2001-7 and to send the application back to the Commission.

Motion Adopted: 2 Yea, 2 Nay, 1 Abstention.

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

As a result of the 2 Yea - 2 Nay, the appeal was denied.

Mr. Dukes did not participate in the discussion or the vote on Subdivision No. 2001-7.

**Review
Ordinance**

Mr. Phillips suggested that the Subdivision Ordinance be reviewed for proposed changes.

**Review
Ordinance
(continued)**

It was further suggested that a message be sent to the Planning and Zoning Commission asking that any recommended changes to the Subdivision Ordinance be forwarded to the Sussex County Council for consideration.

**Bayville
Shore**

Mr. Baker, Project Coordinator, discussed wastewater facilities to be constructed in Bayville Shore, located in the Fenwick Island Sanitary Sewer District.

**M 247 02
Execute
Agreements/
Bayville
Shore**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 257, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Bayville Shore Associates, LLC, for wastewater facilities to be constructed in Bayville Shore – Phase III, located in the Fenwick Island Sanitary Sewer District.

Motion Adopted: 4 Yea, 1 Abstained.

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

**M 248 02
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$1,000.00, \$200.00 from each Councilmanic Account, to the Friends of the Delaware SPCA, Sussex Chapter, for the expansion of the shelter.

Motion Adopted: 5 Yea.

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

**M 249 02
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$200.00, \$100.00 each from Mr. Jones' and Mr. Phillips' Councilmanic Accounts, to the Sussex Central Baseball Boosters for the purchase of new equipment.

Motion Adopted: 5 Yea.

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

**M 250 02
Council-
manic
Grant**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$200.00, \$100.00 each from Mr. Jones' and Mr. Phillips' Councilmanic Accounts, to the Sussex Central Football Boosters for sponsoring the First Annual Sussex Central Football Booster's Golf Tournament fundraiser.

**M 250 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**

**M 251 02
Youth
Activity
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to give \$500.00, \$250.00 each from Mr. Dukes' and Mr. Jones' Youth Activity Accounts, to the Sussex Stingers Girls Fastpitch Softball Team for expenses.

Motion Adopted: 5 Yea.

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

Deferred

The request from the Delaware Quarter Horse Association was deferred.

**M 252 02
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$350.00, \$250.00 from Mr. Dukes Councilmanic Account and \$100.00 from Mr. Phillips Councilmanic Account, to the Laurel Alumni Scholarship Foundation, Inc. for scholarship funding.

Motion Adopted: 5 Yea.

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

**M 253 02
Council-
manic
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to give \$600.00, \$500.00 from Mr. Dukes' Councilmanic Account and \$100.00 from Mr. Phillips' Councilmanic Account, to Charity Lodge No. 27 for expansion of the lodge building.

Motion Adopted: 5 Yea.

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

**M 254 02
Council-
manic
Grant**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to give \$250.00 from Mr. Jones, Councilmanic Account to the American Red Cross for the Crestwood Garden Apartments, Georgetown, Fire Relief Operation.

Motion Adopted: 5 Yea.

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

**M 255 02
Youth
Activity
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to give \$600.00, \$300.00 from Mr. Dukes' Youth Activity Account and \$100.00 each from Mr. Phillips', Mr. Jones', and Mr. Rogers' Youth Activity Accounts, to the Shore Thunder Starz for sponsorship/expenses.

Motion Adopted: 5 Yea.

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

**M 256 02
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$250.00 from Mr. Phillips' Councilmanic Account to the Lighthouse Christian School for operations and expenses.

Motion Adopted: 5 Yea.

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

**M 257 02
Council-
manic
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$200.00, \$100.00 each from Mr. Dukes' and Mr. Phillips' Councilmanic Accounts, to the Laurel Intermediate School for the Science Fair.

Motion Adopted: 5 Yea.

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

**Georgetown
Charter
School**

Mr. Stickels advised that the grant check to the Georgetown Charter School were never mailed due to the fact that the school closed prior to the check being mailed.

**Corre-
spondence**

Mr. Dukes read the following correspondence:

**GREATER SEAFORD CHAMBER OF COMMERCE, SEAFORD,
DELAWARE.**

**RE: Letter in appreciation of donation for the 54th Delmarva Chicken
Festival in Seaford.**

**Grant
Requests**

Mr. Stickels announced that beginning July 1, 2002, requests for funding will not be accepted without a return address and a tax-exempt number.

**Citizen's
Comments**

Mr. Kramer, of Greenwood, once again questioned Council on exceeding its councilmanic funds budget and carrying-over unspent funds from one year to the next. Mr. Kramer questioned why the Council can do this when this is not allowed within departmental budgets.

M 258 02 **At 11:57 a.m., a Motion was made by Mr. Rogers, seconded by Mr. Phillips,**
Recess **to recess until 1:30 p.m. Motion Adopted by Voice Vote.**

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

Public **A Public Hearing was held on the Proposed Ordinance entitled "AN**
Hearing **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN**
(C/U **AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR EXPANSION**
No. 1447) **OF CONDITIONAL USE NO. 1067 TO ALLOW MEAT CUTTING AND**
 RETAIL SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND
 LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX
 COUNTY, CONTAINING 6.10 ACRES, MORE OR LESS" (Conditional
 Use No. 1447) filed on behalf of Ron Yoder.

The Planning and Zoning Commission held a Public Hearing on this application on March 21, 2002 at which time they recommended approval with the following conditions:

- 1. There shall be no Sunday business hours.**
- 2. There shall be no outside storage.**
- 3. One lighted on-premise ground sign may be permitted. The lights on the sign shall be timed to be turned off at 9:00 p.m. The sign shall not exceed the square footage of the existing sign on the premises.**
- 4. 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 Mr. Yoder was present on behalf of his application. Mr. Yoder stated that he plans to construct a new building on the site; that there will not be any slaughtering of livestock performed on the site; and that he would like to erect a lighted sign.

Mr. Dukes suggested striking the sentence "The lights on the sign shall be timed to be turned off at 9:00 p.m." from Condition No. 3.

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

M 259 02 **A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to Adopt**
Adopt **Ordinance No. 1535 entitled "AN ORDINANCE TO GRANT A**
Ordinance **CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL**
No. 1535 **RESIDENTIAL DISTRICT FOR EXPANSION OF CONDITIONAL USE**
 NO. 1067 TO ALLOW MEAT CUTTING AND RETAIL SALES TO BE
 LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN

**M 259 02
(continued)**

CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 6.10 ACRES, MORE OR LESS” (Conditional Use No. 1447) filed on behalf of Ron Yoder, with the following conditions:

- 1. There shall be no Sunday business hours.**
- 2. There shall be no outside storage.**
- 3. One lighted on-premise ground sign may be permitted. The sign shall not exceed the square footage of the existing sign on the premises.**
- 4. 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:

- 1. The applicant established by substantial evidence that the proposed use is a replacement use for prior conditional uses on site and will create no additional traffic nor have any adverse impact of any sort on the character of the neighborhood or the environment in the area. The proposed use is consistent with the purposes and goals of the Comprehensive Land Use Plan.**
- 2. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.**

**Public
Hearing
(C/U
No. 1448)**

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 MODEL HOME SALES OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 22,500 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1448) filed on behalf of Dick Ennis, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on March 21, 2002 at which time they recommended denial based on the record of opposition, safety concerns, and the recommendation of DelDOT.

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

**Public
Hearing
(C/U
No. 1448)
(continued)**

The Council found that James Waehler, Attorney, and Dick Ennis, applicant, were present. Mr. Waehler stated that the applicant proposes to build a sales office/model home on the premises with a paved parking lot for eight vehicles and that the ultimate use of the property will be conversion of the model home into a residence; that while the home is being used as a model home it will not be used as a residence; that the use will be inconspicuous; and that the use would create less traffic than a residence (which is already allowed on the site). In response to concerns about the high levels of traffic on Route 24 and safety concerns because of the roads and driveways that feed into Route 24 at that location near County Road 277, the applicant proposed a solution. He has submitted a contract for a one-acre parcel on Road 277, which has been accepted by the seller and he has obtained a tentative commitment for an easement from the parcel fronting on Route 24 to that parcel, so that all traffic could empty onto County Road 277. All ingress and egress would be from County Road 277.

Mr. Waehler stated that the applicant has no problem with making the approval contingent upon acquiring both the one-acre parcel and an easement allowing him access to the other parcel.

There were no public comments in support of the application. Two letters in opposition to the application were read into the record. Public comments were heard in opposition to the application. Concern was expressed relating to traffic; that the site is not suitable for a commercial or business use; that residents in the area have a fear that the conditional use could be converted to another use once it is established; and that the applicant is inconsistent in stating the length of time he plans to use the building as a model home.

Mr. Cole suggested that the record remain open for comments from DelDOT based on the change of access to the property.

**M 260 02
Defer
Action
on C/U
No. 1448**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to defer action on Conditional Use No. 1448; to leave the public record open for the purpose of obtaining a response from DelDOT on the new entrance/exit proposal; and that the record will remain open for a period of 45 days (30 days to hear from DelDOT and 15 days for public response to DelDOT's comments).

Motion Adopted: 5 Yea.

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

**Public
Hearing
(C/Z
No. 1463)**

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 B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE

**Public
Hearing
(C/Z
No. 1463)
(continued)**

HUNDRED, SUSSEX COUNTY, CONTAINING 19,198 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1463) filed on behalf of Bruce McGuigan.

The Planning and Zoning Commission held a Public Hearing on this application on March 21, 2002 at which time they recommended approval. The record of the Planning and Zoning Commission was incorporated into the record of this Public Hearing.

Jeff Clark of Land Tech, LLC was in attendance on behalf of the applicant. Mr. Clark stated that Mr. McGuigan has operated a bait and tackle shop in this location for the last twenty years; that the rezoning would conform to the neighborhood; that he would like some additional display area; and that he does not want to have to come back to Council each time he wants to expand.

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

**M 261 02
Adopt
Ordinance
No. 1536
(C/Z
No. 1463)**

A Motion was made by Mr. Dukes, seconded by Mr. Roger, to adopt Ordinance No. 1536 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 19,198 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1463) filed on behalf of Bruce McGuigan.

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:

1. The applicant established by substantial evidence that the change of zone is a small addition to an existing commercial area in an existing commercial neighborhood and will have no adverse impact of any sort. The change of zone is consistent with the purposes and goals of the Comprehensive Land Use Plan.
2. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.

**Public
Hearing
(C/Z
No. 1461)**

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 AND A GR GENERAL RESIDENTIAL DISTRICT TO A MR-

**Public
Hearing
(C/Z
No. 1461)
(continued)**

RPC MEDIUM DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 103.08 ACRES, MORE OR LESS" (Change of Zone No. 1461) filed on behalf of Ocean Atlantic Associates, V, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on March 21, 2002 at which time they deferred action. On April 4, 2002, the Commission recommended approval of the application, with conditions.

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

The Council found that Gene Lankford of Ocean Atlantic Associates, V, LLC was present with James Fuqua, Attorney; Jeff Clark of Land Tech, LLC; Ross Harris of ECI; and Robert Rodgers and Gary Kennedy of Orth-Rodgers & Associates, Inc.

Mr. Fuqua presented an introduction and some aspects of the application; Mr. Clark reviewed the site plan; Mr. Ross addressed the stormwater management plan; and Mr. Rodgers presented the traffic impact study.

Mr. Fuqua stated that the applicant seeks to rezone property to a MR-RPC containing 324 residential units and 2.25 acres of Neighborhood Business Use. It is proposed that the RPC will contain a mixture of single family, duplexes, apartments, and multi-family residences, and a Neighborhood Business component. Mr. Fuqua stated that there will be no access to Red Mill Pond; that there will be a recreation area that includes a pool, tennis courts, soccer field, a community building, and jogging/walking trails; that there will be considerable open space and buffers provided; that access to the site will be from County Road 288; that there will be no direct access to Route One or to Best Lane; that emergency vehicles only will be able to access the site from Best Lane; that the gross density of the project is 3.1 units per gross acre.

Mr. Fuqua discussed several of the conditions imposed by the Planning and Zoning Commission which are inconsistent with what the applicant is asking for:

"There shall be no commercial development, except that the community center building may be used as a temporary sales office for this project."

Mr. Fuqua stated that this is not strip – type commercial in the front of an RPC; it is internally contained and designed to be a part of the development.

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(continued)

“The maximum number of dwelling units shall not exceed 300, of which no more than one-half shall be multifamily duplex units.”

Mr. Fuqua stated that:

- Three hundred units is technically one unit less than the existing zoning will permit. They eliminated the 24 apartments above the commercial.
- If there is no commercial, there will not be any apartments; if the commercial is permitted, the applicant is requesting the 24 apartments.
- There is a need for apartments in this area; it is the most affordable form of housing.

“Residential building permits shall not exceed 100 per year.”

Mr. Fuqua stated that the applicant has requested 150 permits per year.

“Recreational facilities, e.g. swimming pool, tennis courts, etc., shall be constructed and open to use by the residents at the time of the completion of the first 60 units.”

Mr. Fuqua stated that:

- A pool serving a few residences is a waste.
- The applicant has submitted a plan to have all recreational facilities completed within two years of the issuance of the first building permit.

Mr. Fuqua emphasized that the Commission took out the 8-unit multi-family dwellings (Big Houses) and the commercial/apartment use.

Mr. Fuqua reported that the applicant is willing to modify the plan by moving the 8-unit multi-family dwellings (Big House) away from nearby residential areas to the area behind the commercial uses along Route One. He stated that the 8-unit multi-family buildings will be designed to look like large single family homes.

Mr. Fuqua presented proposed conditions and proposed findings of fact.

Public comments were heard.

One person spoke in favor of the application.

Comments in opposition to the application referred to multi-family structures and the commercial/apartment aspect; that apartments, duplexes and multi-family structures would impact the character of the area and the property values of neighboring properties; that the restaurant proposed in the commercial area will increase traffic to the area; that nutrient run-off

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(continued)**

and well-water supply is a concern; that the environment may be impacted including bald eagles and blue heron that nest in the surrounding area; that single-family homes are preferred; that there is concern about the quality of construction; that stormwater run-off is a concern; that additional traffic will affect emergency response; that buffer areas should be paid careful attention to; and that the traffic situation in the area is already bad and will only get worse.

Petitions in opposition to the application were submitted by residents of Heronwood Subdivision and Pondview Estates.

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

**M 262 02
Defer
Action
(C/Z
No. 1461)**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to defer action on Change of Zone No. 1461, filed on behalf of Ocean Atlantic Associates, V, LLC.

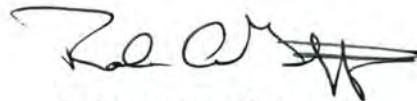
Motion Adopted: 5 Yea.

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

**M 263 02
Adjourn**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to adjourn at 4:55 p.m. Motion Adopted by Voice Vote.

Respectfully submitted



Robin A. Griffith
Clerk of the Council