

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 30, 2002

Call to Order The regular meeting of the Sussex County Council was held Tuesday, April 30, 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 293 02 A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to amend the Agenda by changing "Fair Housing Coalition" to "Delaware Housing Coalition"; to strike "Introduction of Proposed Ordinances"; and to approve the Agenda, as amended.

Motion Adopted: 5 Yea.

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

M 294 02 A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the minutes of April 23, 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

Delaware Housing Coalition Mr. Phillip Garcia Carrion gave a brief presentation on the Delaware Housing Coalition's new Sussex County office located on Market Street in Georgetown. Mr. Carrion advised that the Coalition is a non-profit organization which advocates for affordable housing for everyone. Mr. Carrion advised that the Coalition educates people on what the Fair Housing Act is and provides technical assistance for properly filed complaints.

Sussex
County
Land
Foundation
Appoint-
ments

Mr. Stickels referred to Ordinance No. 1537 entitled “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”, which was adopted on April 23, 2002. In accordance with the Ordinance, two of the directors of the Foundation are to be appointed by the President of the County Council, one Councilperson from each political party. Mr. Jones recommended that Mr. Cole and Mr. Dukes be appointed as directors of the Foundation.

M 295 02
Approve
Appoint-
ments
to Sussex
County
Land
Foundation

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to appoint Mr. Cole and Mr. Dukes to serve as directors of the Sussex County Land Foundation.

Motion Adopted: 5 Yea.

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

Adminis-
trator’s
Report

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

1. Student Government Day

The Sussex County Council will be hosting Student Government Day on Thursday, May 9, 2002, starting at 9:00 a.m. Boys and Girls State students who are juniors in high school from all Sussex County public schools have been invited to participate in this day. There will be an explanation of County government responsibilities and a mock County Council meeting. The media as well as the general public are invited to attend.

2. Chinese Visit – Wolfe Neck Regional Wastewater Facility

On Wednesday, May 1, 2002, a group of Chinese engineers from the Fujian Province will be touring the Wolfe Neck Regional Wastewater Facility. The Wolfe Neck Facility is a 4.0 MGD spray irrigation wastewater treatment facility, owned and operated by the Sussex County Council.

With the advent of the Olympics in China in 2008, the Chinese government is trying to upgrade much of their infrastructure to handle the influx of visitors. Fujian Province’s needs appear to be more related to the size of facilities that are currently being designed and built on the Delmarva Peninsula. Mr. Jim Thomas of the firm of George, Miles & Buhr has been working with the Fujian Engineering Consulting Corporation. He is interested in showing the Chinese engineers a variety of wastewater treatment alternatives. As

Administrator's
Report
(continued)

Fujian is a rural province, spray irrigation may be a viable treatment alternative.

In October 2000, Heather L. Sheridan, the Director of Water and Wastewater Operations for Sussex County, traveled to China as part of the People to People Ambassador Program's Water Environment Federation delegation. The delegates met with their Chinese counterparts on water and wastewater issues.

Sussex County looks forward to introducing our visitors to the Delmarva Peninsula and welcomes the opportunity to participate in the exchange of information on various subjects concerning environmental, regulatory, and business issues.

The tour will begin at 9:00 a.m. at the Wolfe Neck Regional Wastewater Facility located on the east end of County Road 270, near Rehoboth Beach.

Change
of Zone
No. 1461

Council discussed 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-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, L.L.C.

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, including: limiting the maximum number of dwelling units to 300 (of which no more than one-half is to be multi-family duplex units; requiring that no multi-family duplex units shall be adjacent to other contiguous residential subdivisions; excluding the commercial development; and limiting residential building permits to 100 per year.

The County Council held a Public Hearing on this application on April 16, 2002 at which time they deferred action.

It was noted that Council heard a slightly modified application in comparison to the application presented to the Commission. In the presentation made to Council, the applicant presented an alternative site plan with the "big house" multi-family structures moved away from the other residential areas adjacent to the project and closer to Route One.

Mr. Stickels read the following list of eighteen proposed conditions:

Change
of Zone
No. 1461
(continued)

1. The maximum number of dwelling units shall not exceed 300, as follows: 162 single family, 42 duplex units, and 96 multi-family units. There shall be no apartments.
2. The B-1 neighborhood business area shall not exceed ____ acres.
3. Residential building permits shall not exceed 100 per year.
4. Site plan review is required for the master plan and each phase of the development.
5. Multi-family buildings shall only be located in the northeast section of the property adjacent to the C-1 zoned land along Route 1 and the building style shall be similar to the "big house" design, as represented in the applicant's exhibits.
6. The interior street design shall include street lighting, sidewalks, and bike paths.
7. There shall be a 50' buffer between the perimeter of the project and adjacent residential subdivisions, County Route 88, and Best Lane and a 30' buffer between the perimeter of the project and adjacent commercial areas. Buffer areas shall retain existing vegetation to the maximum extent possible. In areas where vegetation does not exist, additional landscaping shall be provided utilizing earth mounds or plant material, or both.
8. A landscape plan, including a "street tree" planting program, shall be submitted and approved by the Commission with each site plan. The "street tree" planting program shall be of not less than three trees per unit. Landscape planting's should be indigenous to the local area.
9. All signals, entrances, intersections, roadway and improvements, and multi-modal facilities shall be constructed as required by DelDOT.
10. The project shall have no access to or from Best Lane, except for emergency vehicles.
11. 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 100 units.
12. The RPC shall be served by the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.
13. The RPC shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.

Change
of Zone
No. 1461
(continued)

14. 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 wetlands or open space areas.
15. Designated wetlands shall not be included in any individual lots. Designated wetlands shall be maintained as non-disturbance areas.
16. No community or individual boat dock or boat launching facilities shall be permitted.
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 commence upon submission of copies of the application for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning & 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.
18. The following additional conditions are placed on the development as requested by the applicant:
 - No access to Red Mill Pond.
 - To restrict runoff from Paynter's Purchase into Red Mill Pond in an effort to be good neighbors and not pollute the pond.
 - If the proposed neighborhood business has an empty storefront, a fake display will be put in the window for aesthetic purposes.
 - The fencing material used to conceal the trash receptacles for the neighborhood business will be made of a high quality material, similar to that which may be used throughout the community, not chain link.
 - The governing documents for the homeowner's association will address noise issues throughout the community.
 - Mature trees, not 2-3 gallon trees, will be planted along the buffer between Paynter's Purchase and Heronwood/Pondview.

Change of Zone No. 1461 (continued)	<ul style="list-style-type: none">• “During the development phase, Ocean Atlantic Associates V, LLC agrees to form an Architectural Guidelines Committee (AGC), not to be confused with the Architectural Review Board to be made up of homeowner’s in Paynter’s Purchase. The AGC will be made up of (1) a developer representative; (2) the Project Manager; (3) a homeowner from Heronwood, appointed by the Project Manager; (4) a homeowner from Pondview, appointed by the Project Manager; and (5) an Architect.
M 296 02 Withdraw Condition	<p>A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to withdraw Condition No. 3 which stated that “Residential building permits shall not exceed 100 per year.”</p> <p>Motion Adopted: 5 Yea.</p> <p>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</p>
M 297 02 Insert Condition	<p>A Motion was made by Mr. Cole that the following be inserted as Condition No. 3 – “Residential building permits shall not exceed 60 per year.” The Motion died for the lack of a Second.</p>
M 298 02 Insert Condition	<p>A Motion was made by Mr. Rogers. seconded by Mr. Cole, that the following be inserted as Condition No. 3 - “Residential building permits shall not exceed 75 per year.”</p> <p>Motion Denied: 3 Nay, 2 Yea.</p> <p>Vote by Roll Call: Mr. Phillips, Nay; Mr. Cole, Yea; Mr. Dukes, Nay; Mr. Rogers, Yea; Mr. Jones, Nay</p>
Delete Section of Condition	<p>It was the consensus of Council to delete the following from Condition No. 18 – “During the development phase, Ocean Atlantic Associates V, LLC agrees to form an Architectural Guidelines Committee (AGC), not to be confused with the Architectural Review Board to be made up of homeowners in Paynter’s Purchase. The AGC will be made up of (1) a developer representative; (2) the Project Manager; (3) a homeowner from Heronwood, appointed by the Project Manager; (4) a homeowner from Pondview, appointed by the Project Manager; and (5) an Architect.</p>
Amend Condition	<p>Following comments made by Mr. Cole that the hedgerow should be protected, it was the consensus of Council to amend Condition No. 7, as underlined: “There shall be a 50’ buffer between the perimeter of the project and adjacent residential subdivisions, County Road 88, and Best Lane and a 30’ buffer between the perimeter of the project and adjacent commercial areas. Buffer areas shall retain existing vegetation to the maximum extent possible <u>to include the mature hedgerow</u>. In areas where</p>

Amend Condition	vegetation does not exist, additional landscaping shall be provided utilizing earth mounds or plant material, or both.
Add New Condition	Following comments made by Mr. Jones that the conditions should refer to the addressing scheme, it was the consensus of Council to add Condition No. 18, as follows: “The applicant shall submit road names and a plan for the addressing of streets to the County’s Mapping and Addressing Department for review and approval.”
Retail Area	Mr. Rogers stated for the record that he suggests that the applicant relocate the retail area behind the Red Mill area and the “big house” dwellings.
M 299 02 Insert Condition	A Motion was made by Mr. Dukes, seconded by Mr. Phillips, that Condition No. 3 read as follows: “Residential building permits shall not exceed 100 per year.”
	Motion Adopted: 5 Yea.
	Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
M 300 02 Adopt Ordinance No. 1538 (C/Z No. 1461)	A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to Adopt Ordinance No. 1538 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-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., with the following conditions: <ol style="list-style-type: none">1. The maximum number of dwelling units shall not exceed 300, as follows: 162 single family, 42 duplex units, and 96 multi-family units. There shall be no apartments.2. The B-1 neighborhood business area shall not exceed 1.5 acres and shall be retail sales related only, with no sales of alcoholic beverages.3. Residential building permits shall not exceed 100 per year.4. Site plan review is required for the master plan and each phase of the development.5. Multi-family buildings shall only be located in the northeast section of the property adjacent to the C-1 zoned land along Route 1 and the building style shall be similar to the “big house” design, as represented in the applicant’s exhibits.

M 300 02
(continued)

- 6. The interior street design shall include street lighting, sidewalks, and bike paths.**
- 7. There shall be a 50' buffer between the perimeter of the project and adjacent residential subdivisions, County Route 88, and Best Lane and a 30' buffer between the perimeter of the project and adjacent commercial areas. Buffer areas shall retain existing vegetation to the maximum extent possible to include the mature hedgerow. In areas where vegetation does not exist, additional landscaping shall be provided utilizing earth mounds or plant material, or both.**
- 8. A landscape plan, including a “street tree” planting program, shall be submitted and approved by the Commission with each site plan. The “street tree” planting program shall be of not less than three trees per unit. Landscape plantings should be indigenous to the local area.**
- 9. All signals, entrances, intersections, roadway and improvements, and multi-modal facilities shall be constructed as required by DelDOT.**
- 10. The project shall have no access to or from Best Lane, except for emergency vehicles.**
- 11. 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 100 units.**
- 12. The RPC shall be served by the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.**
- 13. The RPC shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- 14. 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 wetlands or open space areas.**
- 15. Designated wetlands shall not be included in any individual lots. Designated wetlands shall be maintained as non-disturbance areas.**
- 16. No community or individual boat dock or boat launching facilities shall be permitted.**
- 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**

M 300 02
(continued)

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 commence upon submission of copies of the application for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning & 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.

18. The following additional conditions are placed on the development as requested by the applicant:
 - No access to Red Mill Pond.
 - To restrict runoff from Paynter's Purchase into Red Mill Pond in an effort to be good neighbors and not pollute the pond.
 - If the proposed neighborhood business has an empty storefront, a fake display will be put in the window for aesthetic purposes.
 - The fencing material used to conceal the trash receptacles for the neighborhood business will be made of a high quality material, similar to that which may be used throughout the community, not chain link.
 - The governing documents for the homeowner's association will address noise issues throughout the community.
 - Mature trees, not 2-3 gallon trees, will be planted along the buffer between Paynter's Purchase and Heronwood/Pondview.
19. The applicant shall submit road names and a plan for addressing of streets to the County's Mapping and Addressing Department for review and approval.

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 from AR and GR to MR-RPC and 1.5 acres of neighborhood business, with conditions, was appropriate legislative action based on the following finding of fact:

**Findings
of fact
(continued)**

A. The proposed development's location is appropriate for MR/RPC zoning.

1. MR zoning is appropriate for this parcel of land. The purpose of the MR Zoning District is to provide medium-density residential development in areas expected to become generally urban in character and where central water and sewer may be available. The application is consistent with the stated purpose of MR zoning;
2. A Residential Planned Community (RPC) designation is appropriate for this parcel of land. The purpose of an RPC is to encourage large scale developments using design ingenuity to create superior living environments while protecting existing and future developments and achieving the goals of the Comprehensive Plan. This application is consistent with the stated purpose of an RPC zoning designation.

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. The site is located in an area served by County sewer and central water where future growth is anticipated;
3. The adjacent and nearby properties are already developed with extensive commercial and residential uses;
4. The development is consistent with the Plan's housing element and community design element in that it provides a range of housing for permanent residents and second homeowners to serve the existing 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 to 2020 time period from 43,483 to 73,292 establishing a need for additional housing units;
5. The 300 units proposed are less than that permitted by the RPC Ordinance and significantly less than that permitted by the Comprehensive Plan, which states that with public sewer, 4 units per acre is appropriate for single-family units, 10 units per acre for townhouses and 12 units per acre for multi-family housing;
6. The Plan recognizes that higher residential density is appropriate for sites in the development district in order to obtain the Plan's goal of preserving agricultural areas by concentrating development in the planned development district;

**Findings
of Fact
(continued)**

7. The site is consistent with the development patterns recognized in the State of Delaware's Proposed Strategies for State Policies and Spending and is located in a secondary developing area under the State Map;
8. The site is consistent with the Comprehensive Plan's Future Land Use Map;
9. The nature of the development is consistent with the design, variety, and community interaction goals of the Plan;
10. The development is consistent with the Plan's goal of passive and active recreation facilities as part of a residential development in that significant social and physical amenities will be provided including a 3000 square foot community center, swimming pool, two tennis courts, multi-use field, and walking trail.

C. The requested change of zone promotes the health, safety, morale, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County based on the evidence and testimony presented by the applicant including the following:

1. That with the road and intersection improvements required by DelDOT and required by this approval, the development will not have any adverse impact on traffic. By providing onsite recreational uses and a retail area, offsite vehicle trips will be reduced;
2. Adequate fire and police protection are available nearby;
3. That the character of the area is appropriate for the proposed development. There are existing residential developments located on County Road 88 and on Best Lane and existing commercial uses located on Route 1 including property adjacent to the development;
4. 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;
5. That adequate central water (from Tidewater Utilities, Inc.) and public sewer (from Sussex County) facilities and capacities are available and that there will be no adverse impact on nearby properties;
6. That adequate utility services, schools, medical facilities, and shopping areas are available near the site;
7. That the development will provide a substantial direct economic impact to Sussex County in terms of jobs, payrolls, sewer fees, pro-

**Findings
of Fact
(continued)**

property taxes and transfer taxes and will provide a substantial secondary economic impact to area businesses.

8. That the property is located in an existing mixed commercial/residential area designated as the development district and the proposed development will have no adverse effect on the uses or values of existing property and will conserve property values;
9. Natural resources will be conserved and there will be no adverse environmental impact in that the site will provide a buffer from State wetlands. Central sewer and water will be provided and storm water management will be designed in full compliance with the requirements of all State and County agencies;
10. The proposed density of the MR/RPC is approximately the same as that which could actually be developed under the existing AR/GR zoning designations;
11. That the density and design of the development will provide residential housing at appropriate density in a planned development area thus providing protection of agricultural lands elsewhere in the County;
12. That the Sussex County Planning and Zoning Commission held a public hearing on the proposed application on March 21, 2002 and unanimously recommended to the County Council that the application be approved with conditions;
13. That the Office of State Planning Coordination had indicted by letter dated March 20, 2002, that the State had no objections to the proposed rezoning;
14. The findings and conclusions stated herein are based on substantial evidence comprised of the reasons stated above, the testimony and evidence presented by the applicant and the findings of the Planning and Zoning Commission's recommendation of approval.

**West
Rehoboth
SSD**

Mr. Cole requested that, at a future Council meeting, a report be presented to Council regarding the capacity of the West Rehoboth Sanitary Sewer District.

**Proposed
Boundaries**

Mr. Archut, Assistant County Engineer, reviewed the proposed boundaries for the South Ocean View Sanitary Sewer District.

**M 301 02
Adopt
R 015 02**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to adopt Resolution No. R 015 02 entitled "DISTRICT BOUNDARIES FOR THE PROPOSED SOUTH OCEAN VIEW SANITARY SEWER DISTRICT".

Motion Adopted: 5 Yea.

M 301 02 (continued)	Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
M 302 02 Set Referendum for Proposed South Ocean View SSD	A Motion was made by Mr. Phillips, seconded by Mr. Rogers, that the referendum on the question of establishing the South Ocean View Sanitary Sewer District shall be held on Saturday, July 20, 2002 between the hours of 8:00 a.m. and 2:00 p.m. at the Lord Baltimore School, Route 26, Ocean View, Delaware. Motion Adopted: 5 Yea. Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Proposed Boundaries/ Woodcrest Expansion of the North Millville Expansion Area	Mr. Archut referred to the Public Hearing held on April 23rd to consider extending the Ocean View Expansion of the Bethany Beach Sanitary Sewer District (OVX) to include parcels on Central Avenue, situate, lying west of the Town of Ocean View, and being in Baltimore Hundred, Sussex County, Delaware. At that Public Hearing, Mr. George Hanby was present and stated that he recently constructed a sewer system on his property and that he would like for his property to be excluded from the proposed expansion. At the conclusion of the Public Hearing, it was the consensus of Council that Mr. Archut revise the Proposed Resolution and exclude Mr. Hanby's property from the proposed expansion area. Mr. Archut distributed an amended Proposed Resolution which included the following sentence: "EXCEPTING THEREFROM, that parcel of land identified as Lot B in the Woodcrest subdivision (as recorded in Plot Book 23, Page 73, in the Sussex County Recorder of Deeds Office."
M 303 02 Adopt R 016 02	A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Resolution No. R 016 02 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE OCEAN VIEW EXPANSION OF THE BETHANY BEACH SANITARY SEWER DISTRICT (OVX) TO INCLUDE PARCELS ON CENTRAL AVENUE, CONTIGUOUS TO THE OVX, LYING WEST OF THE TOWN OF OCEAN VIEW, AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE". Motion Adopted: 5 Yea. Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea

Proposed Street-lighting District **Mr. McCabe**, Director of Public Works, advised Council of a petition that has been received asking the County to establish a Streetlighting District for the community of Saraglen Acres, a 41-lot subdivision. Mr. McCabe advised that there are eighteen (18) existing streetlights in the subdivision and no construction is involved.

M 304 02 Circulate Petitions for Street-lighting District/ Saraglen Acres A Motion was made by Mr. Phillips, seconded by Mr. Dukes, that the Sussex County Engineering Department has verified that the subdivision known as Saraglen Acres satisfies the criteria of a suburban community as defined in Paragraph 95-1 of the Sussex County Code; therefore, the Sussex County Council authorizes the circulation of petitions which seek to obtain estimates of costs and charges for streetlighting, for the purpose of establishing a streetlighting district.

Motion Adopted: 4 Yea, 1 Absent.

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

[Mr. Rogers was out of the room at the time the vote was taken.]

Waste-water Facilities **Mr. Green**, Director of Utility Construction, discussed wastewater facilities constructed in the Bethany Beach Sanitary Sewer District and the Ocean View Expansion of the Bethany Beach Sanitary Sewer District.

M 305 02 Grant Beneficial Acceptance/ Providence, LTD A Motion was made by Mr. Cole, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 215, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in Providence, LTD, located in the Ocean View 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 306 02 Grant Beneficial Acceptance/ South Hampton Phase IV A Motion was made by Mr. Cole, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 234, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in South Hampton – Phase IV, located in the Bethany Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

**M 306 02
(continued)** **Vote by Roll Call:** **Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea**

**M 307 02
Council-
manic
Grant** A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$425.00 from Mr. Rogers' Councilmanic Account to the Broadkill Beach Preservation Association for the rental of portable toilets for the summer season at Broadkill Beach.

Motion Adopted: **5 Yea.**

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

**M 308 02
Youth
Activity
Grant** A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$250.00 from Mr. Phillips' Youth Activity Account to the Gumboro Community Center for netting for the ballfield.

Motion Adopted: **5 Yea.**

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

**M 309 02
Council-
manic
Grant** A Motion was made by Mr. Rogers, seconded by Mr. Jones, to give \$300.00, \$150.00 each from Mr. Rogers' and Mr. Jones' Councilmanic Accounts, to The Leukemia & Lymphoma Society for Heather Rudd's fundraising efforts with the "Team in Training".

Motion Adopted: **5 Yea.**

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

**M 310 02
Council-
manic
Grant** A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$150.00 from Mr. Phillips' Councilmanic Account to Charity Lodge No. 27 for the 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 311 02
Grant** A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$100.00 from Mr. Phillips' Councilmanic Account to the Laurel Alumni Scholarship Foundation, Inc. for scholarship funding.

M 311 02 Council- manic Grant (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 312 02 Youth Activity Grant	A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$400.00 (\$100.00 each from Mr. Cole's, Mr. Jones', Mr. Phillips', and Mr. Rogers' Youth Activity Accounts) to Sussex Central Pop Warner Football for operations/expenses (uniforms, busing, field maintenance, etc.)
	Motion Adopted: 5 Yea. Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
M 313 02 Council- manic Grant	A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$500.00 from Mr. Rogers' Councilmanic Account to the Town of Ellendale for trash receptacles for their annual spring clean-up.
	Motion Adopted: 5 Yea. Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
M 314 02 Recess	At 11:50 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Phillips, to recess until 1:30 p.m. Motion Adopted by Voice Vote.
Reconvene	Mr. Jones called Council back into session at 1:35 p.m.
Public Hearing (C/U No. 1449)	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 CONTRACTOR'S YARD AND STORAGE OF MATERIALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.297 ACRES, MORE OR LESS" (Conditional Use No. 1449) filed on behalf of Donald W. Irelan. The Planning and Zoning Commission held a Public Hearing on this application on April 11, 2002 at which time they recommended approval, with conditions. The record of the Planning and Zoning Commission was incorporated into the record of this Public Hearing.

Public
Hearing
C/U
No. 1449
(continued)

The Council found that Donald Irelan was present on behalf of his application. Mr. Irelan stated that he plans to operate a small construction company at the site; that he currently operates his business at a site located on Route 24; and that he wants to relocate his business.

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

M 315 02
Adopt
Ordinance
No. 1539

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 1539 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONTRACTOR'S YARD AND STORAGE OF MATERIALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.297 ACRES, MORE OR LESS" (Conditional Use No. 1449) filed on behalf of Donald W. Irelan, with the following conditions:

1. The site will be fenced with a 6-foot high chain-link type fence, with vinyl screening inserts on the side facing Route 48.
2. Equipment shall be stored in the maintenance building.
3. Business hours shall be from 7:00 a.m. to 5:00 p.m. weekdays, with no Saturday or Sunday hours.
4. The driveway and parking area will be surfaced with crusher run.
5. There shall be no storage outside of the fence.
6. Material shall be stored within the building or under the proposed lean-to addition to the building.
7. Masonry sand may be stored with a bin on the site.
8. 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 will permit the applicant to relocate his existing business to a more appropriate location, consistent with the purposes and goals of the

Findings of Fact (continued) **Comprehensive Land Use Plan, without adverse impact of any sort.**
2. The findings of fact and recommendation of the Planning and Zoning Commission are incorporated herein.

Public Hearing C/Z No. 1465 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 20,071 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1465) filed on behalf of Estrella P. Acosta.

The Planning and Zoning Commission held a Public Hearing on this application on April 11, 2002 at which time they recommended approval.

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

The Council found that Rebecca Trifillis, Attorney, and Janice Timmons, a real estate agent were present on behalf of the application. Ms. Trifillis stated that the existing home on the premises will be converted into office space for Dr. Acosta; that the neighborhood is primarily commercial; and that the site is no longer appropriate for residential use due to the amount of commercial activity surrounding the site.

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

M 316 02 Adopt Ordinance No. 1540 A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Ordinance No. 1540 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 20,071 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1465) filed on behalf of Estrella P. Acosta.

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:

The proposed development's location is appropriate for C-1 zoning.

**Findings
of Fact
(continued)**

- C-1 zoning is appropriate for this parcel of land. The purpose of the C-1 zoning district is to encourage retail shopping, personal services, and a wide variety of commercial and miscellaneous service activities generally serving a community-wide area. Such uses are generally located along major arterial roadways where a general mixture of commercial and service activity now exists. This application is consistent with the stated purpose of the C-1 zoning designation.
- C-1 zoning will provide for commercial densities appropriate for an area that will be served by public sanitary sewer and water systems and is well located with respect to major thoroughfares, shopping facilities, and other commercially zoned properties.

The proposed change of zone 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 and it is the best use of the property.
- The site is located in the area presently served by the Long Neck Sanitary Sewer District.
- The site is located in an area served by central water.
- Adjacent and nearby properties are presently developed with extensive commercial uses, including retail, restaurants, and other professional medical facilities.
- 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 in Spending 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 protection is available nearby, as provided by the Oak Orchard Fire Company. Adequate police protection is also available.
- 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.
- The property is located in an existing mixed use area of commercial, recreational, and residential uses and an area designated as a development district and the proposed development will not have an adverse effect on the uses or values of existing property and will conserve property values.

**Findings
of Fact
(continued)**

- **Natural resources will be conserved and there will be no adverse environmental impact created by the change in zone.**

Other factors in support of the change in zone from AR-1 to C-1:

- **The applicant intends to utilize the existing structure, a cottage, as a medical professional building. The applicant intends to occupy the premises for her medical practice.**
- **The property size (20,000 square feet) is too small to put to a real intensive use; it will always be a low impact use.**
- **Because nearly all of the neighboring and adjacent properties are zoned C-1, this change in zone application is appropriate, as opposed to a conditional use.**
- **The property, used as a physician's office, will not generate substantial traffic, since there will only be one or two patients every hour. Likewise, there will be no traffic generated on the weekends, when Long Neck Road is at peak capacity during the summer.**
- **The Sussex Conservation District has determined with respect to the application that: (a) no storm hazard area is affected; and (b) it does not require offsite or onsite drainage improvements.**
- **The Planning and Zoning Commission recommended that the application be approved since the rezoning was in character with the immediately surrounding properties. There was no opposition to the application before the Planning and Zoning Commission.**
- **The change in zone will promote the health, safety, and welfare of the immediate neighborhood and Sussex County. Moreover, convenient local healthcare will be a benefit to the citizens of Sussex County.**

**Public
Hearing
(C/U
No. 1450)**

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 USED CAR SALES LOT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 4.912 ACRES, MORE OR LESS (Conditional Use No. 1450) filed on behalf of Richard Mark Miller.

The Planning and Zoning Commission held a Public Hearing on this application on April 11, 2002 at which time they recommended that the application be denied based upon the record of opposition and since the proposed use does not comply with the 1997 Sussex County Comprehensive Plan because the site is located in an agricultural area where the only commercial activities intended are those related to agricultural uses or

**Public
Hearing
(C/U
No. 1450)
(continued)**

retail and convenience shopping; that the neighborhood is generally residential and the placement of a used car lot with a mobile home type structure for an office at this location would be out of character with the surrounding area; and that the application, if permitted at the intersection of U.S. Route 9 and County Road 46 would increase traffic and turn-offs and would increase the traffic congestion in the area or at that intersection.

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

The Council found that Richard M. Miller and David Rutt, Attorney, were present on behalf of the application. Mr. Miller and Mr. Rutt stated that a used car sales lot is proposed on the AR-1 portion of the site; that the area around the building on the site is zoned B-1 Neighborhood Business; that the remainder of the site is zoned AR-1 Agricultural Residential; that he will be leasing the site; and that no subletting of the property will be permitted.

The information presented to Council was the same information included in the Planning and Zoning Commission's report to Council and the Commission's report was made a part of the record of this Public Hearing.

Letters of character reference of the applicant were submitted and entered into the record.

Mr. Rutt submitted a list of eight (8) proposed conditions:

- 1. Hours of operation shall be Monday through Saturday 9:00 a.m. to 5:00 p.m. with no Sunday hours.**
- 2. Maximum of 20 cars on the lot.**
- 3. No fuel sales.**
- 4. No vehicle repairs or sale of parts.**
- 5. No vehicles on consignment.**
- 6. No lighted signs.**
- 7. No junk vehicles on the lot; all vehicles to be in running order and able to pass DMV inspection.**
- 8. Maximum vehicle size shall be a six (6) wheel vehicle.**

Public comments were heard. There were no public comments in support of the application.

**Public
Hearing
(C/U
No. 1450)
(continued)**

A petition with 60 signatures was submitted in opposition to the application.

Comments were heard in opposition to the application. Comments referred to concerns about the maintenance of the lot; the use of a manufactured home type unit for an office; visibility and the number of accidents at the intersection of Route 9 and Route 46; that traffic is already a problem and will only get worse; that the neighborhood is generally residential; the type of vehicles that will be sold; and that property values would be negatively impacted.

**M 317 02
Adopt
Proposed
Ordinance
(C/U
No. 1450)**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A USED CAR SALES LOT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 4.912 ACRES, MORE OR LESS (Conditional Use No. 1450) filed on behalf of Richard Mark Miller.

Motion Denied: 5 Nay.

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

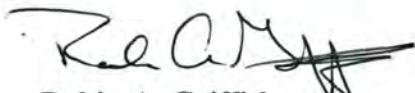
**Reasons
for
Denial**

The Council found that the change of zone was not appropriate legislative action based on the following reasons: the record of opposition; that approval of the application may set a precedent and that any further commercial development at this intersection should be discouraged; that the site is located in an AR-1 Agricultural Residential District and that a used car lot is not an agricultural-related business and would not benefit the agriculture industry; that it would impact traffic at the Route 9 and Route 46 intersection; and that the site is not located in a Development District.

**M 318 02
Adjourn**

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to adjourn at 2:33 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,



**Robin A. Griffith
Clerk of the Council**