

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 14, 2002

Call to Order The regular meeting of the Sussex County Council was held Tuesday, May 14, 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 333 02 A Motion was made by Mr. Rogers, seconded by Mr. Cole, to amend the **Approve Agenda** Agenda by changing the order of the Public Hearings scheduled for 1:30 p.m., as follows:

Change of Zone No. 1467
Providence Land, Ltd.

Change of Zone No. 1466
Raymond McCabe and J. Oliver Smith, Jr.
t/a Bayview Acres

Conditional Use No. 1452
The Lutheran Church of Our Savior

; 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 334 02 A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve **Approve Minutes** the minutes of May 7, 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:

**THEA BECTON, FIRST STATE COMMUNITY ACTION AGENCY,
GEORGETOWN, DELAWARE.**

RE: Letter in appreciation of Council's support.

**LAUREL ALUMNI SCHOLARSHIP FOUNDATION, INC., LAUREL,
DELAWARE.**

RE: Letter in appreciation of grant.

**DELAWARE SMALL BUSINESS FOUNDATION, INCORPORATED,
GEORGETOWN, DELAWARE.**

RE: Letter in appreciation of grant.

**M 335 02
Adopt
Procla-
mation**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to Adopt the Proclamation entitled "PROCLAIMING THE WEEK OF MAY 19 THROUGH MAY 25, 2002 AS 'EMERGENCY MEDICAL SERVICES WEEK'".

Motion Adopted: 5 Yea.

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

**EMS
Week**

Mr. Glenn Luedtke, Director of EMS, announced the events that are planned during Emergency Medical Services Week.

**M 336 02
Adopt
Tribute**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt a Tribute commending Clayton Thomas Serman for achieving the rank of Eagle Scout.

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. Proposed FY '03 Budget

The proposed FY '03 budget will be introduced on Tuesday, May 21, 2002, at the Council meeting at 10:00 a.m. Public comments on the proposed budget will be accepted on Tuesday, June 18, 2002, at 10:30 a.m. There will be a briefing for the media starting at 8:00 a.m. in the Council Chambers on Tuesday, May 21.

Administrator's Report (continued)

2. United States Congress House Resolution 4546

Congressman Michael N. Castle voted on May 10, 2002, to support H.R. 4546, the National Defense Authorization Act for FY '03. This legislation includes several proposals that would affect Delaware.

The FY '03 Defense Authorization Bill authorizes the following programs:

- **\$675,000 to complete the planning and design of the Air Traffic Control Tower at the Dover Air Force Base;**
- **\$19.6 Million for 112 new housing units for Dover Air Force Base;**
- **\$363.9 Million for the C-5 modernization process;**

\$5 Million for Patrick Power to develop a lightweight auxiliary engine to make weaponry more mobile and agile—Patrick Power has proposed that if funded these auxiliary engines would be built at the Sussex County Industrial Airpark in Georgetown.

SCRWF Building Expansion Project

Mr. Izzo, County Engineer, discussed Change Order No. 2 for Sussex County Project No. 00-01 entitled “Building Addition to the South Coastal Regional Wastewater Facility”. The change order, in the amount of \$3,182.00, is for (1) extra costs incurred due to unsuitable soils and (2) new carpet for the existing office area.

M 337 02 Adopt Change Order/ SCRWF Building Expansion Project

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 2 for Sussex County Project No. 00-01, “Building Addition to the South Coastal Regional Wastewater Facility”, be approved in the amount of \$3,182.00 which increases the contract total from \$147,119.00 to \$150,301.00.

Motion Adopted: 5 Yea.

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

News-
paper
Article

Mr. Cole referred to a newspaper article regarding the High Court's decision to approve a temporary moratorium regarding residential building lots around the shore of Lake Tahoe. Mr. Bayard explained that the issue was whether or not moratoriums are constitutional and that the Court concluded that they were, on a limited basis. Mr. Bayard will obtain a copy of the decision and make it available to Council.

M 338 02 Council- manic Grant	A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$400.00, \$200.00 each from Mr. Jones' and Mr. Rogers' Councilmanic Accounts, to the Benjamin Bannekar Elementary School for the purchase of materials for a new playground.
	Motion Adopted: 5 Yea.
	Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Defer Action	Mr. Jones deferred action on the request from Woodbridge Elementary School.
M 339 02 Council- manic Grant	A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$500.00, \$100.00 from each Councilmanic Account, to the Marvel Carriage Museum Building Campaign for the construction of an exhibition building to house, protect and exhibit the carriages of Return Day.
	Motion Adopted: 5 Yea.
	Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
M 340 02 Council- manic Grant	A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$200.00, \$100.00 from Mr. Phillips' Councilmanic Account and \$100.00 from Mr. Dukes' Councilmanic Account (on behalf of Mr. Jones) to Sussex Central High School for high school pennants to be used for fundraisers.
	Motion Adopted: 5 Yea.
	Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Proposed Johnson's Corner Sanitary Sewer District	Mr. Archut, Assistant County Engineer, discussed possible boundaries for the proposed Johnson's Corner Sanitary Sewer District. Mr. Archut advised that this area is in the South Coastal Area Planning Study and that there are several subdivisions in the area. This matter was previously discussed by Council on April 23rd, at which time Mr. Cole questioned whether anything in the area has changed since the proposed boundaries were established. At that time, Mr. Archut was instructed to review the proposed boundaries; to consider including other properties in the petition; and to report back to Council with his findings.

Proposed Johnson's Corner Sanitary Sewer District (continued)	<p>Mr. Archut reported his findings. Mr. Archut advised that the proposed boundaries now roughly encompass the area between Roxanna and Route 54 at Uncle Willies. The proposed boundaries include the El Rancho subdivision, Gentle Winds subdivision, Hampton Park, Twin Cedar Apartments, Swan Estates, Fenwick West, Mill Creek, and Mill Pond Acres.</p> <p>Mr. Archut advised that this will be a new sanitary sewer district and not an extension of an existing district.</p>
M 341 02 Approve Circulation of Petitions/ Proposed Johnson's Corner Sanitary Sewer District	<p>A Motion was made by Mr. Dukes, seconded by Mr. Phillips, that the Sussex County Council approves the circulation of petitions to submit the question of organizing a sanitary sewer district for the Johnson's Corner area, as presented on May 14, 2002, to a referendum vote.</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>
Wastewater Facilities	<p>Mr. Baker, Utility Construction Division, discussed wastewater facilities to be constructed at Home Depot in Rehoboth.</p>
M 342 02 Grant Conditional Acceptance/ Home Depot	<p>A Motion was made by Mr. Rogers, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 219, that the Sussex County Council grant Conditional Acceptance for the wastewater facilities constructed in Home Depot, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.</p> <p>Motion Adopted: 4 Yea, 1 Abstention.</p> <p>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Abstained; Mr. Rogers, Yea; Mr. Jones, Yea</p>
Public Hearing/ HPG Program	<p>A Public Hearing was held to give all citizens an opportunity to participate in the development of a pre-application to the United States Department of Agriculture, Rural Development Services, for a grant under Section 533 of the Housing Act of 1949, 42 U.S.C. 1490 (M) , as amended and known as the Housing Preservation Grant Program (HPG). The primary objective of the (HPG) Program is the development of viable rural communities, including decent housing and a suitable living environment, principally for persons of low and very low income. It is also a primary objective to alleviate or remove health or safety hazards of homes to meet applicable development standards or make needed repairs to improve the general living conditions of the resident(s), including improved accessibility by handicapped persons. The pre-application will be submitted, as follows:</p>

Public Hearing/ HPG Program (continued)	Housing Rehabilitation Grants	<u>Target Areas</u>	
		Sussex	Kent
		\$20,000	\$20,000
	Administration	5,000	5,000

The Statement of Activity was introduced; it is proposed that the HPG funds be utilized to improve the substandard conditions of approximately twelve households; ten grant recipients will be moderate income and two will be low income. The program funds will be used to underwrite the costs of materials and labor from licensed contractors. All prospective grantees would have to meet Section 8 income guidelines.

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

M 343 02
Adopt
Resolution
No.
R 017 02 A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to adopt Resolution No. R 017 02 entitled "ENDORsing PROJECT TO BE SUBMITTED TO THE UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL HOUSING SERVICES, FOR FUNDING AND AUTHORIZING ROBERT L. STICKELS, COUNTY ADMINISTRATOR, TO SUBMIT PRE-APPLICATION".

Motion Adopted: 5 Yea.

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

Recess At 10:52 a.m., Mr. Jones declared a recess.

Reconvene Mr. Jones called Council back into session at 11:00 a.m.

**Public
Hearing/
General
Obligation
Bonds/
Ellendale
Sanitary
Sewer
District** A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$1,000,000 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".

Mr. Baker advised that the loan will be for a term not exceeding 40 years at 0 percent interest. It is anticipated that the Bonds will be sold to the State of Delaware Twenty-First Century Fund.

Mr. Baker explained that, while the Bonds are backed by the County's full faith and credit, it is expected that the debt service will be paid from revenues of the Ellendale Sanitary Sewer District.

Hearing (continued)	<p>Public comments were heard. Mrs. Til Purnell spoke in favor of the Proposed Ordinance. The Public Hearing was closed.</p>
M 344 02 Adopt Ordinance No. 1541	<p>A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to Adopt Ordinance No. 1541 entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$1,000,000 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".</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>
Recess	<p>At 11:07 a.m., Mr. Jones declared a recess.</p>
Reconvene	<p>At 11:15 a.m., Mr. Jones called Council back into session.</p>
Public Hearing/ General Obligation Bonds/ SCRWF	<p>A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$13,000,000 GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE DESIGN, CONSTRUCTION, AND EQUIPPING OF IMPROVEMENTS TO AND EXPANSION OF THE SOUTH COASTAL REGIONAL WASTEWATER FACILITIES AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH".</p> <p>Mr. Baker reported that this bond issuance is for renovations and expansion costs for the South Coastal Regional Wastewater Facility. Plans are to increase the capacity of the plant from 6 million gallons per day to 9 million gallons per day.</p> <p>Mr. Baker advised that the loan will be for a term not exceeding 40 years and at an interest rate of 3.2 percent. It is anticipated that the Bonds will be sold to the State of Delaware Twenty-First Century Fund.</p> <p>Mr. Baker explained that, while the Bonds are backed by the County's full faith and credit, it is expected that the debt service will be paid from revenues of the County's sanitary sewer districts.</p> <p>There were no public comments and the Public Hearing was closed.</p>
M 345 02 Adopt Ordinance No. 1542	<p>A Motion was made by Mr. Dukes, seconded by Mr. Cole, to Adopt Ordinance No. 1542 entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$13,000,000 GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE DESIGN, CONSTRUCTION, AND EQUIPPING OF IMPROVEMENTS TO AND EXPANSION OF THE</p>

**M 345 02
(continued) SOUTH COASTAL REGIONAL WASTEWATER FACILITIES AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH".**

Motion Adopted: 5 Yea.

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

Recess At 11:20, a Motion was made by Mr. Dukes, seconded by Mr. Rogers, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene At 1:30 p.m., Mr. Jones called Council back into session.

Public Hearing (C/U No. 1452) A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A PUBLIC PRE-SCHOOL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.00 ACRES, MORE OR LESS" (Conditional Use No. 1452) filed on behalf of The Lutheran Church of Our Savior.

The Planning and Zoning Commission held a Public Hearing on this application on April 25, 2002 at which time they recommended approval with two stipulations.

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

The Council found that Richard Bauermeister was present on behalf of the application and stated that no building additions are proposed; that the existing fellowship hall portion of the building will contain the classrooms; that a playground will be provided next to the building; and that the playground will be fenced.

There were no public comments and the public hearing was closed.

**M 346 02
Adopt
Ordinance
No. 1543
(C/U
No. 1452)** A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 1543 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A PUBLIC PRE-SCHOOL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.00 ACRES, MORE OR LESS" (Conditional Use No. 1452) filed on behalf of The Lutheran Church of Our Savior, with the following conditions:

1. A fenced playground shall be provided between the existing building and the parking lot.

**M 346 02
(continued)**

2. 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 serve an important public and community service, consistent with the purposes and goals of the Comprehensive Land Use Plan, without adverse impact of any sort.**
- 2. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.**

**Public
Hearing
(C/Z
No. 1467)**

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 HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT/RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.59 ACRES, MORE OR LESS” (Change of Zone No. 1467) filed on behalf of Providence Land, Ltd.

The Planning and Zoning Commission held a Public Hearing on this application on April 25, 2002 at which time they recommended approval with two stipulations.

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

The Council found that Robert Harris of Gulfstream Development Corporation was present on behalf of the application. Mr. Harris stated that this application for rezoning is within the Providence RPC which Gulfstream Development is the developer of; that the application is for the addition of 0.59 acres to the Providence RPC; that the application is for two additional lots; that access will be from an existing interior street; and that owners of each of the lots will be members of the Providence RPC and will share in the common area expenses and recreational facilities.

There were no public comments and the public hearing was closed.

**M 347 02
Adopt
Ordinance
No. 1544
(C/Z
No. 1467)**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 1544 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT/RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.59 ACRES, MORE OR LESS" (Change of Zone No. 1467) filed on behalf of Providence Land, Ltd., with the following conditions:

1. The site plan shall be subject to review and approval by the Planning and Zoning Commission.
2. The amenity package, required with Change of Zone No. 1403 (Ordinance No. 1384) which included the pool, bathhouse, and ten additional parking spaces, shall be completed when certificates of occupancy for 31 units have been issued.

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 proposed change of zone is consistent with the purposes and goals of the Comprehensive Land Use Plan, is a small and logical expansion of an existing residential development, and with the conditions set forth hereafter, will have no adverse impact of any sort.
2. The findings of fact and recommendations of the Planning and Zoning Commission are incorporated herein.

**Public
Hearing
(C/Z
No. 1466)**

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 HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT/RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 60 ACRES, MORE OR LESS" (Change of Zone No. 1466) filed on behalf of Raymond McCabe and J. Oliver Smith, Jr., t/a Bayview Acres.

The Planning and Zoning Commission held a Public Hearing on this application on April 25, 2002 at which time they deferred action; on May 9, 2002 the Commission recommended approval with stipulations.

**Public
Hearing
(continued)**

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

The Council found that John Sergovic, Attorney, was present and stated that in 1985, the Commission recommended approval of an application for the development of this site; that the applicant withdrew the application at that time since adequate infrastructure was not available to support an HR-1 application; since that time, the infrastructure required to support the proposed land use is in place or is being put into place; that the applicants, together with the developer of Bayville Shores and two other adjoining property owners, have entered into a road agreement to provide a singular and beneficial access to this project and Bayville Shores directly onto Route 54, rather than using 58B; that Artesian Water has entered into efforts to centralize water in this location and now centralized water is available; that the density proposed is less than four units per acre; that the density and zoning proposed is compatible with the surrounding land uses; that there is no commercial use proposed; that the applicants have committed, in accordance with the recommendations of DelDOT and the Planning and Zoning Commission, to install sidewalks within the right-of-ways; however, the applicants feel that it would be over-paving to have sidewalks on both sides of all streets and roads; that they do propose an interconnecting sidewalk system; that DelDOT's recommendations have been incorporated into the site plan; that the road agreement incorporates four of DelDOT's stipulations; that there is no intent to disturb any wetlands; that the site plan presented to the Planning & Zoning Commission shows three entrances on the main corridor; that a modified site plan has been submitted reducing the entrances on the main corridor to two; that the applicant will comply with Ordinance 38 if it impacts the project; that the applicant does not have a problem with a requirement that a Technical Advisory Committee (TAC) review be required prior to site plan review; and that the applicant is asking that the number of building permits permitted per year be 50 or 60 (cumulatively).

Mr. Derek Kennedy of Orth-Rodgers & Associates discussed DelDOT's recommendation that the County grant the application only if it first receives assurances, in the form of a binding deed restriction, in regard to six conditions.

Mr. McCabe discussed their land use plans and the history of ownership of the property. Mr. McCabe assured Council that they plan to protect the woodlands and wetlands.

There were no public comments.

Mr. Bayard read two letters of opposition into the record, one from Harry Haon, Fenwick Town Council, and one from Thomas Sharp.

The Public Hearing was closed.

**M 348 02
Adopt
Ordinance
No. 1545
(C/Z
No. 1466)**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1545 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT/RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 60 ACRES, MORE OR LESS" (Change of Zone No. 1466) filed on behalf of Raymond McCabe and J. Oliver Smith, Jr., t/a Bayview Acres, with the following conditions:

- 1. The maximum number of dwelling units shall not exceed 220, of which no more than 96 shall be multi-family units.**
- 2. There shall be no commercial development on the site.**
- 3. Residential building permits shall not exceed 50 per year cumulatively.**
- 4. Technical Advisory Committee (TAC) review, prior to site plan review and approval, is required.**
- 5. Sidewalks are limited to a sidewalk on one side of the road which is developed exclusively for single-family residential lots, with sidewalks on both sides of the entrance corridor. A single sidewalk system serving townhomes shall have continuous paths and shall separate the residential units from the parking areas and driveways (to be built to driveway standards under the zoning ordinance) serving the townhomes.**
- 6. Property addressing of the project shall be submitted to the County Addressing Division for review and approval.**
- 7. All entrances, intersections, roadway improvements, and multimodal facilities shall be constructed as required by DelDOT.**
- 8. The applicant shall coordinate with the State, County, and other local emergency planning offices in the development and implementation of an emergency evacuation procedure for the project.**
- 9. An access for emergency vehicles only shall be provided from SCR No. 58-B to the project.**
- 10. Recreational facilities, e.g., swimming pool, clubhouse, etc., shall be constructed and open for use by the residents at the time of the completion of the first 50 units.**
- 11. The RPC shall be served by an existing Sussex County sanitary sewer district.**

M 348 02
(continued)

12. The RPC shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
13. 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.
14. Wetlands shall not be included in individual lots. Wetlands shall be maintained as non-disturbance areas.
15. The developer shall take reasonable steps to protect and minimize the disturbance of Palustrine Shrub and Scrub/Palustrine Forest habitat identified by the State Wetlands Inventory Survey.
16. 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 submittal of copies of the application for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning and submission of a bond in an amount equal to 125% of the cost of the site work authorized by the Sussex Conservation District permit and in a form acceptable to the County Attorney. The bond shall be released upon the issuance of all other permits and the filing of an approved master plan or final site plan.

Motion Adopted: 4 Yea, 1 Abstention.

Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Abstained;
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:

Scope of Application

1. The subject application is an application of Raymond McCabe and J. Oliver Smith which touches upon 60± acres of land lying approximately 800 feet north of Route 54 at the new entrance to the Bayville Shores

**Findings
of Fact
(continued)**

Community, north of Road 58B. This application seeks to rezone 60 acres from AR-1 Agricultural Residential District to an HR-1/RPC High Density Residential District/Residential Planned Community.

2. The property adjoins the Bayville Shores Community, an HR-1/RPC District which is currently being completed with a density of 6.07 units per acre; Shady Park, a fully developed mobile home park of 256 units with a density of 4.2 units per acre; and Swann Keys, a GR District containing 618 units with a density of 6.6 units per acre. The property is also in close proximity to the Mallard Lakes HR-1 Community of 483 units, fully developed with a density of 7.2 units per acre.
3. The application proposes that the project be developed with 220 dwelling units consisting of no more than 96 multi-family units.
4. The rezoning seeks a density of 3.7 units per acre, which is less than the allowed density for an HR-1 District, and within the density recommended by the 1997 Comprehensive Land Use Plan for a single-family residential project.
5. Sewer use projection for the property by the Sussex County Engineer's Report is at four units per acre.

Compatibility with Neighborhood

1. The Sussex County Council finds that the subject property is in an area along Route 54 that has been developed and is developing with residential projects with densities similar to or greater than that of the proposed project.
2. The proposed project is in character with the nature of the area, particularly the Bayville Shores Community and the Mallard Lakes Community, and its proposed density is less than any developed adjoining property.

Roadway Access

1. The Sussex County Council finds that the subject parcel will be served by a new entrance created on Route 54, which by agreement is to be the sole access for the subject parcel, the Bayville Shores Community, and two other parcels. Accessing all of these communities through a single entrance on Route 54 will tend to lessen congestion in the road system, particularly after placing a signal at the Route 54 Bayville Shores entrance, the cost of same to be shared by this project identified as Bayview Acres, Bayville Shores, and other parcels utilizing this roadway.
2. To allow for proper economies of scale for the properties accessing the Bayville Shores entrance at Route 54, an appropriate number of units

**Findings
of Fact
(continued)**

for each property sharing access is desirable to properly allocate the economic obligations under the Road Agreement entered into between these applicants and the developer of Bayville Shores.

Land Use Compliance

1. The Sussex County Council finds that the application was recommended unanimously by the Planning and Zoning Commission, with no reduction in density.
2. The Sussex County Council finds that the subject application is in compliance with the 1997 Comprehensive Land Use Plan, as the subject property lies within the Development District of the 1997 Comprehensive Land Use Plan.
3. The subject application meets the goals of the 1997 Comprehensive Land Use Plan. The entire acreage will be served by existing central wastewater disposal adequate to handle the needs. Allowing development at 3.7 units per acre is compatible with the projected sewer use and allocated capacity as reported by the Sussex County Engineering Office. The parcel will be served by a major improvement to water delivery by Artesian Water Company located on the adjoining Bayville Shores Community.
4. The road improvements undertaken to serve this community and the adjoining community (Bayville Shores) have been sanctioned by the Delaware Department of Transportation (DelDOT). DelDOT has issued an opinion that the use of this entrance at the densities proposed for the subject project should not significantly contribute to Route 54 congestion. DelDOT states that there already exists a need to make improvements to Route 54, and that the need for road improvements on Route 54 would be unfair to attribute to this land use proposal.
5. The applicants' proposal to make incremental road improvements in conjunction with Bayville Shores Developer are designed to improve traffic conditions. The applicants have committed to the restrictions requested of DelDOT in its comments on the application dated January 17, 2002 and April 8, 2002.
6. The proposed density of 3.7 units per acre is compatible with the 1997 Comprehensive Land Use Plan for single-family detached residential use. The density is less than the recommended density for multi-family units, nevertheless the 3.7 units per acre are an appropriate density for this parcel, which is proposed primarily for single-family detached residential use.
7. The location of this property within the developing area of Route 54 at the density of 3.7 units per acre is compatible with the historical zoning patterns within this general Development District, being one of the

**Findings
of Fact
(continued)**

limited Development Districts under the 1997 Comprehensive Land Use Plan.

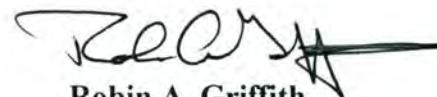
Compliance with RPC Purpose

1. A purpose of the Residential Planned Community is to encourage large-scale developments as a means of creating a superior living environment through unified developments and to provide for the application of design ingenuity while protecting existing and future development and achieving the goals of the Comprehensive Plan.
2. The proposed housing types of the application, detached homes on single-family lots at the boundaries and multi-family units at its center, meet the purposes of the Residential Planned Community, since it allows for design ingenuity while protecting existing and future land developments.
3. Allowing townhomes and single-family detached homes in a designed community allows for a diversity of housing types or different housing types in the same community.

**M 349 02
Adjourn**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to adjourn at 2:47 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith
Clerk of the Council