



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 19, 2009

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, May 19, 2009, at 3:00 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Vance Phillips	President
George B. Cole	Vice President
Joan R. Deaver	Councilwoman
Michael H. Vincent	Councilman
Samuel R. Wilson, Jr.	Councilman
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Deputy Administrator
James D. Griffin	County Attorney

Mr. Phillips called the meeting to order.

The Invocation and Pledge of Allegiance were led by Mr. Phillips.

M 303 09 Approve Agenda

A Motion was made by Mr. Vincent, seconded by Mr. Cole, to approve the Agenda, as posted.

Motion Adopted by Voice Vote.

Minutes

The minutes of May 5, 2009 were approved by consent.

Corre- spondence

Mr. Griffin read the following correspondence:

PATCHES ESTES AND DIANE BORCHARDT, SBA NETWORK SERVICES, INC., BOCA RATON, FLORIDA.

RE: Letter in appreciation of the extraordinary service provided by Megan Nehrbas in the Sussex County Mapping and Addressing Department

VINCENT ROBERTSON, GRIFFIN & HACKETT, P.A., GEORGETOWN, DELAWARE.

RE: Note thanking the Council for reappointing him as Assistant County Attorney.

Draft Ordinance Relating to Sheriff Fees	Sheriff Eric Swanson presented and reviewed a Draft Ordinance to increase the fees charged by the Sheriff's Office. In response to questions raised by the Council, Mr. Swanson stated that the increased costs would cover the cost of services provided and fees incurred as well as the cost of an additional Deputy to carry out the duties of the Department.
Draft Ordinance (continued)	The Draft Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE IV § 62-15 RELATING TO FEES CHARGED BY THE SHERIFF" was not introduced on this date.
Oak Orchard Expansion No. 1/ Design Contract	<p>Michael Izzo, County Engineer, referenced that, on May 5, 2009, the Council approved the Consultant Selection for various projects and he presented a proposal for a Design Contract in the amount of \$872,000.00 with the firm of George, Miles & Buhr for Oak Orchard Sanitary Sewer District, Expansion No. 1.</p> <p>Mr. Izzo noted that the Engineering Department anticipates that there will be three separate contracts for Expansion No. 1. He also noted that George, Miles & Buhr (GMB) will sub-consult out services to CABA Associates and Davis, Bowen & Friedel and therefore; GMB will oversee the work of the other two firms.</p> <p>Mr. Izzo advised that the County has received Stimulus Funding for this \$13 million construction project, as follows: a loan in the approximate amount of \$9 million, \$3 million of which will be a grant/loan forgiveness.</p> <p>Mr. Izzo stated that there is a fourth work item that is associated with this project that is outside the Oak Orchard Expansion Area No. 1, in the River Road area. He noted that this is a left over work item from the Oak Orchard Sanitary Sewer District's original construction due to human remains being located in the road area. At that time, the sewer line could not be extended any further, leaving 20 – 25 homes, along the Indian River Bay, that did not receive sewer service.</p> <p>Mr. Izzo reported that it is now proposed to reroute the sewer trench around the remains and to extend the sewer line as originally proposed; however, to do this, the State Historic Preservation Office is mandating that an archaeological person be present during construction.</p>
M 304 09 Authorize Agreement for Design Services/ Oak Orchard SSD	A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the recommendation of the County Engineering Department, to authorize the President of the Sussex County Council to execute an Agreement with George, Miles & Buhr, LLC of Salisbury, Maryland, including sub-consultant services by Davis, Bowen & Friedel, Inc., and CABA Associates, Inc. to provide design services for the Oak Orchard Sanitary Sewer District Expansion Area No. 1 at a cost not to exceed \$841,823.00 and Design and Archaeological Services for the Oak Orchard Sanitary Sewer District,

Expansion No. 1	<p>Contract Area F, at a cost not to exceed \$119,447.00.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Phillips, Yea</p>
CPR Assist Devices	<p>Glenn Luedtke, Director of EMS, presented a proposal to purchase CPR Assist Devices. He stated that according to the American Heart Association, on a national basis, sudden cardiac arrest kills 250,000 lives annually and that research shows that effective CPR is crucial to survival. Mr. Luedtke stated that the implementation of CPR Assist Devices will not only improve patient care but will also improve the safety of paramedics. He stated that one of the greatest risks for paramedics is being unrestrained in the back of a moving ambulance.</p> <p>Mr. Luedtke reviewed the two primary devices on the market, the Autopulse and the Lucas; both devices are approved by the FDA and the Delaware Office for EMS. After a thorough evaluation including a testing process, Mr. Luedtke stated that the Department of Emergency Medical Services is recommending the Lucas device, as it is best suited for Sussex County both operationally and financially. Mr. Luedtke recommended the purchase of eleven Lucas devices at a discounted price of \$165,712.00; the total cost to the County will be \$97,740.00 since 40 percent of the purchase will be funded by the State. He noted that funds for this purchase are in the Fiscal Year 2009 Budget.</p>
M 305 09 Authorize Purchase of CPR Assist Devices	<p>A Motion was made by Mr. Vincent, seconded by Mr. Cole, that the Sussex County Council authorizes the purchase of eleven (11) Lucas CPR Assist Devices and other necessary equipment at a cost of \$165,712.00.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Phillips, Yea</p>
Woodlands of Millsboro SSD/ Adoption of Boundaries	<p>John Ashman, Director of Utility Planning, presented information on establishing the boundaries of the Proposed Woodlands of Millsboro Sanitary Sewer District. On April 30, 2009, the Engineering Department conducted a Public Hearing on the proposed boundaries at which time there did not appear to be any opposition and everyone appeared to be in favor of moving forward towards a referendum. Mr. Ashman stated that, based on the Public Hearing held on April 30, 2009 and the lack of negative comments, it is the Engineering Department's recommendation that the Proposed Woodlands of Millsboro Sanitary Sewer District be established, as presented.</p>
M 306 09	<p>A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to adopt</p>

**Adopt
R 014 09** **Resolution No. R 014 09 entitled “DISTRICT BOUNDARIES FOR THE PROPOSED WOODLANDS OF MILLSBORO SANITARY SEWER DISTRICT”.**

Motion Adopted: 5 Yeas.

**M 306 09
(continued)** **Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
 Mr. Wilson, Yea; Mr. Cole, Yea;
 Mr. Phillips, Yea**

**Refer-
endum** **Mr. Ashman reported that the referendum is scheduled to be held on June 25, 2009.**

**Procla-
mation** **A Proclamation entitled “PROCLAIMING THE WEEK OF MAY 17 THROUGH MAY 23, 2009 AS EMERGENCY MEDICAL SERVICES WEEK” was presented to Sussex County paramedics.**

**Procla-
mation** **Mr. Baker read the Proclamation entitled “PROCLAIMING THE MONTH OF MAY AS COMMUNITY ACTION MONTH”. The Proclamation will be delivered to First State Community Action Agency.**

**Adminis-
trator’s
Report** **Mr. Baker read the following information in his Administrator’s Report:**

1. Memorial Day Holiday

County offices will be closed on Monday, May 25, in honor of the Memorial Day holiday. County offices will reopen at 8:30 a.m. on Tuesday, May 26, 2009.

There will be no Council meeting on Tuesday, May 26. The next regularly scheduled County Council meeting will be held on June 2, 2009, at 3:00 p.m.

2. Delaware Solid Waste Authority Public Hearing

On June 4, 2009, at 6:00 p.m. at the Delaware Department of Transportation South District Building, a public hearing will be held regarding expansion of the Solid Waste Authority’s Jones Crossroads facility. Attached is information regarding the public hearing.

3. Delaware Department of Transportation US 13 and DE Route 404 Intersection Realignment

On May 21, 2009, at 10:00 a.m., a ceremony will be held celebrating the completion of the US 13 and DE Route 404 intersection realignment at the Adams/Ewing Public Safety Complex. Attached is a copy of the notice.

4. Delaware Solid Waste Authority Report – April 2009

As per the attached report, 22,024 pounds of recycling material were collected at the County's West Complex site during April 2009 in cooperation with the Delaware Solid Waste Authority.

**Fiscal
2010
Budget
Presen-
tation**

Mr. Baker presented the Proposed Annual Operating Budget for Fiscal Year 2010 and the accompanying Budget Letter (both of which are available for download and/or viewing on the County's website at www.sussexcountymde.gov). Assisting Mr. Baker with the Budget presentation were Susan Webb, Gina Jennings and Kathy Roth.

Mr. Baker stated that the primary challenge and goal in developing this budget has been to maintain and supplement existing County services in the midst of a major economic downturn. Mr. Baker reported that General fund revenues are down 15.7 percent, which reflects an \$8.6 million reduction; the State paramedic contribution is down from 40 percent to 30 percent (a reduction of \$1.2 million); no tax increase is recommended; and there are 26 less full-time employees budgeted for due to attrition and cross-training of staff to fill positions as they become open.

Mr. Baker reported that, this year, a \$3.8 million deficit is projected in the General Fund, which compares to a \$3.3 million loss in 2008 (per the audit) and a \$2.7 million loss in 2007.

Mr. Baker reported that the proposed \$128 million budget for Fiscal 2010 reflects the economic realities of today by cutting spending in a broad-based manner. In the General Fund, revenues decreased 16 percent; the second largest revenue, realty transfer tax, has decreased 29 percent from the 2009 estimate and 65 percent from 2005 actual. Other General Fund housing related revenue line items are down \$2.2 million, again primarily due to the change in the housing market and construction industry. Mr. Baker stated that conservative budgeting now and in the past has enabled the County to continue without raising property taxes. This proposed budget includes zero use of Appropriated Reserves in the General Fund portion of the budget.

Mr. Baker reviewed the following major budget changes:

- Grants in Aid reduced.
- Reduction in staff by 26 full-time employees due to attrition and more efficient use of staff.
- Pensioner benefit trust fund reimburses for pensioner benefits.
- Group Hospital Plan changes.
- General Fund Engineering employees transferred to Sewer and Water Districts
- Sewer District Repayments – Construction grants not needed.

**Fiscal
2010
Budget
Presen-
tation
(continued)**

- **Machinery & Equipment – Payable from Capital Improvement Fund.**
- **Water & Sewer Districts reimburse General Fund for administrative costs.**
- **Interest on loans – sewer projects.**
- **Early Retirement Option**
- **Bookmobile – Reduced Service Level**
- **Clerk of Peace fee increase.**
- **State paramedic grant share reduced from 40 percent to 30 percent.**

Mr. Baker presented the following budget highlights:

- **No property tax increase.**
- **28% decrease in anticipated realty transfer tax and housing industry related revenues.**
- **\$8 water and sewer service charge increase.**
- **Industrial Airpark Improvements - \$4.3 million.**
- **14% decrease in Group Hospital costs.**
- **Funding for 40 troopers above State Police allocation.**
- **Sussex County Volunteer Firemen’s Association - \$2.9 Million
-Paid Ambulance Attendants Portion - \$1.4 Million**
- **Dog Control - \$600,000**
- **Five Year Capital Plan (County building improvements, Industrial Airpark improvements, and sewer projects – Angola, Johnsons Corner, Oak Orchard Expansion)**
- **16 percent General Fund Budget decrease or \$8.6 million**
- **No use of Appropriated Reserves in the General Fund Budget**

Mr. Baker encouraged the County Council to review the Proposed Budget carefully prior to the Public Hearing scheduled for June 16, 2009.

**Introduction
of Proposed
Ordinance/
Budget**

Mr. Vincent introduced the Proposed Ordinance entitled “AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2010”. The Proposed Ordinance will be advertised for Public Hearing.

**Introduction
of Proposed
Ordinance/
Sewer
District
Rates**

Mr. Vincent introduced the Proposed Ordinance entitled “AN ORDINANCE ESTABLISHING ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR COLLECTION AND TRANSMISSION AND/OR TREATMENT, AND CONNECTION CHARGES FOR ALL SUSSEX COUNTY WATER AND SANITARY SEWER DISTRICTS”. The Proposed Ordinance will be advertised for Public Hearing.

Grants

Mrs. Webb presented grant requests for the Council’s consideration.

M 307 09

A Motion was made by Mr. Vincent, seconded by Mr. Cole, to give

Community Grant **\$2,000.00 (\$500.00 each from Mr. Cole's, Mr. Phillips', Mr. Vincent's, and Mr. Wilson's Community Grant Accounts) to Delaware Burn Camp for a Youth Camp Program.**

Motion Adopted: 5 Yeas.

M 307 09 **Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;**
(continued) **Mr. Wilson, Yea; Mr. Cole, Yea;**
 Mr. Phillips, Yea

M 308 09 **A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give**
Community Grant **\$2,700.00 from Mr. Cole's Community Grant Account to West Rehoboth**
 Community Land Trust for administrative costs related to several projects.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
 Mr. Wilson, Yea; Mr. Cole, Yea;
 Mr. Phillips, Yea

Additional Business/ **Under Additional Business, Bill Steer stated that last Wednesday, May 12th,**
Bill **a member of the Sussex County Council testified before the State**
Steer **Commission on House Bill No. 5. Mr. Steer respectfully requested that a**
 transcript of that testimony be provided and copied to the minutes of this
 meeting so that everyone has the opportunity to see what was said and
 understand precisely how it was presented.

Mr. Phillips stated that Mr. Steer's request will be taken under advisement
and given consideration by the Council.

M 309 09 **At 4:37 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Wilson,**
Go Into **to recess the Regular Session and to go into Executive Session for the**
Executive **purpose of discussing issues relating to Personnel, Pending/Potential**
Session **Litigation, and Land Acquisition. Motion Adopted by Voice Vote.**

Executive **At 4:38 p.m., an Executive Session of the Sussex County Council was held in**
Session **the Caucus Room of the County Council Chambers for the purpose of**
 discussing issues relating to Personnel, Pending/Potential Litigation, and
 Land Acquisition. The Executive Session concluded at 4:58 p.m.

M 310 09 **At 4:59 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Cole, to**
Reconvene **come out of Executive Session and to reconvene the Regular Session.**
Regular
Session

There was no action on Executive Session items.

M 311 09 **At 5:00 p.m., a Motion was made by Mr. Cole, seconded by Mr. Vincent, to**
Recess **recess until 6:00 p.m. Motion Adopted by Voice Vote.**

Reconvene **Mr. Phillips called the Council back into session at 6:00 p.m.**

**Public Hearing/
C/U
No. 1778** **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 ANTIQUES, GIFTS AND PRODUCE AND BARBEQUE SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.0 ACRE, MORE OR LESS” (Conditional Use No. 1778) filed on behalf of Timothy Elder.**

**Public Hearing/
C/U
No. 1778
(continued)** **The Planning and Zoning Commission held a Public Hearing on this application on April 30, 2009 at which time they deferred action.**

(See the minutes of the meeting of the Planning and Zoning Commission dated April 30, 2009.)

Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.

Timothy Elder was present and stated that he intends to operate a small barbeque, produce, and shaved ice business; that he owns the property; that all storage will be in the garage; that he presently uses the garage on the site for storage for his other businesses; that he has other sites with similar intents; that he hopes to create jobs and to expand the use; that he plans on providing picnic tables under the canopy on the site for patrons of the barbeque; that concern has been expressed about smoke caused by the barbeque; that he plans to use a hickory smoker which will contain the smoke; that the hickory smoker will be state-of-the-art and will run on propane; that he will address any concerns that Mr. Murray, a neighbor, has; that there will be no construction; that there is currently a dwelling and rental units located on the property; that there will be no construction; that there will be a canopy in front of the garage; that there will be a wooden stand for the produce; that three parking spaces are proposed; that employees will be able to park almost anywhere on the site; that there will be a maximum of two employees; and that there is plenty of room for additional parking, if required.

Public comments were heard.

Diane Comolli spoke in opposition to the application. She stated that the entire stretch of road does not have a commercial food operation on it and they do not want one; that the only current commercial operation in the area is a funeral home; and that they want the entire stretch from Route 26 to the Canal Bridge to remain as residential as possible so as to not have a negative impact on homeowners in the area.

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

M 312 09
Defer
Action on
C/U
No. 1778

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Conditional Use No. 1778 filed on behalf of Timothy Elder.

Motion Adopted: 5 Yeas.

M 312 09
(continued)

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea

Mr. Cole left the meeting due to a possible conflict with the next application.

Public
Hearing/
C/Z
No. 1641

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 HUNDRED, SUSSEX COUNTY, CONTAINING 3.02 ACRES, MORE OR LESS” (Change of Zone No. 1641) filed on behalf of Thomas E. Frank.

The Planning and Zoning Commission held a Public Hearing on this application on April 30, 2009 at which time they deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated April 30, 2009.)

Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.

Mr. Abbott distributed Exhibit Books which were previously provided by the Applicant.

Mr. Abbott reported that the Planning and Zoning Department received 33 letters in opposition and that the Sussex County Council received over 350 letters of opposition. Even though each letter was not read into the record, all of the letters were made a part of the record.

Thomas Frank was present with Heidi Balliet, Attorney with Tunnell & Raysor, P.A. and Mark Davidson of Design Consultants Group, L.L.C. They stated that they are seeking a change of zone for a neighborhood type business use for retail shopping and personal services; that they realize that the Council must consider if the uses permitted in a B-1 District are appropriate for this location; that the purpose of a B-1 District is to provide primarily for retail shopping and personal service uses, to be developed either as a unit or in individual parcels, to serve the needs of a relatively small area, primarily nearby rural, low-density or medium-density residential neighborhoods; that the site is surrounded by various uses, i.e. a funeral home in a B-1 District, GR General Residential subdivisions, RPC -

Public
Hearing/
C/Z
No. 1641
(continued)

Residential Planned Communities, and a non-conforming produce stand; that AR-1 zoning may be out of character, non-compatible and offensive to some of the residents in the area due to some farming practices that cause dust, odor and noises; that the area is a fast paced growth area; that the project will be served with County sewer; that the project will be provided with water from Tidewater Utilities, Inc.; that they have not received any objections from DelDOT; that the site has adequate space for parking; that the site could accommodate a restaurant, bakery, professional offices, or similar uses; that property values should increase, not decrease; that it is their intent that the project have the look and feel of a residential character; that pedestrian walkways will be provided; that three buildings are proposed with a total of approximately 27,000 square feet; that the site is an appropriate site for this type of use and will comply with the County Comprehensive Land Use Plan; that the Office of State Planning Coordination has voiced no objection to the proposed zoning change; that the project is within an area, which according to the Comprehensive Land Use Plan, where a wide variety of business uses should be allowed to serve the residential neighborhoods in the area; that this property is located in a Short Term Annexation Area for the Town of Ocean View; that the site is served by an existing County sanitary sewer system and is allocated 15.72 EDUs; that the site is located in the Environmentally Sensitive Developing Area; that some of the guidelines for the Environmentally Sensitive Developing Area reference light commercial uses that are appropriate to provide for convenient services and to allow people to work and shop close to home; that the Applicant has provided an Environmental Assessment Report analyzing the project's potential environmental impacts, including the effects on stormwater runoff, nitrogen and phosphorous loading, wetlands, wastewater and water systems; that the State Strategies reference that the site is located in an Investment Level 2 Area which are areas characterized by a variety of housing types, commercial and office uses serving primarily local residents; that the Applicant realizes that off-site road improvements will be required as a part of the entrance plan approval and that the Applicant will meet or exceed those DelDOT requirements; that the project will not have an adverse impact on neighboring properties or the community; that highly complementary support and services related to nearby residents and business uses should be expected; that the location of a neighborhood business providing personal service uses on this parcel should have the effect of limiting trips on Route 26 by residents of the area who may otherwise have to travel farther on for their shopping and housing needs; that the project will provide employment opportunities for the residents of the County and the Town; that the development of this property will generate revenues for the County from the sewer impact and user fees, building permits, inspection fees, and real estate fees; that there are no wetlands on the site; that a small drainage swale on the site provides drainage to part of the Shady Dell Park Subdivision; that a downstream analysis will be performed; that stormwater management will be provided on the site; that soils work has been performed; that a nutrient loading assessment per the Pollution Control Strategy has been performed; that Best Management Practices will be utilized; that a Phase I Environmental

Public
Hearing/
C/Z
No. 1641
(continued)

Site Assessment has been performed; that two dry stormwater management ponds with bio-filtration are proposed with landscaping; that recharging groundwater reduces pollutants; that the mandated TMDL (Total Maximum Daily Load) reduction will be met for this property; that parking lot trees will be furnished throughout the site; that as part of the preparation of site, utility plans by County Engineering, the State Fire Marshal, and the Office of Drinking Water (Public Health), and an approval by Tidewater Utilities, Inc. will be secured; that the site plan shows a traffic flow schematic delineating the type of entrance and number of proposed average daily trips; that the project will have one entrance directly across from Butler Boulevard; that a letter of No Objection for an entrance location has been applied for and will be approved by DelDOT; that no State or Federal listed species or their habitat were identified within the property; that it is the opinion of W. Redinger Environmental Services that the proposed project should not have any effect on listed species; that no Federal or State regulated wetlands are present within the subject property based on the absence of hydrophilic vegetation; that approximately 1.32 acres of open space is proposed on the site plan generated for the purpose of this application at this time; that the open space is in the form of landscape, sidewalks and stormwater management green best management practices; that Muddy Neck Road improvements along the frontage of the property, meeting the minimum DelDOT requirements, will be provided by the Developers; that road widening, five-foot shoulders and asphalt overlays will be required; that a ten-foot wide multi-modal type of pedestrian access will be constructed along the County road frontage of this project; that careful attention was directed at the location of the buildings, parking lot and loading areas to the adjoining properties; that pedestrian connectivity and safety has been implemented with the off-site road improvements being undertaken as well as the walkways being proposed to connect to adjacent properties; and that a minimum of 20-foot wide landscape buffering is proposed with 6-foot high solid privacy fence to help reduce noise.

Ms. Balliet stated that the Applicant is proposing the following self-imposed deed restrictions to alleviate concerns: 1) a six-foot high privacy fence will be placed along the common boundary line of this property and Shady Dell Park Subdivision and along Providence Land LTD; 2) all lighting will be downward illumination and will not encroach onto adjacent properties; 3) all trash dumpsters will be located at least 25-feet from all boundary lines; 4) all required DelDOT road improvements will be completed at the developer's expense prior to issuance of a Certificate of Occupancy by Sussex County; 5) any commercial ventilation fans, vents and heating and A/C units will be placed on the roofs of the building and will be placed at least 30-feet from the adjacent boundary lines and will be screened; 6) the front and side view of the buildings will reflect the architectural style and look of a residential style structure in the community; 7) pedestrian walkway access will be provided to adjacent properties as shown on the plan; 8) no outside open storage of pallets, crates, or building materials will be permitted; 9) no outside speakers, bells or ringers will be permitted for

any use; 10) hours of operation shall be limited to 11:00 p.m. in the evening; and 11) all utilities serving the property, i.e. electric, phone, cable, etc will be placed underground.

There were no public comments in support of the application.

Public
Hearing/
C/Z
No. 1641
(continued)

Ron Liberto (President of the Townhomes of Providence and President of the Providence Owners Association), Diane Liberto, Bruce Ferraro, Diana Emlet, Pat Emlet, Eric Sheinin (President of the Board of Directors of the Villages of South Hampton), Gary Noce, Gary Lee Cox (President of Shady Dell Homeowners Association), Pat Olive, Charles Olive, Diane Comolli, Mark Comolli, Tony McClenney, Sandy Pool, James Colin, and Lori Fry spoke in opposition to the project. They stated that they are in opposition to the retail establishment; that there is concern about traffic congestion, noise pollution, an increase in loitering and crime, odor from dumpsters, dry ponds which breed mosquitoes and fill with scum; that the proposal conflicts with the residential nature of their neighborhood; that commercial real estate is suffering in these economic times; that additional vacant buildings are not needed but likely due to the low demand for commercial property; that the applicant purchased this property knowing it was zoned AR-1 and he should not have expectations to develop this land in any commercial or business manner; that the proposed use is out of character with the area even if it has a residential appearance; that many of the residents purchased their property knowing the zoning was residential; that this type of use should be built along Route 26; that there are many vacant retail facilities on Route 26; that the 3-story townhomes will look down onto the proposed commercial facility and that they will see mechanical equipment on the roof-top and dumpsters on the site; that self-imposed restrictions mean nothing; that if the change of zone is approved, anything can be put there including a restaurant or bar that will be open late at night and into the early morning hours; that the map does not show the curve on Muddy Neck Road where there is an extreme blind spot where the subject property starts; that they are concerned about additional traffic; that it is difficult now to make a left turn off of Parker House Road onto Muddy Neck Road; that they are concerned about the safety of cyclists and pedestrians; that the removal of trees will create problems with water drainage; that they have no problem with the agricultural use of the property; that noise and light pollution will devalue area properties; that the proposed use is not a welcome neighbor; that the majority of the letters of opposition came from permanent residents; that in the area, they already have 4 drug stores, 6 banks, 5 grocery stores, 3 gas stations, 5 medical complexes, 15 to 20 restaurants and 10 hair salons within five minutes of this intersection; that the last thing that the residents of Shady Dell want is a right-of-way going into their community; and that the Notice of Public Hearing sign was torn down and that none of the owners of Providence knew about the application and the Public Hearings.

Diane Liberto read a letter into the record written by Janis Penman (a

resident of Providence) in opposition to the project. The letter was made a part of the record.

Pat Emlet stated that she and others have canvassed many communities in the area including Providence, Canal Woods, Waterside, Plantation Park, Malcolm Manor, Camp Barnes, Bethany Meadows, Bethany Breeze, Hunters Run, Summerfield, South Hampton, Quaint Acres, Bridlewood, Shady Dell Park, Ocean Farm and that not one person she has contacted has been in favor of this zoning change.

**Public
Hearing/
C/Z**

**No. 1641
(continued)**

Pat Emlet submitted photos of the torn Public Hearing sign and an aerial map. The photos were made a part of the record.

Sandy Pool submitted an additional 140 signatures in opposition to the application. She noted that these signatures have been obtained since the Public Hearing before the Commission. The petitions were made a part of the record.

The Public Hearing was closed.

**M 313 09
Defer
Action on
C/Z
No. 1641**

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1641, filed on behalf of Thomas E. Frank.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Absent;
Mr. Phillips, Yea**

**M 314 09
Adjourn**

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to adjourn at 7:34 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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