



Sussex County Council Agendas & Minutes

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 6, 2006

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 6, 2006 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Lynn J. Rogers	President
George B. Cole	Member
Finley B. Jones, Jr.	Member
Vance Phillips	Member
Robert L. Stickels	County Administrator
David Baker	Finance Director
Hal Godwin	Administrative Assistant
James D. Griffin	County Attorney

M 392 06 Amend and Approve Agenda

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to amend the following Agenda items listed under Hal Godwin, Administrative Assistant, as follows:

2. Discussion and Possible Introduction of a Proposed Ordinance relating to fines for building without a permit.
3. Discussion and Possible Introduction of a Proposed Ordinance relating to fees to petition the Building Code Appeal Board.

;and to approve the Agenda, as amended.

Motion Adopted: 4 Yea, 1 Absent.

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

M 393 06 Approve Minutes

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to approve the minutes of April 25, 2006.

Motion Adopted: 4 Yea, 1 Absent.

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

**Corre-
spondence**

Mr. Griffin read the following correspondence:

HILDA DONNELLY, SEAFORD, DELAWARE.

RE: Thank you card for the Tribute in celebration of her 80th Birthday.

**Adminis-
trator's
Report
(continued)**

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

1. Beneficial Acceptance

The Engineering Department has granted Beneficial Acceptance to the following projects:

- **Little Meadows – Phase III, Agreement No. 416, was granted Beneficial Acceptance on May 23, 2006. The developer is Little Meadows, Inc., and the project is located 3,000 feet west of US 13 and Delaware Route 20 in the Blades Sanitary Sewer District, consisting of 60 single-family lots.**
- **The Refuge at Dirickson Creek – Phase VII, Agreement No. 617, was granted Beneficial Acceptance on June 5, 2006. The developer is Bunting-Gray, L.L.C., and the project is located on Route 54 west of Shady Park in the Fenwick Island Sanitary Sewer District, consisting of 36 single-family lots.**

Included with this report is a fact sheet on each of the projects.

2. US 113 Transportation Alternatives

The Delaware Department of Transportation will be conducting a series of Public Workshops in June to allow the public to review alternatives for US 113. Included with this report is a list of those workshops.

3. Dorothy Hurd - Library Assistant - Milton Library

It is with sadness that I inform Council of the passing of Dorothy Hurd, Library Assistant at the Milton Library, on Friday, May 26, 2006, after a lengthy battle with cancer. Dorothy was hired on October 1, 1997. In addition to her responsibilities with the County as a librarian she was an artist, and she and her husband exhibited their work at the library at various times.

4. Holly Oak Suburban Community Improvements Project

The election for the Holly Oak Suburban Community Improvements Project will be held on Saturday, June 10, 2006, from 9:00 a.m. to 6:00 p.m. at the Inland Bays Regional Wastewater Facility.

Wastewater Agreements **Mr. Godwin, Administrative Assistant, presented wastewater agreements for the Council's consideration.**

M 394 06	A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the
Execute	recommendation of the Sussex County Engineering Department, for Sussex
Agreement	County Project No. 81-04, Agreement No. 559, that the Sussex County
M 394 06	Council execute a Construction Administration and Construction
Execute	Inspection Agreement between Sussex County Council and Breakwater,
Wastewater	LLC, for wastewater facilities to be constructed in Breakwater Estates,
Agreement/	located in the West Rehoboth Expansion of the Dewey Beach Sanitary
Breakwater	Sewer District.

(continued) Motion Adopted: 4 Yea, 1 Absent.

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

<p>M 395 06 Execute Wastewater Agreement/ Walker Acres</p>	<p>A Motion was made by Mr. Phillips, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 624, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Ship Builders, LLC, for wastewater facilities to be constructed in Walker Acres, located in the Ellendale Sanitary Sewer District.</p>
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Motion Adopted: 4 Yea, 1 Absent.

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

Introduction of Proposed Ordinance	<p>Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE III §62-10 TO INCREASE THE LATE CHARGE FOR BEGINNING CONSTRUCTION PRIOR TO OBTAINING A COUNTY BUILDING PERMIT”. The Proposed Ordinance will be advertised for Public Hearing.</p>
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Introduction of Proposed Ordinance	<p>Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE I, §52-31 RELATED TO THE FEE FOR FILING APPEALS FROM THE ACTION OF THE BUILDING OFFICIAL TO THE BOARD OF ADJUSTMENTS AND APPEALS. The Proposed Ordinance will be advertised for Public Hearing.</p>
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**Review of
Sussex
County
Code
Relating
to Signs**

Mr. Godwin reported that he reviewed the Sussex County Code relating to signs following concerns expressed by Councilmembers at the May 9th Council meeting. He stated that he found that the County's laws appear to be appropriately applied to the various land uses in the Zoning Code. He stated that there does appear to be a possible conflict with Delaware State Law in Section 115-24, Paragraph C, of the Sussex County Code regarding directional signs.

**Review of
Sussex
County
Code
Relating
to Signs
(continued)**

Mr. Godwin reported that, in regards to small temporary signs which are sometimes considered directional along the roadway, the Sussex County Code, Section 115-159, Paragraph G, permits a temporary real estate sign indicating sale, rental, or lease of the premises on which it is located. These signs are not permitted to be located off-premises. The Sussex County Code does not permit the many signs that are placed along the shoulder of the road advertising building projects, etc.

Mr. Godwin noted that the only deterrent in the Code relating to signs is that if someone already has an illegal sign, they cannot get a permit for another sign on the same property.

Mr. Godwin reported that Section 115-158 of the County Code clearly states that in all districts, certain signs are not permitted, i.e. flashing signs, except for time and temperature indicators and animated signs.

Mr. Cole stated that the County's sign ordinance needs to be amended to address violations.

The Councilmembers agreed that the County's entire sign ordinance needs to be reviewed and updated.

**Legal
Counsel**

James D. Griffin, County Attorney, excused himself from participating in the Public Hearing on the appeal filed by Liborio, LP. Richard E. Berl, Jr., Assistant County Attorney, joined the meeting to provide legal counsel to the Council during the Public Hearing.

**Public
Hearing/
Appeal/
Subdivision
No. 2002-39**

A Public Hearing was held on an appeal filed by Liborio, LP on the Sussex County Planning and Zoning Commission's decision to approve an application of Christine Reece and William Cugno for the subdivision of land in a MR Medium Density Residential District in Indian River Hundred, Sussex County, by revising an existing open space into a building lot, located southwest of Fairfield Road, 250 feet north of Route 24, within Fox Hollow Subdivision. (Subdivision No. 2002-39)

Mr. Berl explained that the Public Hearing was on an appeal of a re-subdivision, which was previously approved by the Planning and Zoning Commission involving a subdivision known as Fox Hollow (Subdivision No. 2002-39), an application of Christine Reece and William Cugno. Mr. Berl

noted that there was an initial Public Hearing before the Planning and Zoning Commission a couple of years ago; the Commission approved a re-subdivision of what had originally been classified as an open lot into a building lot. The Commission's decision was subsequently appealed to the Supreme Court with Judge Graves in Superior Court eventually ruling that there was insufficient record to make a decision. As a result, there was a subsequent Public Hearing before the Planning and Zoning Commission and the Commission approved the application again with a more detailed record and Finding of Facts. The Commission's approval was subject to the following conditions:

Public
Hearing/
Appeal/
Subdivision
No. 2002-39
(continued)

1. There shall be only one (1) single family dwelling built on the lot.
2. A fence or screening landscape buffer of at least six (6) feet in height shall be constructed or maintained between the commercial property and this parcel with the exception of an area at least 30 feet from Fairfield Road so as to not impede safe pedestrian or vehicular traffic.

Mr. Berl explained that the Appeal before the Council on this date was made by one of the objectors, Liborio, L.P.

Lee Ramunno was present on behalf of Liborio, L.P., a partnership that his family owns. He stated that the partnership owns Peddlers Village Shopping Center, which is part of Fox Hollow; that they also own two residential lots in Fox Hollow; that the issue at hand is 1.2 acres of open space; that in 1973, the developer set aside the lot as open space; that the recorded plan clearly labeled it as open space; that the 1987 survey refers to the lot as open space; that the Planning and Zoning Commission found it as open space; that the lot was never deeded to the Civic Association; that the developer, Mr. Nowakowski, kept it in his own name and did not maintain it; that the fact that the developer kept the lot in his name does not eliminate the reference to open space; that the grass was rarely cut; that every single buyer that bought lot(s) in Fox Hollow Subdivision relied on the fact that there was 1.25 acres of open space; that every property owner in the subdivision has a vested right in the open space as an amenity since it was a part of the plan; that Mr. Nowakowski is now proposing that he be allowed to build a house there; that the people who have written letters in support of the application have done so to get rid of the "eyesore" (the lot that is not maintained); that this parcel is the only open space in the subdivision; that he questions the validity of the percentage of signatures (51%) of the home owners who support the application; that in order to change the open space to a building lot, every single owner should have to agree that they do not want the open space anymore; that the open space provides a buffer between the residential area and the shopping center; that if this is allowed to occur, it would be setting a bad precedent; that open space is open space and can never be changed; that a re-subdivision is bound by new regulations, which would now require approximately seven acres of open space and that the Commission ignored this fact; and that approval of the application would take away the residents' property rights.

Mr. Rogers emphasized that this Public Hearing was not a new Public Hearing on the application, but a review of the Planning and Zoning Commission's Public Hearing and their decision.

It was noted that the Councilmembers were provided a copy of the minutes of the Planning and Zoning Commission's Public Hearing.

Mr. Rogers questioned if the word "perpetuity" was in the deed in regards to open space.

Public
Hearing/
Appeal/
Subdivision
No. 2002-39
(continued)

Mr. Lank, Director of Planning and Zoning, noted that no record exists stating that Mr. Nowakowski was required to transfer the lot to the Homeowners Association and the lot was never transferred. He noted, however, that the lot was labeled as open space for the project and that it was not a numbered lot in the subdivision.

Mr. Rogers questioned if the term "open space" attached to a subdivision is legally binding. Mr. Berl responded that he would need to do some research prior to responding to that question.

Mr. Lank noted that there were some duplications found on the petitions submitted in favor of the application; that the names were hard to read; and that the 51 percent is questionable.

Ted Nowakowski, Jr. of 4 South Lake Terrace, Rehoboth, stated that the parcel of land in question was set aside for the Nowakowski family; that the parcel was used for stockpiling while the subdivision was being built; that over the next few years, the soil was sold; that there has been a garden on the site; that he also ran a firewood business on the site for several years; and that Mr. Ramunno has three times made offers to purchase the property.

Mr. Berl asked Mr. Nowakowski to limit his comments to why he believes the Planning and Zoning Commission were correct in making their decision to approve the application.

Mr. Nowakowski stated that the application should be treated as a request for his father to be able to liquidate a piece of property he has paid taxes on since 1973; that it is being taxed as a vacant lot; that in none of the original covenants, which people bought lots under, was there ever a mention that this lot was to be conveyed to the homeowners; and that in 1973, there was no such thing as "Open Space".

It was noted that the tax record for the property needs to be reviewed to determine whether it is being assessed as residential or open space.

Bill Chasanov, Attorney for the Nowakowski family, stated that the issue is a legal matter; that there were twelve different reasons that were given at the hearing that was held on October 27, 2005 as to why the application

should be granted and that they concur with those twelve reasons; that they agree with the recommended conditions; and that the requirement for fencing would address the trash problem.

The Public Hearing was closed.

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| M 396 06
Defer
Action on
Appeal
M 396 06
Defer
Action on
Appeal/
Liborio, LP
(continued) | A Motion was made by Mr. Phillips, seconded by Mr. Jones, to defer action on the appeal filed by Liborio, LP on the Sussex County Planning and Zoning Commission's decision to approve an application of Christine Reece and William Cugno for the subdivision of land in a MR Medium Density Residential District in Indian River Hundred, Sussex County, by revising an existing open space into a building lot, located southwest of Fairfield Road, 250 feet north of Route 24, within Fox Hollow Subdivision.

Motion Adopted: 4 Yea, 1 Absent.

Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
 Mr. Dukes, Absent; Mr. Jones, Yea;
 Mr. Rogers, Yea |
| Legal
Counsel | Mr. Berl, Assistant County Attorney, left the meeting and Mr. Griffin, County Attorney, rejoined the meeting. |
| Oak
Orchard
SSD/
Contract
99-19E/
Change
Order | Mr. Izzo, County Engineer, presented Change Order No 1 to Contract E for the Oak Orchard Sanitary Sewer District. Mr. Izzo reported that the quantities on the bid form were not accurate due to actual depths and lengths of sewer line. He noted that inaccuracies increased the value of the contract significantly and the County needs to pay the contractor, Metra Industries, at the higher bid value. Mr. Izzo advised that when the rates were set, some contingent costs were included that would cover this overage, however, he noted that it would reduce significantly the margin of error for the last two contracts. |
| M 397 06
Approve
Change
Order/
Oak
Orchard
SSD/
Contract
99-19E | A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Engineering Consultants, CABA Associates, Inc., for Sussex County Project No. 99-19E "Frames Point Collection & Conveyance System" with Metra Industries, Inc., that Change Order No. 1 be approved in the amount of \$101,861.66, which increases the contract total to \$1,389,278.66.

Motion Adopted: 3 Yea, 1 Abstention, 1 Absent.

Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Abstention;
 Mr. Dukes, Absent; Mr. Jones, Yea;
 Mr. Rogers, Yea |
| Sewer Line
Renovation
Project | Julie Cooper, Project Engineer, presented the Balancing Change Order for the Sewer Line Renovation Phase III Project. She stated that Phase III of the sewer rehab in the Bethany and South Bethany Sanitary Sewer Districts |

has been completed. Ms. Cooper stated that the contingent items for repairs were not needed, resulting in a credit change order in the amount of \$6,934.00.

M 398 06 A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the
Substantial recommendation of the Sussex County Engineering Department, that
Completion/ Sussex County Council grant Substantial Completion, effective May 23,
Sewer Line 2006 to Allstate Power-Vac, Inc., for Sussex County Project No. 05-09,
Renovation Sewer Line Renovation Phase III; and further, that Balancing Change
Project Order No. 1 be approved in the amount of \$6,934.00, thereby decreasing
M 398 06 the contract amount from \$364,400.00 to \$357,466.00, and that final
(continued) payment be made and any held retainage be released in accordance with the
 terms and conditions of the contract documents.

Motion Adopted: 4 Yea, 1 Absent.

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

Requests Mr. Baker presented grant requests for the Council's consideration.

M 399 06 A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give
Community \$3,000.00 from Mr. Jones' Community Improvement Grant Account to the
Improve- Town of Greenwood for Christmas lights.
ment
Grant **Motion Adopted:** 4 Yea, 1 Absent.

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

M 400 06 A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$400.00
Youth (\$100.00 each from Mr. Dukes', Mr. Jones', Mr. Phillips' and Mr. Rogers'
Activity Youth Activity Grant Accounts) to Read Aloud Delaware for book
Grant shelving.

Motion Adopted: 4 Yea, 1 Absent.

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

M 401 06 A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$500.00
Council- (\$125.00 each from Mr. Dukes', Mr. Jones', Mr. Phillips', and Mr. Rogers'
manic Councilmanic Grant Accounts) to the Greater Georgetown Chamber of
Grant Commerce for the Summer Festival.

Motion Adopted: 4 Yea, 1 Absent.

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

**M 402 06
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$400.00 (\$200.00 each from Mr. Dukes' and Mr. Phillips' Councilmanic Grant Accounts) to the Laurel Lions Club for the Lions Vision Days fundraiser.

Motion Adopted: 4 Yea, 1 Absent.

**M 402 06
(continued)**

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

**M 403 06
Youth
Activity
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$1,000.00 from Mr. Phillips' Youth Activity Grant Account to Families Connected, Inc. for summer program expenses.

Motion Adopted: 4 Yea, 1 Absent.

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

**M 404 06
Youth
Activity
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$500.00 from Mr. Phillips' Youth Activity Grant Account to the Dagsboro Boys & Girls Club for scholarship funding.

Motion Adopted: 4 Yea, 1 Absent.

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

**M 405 06
Recess**

At 11:56 a.m., a Motion was made by Mr. Cole, seconded by Mr. Phillips, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene

Mr. Rogers called the Council back into session at 1:30 p.m.

**Members
Present**

The following were present for the afternoon session:

Lynn J. Rogers	President
Dale R. Dukes	Vice President
George B. Cole	Member
Finley B. Jones, Jr.	Member
Robert L. Stickels	County Administrator
Hal Godwin	Administrative Assistant
James D. Griffin	County Attorney
Lawrence B. Lank	Director of Planning and Zoning

Request to Withdraw Application **Mr. Lank reported that a letter dated June 4, 2006 was received from Ken and Joan Gillam requesting permission to withdraw their application for Conditional Use (No. 1652).**

M 406 06 Authorize Withdraw of C/U **A Motion was made by Mr. Dukes, seconded by Mr. Jones, to authorize the withdraw of Conditional Use No. 1652, as requested by the applicants, Ken and Joan Gillam.**

No. 1652 **Motion Adopted: 4 Yea, 1 Absent.**
M 406 06 **Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Absent;**
(continued) **Mr. Dukes, Yea; Mr. Jones, Yea;**
 Mr. Rogers, Yea

Public Hearing/ C/Z **A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO AN AR-1 – RPC AGRICULTURAL RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 19.84 ACRES, MORE OR LESS” (Change of Zone No. 1607) and “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 – RPC AGRICULTURAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A RECREATIONAL/THERAPEUTIC EQUESTRIAN FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 19.84 ACRES, MORE OR LESS” (Conditional Use No. 1678) filed on behalf of Marine Farm, LLC.**

No. 1607 and C/U
No. 1678

The Planning and Zoning Commission held a Public Hearing on these applications on May 11, 2006 at which time they deferred action for further consideration.

(See the minutes of the meeting of the Planning and Zoning Commission dated May 11, 2006 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing. The summary was admitted as part of the Council’s record.

Mr. Griffin clarified that the Public Hearing would deal with two applications: a Conditional Use and a Change of Zone. He explained that the proposed Conditional Use activity would not be permitted under the existing zoning; for this reason, only if the Change of Zone is approved would the Conditional Use be applicable for consideration.

Mr. Lank explained that he distributed to each Councilman a copy of Ordinance No. 1770, a rezoning application filed on behalf of Marine Farm, LLC, which was approved on April 19, 2005. The document outlines the conditions imposed and the Findings of Fact.

Tim Willard, Attorney; Jason Palkewicz of McCrone, Inc.; Frank Kea, Land Designer and representative for the Developer; and Kerri Shelly, Georgia Truitt, and Kelly Smith of the Southern Delaware Therapeutic and Recreational Horseback Riding, Inc. (SDTRHR, Inc.) were present on behalf of the application. They stated that they propose a state-of-the-art therapeutic riding facility that would be equipped to serve the present and future demands of special needs and at-risk individuals in the community.

**Public
Hearing/
C/Z
No. 1607
and
C/U
No. 1678
(continued)**

Mr. Willard stated that they previously distributed an Exhibit Booklet in reference to the use of the property and site plan information. Mr. Willard also distributed a copy of Ordinance No. 1770, filed on behalf of Marine Farm, LLC, which was adopted on April 19, 2005. Ordinance No. 1770 authorized a change of zone from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District - Residential Planned Community for a parcel of land containing 373.82 acres, more or less. It was noted that the original proposal was for a mixed residential development containing 650 residences, including a roadway connection to Jimtown Road. The County Council imposed conditions on the approval of Ordinance No. 1770; one of the conditions was that the 20 lots with roadway connection to Jimtown Road be eliminated.

Mr. Willard explained that the SDTRHR would not be allowed under MR-RPC zoning and therefore, the application for a change of zone to AR-RPC was submitted.

Frank Kea of Caldera Properties stated that since the 20 acres was not going to be utilized for the Residential Planned Community, they offered the site to the SDTRHR as a charitable contribution; that they plan to give them 19.84 acres of land which includes 12 acres that would be cleared with the remainder being non-tidal wetlands; that there is a stream around three sides of the site; that the land has been appraised at \$2 million; that they have agreed to donate \$500,000 in services (engineering, architecture, etc.); that the SDTRHR has been located in the area for approximately 15 years; that they have operated on the Marine Farm site and across the street at an existing horse stable facility; that the facility they are currently located in is closing to public boarding and they need another home.

Mr. Willard and Mr. Kea stated that the site is located in the Level 2 Area – the Environmentally Sensitive Developing District; that it is surrounded by both agricultural and residential use; that a Traffic Impact Study was not required; that the Office of State Planning Coordination stated that the rezoning is a down-zoning, which is in compliance with the County’s Land Use Plan and does not require a PLUS review, and further, that they would like to review the site plan, if the application is approved; that the proposal

Public
Hearing/
C/Z
No. 1607
and
C/U
No. 1678
(continued)

would revise the Marine Farm site plan; that there would be a parking lot in the front with 60 spaces that would be lighted for safety purposes; that in their current location, they are serving approximately 12 riders; that they plan to serve fifty riders at the new facility; that the project would include a barn, an indoor and outdoor arena, tack room, stables, administrative office, meeting room, living space for an on-site attendant, and fenced paddock and pasture areas; that the tree buffer would remain; that they would offer private lessons in addition to serving individuals with special needs since private lessons would provide additional income; that traffic would be minimal and that there is no development potential for the site; that the property would be deeded over to SDTRHR; that there would be no impact on the pond/wetlands including getting sewer to Marine Farm; and that there would be a Nutrient Management Plan.

Mr. Willard submitted proposed conditions and findings of fact for the Council's consideration.

Kelly Smith, Kerri Shelly and Georgia Truitt spoke on behalf of the SDTRHR, Inc. They stated that the business operated on the Marine Farm property beginning in 1988 and operating there for fifteen years; that in 2003 they had to relocate across the street from the Marine Farm property where it has been operating since; that the program's mission is to provide equine assisted therapy promoting the physical, emotional and educational growth of children and adults with special needs; that they presently serve twenty-five participants per week; that there is documented evidence of the physical and psychological benefits derived from equine-assisted therapy; that their clients and volunteers arrive by appointment and traffic is minimal; that the business is quiet and low profile; that many participants will be entering from Robinsonville Road; that they operate in compliance with the new, more strict manure management regulations that will go into effect in the beginning of 2007; that potential odors would be minimized as well as the environmental impact; that manure would be contained so as to avoid runoff; that there would be a stormwater pond to catch any runoff from the parking lot; that the wetlands would remain undisturbed; that their presence in the area since 1988 proves that the use would not have a negative impact on the area; and that if they are unable to relocate back to the Marine Farm property, it is very probable that they would have to close their doors.

Mr. Willard submitted letters in support of the SDTRHR, Inc. from Pam Mousley of Pam An Stables, Jay Prettyman, Jeff Millman, Angie and Barry Sipple, Sally Fintel, Dorian Kleinstuber, and John F. Eliason of the Kiwanis Club.

Public comments were heard.

Gail Shafer (a resident of Millsboro) spoke in support of the application. She told the Council of the benefits that her brother-in-law receives from the SDTRHR's programs.

Debbie Hickman Layton, a resident of Dagsboro, spoke in support of the application. She told the Council of the benefits that her son receives from the SDTRHR's programs.

Serinda Conner, a resident of Milton, spoke in support of the application. She referred to multiple newspaper articles that explain the benefits of therapeutic riding. She stated, in response to concerns raised by the residents, that the facility would create very little dust; that allergies cannot really be a big concern because the same horses and others have lived for years in close proximity to Jimtown; that there are two horse farms, both approximately 5/10 – 8/10 of a mile away; that the proposed location is 6/10 of a mile away; that horses do not create a lot of odor like some other farm animals, i.e. pigs, chickens or cows; that the SDTRHR operates in compliance with equine waste management laws of Delaware; and that any fundraising events would conclude by 9:00 p.m.

Public
Hearing/
C/Z
No. 1607
and
C/U
No. 1678
(continued)

Lucinda Allen of Jimtown spoke in opposition to the application. She stated that she doesn't want horses in Jimtown; that she doesn't want her way of life and peace to be invaded; that she does not want to be disturbed; that she doesn't want her neighborhood destroyed; and that she doesn't want to be forced to move away.

In response to questions raised by Councilman Rogers, Ms. Allen stated that the horses have not disturbed her in the past although she did leave the area for a couple of years. Mr. Rogers questioned Ms. Allen as to whether she understood that the land would be deeded to SDTRHR and out of the developer's hands, which would make the Marine Farm development 20 acres farther away from her property.

Ms. Allen responded that she "heard what they said" but she doesn't know what they'll do.

Betsy Farlow stated that she is concerned about what might happen in the future and about the change in zoning; that she doesn't want to see "any door left open" for any kind of other development other than what is currently described; that she is concerned about the wetlands and streams; and that she has heard that current regulations are insufficient and that in the Land Use Plan Update, they may be changed somewhat.

Ornia Kemp, a resident of Jimtown, read a letter from Rosalyn Echols, Chairperson of the Concerned Citizens of Jimtown and Surrounding Communities, in opposition to the Marine Farm applications. She noted that Ms. Echols could not be in attendance. The Councilmembers stated that they had a copy of the letter and attachments.

James White, a resident of Jimtown, expressed concern that there would be odor from the horse farm; that the proposed use would interfere with the lives of the residents of Jimtown; that the proposed use should not be

located in a residential area; that he would prefer that houses be built on the property; and that the Councilmembers would not want this use in their neighborhoods.

There were no additional comments and the Public Hearing.

M 407 06 **A Motion was made by Mr. Dukes, seconded by Mr. Cole, to defer action on**
Defer **Change of Zone No. 1607 and Conditional Use No. 1678, applications of**
Action **Marine Farm, L.L.C.**

M 407 06 **Motion Adopted: 3 Yea, 2 Absent.**

Defer Action **Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Absent;**
on C/Z **Mr. Dukes, Yea; Mr. Jones, Absent;**
#1607 & **Mr. Rogers, Yea**
C/U #1678
(continued)

(Mr. Jones was out of the room during the vote.)

Public **A Public Hearing was held on the Proposed Ordinance entitled “AN**
Hearing **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN**
(C/U **AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SINGLE-**
No. 1651) **FAMILY DETACHED CONDOMINIUMS (32 UNITS) TO BE LOCATED**
ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES
AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 8.21
ACRES, MORE OR LESS” (Conditional Use No. 1651) filed on behalf of
Jeff Hamer/Oasis Property Development, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on May 11, 2006 at which time they deferred action. On May 25, 2006, the Commission recommended that the application be approved with conditions.

(See the minutes of the meeting of the Planning and Zoning Commission dated May 11 and May 25, 2006 for additional information on the application, correspondence received, the Public Hearing before the Commission and the Commission’s recommendation of approval.)

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing. The summary was admitted as part of the Council’s record.

Mr. Lank distributed a booklet which was previously submitted into the record.

The Council found that Curtis Ricketts of Oasis Property Development, LLC was present with Tim Willard, Attorney. Mr. Willard reviewed the information in the booklet. They stated that the application is for 32 single family detached residential units; that there would be a condominium-type ownership; that the development would be known as The Villas at Harmon

Public
Hearing
(C/U
No. 1651)
(continued)

Bay; that the density of the project would be 3.9 units per acre which is consistent with nearby developments; that the federal wetlands would be undisturbed; that they plan to work in cooperation with the State of Delaware Historical and Cultural Affairs in allowing access to recover information from the Avery's Rest archaeological site; that the development follows *Better Models for Development*; that the development was designed with a focus on pedestrians and the neighborhood; that a lot of the open space is to be used as a public area while trying to maintain private open space; that there would be two parking spaces per unit located in garages; and that additional parking would be provided in the front of the project near the thoroughfare.

Mr. Willard stated that the applicant has agreed to the conditions proposed by the Planning and Zoning Commission, with a couple of amendments:

- The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications except as provided for on the site plan. (Condition 8)
- The developer will cooperate with the Division of Historical and Cultural Affairs concerning possible archaeological sites, and more specifically the "Avery's Rest" archaeological site as agreed to between the developer and SHPO. (Condition 15)

Mr. Cole questioned the amount of parking proposed and the design of the development.

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

M 408 06
Adopt
Ordinance
No. 1850
(C/U
No. 1651)

A Motion was made by Mr. Cole, seconded by Mr. Jones, to Adopt Ordinance No. 1850 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SINGLE-FAMILY DETACHED CONDOMINIUMS (32 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 8.21 ACRES, MORE OR LESS" (Conditional Use No. 1651) filed on behalf of Jeff Hamer/Oasis Property Development, LLC, with the following conditions:

1. The maximum number of dwelling units shall not exceed 32.
2. All entrance, intersection, roadway, and multi-modal pathway improvements required by DelDOT shall be completed by the developer in accordance with DelDOT's determination.
3. Recreational facilities and amenities, including a swimming pool, shall be constructed and open to use by residents of the development within two (2) years of the issuance of the first building permit.
4. The development shall be served as part of an existing or extended Sussex County Sanitary Sewer District in accordance with the Sussex County Engineering Department's specifications and regulations. If

M 408 06
Adopt
Ordinance
No. 1850
(C/U
No. 1651)
(continued)

upgrades in a pump station are required to service this development, the improvements shall be made by the developer at the developer's expense.

5. The development shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
6. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
7. Site plan review shall be subject to the approval of the Planning and Zoning Commission.
8. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications except as provided for on the site plan.
9. The developer shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
10. Construction, site work, grading and deliveries of construction materials, landscaping materials and fill, on off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.
11. No structure shall exceed 42 feet in height.
12. A system of street lighting shall be provided by the developer and the location shall be shown on the final site plan.
13. There shall be sidewalks fronting or accessing all properties on at least one side of each street within the development.
14. Addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
15. The developer will cooperate with the Division of Historical and Cultural Affairs concerning possible archaeological sites, and more specifically the "Avery's Rest" archaeological site as agreed to between the developer and SHPO.
16. Parallel parking spaces along driveways shall be a minimum of 10 feet wide by 22 feet wide.

Motion Adopted: 4 Yea, 1 Absent.

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

Public
Hearing
(C/U
No. 1653)

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A PLUMBING BUSINESS WITH PARKING AREA TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.56 ACRES, MORE OR LESS" (Conditional Use No. 1653) filed on behalf of Robert Rahn.

The Planning and Zoning Commission held a Public Hearing on this application on May 11, 2006 at which time they deferred action. On May 25, 2006, the Commission recommended that the application be denied.

(See the minutes of the meeting of the Planning and Zoning Commission dated May 11 and May 25, 2006 for additional information on the application, correspondence received, the Public Hearing before the Commission and the Commission's recommendation of denial.)

Public
Hearing
(C/U
No. 1653)
(continued)

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.

The Council found that Robert Rahn was present on behalf of his application. He referred to the Commission's statement that "this application is not consistent with the surrounding area" and he stated that there are several small businesses located in the area – HVAC, electrical, and siding contractors and a beauty shop. He stated that he operates a plumbing business; that only a few vehicles are parked on the site; that most of the trucks are taken home at night; that there would be no retail activities on the site; that he lives on the site; that he would like to construct a small garage for storage; that business hours are 7:00 a.m. to 5:00 p.m.; that he would plant a tree buffer along the property line; that he purchased the lot from an adjacent property owner; that the business has been operating on the site for approximately two years; that he did receive a violation from the County; and that he was previously unaware that he needed a conditional use permit.

Mr. Cole suggested that parking be placed in the rear of the property within a fenced in area to maintain the residential character of the property.

The Public Hearing was closed.

M 409 06
Defer
Action on
C/U
No. 1653

It was the consensus of the Council to direct Mr. Lank to develop proposed conditions for the Council to consider should they decide to act favorably on the application.

A Motion was made by Mr. Jones, seconded by Mr. Cole, to defer action on Conditional Use No. 1653 filed on behalf of Robert Rahn and to leave the record open for the submission of proposed conditions.

Motion Adopted: 4 Yea, 1 Absent.

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

M 410 06

A Motion was made by Mr. Cole, seconded by Mr. Jones, to adjourn at 4:32

Adjourn p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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