



Sussex County Council Agendas & Minutes

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 12, 2007

Call to Order A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 12, 2007 at 6:30 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Dale R. Dukes	President
Finley B. Jones, Jr.	Vice President
George B. Cole	Member
Vance Phillips	Member
Lynn J. Rogers	Member
Susan M. Webb	Finance Director
Hal Godwin	Assistant to the County Administrator
James D. Griffin	County Attorney

M 349 07 A Motion was made by Mr. Jones, seconded by Mr. Phillips, to amend the
Approve Agenda by deleting "Introduction of Proposed Zoning Ordinances", and to
Agenda approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

M 350 07 A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the
Approve minutes of May 8, 2007.
Minutes

Motion Adopted: 5 Yeas.

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

Corre- Mr. Griffin read the following correspondence:
spondence

**DELAWARE ENVIROTHON, DOVER, DELAWARE.
RE: Letter in appreciation of the Council's recent donation.**

Sussex Tech The County Council congratulated the Sussex Tech Lady Ravens on
Lady winning the 2007 State Softball Championship on June 2, 2007. The Lady
Ravens Ravens defeated top-seeded Caravel (6-0).

M 351 07 A Motion was made by Mr. Phillips, seconded by Mr. Jones, to Adopt the
Procla- Proclamation entitled "CONGRATULATING THE SUSSEX TECH LADY
mation RAVENS ON WINNING THE 2007 STATE SOFTBALL

M 351 07 CHAMPIONSHIP”.

**Adopt
Procla-
mation**

Motion Adopted: 5 Yeas.

(continued)

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

**Presentation
of Procla-
mation**

The Council presented the Proclamation to the Sussex Tech Lady Ravens Softball Team, who were in attendance. Coach John Marvel and Coach Eric Swanson (Sussex County Sheriff) were also in attendance.

**Adminis-
trator’s
Report**

Mrs. Webb read the following information in the Administrator’s Report:

1. Heron Bay Development

The County is reviewing applicable regulations and options relative to easements and buffers for the Heron Bay Development. We will soon update the County Council regarding this matter.

2. Legislative Update – Realty Transfer Tax Related Proposals

- House Substitute No. 1 for House Bill No. 111 – Attached is a copy of House Substitute No. 1 for House Bill No. 111 as introduced by Representative Bruce Ennis. As per the synopsis of the bill, the realty transfer tax for any new major subdivisions would revert to the State of Delaware if the major subdivisions are located in non-growth or Level 4 areas. The effect of this bill would be a decrease in the counties’ portion of realty transfer tax annually.**
- House Substitute No. 2 for House Bill No. 111 – Attached is a copy of a proposed bill to change the allocation of realty transfer tax only for new major subdivisions in non-growth or Level 4 areas when the density approved by a county government exceeds that which was allocated in the certified comprehensive plan.**
- House Bill No. 186 – This bill would not affect realty transfer tax, but would prevent county and local governments from permitting new major subdivisions that are outside growth zones or within Level 4 areas. Attached is a copy of the bill.**

Mr. Godwin and Mr. Baker will be watching these bills closely, as they can have a major effect on Sussex County government.

**Legislative
Update**

Mr. Godwin presented the following legislative update:

House Bill No. 111

The first version of this Bill took away all Realty Transfer Tax in Level 4 Areas.

House Substitute No. 1 reduced it to major subdivision approvals.

Representative Ennis asked David Baker and Hal Godwin to draft a replacement Bill and David Baker and James Griffin did that (House Substitute No. 2). Since House Substitute No. 2 was submitted, Representative Ennis has raised more issues of concern that the County's Substitute Bill did not address.

House Substitute No. 2 will be considered by the Land Use and Infrastructure Committee on Wednesday, June 20, 2007; this legislation will be discussed along with House Bill No. 186.

House Bill No. 186

This Bill states that the County cannot approve any subdivisions in Level 4 areas. This takes away not only Realty Transfer Tax, but also the County Council's authority to make land use decisions in Level 4 areas.

House Bill No. 30

This "Stop the Spray" Bill remains on the House Ready List. This Bill affects the County's ability to spray wastewater on State-owned lands.

Mr. Godwin stated that the Delaware Conservancy has endorsed two of the County's amendments to House Bill No. 30. Amendment Nos. 2 and 3 are necessary to the County; these amendments would grandfather the current spray site at Wolfe Neck and allow the County to negotiate for additional spray areas in the same district.

**Local
Law
Enforce-
ment
Grant**

Mr. Godwin presented the following request for funding through the Revenue Sharing for Local Law Enforcement Grant Program:

Lewes	\$ 6,009.21	Portable Radios, Security Camera System, etc.
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**M 352 07
Approve
Grant**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the Local Law Enforcement Grant to the City of Lewes, as presented.

Motion Adopted: 5 Yeas.

**M 352 07
(continued)**

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

**Proposed
Draft
Ordinance/
Source
Water
Protection**

Mr. Godwin presented a Proposed Draft Ordinance (Draft) relating to Source Water Protection for the Council's consideration. The State mandated that counties and municipalities with populations of 2,000 persons or more, with the assistance of DNREC, adopt as part of their 2007 Comprehensive Land Use Plans and Ordinances, maps and ordinances referencing water resource protection areas, wellhead protection areas, and recharge areas (Source Water Protection Law).

Mr. Godwin noted that the County entered into a contract with Duffield Associates for the review and preparation of ordinances relating to Wellhead and Groundwater Resource Protection. The County Council also established a Citizens and Technical Advisory Committee in accordance with State Law. This Committee met and developed the Draft to present the Council.

Mr. Godwin introduced the members of the Committee that were present; also present were representatives from DNREC and Nick DiPasquale of Duffield Associates.

Mr. DiPasquale respectfully declined to speak since, at the Committee's request, he did not participate in most of the Committee's meetings.

Kevin Burdette, a member of the Committee, reviewed the basic content of the Draft and he stated that the overall body of the Draft does meet the intent of State Law. He stated that, in accordance with the Draft, any existing well would be exempt. He also stated that the Source Water Protection Area Maps were accepted and that periodically, these maps would be updated with the Council's approval. He noted that the Draft Ordinance gives the Council the flexibility to agree or disagree with the Source Water Protection Area Maps and the Excellent Recharge Area Maps.

Mr. Godwin clarified that the Source Water Protection effort is only for larger public drinking wells; it would not put any land use regulations on private wells. Mr. Godwin noted that the Committee made adjustments to the first Draft to accommodate comments made by DNREC. DNREC has submitted another list of comments in response to the second Draft.

Mabel Granke, a member of the Committee, stated that she believes the Proposed Draft Ordinance is flawed. She advised that she submitted to the County Council a "minority report" in which she stated that the Draft exempts current public wellheads and they also need protection; that there is real concern regarding what is allowed for impervious surface; and that augmentation or alternatives should be allowed but they must have some kind of oversight.

**Proposed
Draft
Ordinance/
Source
Water
Protection
(continued)**

Dan Kramer, a member of the Committee, stated that a majority of the Committee supports the overall Proposed Draft Ordinance. Mr. Kramer suggested that the County Attorney will have to do research to make sure that the content of the Draft Ordinance correlates with State Law.

John Barndt, Program Manager at DNREC, stated that he was present to represent Kevin Donnelly, Director, Division of Water Resources. Mr. Barndt stated that the purpose of the legislation is to direct the municipalities and counties to develop protection measures for their wellhead areas and excellent groundwater recharge areas. Mr. Barndt distributed maps delineating these areas.

Mr. Barndt reported that there are three basic aspects where they do not think that the Draft meets State Law:

- The Draft only protects wells within “safe zones” while leaving the area between the outermost edge of the safe zone and the WHPA boundary completely unprotected.
- The Draft sets forth procedures by which the Sussex County Council can change the boundaries of the Excellent Groundwater Recharge Area Maps. It is recommended that the maps be approved by the Council only after consultation with a licensed Geologist.
- The language in the Draft needs clarification in regards to the reference that “any well in existence prior to the adoption of this Ordinance is exempt from the conditions of this Ordinance”.

Mr. Barndt stated that the Council has a letter dated May 30, 2007 from Kevin Donnelly that more specifically addresses these comments.

Mr. Griffin stated that, in considering the number of comments and conflicting points of view in regards to the Draft, he will need input from the Council prior to writing an ordinance for introduction.

The Council decided to schedule a workshop on this matter. The workshop will be scheduled for June 26th in the afternoon.

**DFSSD/
Delaware
Avenue
Extended/
Award of
Contract**

Doug Stewart, Project Engineer, reported on the bid results for the Dagsboro–Frankford Sanitary Sewer District - Delaware Avenue Extended, Contract 04-04. This project comprises the extension of an existing County sewer in Delaware Avenue to provide service to fifteen residential parcels on Delaware Avenue, south of the railroad. Ten companies responded to the Bid Proposal; the low bidder, Bunting & Murray Construction Corporation, submitted a Base Bid and Alternative Bid of \$268,851.57 and \$313,887.57, respectively. Included in the Alternative Bid, the Item C-1 bid amount for the pavement upgrade is \$45,036.00. DelDOT has affirmed that it will execute with the County an agreement to directly pay that amount to the County for that work. The other bids received exceeded the Engineer’s Estimate. A bid summary sheet was distributed.

**M 353 07
Approve
Award of
Contract/
DFSSD/
Delaware
Avenue
Extended**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project No. 04-04, Dagsboro–Frankford Sanitary Sewer District – Delaware Avenue Extension, be awarded to the Bunting & Murray Construction Corporation of Selbyville, Delaware at the Alternative Bid Amount of \$313,887.57, contingent upon the receipt of approval of USDA – Rural Development and the Delaware Department of Transportation.

Motion Adopted: 5 Yeas.

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

**MPHU
Program
Update**

William Lecates, Director of Community Development and Housing; Karen Horton, Housing and Community Development Planner, Delaware State Housing Authority; and Van Temple, Executive Director, Diamond State CLT presented an Implementation Progress Report on the County's Moderately Priced Housing Unit (MPHU) Program.

Mr. Lecates reported that three projects have been previously approved: Bell Point (105 MPHU homes out of 525 units total), Milton Landing (400+ MPHU homes out of 3,785 total and 439,000 square feet of commercial space on 758 acres near Milton), and Almshouse (41 MPHUs out of 163 units on 82 acres south of Georgetown). Mr. Lecates reported that the Almshouse project has been disqualified; however, reapplication is anticipated. Mr. Lecates stated that several pieces of legislation currently being considered by the General Assembly will have a negative impact on the MPHU Program. Mr. Lecates advised that they are working with the County attorneys to develop recommendations for some detail changes to the MPHU Ordinance.

Ms. Horton stated that they are currently working with the County attorneys to develop the necessary draft documents to govern the relationship between the County and the developer and the County and the home buyer.

No action was required by the Council.

**Old
Business/
C/U
No. 1668**

The County Council discussed the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COUNTRY STORE AND STORAGE OF OVERHEAD DOORS AND PARTS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 21,560 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1668) filed on behalf of Karl M. Klink III and Melanie Klink.

**Old
Business/
C/U
No. 1668
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on October 26, 2006 at which time they deferred action; on December 7, 2006, the Commission recommended approval for only a country store and not for a garage door business storage, with ten conditions.

The County Council held a Public Hearing on this application on November 14, 2006 at which time they deferred action.

The Council discussed and agreed with the Commission's recommendation to limit the use to a country store only.

**M 354 07
Amend
Ordinance
Title
(C/U
No. 1668)**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to amend the title of Conditional Use No. 1668, as follows: "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COUNTRY STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 21,560 SQUARE FEET, MORE OR LESS".

Motion Adopted: 5 Yeas.

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

**M 355 07
Adopt
Ordinance
No. 1905
(C/U
No. 1668)**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 1905 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COUNTRY STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 21,560 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1668) filed on behalf of Karl M. Klink III and Melanie Klink, as amended, with the following conditions:

- 1. The use shall be limited to a country store only.**
- 2. Operation of the country store, as stated by the Applicant, shall be Wednesday to Sunday, 9:00 a.m. until 5:00 p.m. during the months of April through December.**
- 3. Type of goods offered for sale shall be consistent with a country/resort store operation, i.e. candles, furniture, crafts, nautical and agricultural related items.**
- 4. There shall be no parking allowed in the front yard setback.**
- 5. One sign, which may be lighted, shall be permitted. The sign shall not exceed 32 square feet in size on both facings.**
- 6. There shall be no outside display of items offered for sale, except that items for sale may be displayed on the porch of the store structure, under the porch roof canopy.**

**M 355 07
Adopt
Ordinance
No. 1905
(C/U
No. 1668)
(continued)**

7. Dumpsters for trash and/or recycling cardboard shall be screened from view by any neighboring properties.
8. Security lighting shall be downward directed so as to not adversely affect neighboring properties.
9. On-site water and septic shall be provided for use by store employees and patrons.
10. Final Site Plan is subject to review and approval of the Planning and Zoning Commission.

Motion Adopted: 5 Yeas.

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

**Old
Business/
C/U
No. 1669**

The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTO RESTORATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.223 ACRES, MORE OR LESS” (Conditional Use No. 1669) filed on behalf of David A. Peterson.

The Planning and Zoning Commission held a Public Hearing on this application on November 16, 2006 at which time they deferred action. On December 14, 2006, the Commission recommended that the application be denied since the use is not consistent with the character of the area; the current condition of the site would only get worse if the application were approved; and the use would have an adverse impact on the area.

The County Council held a Public Hearing on this application on December 5, 2006 at which time action was deferred.

Lawrence Lank, Director of Planning and Zoning, submitted and read possible findings and conditions of approval for the Council’s consideration.

**M 356 07
Adopt
Proposed
Ordinance
(C/U
No. 1669)**

A Motion was made by Mr. Jones, seconded by Mr. Rogers, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTO RESTORATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.223 ACRES, MORE OR LESS” (Conditional Use No. 1669) filed on behalf of David A. Peterson, with conditions.

Motion Denied: 5 Nays.

**M 356 07
(continued)**

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

**Old
Business/
C/U
No. 1673**

The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTOMOTIVE SALES LOT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.14 ACRES, MORE OR LESS” (Conditional Use No. 1673) filed on behalf of William Kevin Clark.

The Planning and Zoning Commission held a Public Hearing on this application on December 12, 2006 at which time they deferred action. On January 11, 2007, the Commission recommended that the application be denied since the use would be out of character with the surrounding area.

The County Council held a Public Hearing on this application on January 9, 2007 at which time action was deferred.

Lawrence Lank, Director of Planning and Zoning, submitted and read possible findings and conditions of approval for the Council’s consideration.

**M 357 07
Adopt
Proposed
Ordinance
(C/U
No. 1673)**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTOMOTIVE SALES LOT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.14 ACRES, MORE OR LESS” (Conditional Use No. 1673) filed on behalf of William Kevin Clark, with conditions.

Motion Denied: 5 Nays.

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

**Old
Business
(C/U
No. 1675)**

The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR EXPANSION OF EXISTING MANUFACTURED HOME COMMUNITY (82 ADDITIONAL LOTS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 20.79 ACRES, MORE OR LESS” (Conditional Use No. 1675) filed on behalf of Colonial East, Ltd.

**Old
Business
(C/U
No. 1675)
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on January 11, 2007 at which time they deferred action; on February 20, 2007, the application was denied since a majority vote was not recorded (2 Ayes, 2 Nays, 1 Abstention).

Lawrence Lank, Director of Planning and Zoning, submitted and read possible findings and conditions of approval for the Council's consideration.

**M 358 07
Adopt
Ordinance
No. 1906
(C/U
No. 1675)**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Ordinance No. 1906 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR EXPANSION OF EXISTING MANUFACTURED HOME COMMUNITY (82 ADDITIONAL LOTS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 20.79 ACRES, MORE OR LESS" (Conditional Use No. 1675) filed on behalf of Colonial East, Ltd., with the following conditions:

- 1. The preliminary site plan shall be required to be reviewed by the Planning and Zoning Commission.**
- 2. The preliminary site plan shall include a phasing schedule and projected timetable.**
- 3. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.**
- 4. The project shall be served by central sewer as part of the existing West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and shall comply with all requirements of the Sussex County Engineering Department regarding public sewer service. The Applicant may be responsible for the construction of any upgrades to the sewer system at their cost and shall be subject to the approval of the County Engineer.**
- 5. The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- 6. The maximum number of lots for lease shall not exceed 82.**
- 7. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements and will utilize Best Management Practices.**
- 8. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications.**
- 9. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed landscape design. The fifty (50) foot buffer shall be landscaped and maintained along Minos Conaway Road and the Railroad to screen the project.**
- 10. Construction, site work, grading, and deliveries of construction material, landscaping materials and fill on, off, or to the project shall only occur between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday. There shall be no construction activities on**

M 358 07
Adopt
Ordinance
No. 1906
(C/U
No. 1675)
(continued)

Sundays.

- 11. Road naming and addressing shall be approved by the Sussex County Mapping and Addressing Department.**
- 12. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all appropriate agency approvals.**

Motion Adopted: 4 Yeas, 1 Nay.

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

Old
Business/
C/U
No. 1683

The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 72.72 ACRES, MORE OR LESS” (Conditional Use No. 1683) filed on behalf of Wayne Baker, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on March 22, 2007 at which time they deferred action. On April 19, 2007, the Commission recommended that the application be approved with conditions.

The County Council held a Public Hearing on the Proposed Ordinance on April 17, 2007 at which time they deferred action.

M 359 07
Adopt
Ordinance
No. 1907
(C/U
No. 1683)

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Ordinance No. 1907 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 72.72 ACRES, MORE OR LESS” (Conditional Use No. 1683) filed on behalf of Wayne Baker, LLC., with the following conditions:

- 1. No materials shall be brought from off the site for processing, mixing or similar purposes.**
- 2. A water or water truck shall be available to control dust from road traffic when conditions require.**
- 3. Any on-site and off-site roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation. Preliminary discussions with DelDOT indicate that the Applicant will be required to upgrade Lawson Road from the entrance to the intersection with Avalon Road and Lawson Road. The road from the intersection of Avalon Road and Lawson Road to the intersection**

M 359 07
Adopt
Ordinance
No. 1907
(C/U
No. 1683)
(continued)

of Lawson Road and Zoar Road, approximately one (1) mile, be improved to DelDOT specifications at the Applicant's expense, if required by DelDOT. This section of the road is equally in need of improvements to safely handle the truck traffic to be generated by the borrow pit operation, let alone the additional stress on the road service caused by 70,000 pound loaded dump trucks. All truck traffic to and from the borrow pit is to be directed, per DelDOT's recommendation, to and from the borrow pit entrance to the intersection of Lawson Road and Zoar Road. The trucks utilizing the borrow pit are to be prohibited from using Avalon Road except for local deliveries on Avalon Road. The trucks utilizing the borrow pit are to be prohibited from using Lawson Road to the north of the borrow pit entrance except for local deliveries on Lawson Road.

4. The hours of operation for the business on this site shall only occur between the hours of 7:30 a.m. to 6:00 p.m. Monday through Friday and 7:30 a.m. until 2:00 p.m. on Saturdays. There shall not be any borrow pit activity on Sundays.
5. There shall be no more than 25 loads of materials hauled from the site on any given day.
6. No fuel shall be stored on-site for the borrow pit operations.
7. No dredging activities shall be permitted on the site.
8. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
9. The borrow pit shall have 3:1 slopes and the slopes shall be seeded and planted to control erosion. The pit shall not be greater than 25 feet in depth at any point.
10. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance. The vegetative buffers to be established and maintained along the borders of Lawson Road and Avalon Road shall be shown in detail on the Final Site Plan. The buffers shall include mature plantings with a minimum height of 6 feet and shall be placed within 30 feet of Lawson Road and Avalon Road rights-of-way. Crops are not to be considered as part of the vegetative buffer; rather, the buffer is to be designed to provide a visual, dust and other nuisance barrier.
11. The Applicant shall comply with all State and County erosion and sediment control regulations.
12. Markers and signs shall be placed at appropriate locations to designate pit areas.
13. The borrow pit shall be surrounded by a densely landscaped unexcavated buffer strip a minimum distance of 100 feet from any street lines, 100 feet from any single family lots, 100 feet from the existing cemetery, and 50 feet from all other property lines. In addition, the borrow pit shall be at least 200 feet from any dwelling on property of other ownership. The pit itself shall not cover an area greater than 25 acres. The densely landscaped buffer shall be shown

M 359 07
Adopt
Ordinance
No. 1907
(C/U
No. 1683)
(continued)

on the site plan.

14. The pit shall be at least 600 feet from Avalon Road and Lawson Road.
15. Every five years after the start of excavation, the Sussex County Planning and Zoning Office may inspect the site and request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments and verify compliance with all current regulations.
16. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.
17. Performance guarantees shall be required to assure completion of any approved reclamation plan, pursuant to Section 115-172B(6)(e).

Motion Adopted: 4 Yeas, 1 Nay.

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

Old
Business/
C/Z
No. 1611

The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 146.68 ACRES, MORE OR LESS” (Change of Zone No. 1611) filed on behalf of B & M Property Development, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on April 26, 2007 at which time they deferred action. On May 16, 2007, the Commission recommended that the application be approved with conditions.

The County Council held a Public Hearing on the Proposed Ordinance on May 8, 2007 at which time they deferred action.

M 360 07
Adopt
Ordinance
No. 1908
(C/Z
No. 1611)

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to Adopt Ordinance No. 1908 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 146.68 ACRES, MORE OR LESS” (Change of Zone No. 1611) filed on behalf of B & M Property Development, LLC., with the following conditions:

**M 360 07
Adopt
Ordinance
No. 1908
(C/Z
No. 1611)
(continued)**

1. The maximum number of residential lots shall not exceed 173 units, consisting of 74 townhome units and 99 single-family lots.
2. No more than 60 residential building permits shall be issued in any given calendar year.
3. Site plan review shall be required for each phase of development.
4. All entrance, intersection, roadway and multi-modal improvements shall be constructed as required by DelDOT.
5. The pool and clubhouse shall be constructed and open to use within two years of the issuance of the first building permit for a residential unit within the project. In addition, the remainder of the recreational facilities and amenities shall be constructed and open to use by residents of the development within two years of the issuance of the first building permit. These additional recreational facilities shall include play courts, pocket parks, gazebos, a pier, pathways and trails.
6. The development shall be served as part of an existing or extended Sussex County Sanitary Sewer District in accordance with Sussex County Engineering Department specifications and regulations.
7. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
8. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
9. The Applicant, its successors and/or assigns, including a homeowners or condominium association that will be formed, shall operate the stormwater management facilities in a manner that is consistent with Best Management Practices (BMPs).
10. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. Street design shall include sidewalks on both sides of the streets and street lighting.
11. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design, including the proposed reforestation program.
12. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill, on, off or to the property shall only occur from Monday through Friday and only between the hours of 7:00 a.m. and 6:00 p.m.
13. The Applicant shall form a homeowners or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
14. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.
15. The Applicant shall coordinate with State, County and local emergency planning offices in the development and implementation of an emergency evacuation procedure for the project.
16. No wetlands shall be included in any individual lots. Federal and

**M 360 07
Adopt
Ordinance
No. 1908
(C/Z
No. 1611)
(continued)**

State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permit. As stated by the Applicant, the State wetlands of 86.31 acres shall also be restricted as a Nature Preserve in favor of an outside agency, if acceptable to such agency, or in favor of the community association.

17. A notice that hunting activities may occur on neighboring and adjacent properties or waterways shall be included within the condominium documents or restrictive covenants for the project.

18. The Applicant shall coordinate with the local school districts' transportation manager to establish school bus stop areas. The location of these areas shall be shown on the Final Site Plan.

19. Aside from the community pier and any existing pier or boat ramp, no other piers or boat ramps shall be permitted.

Motion Adopted: 5 Yeas.

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

Requests

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

**M 361 07
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$200.00 from Mr. Dukes' Councilmanic Grant Account to the Arabian Lights Dance Company for operating expenses.

Motion Adopted: 5 Yeas.

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

**M 362 07
Council-
manic
Grant**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to the Eastern Shore AFRAM Festival, Inc. for festival expenses.

Motion Adopted: 5 Yeas.

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

**M 363 07
Council-
manic
Grant**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$300.00 (\$100.00 each from Mr. Cole's, Mr. Jones', and Mr. Rogers' Councilmanic Grant Accounts) to the American Legion Post 8 Baseball Team for operating expenses.

Motion Adopted: 5 Yeas.

M 363 07
(continued)

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

M 364 07
Council-
manic
Grant

A Motion was made by Mr. Rogers, seconded by Mr. Jones, to give \$200.00 from Mr. Rogers' Councilmanic Grant Account to the H.O. Brittingham Elementary School (HOB/PTO) for the *PARTNERS* Program.

Motion Adopted: 5 Yeas.

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

Additional Business

Under Additional Business, Daniel Kramer referred to the discussion regarding Source Water Protection and he requested that each Councilmember be given a copy of the Delaware Source Water Protection Law of 2001.

M 365 07
Adjourn

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to adjourn at 9:45 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

Robin A. Griffith
Clerk of the Council