



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JULY 29, 2008

Call to Order A regularly scheduled meeting of the Sussex County Council was held on Tuesday, July 29, 2008 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

M 515 08 A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to amend the Agenda by deleting “Local Law Enforcement Grant Request” under Hal Godwin; by deleting “Land Acquisition” under David Baker; by amending the order of the Public Hearings at 1:30 p.m. placing “Conditional Use No. 1740” prior to “Conditional Use No. 1739”; and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

M 516 08 A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the minutes of July 22, 2008.

Motion Adopted: 5 Yeas.

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

Habitat for Mr. Baker presented a proposal to extend an existing Lease Agreement between Sussex County and Sussex County Habitat for Humanity for a

Humanity Lease Renewal	40,000 square foot parcel located at the site of the former County transfer station in Angola. Mr. Baker reported that it is proposed that the Lease be extended for a term of five years, with the option of two five-year extensions, at a cost of \$1.00 per year. It was noted that Habitat for Humanity uses the site for storage purposes.
M 517 08 Approve Lease Renewal/ Habitat for Humanity	A Motion was made by Mr. Dukes, seconded by Mr. Rogers, that the Sussex County Council approves the renewal of a Lease Agreement with Sussex County Habitat for Humanity, Inc. Motion Adopted: 5 Yeas.
	Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Advisory Committee	Mr. Baker reported on the Advisory Committee for the Aging and Adults with Physical Disabilities. He advised that the terms of several members have expired and the remaining members' terms will expire in August.
M 518 08 Appointments to Advisory Committee	A Motion was made by Mr. Cole, seconded by Mr. Phillips, to reappoint Albert Clark and Robert Draine to the Advisory Committee for the Aging and Adults with Physical Disabilities for a term of two years, until August 2010. Motion Adopted: 5 Yeas.
	Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
M 519 08 Appointments to Advisory Committee	A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to reappoint Raymond Moore, Sr. and Sally Beaumont to the Advisory Committee for the Aging and Adults with Physical Disabilities for a term of two years, until August 2010. Motion Adopted: 5 Yeas.
	Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
M 520 08 Appointment to Advisory Committee	A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to reappoint James Moseley to the Advisory Committee for the Aging and Adults with Physical Disabilities for a term of two years, until August 2010. Motion Adopted: 5 Yeas.
	Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea;

Mr. Jones, Yea

M 521 08 Appoint-ment A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to reappoint Vance Daniels to the Advisory Committee for the Aging and Adults with Physical Disabilities for a term of two years, until August 2010.

Motion Adopted: 5 Yeas.

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

M 522 08 Appoint-ments to Advisory Committee A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to reappoint John Williams, Fran Smith, and Ruth Biedman to the Advisory Committee for the Aging and Adults with Physical Disabilities for a term of two years, until August 2010.

Motion Adopted: 5 Yeas.

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

Defer Action Action on the appointments of Sandra Dole (Mr. Rogers' appointment) and Newton Crouse (Mr. Dukes' appointment) was deferred. The terms of Sandra Dole and Newton Crouse expire in August 2008.

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

1. Property Tax Bills

The County began mailing the annual property tax bills on July 23, 2008. A total of 164,000 tax bills have been printed, totaling \$98.3 million. Bills will be mailed this week and next week. Property taxes are not due until September 30, 2008. The County's portion of property taxes ranges from 10.4% in the Milford School District to a maximum of 14.4% in the Laurel School District. The Sussex County Treasury Division will be available to answer questions at (302) 855-7760. Assistance is available for low income, senior citizens, and disabled residents. That information is being mailed with the property tax bill.

2. Planning and Zoning Commission – Land Use Plan Ordinances

On August 6, 2008 at 3:00 p.m., the Planning and Zoning Commission will meet to consider three possible ordinances, as recommended in the County's Land Use Plan. These pertain to open space within developments, definition of superior design within cluster developments and Super Green incentive criteria for developments. At this time, ordinances have not been drafted;

however, the basis of the proposed ordinances is to be discussed.

Sharing Funds Allocation Prime Hook National Wildlife Refuge/ Revenue Sharing Funds Allocation (continued)	<p>Mrs. Webb reported that a check in the amount of \$60,233.00 has been received from the United States Department of the Interior, Fish and Wildlife Service, as a federal payment in lieu of taxes for the Prime Hook National Wildlife Refuge. The check represents payments under the Refuge Revenue Sharing Act covering Fiscal Year 2006. The amount is calculated by the U.S. Fish and Wildlife Service by prorating the total funds available for payment, including refuge receipts and supplemental appropriations. Sussex County may use the funds for any governmental purpose.</p> <p>Mrs. Webb presented for the Council's authorization, the recommended distribution of the Refuge Revenue Sharing Funds, as follows: Milford School District - \$11,808.82; Cape Henlopen School District - \$37,182.19; Sussex Technical High School - \$4,023.11; Library - \$757.58; and Sussex County - \$6,461.31.</p>
M 523 08 Authorize Distribution of Refuge Revenue Sharing Funds	<p>A Motion was made by Mr. Dukes, seconded by Mr. Phillips, that the Sussex County Council authorizes the distribution of the Refuge Revenue Sharing Funds, as presented.</p> <p>Motion Adopted: 3 Yeas, 2 Nays.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Nay; Mr. Rogers, Nay; Mr. Jones, Yea; Mr. Dukes, Yea</p>
Financial Report	<p>Mrs. Webb presented the Financial Report for the period ending June 30, 2008.</p>
Georgetown Station 108/ Lease Extension	<p>Robert Stuart, Deputy Director of Emergency Medical Services, presented a request from Robin James, Member of Circle J. Venture, L.L.C., to extend their lease with Sussex County for Suite A at Cinderberry for a term of thirty to sixty days. Circle J Venture currently uses Suite A as a Sales Office. They have requested the time extension for the completion of their new Sales Office. All other terms and conditions of the Lease would remain in effect during the extended time period(s).</p>
M 524 08 Approve Lease Extension/ Georgetown Station 108	<p>A Motion was made by Mr. Rogers, seconded by Mr. Dukes, that the Sussex County Council approves the extension of a Commercial Lease Agreement, requested by Circle J. Venture, L.L.C., for Suite A, 8 Mulberry Lane, Georgetown, Delaware, for a period of thirty days with an option for an additional thirty days, terminating on October 13, 2008.</p> <p>Motion Adopted: 3 Yeas, 2 Nays.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Nay; Mr. Rogers, Nay; Mr. Jones, Yea; Mr. Dukes, Yea</p>

**MPHU
Rental
Unit
Program
MPHU
Rental
Unit
Program
Proposal
(continued)**

William Lecates, Director of Community Development and Housing, presented a proposal for a Moderately Priced Rental Unit Program for discussion. He noted that the rental assistance program would target low to moderate income citizens.

Mr. Lecates reviewed the following:

Program Parameters

- **Minimum of 25 units.**
- **Rental dwelling units below market rate.**
- **Located in growth areas as defined by the Comprehensive Plan or land designated in a municipality's Comprehensive Plan as lying within the growth and future annexation area.**
- **15 percent of units must be affordable to households as below 100 percent of HUD's area median income.**
- **Projects must be served by public water and sewer.**
- **Units must be mixed throughout the project.**

Developer Incentives

- **20 percent bonus density.**
- **Full utilization of zoning designated.**
- **Expedited review.**

Rental Eligibility

- **Live and work in Sussex County for at least one year.**
- **Earn below 100 percent of HUD's area median income.**
- **Must be primary occupant.**
- **Willing to sign one-year lease with year-by-year option.**

Affordability Controls

- **25-year affordability restriction that runs with program units.**

Mr. Cole questioned what would happen if the Moderately Priced Rental Units cannot be rented and he recommended that the units remain in the Program and that the developer not be allowed to put the units out on the general market. Mr. Lecates stated that this issue would be considered during the writing of a draft ordinance.

It was the consensus of the Council that a draft ordinance be written for the Moderately Priced Rental Unit Program.

**Bay Farm
Road
Expansion**

John Ashman, Director of Utility Planning, requested approval to prepare and post notices for the expansion of the Long Neck Sanitary Sewer District to include parcels located along Bay Farm Road. Mr. Ashman reported

**Proposal/
LNSSD** that the annexation request was received on February 6, 2007 from Doug Ritter; that the proposed expansion size is 8.4+- acres; that the parcels are primarily single family lots; and that the area is contiguous to the existing District.

**Bay Farm
Road
Expansion
Proposal/
LNSSD** Mr. Ashman reported that the Engineering Department sent out letters to area residents asking for their opinion as to whether or not they wish to be included in the annexation. A map of the area was distributed outlining the results of the poll.

(continued) The Council discussed whether or not to include all the properties along Bay Farm Road in the expansion area.

Mr. Ashman stated that property owners would be subject to system connection charges in the amount of \$3,252.00 per lot, based on Fiscal Year 2009 rates.

**M 525 08
Authorize
Posting of
Notices for
Bay Farm
Road
Expansion/
LNSSD** A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Engineering Department is authorized to prepare and post notices for the extension of the Long Neck Sanitary Sewer District to include all parcels along both sides of Bay Farm Road (parcels located within the blue border on a map presented on July 29, 2008).

Motion Adopted: 5 Yeas.

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

**Wastewater
Con-
struction
Agreement/
Millville
SSD** Brad Hawkes, Director of Utility Engineering, presented a Wastewater Construction Agreement for the Millville Sanitary Sewer Expansion Area. He reported that this project is on Railway Road and would primarily serve the community of Bethany Bay, which currently has an on-site system. Through a cooperative agreement with DNREC, the County is proposing to provide infrastructure to this area.

**M 526 08
Approve
Wastewater
Agreement/
Millville
SSD
Expansion** A Motion was made by Mr. Dukes, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Agreement No. 478-B with Bay Forest, LLC and Linder & Company, Inc., to construct regional wastewater improvements in Millville.

Motion Adopted: 5 Yeas.

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

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

M 527 08 **Community Grant** **A Motion was made by Mr. Cole, seconded by Mr. Rogers, to give \$500.00 from Mr. Cole's Community Grant Account to Del-Mar-Va Forest No. 201 for a Muscular Dystrophy fundraiser.**

M 527 08 **(continued)** **Motion Adopted: 5 Yeas.**

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

M 528 08 **Community Grant** **A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$5,000.00 from Mr. Rogers' Community Grant Account to Dry Dock, Inc. for operating expenses.**

Motion Adopted: 5 Yeas.

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

M 529 08 **Community Grant** **A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$5,000.00 from Mr. Rogers' Community Grant Account to Lewes Canalfront Park for completion of their final phase of the Lewes Canalfront Park.**

Motion Adopted: 5 Yeas.

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

M 530 08 **Community Grant** **A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$250.00 (\$50.00 from each Community Grant Account) to the United Way of Delaware for a golf tournament fundraiser.**

Motion Adopted: 5 Yeas.

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

M 531 08 **Community Grant** **A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$1,000.00 from Mr. Cole's Community Grant Account to the City of Rehoboth Beach for the Delaware State Marching Band's performance at the Bandstand.**

Motion Adopted: 5 Yeas.

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

**Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea**

M 532 08 A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$1,200.00 (\$1,000 from Mr. Dukes' and \$200.00 from Mr. Phillips' Community Grant Accounts) to the Bethel Historical Society for Fall Festival expense.

Motion Adopted: **5 Yeas.**

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

M 533 08 A Motion was made by Mr. Dukes, seconded by Mr. Cole, to give \$100.00 from Mr. Dukes' Community Grant Account to the Gator's Men's Modified Softball Team for tournament expenses.

Motion Adopted: **5 Yeas.**

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

M 534 08 A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$1,000.00 (\$200.00 from each Community Grant Account) to WomenNetworking in Southern Delaware, Inc. for the Girl Power Program.

Motion Adopted: **5 Yeas.**

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

M 535 08 A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$3,500.00 from Mr. Rogers' Community Grant Account to the Fort Miles Historical Association for operating expenses.

Motion Adopted: **5 Yeas.**

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

**Old
Business/** **The Council discussed the Proposed Ordinance entitled “AN ORDINANCE
TO AMEND CHAPTER 99, ARTICLES I, III, IV AND VI OF THE CODE**

**Proposed
Ordinance
Relating to
Forested
Buffers
Proposed
Ordinance
Relating
to Forested
Buffers
(continued)**

OF SUSSEX COUNTY RELATING TO FORESTED AND/OR LANDSCAPED BUFFERS, SITE PLANS AND BONDING REQUIREMENTS AND TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ARTICLE III TO ADD A PROVISION ALLOWING COUNCIL TO REQUIRE A FORESTED AND/OR LANDSCAPED BUFFER FOR CONDITIONAL USES AND RESIDENTIAL PLANNED COMMUNITIES OF SINGLE-FAMILY OR MULTI-FAMILY DWELLINGS”.

The Planning and Zoning Commission held a Public Hearing on this application on November 29, 2007 at which time the Commission recommended that the application be approved.

The County Council held a Public Hearing on this application on December 4, 2007 at which time they deferred action and left the public record open (no time period was established).

Mr. Baker and Mr. Griffin reviewed the following proposed revisions to the Forested Buffer Ordinance (which were incorporated in a Memo from Jim Griffin to David Baker, dated July 28, 2008):

- Under Section 99-5, Introductory Paragraph, the reference to the buffer as being 30 feet in width was changed to 20 feet.
- Under Section 99-5, Item F, a sentence was added to provide that when a subdivision is constructed in phases, the buffer must be completed for each phase before County approvals or permits will be granted to construct the next phase.
- Under Section 99-5, Item I, the width of the buffer was changed to 20 feet.
- Under Section 99-16, Item D, the width of the buffer was changed to 20 feet.

Mr. Griffin advised that, if the width of the buffer is changed from 30 feet to 20 feet, the Council should note that, on Page 2, under Item A, there is a requirement for a total of 20 trees within every 100 feet of the 30 foot wide buffer; that if the area of the buffer is reduced from 3,000 square feet to 2,000 square feet, with a 20 foot width, with a 10 foot separation distance between planted trees, the developer would probably not be able to install 20 trees, even if the plantings are staggered; and that if the width of the buffer is reduced to 20 feet, it may be necessary to reduce the total number of trees required for each 100 feet since you would no longer be able to get 2 rows of 10 trees each.

The Council discussed the proposed revisions.

It was noted that the Proposed Ordinance does not amend the Cluster Ordinance. It was also noted that the Proposed Ordinance makes reference to the entire outer perimeter for Conditional Uses and Residential Planned Communities of single-family or multi-family dwellings.

Mr. Lank, Director of Planning and Zoning, reviewed corrections on Pages 1 and 5, which related to Section numbers and Item identification.

**Proposed
Ordinance
Relating to
Forested
Buffers
(continued)**

Mr. Phillips stated that the Council should be aware of the financial impact of the Proposed Ordinance prior to adopting it.

A Motion was made by Mr. Phillips to defer action for one week on the Proposed Ordinance relating to Forested Buffers in order to allow time to look into the costs of the Ordinance. The Motion died for the lack of a Second.

Mr. Griffin reviewed the proposed revisions, as discussed on this date:

- **On Page 1, in the last WHEREAS, change Section 115-18 to Section 115-218.**
- **Under Section 99-5, Introductory Paragraph, the reference to the buffer as being 30 feet in width was changed to 20 feet.**
- **Under Section 99-5, Item A, change “Every 100 foot length of buffer shall include a minimum total of 20 trees” to “Every 100 foot length of buffer shall include a minimum total of 15 trees”.**
- **Under Section 99-5, Item F, a sentence was added to provide that when a subdivision is constructed in phases, the buffer must be installed and completed for each phase before County approvals or permits will be granted to construct the next phase.**
- **Under Section 99-5, Item I, the width of the buffer was changed to 20 feet.**
- **Under Section 99-16, Item D, the width of the buffer was changed to 20 feet.**
- **Change Section 115-18 to Section 115-218 and identify the ensuing paragraph as E.**

**M 536 08
Approve
Amend-
ments to
Forested
Buffer
Ordinance**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to approve the (seven) amendments to the Proposed Ordinance relating to Forested Buffers, as presented.

Motion Adopted: 4 Yeas, 1 Nay.

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

**M 537 08
Adopt
Ordinance
No. 1984**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 1984 entitled “AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV AND VI OF THE CODE OF SUSSEX COUNTY RELATING TO FORESTED AND/OR LANDSCAPED BUFFERS, SITE PLANS AND BONDING REQUIREMENTS AND TO AMEND CHAPTER

115 OF THE CODE OF SUSSEX COUNTY, ARTICLE III TO ADD A PROVISION ALLOWING COUNCIL TO REQUIRE A FORESTED AND/OR LANDSCAPED BUFFER FOR CONDITIONAL USES AND RESIDENTIAL PLANNED COMMUNITIES OF SINGLE-FAMILY OR MULTI-FAMILY DWELLINGS", as amended on July 29, 2008.

M 537 08
(continued)

Motion Adopted: 4 Yeas, 1 Nay.

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

Old Business/ C/U
No. 1758 and C/U
No. 1759 **The Council discussed the Proposed Ordinances denominated Conditional Use Nos. 1758 and 1759 filed on behalf of Bridle Ridge Properties, LLC.**
Mr. Dukes stated that there is still a meeting planned between the developer and the homeowners and he suggested that the Council defer action until after that meeting is held. Mr. Griffin advised that the Public Hearing record has been closed on these applications and therefore, the Council is unable to accept additional public comment unless the record is reopened.

A Motion was made by Mr. Phillips to defer action until August 19, 2008. The Motion failed for the lack of a Second.

Mr. Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on both applications on October 11, 2007 at which time the Commission deferred action. On November 29, 2007 the Commission recommended that the applications be approved, with conditions. More specifically, the Commission recommended approval of Conditional Use No. 1758 for a maximum of 46 multi-family housing units with 12 conditions and recommended approval of Conditional Use No. 1759 for a maximum of 50 multi-family villas and with 12 conditions.

The County Council held a Public Hearing on this application on October 30, 2007 at which time they deferred action and left the record open for a period of two weeks (until November 13th) for written comment from the County Engineering Department regarding sewer capacity; thereafter, the record was left open until November 20th for written comments related to the Engineering Department's written submission regarding sewer capacity.

The County Engineering Department submitted a response on November 1, 2007 in regards to sewer capacity. The letter was made a part of the record. Mr. Lank read a summary of the Commission's Public Hearing and decision in regards to Conditional Use No. 1758.

Councilmembers noted that area residents have expected that 46 single family homes would be built in Phase IV of Henlopen Landing, which is compatible with the other phases.

In response to questions raised by the Council, Mr. Lank stated that a vote resulting in the denial of this application would mean that Phase IV of Henlopen Landing would remain as originally approved, with 46 single-family lots.

**M 538 08
Adopt
Proposed
Ordinance
(C/U
No. 1758)**

(Denied)

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 16.18 ACRES, MORE OR LESS” (Conditional Use No. 1758) filed on behalf of Bridle Ridge Properties, LLC.

Motion Denied: 4 Nays, 1 Yea.

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

Mr. Lank read a summary of the Commission’s Public Hearing and decision in regards to Conditional Use No. 1759, filed on behalf of Bridle Ridge Properties, LLC.

It was noted that several of the conditions of approval for this application, as recommended by the Commission, relate to the combined development (Conditional Use Nos. 1758 and 1759) and further, since the Council denied Conditional Use No. 1758, new conditions of approval should be drafted and considered for Conditional Use No. 1759.

It was also noted that this application is a separate property than Conditional Use No. 1758 and that this application has nothing to do with the Henlopen Landing development.

**M 539 08
Defer
Action
on C/U
No. 1759**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 13.00 ACRES, MORE OR LESS” (Conditional Use No. 1759) filed on behalf of Bridle Ridge Properties, LLC and to direct staff to draft proposed conditions of approval for the Council’s consideration.

Motion Adopted: 5 Yeas.

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

Mr. Jones, Yea

**Old Business/
C/Z
No. 1622**

The Council discussed the Proposed Ordinance denominated Change of Zone No. 1622, filed on behalf of Gary F. Farmer, DVM.

The Planning and Zoning Commission held a Public Hearing on this application on June 12, 2008; on July 16, 2008 the Commission recommended that the application be denied by a vote of 2 Yeas and 3 Nays.

The County Council held a Public Hearing on this application on July 15, 2008 at which time they deferred action.

In response to questions raised by Mr. Cole, Mr. Lank stated that the applicant is already operating at the site under a conditional use permit, which was approved in 1994.

**M 540 08
Adopt
Ordinance
No. 1985
(C/Z
No. 1622)**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 1985 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 2.54 ACRES, MORE OR LESS” (Change of Zone No. 1622) filed on behalf of Gary F. Farmer, DVM.

Motion Adopted: 5 Yeas.

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

**Old Business/
C/Z 1637
and C/U
No. 1775**

The Council discussed the Proposed Ordinances denominated Change of Zone No. 1637 and Conditional Use No. 1775, filed on behalf of East Market, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on March 13, 2008; on April 24, 2008 the Commission recommended that the applications be approved.

The County Council held a Public Hearing on this application on April 1, 2008 at which time they deferred action.

**M 541 08
Adopt
Ordinance
No. 1986
(C/Z**

A Motion was by Mr. Rogers, seconded by Mr. Dukes, to Adopt Ordinance No. 1986 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF

No. 1637) **LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 22.49 ACRES, MORE OR LESS” (Change of Zone No. 1637) filed on behalf of East Market, LLC.**

M 541 08 **Motion Adopted:** **4 Yeas, 1 Nay.**

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

M 542 08 **Adopt**
Ordinance
No. 1987
(C/U
No. 1775) **A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1987 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (70 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 22.49 ACRES, MORE OR LESS” (Conditional Use No. 1775) filed on behalf of East Market, LLC, with the following conditions:**

- 1. There shall be no more than 70 units within the project.**
- 2. The Applicant shall form a Condominium Association responsible for the perpetual maintenance of streets, roads, any buffers, storm-water management facilities, erosion and sedimentation control facilities and other common areas.**
- 3. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
- 4. All entrances shall comply with all of DelDOT’s requirements and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.**
- 5. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- 6. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- 7. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**
- 8. A 30-foot forested Agricultural Buffer shall be shown along boundaries bordering on any land used primarily for any agricultural purpose. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.**

**M 542 08
Adopt
Ordinance
No. 1987
(C/U
No. 1775)
(continued)**

9. The developer shall maintain as many existing trees as possible. The undisturbed forested area shall be shown on the Final Site Plan.
10. No wetlands shall be included within any lots.
11. A system of street lighting shall be established.
12. Sidewalks shall be located on both sides of all streets in the project.
13. There shall be walking, jogging and bike paths throughout the project as shown on the Preliminary Site Plan.
14. The project shall be served by a central sewer system provided by Sussex County, and designed and constructed in accordance with Sussex County Engineering Department specifications.
15. Within 3 years of the issuance of the first residential building permit, the developer shall construct all of the recreational amenities.
16. There shall be a 50-foot buffer from all State and Federal Wetland areas. The buffer shall comply with the requirements of Section 115-193 of the Zoning Code.
17. The dock, pier or boat slips shall be utilized by residents and guest of the project only and shall be subject to the review and approval of State and Federal agencies.
18. The area originally set aside for the wastewater treatment area shall remain as open space. Active recreation could add attractive features to the project. Another alternative would be planting native trees and plants to replace the forested area being removed in the rest of the site. The Final Site Plan shall show how this area is to be incorporated into the project's open space and shall include a landscape plan.
19. The project shall provide for future interconnectivity to the Rogers property to the East.
20. The Agricultural Use Protection Notice shall be incorporated into the Condominium Documents for this project and shall be included on the Final Site Plan.
21. Construction, site work, grading and delivery of materials on, off or to the property shall only occur during the hours of 7:00 a.m. through 6:00 p.m., Monday through Saturday.
22. It is recommended that the Applicant, in cooperation with DelDOT, resurface Warwick Road from Blue Claw Road to the River and Blue Claw Road from Warwick Road to Gull Point Road upon completion of the project.

Motion Adopted: 4 Yeas, 1 Nay.

**Introduction
of Proposed
Ordinance**

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

Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 43.19 ACRES, MORE OR LESS” (Change of Zone No. 1659) filed on behalf of Baywood, LLC. The Proposed Ordinance will be advertised for Public Hearing.

**Introduction
of Proposed
Ordinance**

Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 101.6 ACRES, MORE OR LESS” (Change Of Zone No. 1666) filed on behalf of Beaver Properties, LLC. The Proposed Ordinance will be advertised for Public Hearing.

**Additional
Business/
Jacqueline
Vogel of
Heritage
Shores**

Under Additional Business, Jacqueline Vogel of Heritage Shores submitted pictures showing deficiencies in the construction of her home. Ms. Vogel also asked Council about the County’s assessment process and she asked that the County look at the assessments of her home and her neighbors’ homes. She commented that the County’s existing assessment process is archaic and inequitable and that the process should be changed.

**Additional
Business/
Elva Allen/
Conaway
Case**

Under Additional Business, Elva Allen, submitted a Fact Sheet and Documentation on the “Conaway Case”. Ms. Allen spoke in regards to a claim of ownership of property and allegations against James D. Griffin and Vincent D. Robinson, Attorneys, Griffin & Hackett, P. A. There was a consensus of the Council to refer this matter to Richard Berl, Assistant County Attorney, with the law firm of Smith O’Donnell Procino & Berl, LLP.

**M 543 08
Go Into
Executive
Session**

At 1:30 p.m., a Motion was made by Mr. Dukes, seconded by Mr. Rogers, to recess the Regular Session and to go into Executive Session to discuss land acquisition.

Motion Adopted by Voice Vote.

**Executive
Session**

At 1:30 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing land acquisition. The Executive Session concluded at 1:55 p.m.

**M 544 08
Reconvene
Regular
Session
Public
Hearing
C/U
No. 1740**

At 1:56 p.m., a Motion was made by Mr. Dukes, seconded by Mr. Rogers, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted by Voice Vote.

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GENERAL RESIDENTIAL DISTRICT FOR A COMMUNITY CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 41,651 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1740) filed on behalf of Cynthia A. Brittingham and Monroe E. Brittingham, Jr.

The Planning and Zoning Commission held a Public Hearing on this application on July 10, 2008 at which time the Commission recommended that the application be approved, with conditions.

(See the minutes of the meeting of the Planning and Zoning Commission dated July 10, 2008).

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing and decision.

Mr. Lank distributed copies of the Project Exhibit Book which were provided by the Applicant.

Monroe Brittingham, Applicant, was present with Tim Willard, Attorney. They stated that a 2,700 square foot building has been constructed on the site; that there are three offices, a game room, two bathrooms, and an outside porch; that a small snack kitchen exists in the building with no cooking facilities; that the building is not yet being utilized for a community center; that the area does not have any recreational facilities; that there is interest in a community center in the area by the residents and First State Community Action and the Cool Springs Civic Association; that there would be limited hours of operation which would never be past 12:00 p.m.; that the use is of a public or semi-public character and is essential and desirable for the general convenience and welfare of the community; that a private club is a listed Conditional Use; that according to the Comprehensive Plan, single-family residential housing is appropriate, together with churches, commercial, recreational facilities and accessory uses as may be necessary or are normally compatible with residential surroundings; that DelDOT has reviewed the expansion to the site for the community building and advised that a Traffic Impact Study is not required and that no additional entrance improvements will be required; that the building has a seating capacity for 96 seats; that according to the State Fire Marshal, the building has a capacity for 130 people; that the site has been fenced with chain-link fencing; that the building can be utilized for after school programs, youth programs, computer use and tutoring; that the use could also serve the residents of Pinetown, Jimtown and Belltown;

**Public
Hearing
C/U
No. 1740
(continued)**

that the building could also be utilized for weddings, receptions, neighborhood meetings, and senior citizen functions; that the Applicant envisioned building the Center to serve the community; that the parking lot is fenced; that a non-profit corporation has been established called the Community Civic Center; that the non-profit corporation would be permitted to lease the building to groups; that the building would be used for social events, such as weddings; that the building would not be used as a dance club or loud music establishment with alcohol sales; and that there are no deed restrictions restricting this use.

Mr. Willard stated that a petition containing 159 signatures was submitted in support of the application. He also referenced two letters of support that were received into the record, one from Betty Trammell and one from Sonia Johnson.

Joan Deaver, Citizens for a Better Sussex, and Peter Cox, a resident of Cool Spring, were present and spoke in support of the application. They stated that the use will have a positive impact on the young people in the community and that a need exists in the community for a Center.

Patricia Badger, a resident of Cool Spring, expressed concern about alcohol use on the premises.

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

**M 545 08
Adopt
Ordinance
No. 1988
(C/U
No. 1740)**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Ordinance No. 1988 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A COMMUNITY CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 41,651 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1740) filed on behalf of Cynthia A. Brittingham and Monroe E. Brittingham, Jr.:

1. The Conditional Use shall be known as the Cool Spring Community Center ("Center").
2. The Center shall be a facility available for public use by non-profit organizations, youth organizations or privately for community events.
3. All government regulations, licensing and permitting including the Fire Marshal, Division of Public Health, DNREC, DelDOT and State Child Care Licensing shall be adhered to and obtained as necessary.
4. Gatherings at the Center shall only occur between the hours of 7:00 a.m. until 12:00 p.m.
5. All tenants of the Center shall be required to sign a lease, the terms

**M 545 08
Adopt
Ordinance
No. 1988
(C/U
No. 1740)
(continued)**

of which will require a Director of the Community Civic Center, Inc., or his or her designee, to be present during any gatherings and to be responsible for monitoring the event to ensure that the terms of this Conditional Use permit are met.

6. There shall be one sign identifying the building located at the entrance and one on the building with directional lighting.
7. A dumpster shall be located in the rear of the property and shall be fenced and landscaped accordingly.
8. The Center shall not be rented or used for dance parties or night club activities with loud music and alcohol sales.
9. There shall be no parking on Martin Farm Road or Fisher Road.
10. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion Adopted: 4 Yeas, 1 Absent.

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

**Public
Hearing
(C/U
No. 1739)**

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 MULTI-FAMILY DWELLING STRUCTURES (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.66 ACRES, MORE OR LESS” (Conditional Use No. 1739) filed on behalf of Eric Sugrue, Big Trips, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on July 10, 2008 at which time the Commission deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated July 10, 2008.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.

Mr. Lank distributed copies of the Project Exhibit Book which were provided by the Applicant.

Mr. Lank reported that on this date, a packet of information was received from James Fuqua, the Applicant’s Attorney, containing comments in reference to the Sussex County Engineering Department’s review comments; a DelDOT Facilities Report; a copy of Pages 3-16 and 3-17 of the

**Public
Hearing
(C/U
No. 1739)
(continued)**

Comprehensive Plan Update; a site location map for this application; a site location map and Ordinance No. 1801 for Conditional Use No. 1619; and an Environmental Assessment Report. Mr. Lank advised that this information has been made a part of the record.

Mr. Lank reported that letters of opposition have been received from Kathleen Steighner, Helena Dove, and John Howard. Also, an additional petition containing 27 signatures was received in opposition to the application.

James Fuqua, Attorney, was present with Doug Warner of Element Design Group and Rob Burton, a representative of the Applicant. They stated that the application is for 6 multi-family residential units comprised of 3 2-unit duplex-type buildings; that the units will have the appearance of a single home; that the buildings will be a maximum of two stories with a maximum height of 35 feet; that the site contains 1.66 acres in the GR General Residential District; that there is presently a single family residence located on the property which has been used as a rental property; that central sewer will be provided by the County as part of the West Rehoboth Sewer District; that sewer service to the area already exists and wastewater capacity is available for the proposed 6 units; that the County planned on this site to be developed at 6.64 EDUs; that central water will be provided by Tidewater Utilities, Inc.; that there will be no adverse impact on water and wells; that the cost of construction will be less by creating 3 buildings than creating a subdivision with individual dwellings on lots; that 0.6 acre of forest land and 0.4 acre of wetlands exist on the site; that the wetlands on the site are non-tidal; that no wetland disturbance is intended; that a buffer from Munchy Branch would either be a 50 foot buffer or the wetlands buffer, but a minimum of 50 foot; that no trees or bushes will be removed in the buffer areas; that the proposed density equals 3.6 units per acre; that GR General Residential Zoning allows for up to 4 units per acre; that the units are proposed to contain approximately 1,800 to 1,900 square feet of living space; that the parcel could be subdivided into 5 lots; that they are proposing a 50-foot wide buffer setback from the centerline of Munchy Branch, a 40-foot building setback from Munchy Branch Road, and a 40-foot separation between the buildings; that they are proposing a 24-foot wide pavement with curbing for access; that small storm water management features are proposed between the buildings; that the driveways will be built in compliance with County standards; that parking will be provided with 2 spaces per unit and 1 space in each garage; that the storm water management features will not contain water; that C-1 General Commercial and B-1 Neighborhood Business Districts exist in close proximity and include a truck salvage yard, auto parts sales, a roofing company, and a graphics shop; that there are several multi-family projects in the general area and include Beach Haven, Sea Bright, and Creekwood; that there are no flood plain issues; that the site can be prepared to comply with the requirements for 99-9C of the Subdivision Code; that silt fencing will be provided per the requirements of the Sussex Conservation District; that no by-pass lanes are normally required for this number of units by DelDOT; that the entrance to the site would be from Munchy Branch Road; that DelDOT has stated that a 5-foot wide dedication will be required along

**Public
Hearing
C/U
No. 1739
(continued)**

Munchy Branch Road; that there will be a landscaped buffer along both the north and east boundaries of the property; that a multi-modal path may be required and is intended; that the units will have similar construction as the units in the Sea Bright project; that an outfall will be established from the storm water management features by swale or pipes to the Branch; that Best Management Practices will reduce the nitrogen and phosphorus on the site; that a Condominium Association will be established to control and maintain the site; that all requirements of DNREC and the Sussex Conservation District will be met or exceeded, that there will be no discharge of stormwater onto Munchy Branch Road; that stormwater will be detained on site in swale areas and released into the wetlands; and that the use complies with the Comprehensive Plan and the Comprehensive Plan Update.

Mr. Fuqua addressed concerns that were expressed during the Public Hearing before the Planning and Zoning Commission: there will be no adverse impact on sewer systems or existing wells; Munchy Branch and the associated wetlands will not be disturbed by this proposal; there will be a combination of wetlands and a 50 foot buffer line that will remain in its natural condition and left undisturbed; stormwater facilities will comply with all DNREC and Soil Conservation requirements to insure that run-off will be captured and released in an environmentally sensitive manner; the traffic impact of 6 additional residences will have a negligible impact; the existing Level of Service of Munchy Branch Road is a Level of Service B and with the development of these proposed units, the Level of Service will remain at Level of Service B; that the current zoning of the property is GR which permits a density of 4 units per acre; that this site contains 1.66 acres; that the current zoning would permit a density of slightly over 6 units per acre (gross); that this proposal will have a more positive impact on property values than 4 single family homes; that the proposed use would be the highest and best use of the property; that the proposal is not out of character with the area; that there is a general mix of uses in the area consisting of business, commercial and multi-family uses - an auto repair business, a construction business, a vehicle storage/salvage yard, a County pump station and a roofing business; that the 5.5 acres of C-1 located directly across from this application site currently permits the creation of a multi-family development at 12 units per acre (60 multi-family units); that another site in the area was approved for a conditional use for multi-family units in 2005 by the Council and another site previously requested 5 units and was approved for 2 by the Council since only 1 EDU was allocated to that site; that this proposal is consistent with the County Engineering Department's plans for the site; and that the proposed development is consistent with the historical trend of development which has occurred in the area including the approval of multi-family units on a nearby property.

Mr. Fuqua submitted proposed Findings of Facts and Proposed Conditions.

Mr. Fuqua read the Proposed Conditions into the record.

Public comments were heard.

**Public
Hearing
(C/U
No. 1739)
(continued)**

Kathleen Steigner, Mike Robertson, Helena Dove, Joan Deaver (Citizens for a Better Sussex), and Fay Marsh spoke in opposition to the application. They spoke in opposition to the construction of more than one single family unit on the 1.66 acre parcel. They stated that the number of units on such a small parcel is excessive; that the proposal is inconsistent with the character of the neighborhood; that the closest condominiums are 3/4 mile away and close to Route 1; that this area consists of small housing communities; that there are safety concerns such as lack of handicapped parking, children's safety, potential flooding problems, contamination of ground water and well water; that the County is proposing new sidewalk regulations for new subdivisions and they question if this application will have to comply and if not, why not; that there is concern about egress and ingress to the site; that the project will not be able to accommodate emergency vehicles and service and delivery vehicles; that traffic accidents are a concern; that the road has no bike lane or pedestrian shoulder; that a Traffic Impact Study is needed; that they are concerned about the safety at the entrance to the site; that there is no turn around proposed on the site; that run-off could be a problem to adjacent sites; that there will be drainage problems; that the swales are going to drain into Munchy Branch; that the property is a wetland designated property and already has drainage problems at the base of the culvert; that there needs to be protection against contaminants; that homes should be 100 feet off of roads so that roads can be widened in the future; that there has been a lack of upkeep on the property by the Applicant; that the Applicant proposes to provide housing for his restaurant workers; that the house which currently exists on the property is a two-story house and has been there since 1992; that it has not been used as a single family residence since Mr. Sugrue purchased the property; that the Applicant has had employees living there and there are a lot of people living there; that there are problems with calculations regarding the footprints of the buildings; that trees will have to be removed; that in the surrounding developments, they have restrictions that do not allow multi-use buildings (in accordance with Homeowners Association rules); that, if this project is approved, there will be a public safety hazard on the site and Munchy Branch Road; that there are environmental concerns regarding wetlands and neighboring properties; that this proposal would depreciate property values; that sufficient open space is not proposed; that children and pets need open space; that the close proximity of wetlands and retention ponds will create a danger for children; that this is not in accordance with the Comprehensive Plan Update; and that not one person spoke in support of this application at the Public Hearing before the Commission.

Ms. Steigner stated that she submitted two petitions in opposition to the application, which consist of approximately 140 signatures of residents, mostly from Fieldwood and Shady Ridge developments and people that live on Munchy Branch Road.

Helena Dove submitted her letter of opposition into the record.

(continued)

Fay Marsh stated that she previously submitted two letters of opposition. There were no additional public comments and the Public Hearing was closed.

**M 546 08
Defer
Action on
C/U
No. 1739**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to defer action on Conditional Use No. 1739, filed on behalf of Eric Sugrue, Big Trips, LLC.

Motion Adopted: 5 Yeas.

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

**Public
Hearing
(C/Z
No. 1657)**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO MODIFY CONDITION NO. 10 IMPOSED ON ORDINANCE NO. 1573 FOR CHANGE OF ZONE NO. 1475, THE APPLICATION OF RIBERA-ODYSSEY, LLC FOR “THE PENINSULA”, A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, TO EXTEND THE TIME TO CONSTRUCT AND OPEN FOR USE THE GOLF CLUBHOUSE AND NATURE CENTER FACILITIES” (Change of Zone No. 1657) filed on behalf of Ribera – Odyssey, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on July 10, 2008 at which time the Commission deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated July 10, 2008.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.

Mr. Lank explained that this application was filed to modify Condition No. 10 imposed on Ordinance No. 1573 for Change of Zone No. 1475, the application of Ribera-Odyssey, LLC for “The Peninsula”, a MR-RPC Medium Density Residential District – Residential Planned Community, to extend the time to construct and open for use the golf clubhouse and nature center facilities.

Mr. Lank distributed photographs submitted by the Applicant. The photographs show the amenities and included an aerial photograph of the site and surrounding area.

James Fuqua, Attorney for the Applicant, stated that the application is for a modification of Condition No. 10 of the original approval of The Peninsula MR-RPC; that The Peninsula was approved as a 1,404 mixed residential

Public
Hearing
(C/Z
No. 1657)
(continued)

development with extensive recreational facilities and an 18-hole championship golf course; that the original approval took place in 2002; that the approval was subject to 21 conditions and this application is for the modification of 1 of the 21 conditions; that Condition No. 10 reads “Recreation facilities, namely tennis courts, swimming pool, community buildings, pathways, trails and beaches shall be constructed and open to use by the residents within two years from the issuance of the first building permit.”; that they are requesting a modification of this condition to extend the time for the construction of the golf club house and the nature center – not a deletion of that condition; that they are requesting a modification to extend the time based on the number of units sold; that extensive recreational and other amenities have already been constructed; that the golf course was open to play in April 2006 along with the golf shop, post office, Terrace Grille Restaurant, and fishing pier; that the aquatic center (outdoor pool and Spa A) opened in May 2006 and Spa B and the wave lagoon and beach opened in May 2007; that the athletic center opened in October 2006 with the fitness center, aerobic room, indoor pool and spa, youth activities room, men and women’s massage and locker rooms, and men and women’s showers and saunas; that the water taxi pier and Bay beach opened in May 2006; that the Nature Center boardwalks opened in May 2007; that the community pathways are 75% complete and open; and that the nature trails opened in May 2007; that the clubhouse and nature center have not yet been built; that County staff have inspected the site and found the amenities to be substantially completed except for the clubhouse and nature center; that the reasons for their request is economics since we are in a possible recession which has caused a downturn in the housing market and since the downturn is not yet over; that Condition No. 2 of the Conditions of Approval referenced that “Residential Certificates of Occupancy shall not exceed 300 per year” and that if the market had continued as it had, there would have been 1,200 units on the site by now; that approximately 400 units have been completed; that the facilities are not needed at this time since there are not many residents there to support the facilities; that a second reason is also economic – on behalf of the Peninsula residents; that the developer is responsible for the construction of the facilities but when they are completed, there will be an increasing responsibility on the owners to pay for the operations and maintenance; that spreading this expense on to a few owners is a burden; that in November 2007, they held a meeting with the Homeowners to consider when to build the clubhouse; that the emails received are in support of a continuation of time to stay building the clubhouse; that the developer and the residents would all like to see the clubhouse built, if feasible; that they request a modification that the clubhouse construction begin upon a total of 500 members of the project and that the Nature Center be built upon completion of the clubhouse; that they anticipate that it will take 18 months to complete the clubhouse; that the golf course is a private country club with 400 members; that it costs the developer approximately \$3,000,000 to maintain the golf course annually; that all landowners/unit owners become members of the club; that they have three (3) types of memberships; that presently there are 60 golf members of the 400 members of the club; that

**Public
Hearing
(C/Z
No. 1657)
(continued)**

the first resident moved into the project in August 2005; that the Nature Center can be constructed in 5 to 7 months; that the Nature Center building will be an environmentally designed building; and that the proposed modification of Condition No. 10 is intended to be modified by adding “Except that the golf clubhouse shall commence construction when 500 golf club memberships have been attained and the nature center shall commence construction upon completion of the golf clubhouse”. Mr. Fuqua noted that 500 golf club memberships equal 500 sales.

Mr. Cole suggested that the word “memberships” be changed to “units”

Public comments were heard.

John Kurpjuweit, a permanent resident of The Peninsula, spoke in support of the request and he complimented the amenities of The Peninsula. He stated that the development is a great place to live; that he is willing to wait for the clubhouse due to the economic impact on the residents; and that he is willing to pay his fair share with 1,000 to 1, 200 members, not 400 members.

Bruce and Audrey Adkins, residents of The Peninsula, stated that they would like to see the raised nature walks/piers completed and that construction of the Clubhouse and Nature Center at this time would be a burden to the residents that are there now.

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

**M 547 08
Defer
Action on
C/Z
No. 1657**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to defer action on Change of Zone No. 1657, filed on behalf of Ribera-Odyssey, LLC.

Motion Adopted: 5 Yeas.

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

**M 548 08
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to adjourn at 4:12 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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