

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JULY 30, 2002**

**Call to Order** The regular meeting of the Sussex County Council was held Tuesday, July 30, 2002, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Finley B. Jones, Jr.</b>	<b>President</b>
<b>Lynn J. Rogers</b>	<b>Vice President</b>
<b>George B. Cole</b>	<b>Member</b>
<b>Dale R. Dukes</b>	<b>Member</b>
<b>Vance Phillips</b>	<b>Member</b>
<b>Robert L. Stickels</b>	<b>County Administrator</b>
<b>David Baker</b>	<b>Finance Director</b>
<b>Eugene Bayard</b>	<b>County Attorney</b>

**M 473 02** A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to approve the **Approve Agenda**, as presented.

**Motion Adopted:** 4 Yea, 1 Absent.

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

**M 474 02** A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the **Approve Minutes**, as distributed.

**Motion Adopted:** 4 Yea, 1 Absent.

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

**Corre-  
spondence** Mr. Bayard read the following correspondence:

**SUSSEX CHIX SOFTBALL, SEAFORD, DELAWARE.**  
RE: Letter in appreciation of grant.

**M 475 02** A Motion was made by Mr. Phillips, seconded by Mr. Cole, to Adopt the **Adopt  
Tribute** Tribute congratulating Baker's Hardware Co., Inc. on its 40th Anniversary.

**Motion Adopted:** 4 Yea, 1 Absent.

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

District III Little League Presentation	<p><b>Mr. John Hall and Mr. Martin Donovan were present on behalf of District III Little League.</b> Mr. Hall told Council that the League consists of approximately 4,000 ball players ranging in age from 5 to 18 years old. He also told Council that currently, the Eastern Regional Tournament is taking place in Sussex County and that twelve states (from Maryland to Maine) are represented.</p> <p>Mr. Hall reported that after September 11th, the Little League Board of Directors decided that Little League should recognize the public safety providers/emergency personnel in Sussex County for all of their dedication. The Little League started a program called "Hometown Heroes" and plaques were made consisting of all the patches of the fire companies, police, and military bases in the County. Mr. Hall presented a plaque to the Sussex County Council for display in the County Administration Building.</p>
Draft Ordinance/ Land Use Plan Update	<p>Mr. Stickels presented a draft ordinance entitled "AN ORDINANCE ADOPTING THE 2002 UPDATE OF THE COMPREHENSIVE PLAN FOR SUSSEX COUNTY AND REPEALING THE 1997 COMPREHENSIVE PLAN".</p> <p>Mr. Stickels announced that the Draft of the Sussex County Comprehensive Plan Update has been completed and is available to the public at a cost of \$10.00. (An Executive Summary is available at no cost.) The draft Plan will be available on the County's website on Friday, August 2nd. Mr. Stickels announced that a Workshop on the Draft of the Comprehensive Plan Update will be scheduled in the near future.</p>
Introduction of Proposed Ordinance	<p>Mr. Phillips commented on the Mobility Element of the Draft Plan; that there really isn't much of a statement that new roads may be necessary and that there should be a greater emphasis on transportation infrastructure in Sussex County. Mr. Stickels responded that Mr. Phillips' comments should be made during the upcoming workshop.</p>
Administrator's Report	<p>Mr. Dukes introduced the Proposed Ordinance entitled "AN ORDINANCE ADOPTING THE 2002 UPDATE OF THE COMPREHENSIVE PLAN FOR SUSSEX COUNTY AND REPEALING THE 1997 COMPREHENSIVE PLAN". The Proposed Ordinance will be advertised and Public Hearings will be scheduled on August 29th (Planning and Zoning Commission) and October 1st (Sussex County Council).</p> <p>Mr. Stickels read the following information in his County Administrator's Report:</p>

1. Bay Farm Road – Sussex County Road No. 299

The Delaware Department of Transportation will be holding a public hearing with regard to the proposed vacation and abandonment of a portion of Bay Farm Road, Sussex County Road No. 299, from Sussex County Road No. 299A to its dead end. The hearing will be

Administrator's  
Report  
(continued)

held at the Department of Transportation South District Office, located at the intersection of County Road No. 431 and U.S. Route 113 near Georgetown, Delaware, in the Conference Room on Thursday, August 8, 2002, at 2:00 p.m.

I have sent notice to the Planning and Zoning Department, Engineering Department, and the Emergency Operations Center asking for comments. At this time, I know of no reason why the Council should oppose this abandonment.

2. International Institute of Municipal Clerks

I am pleased to inform the Council that Robin A. Griffith, Clerk of the County Council of Sussex County, Delaware, has been awarded the prestigious designation of Certified Municipal Clerk (CMC) from the International Institute of Municipal Clerks (IIMC) for achieving its high educational, experience, and service requirements.

Robin obtained her designation as a Certified Municipal Clerk through completion of the IIMC-approved Municipal Clerks Institute Program conducted by the College of Human Resources, Education, and Public Policy, University of Delaware, Newark, Delaware. This program provides over 100 student/instructor contact hours of in-depth courses in managerial and leadership skills, social and interpersonal concerns, and technical training needed to deal with changes taking place in government today.

I, along with the County Council, would like to congratulate Robin for becoming the first County Council Clerk to receive this certification.

Mr. Rogers joined the meeting.

Dagsboro-Frankford SSD Extension/Bid Results      Mr. Stewart, Project Engineer, presented bid results for the Construction Contract for the U.S. 113 Sewer Extension of the Dagsboro-Frankford Sanitary Sewer District, as follows:

Bunting & Murray Construction Corporation Selbyville, Delaware	\$ 58,549.25
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George & Lynch, Inc. New Castle, Delaware	\$113,945.00
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The Engineer's Estimate was \$102,150.00.

M 476 02      A Motion was made by Mr. Phillips, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineer, that Sussex County Council award the Construction Contract for Sussex County Project No. 02-01, Dagsboro – U.S. 113 Sewer Extension of the Dagsboro – Frankford

Award Bid/  
D/F  
SSD

M 476 02 Award Bid/ Dagsboro – Frankford Sanitary Sewer District (continued)	<b>Sanitary Sewer District for the amount of \$58,549.25 to Bunting &amp; Murray Construction Corporation.</b>  <b>Motion Adopted:</b> 5 Yea.  <b>Vote by Roll Call:</b> Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Saraglen Acres Street- lighting District/ Results	Mr. McCabe, Public Works Director, presented a Proposed Resolution establishing the Saraglen Acres Streetlighting District. Mr. McCabe reported that the District was approved by a majority vote in an election on July 25, 2002. Twenty-seven (27) votes were cast in support of the Streetlighting District and 0 votes were cast in opposition to the Streetlighting District.
M 477 02 Adopt Resolution No. R 023 02	A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to Adopt Resolution No. R 023 02 entitled “A RESOLUTION ESTABLISHING SARAGLEN ACRES STREETLIGHTING DISTRICT”.  <b>Motion Adopted:</b> 5 Yea.  <b>Vote by Roll Call:</b> Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Oak Meadows Street- lighting District Modifi- cation	Mr. McCabe, Public Works Director, presented information on the Oak Meadows Streetlighting District. Oak Meadows is a 148 – lot subdivision and it is an existing County Streetlighting District (since 1980). The homeowners in the District have asked the County to install ten additional streetlights. This modification will raise their rates. The existing rate is \$17.26 per improvement per year. After installation, the cost is going to be \$63.93 for the first year and \$32.63 every year thereafter. The proposed rates have been presented to the homeowners. On July 11, 2002, the County received a formal letter from the homeowners association requesting the project.
M 478 02 Approve Estimated Annual Billing Rate/Oak Meadows Street- lighting District	A Motion was made by Mr. Cole, seconded by Mr. Dukes, that based upon the recommendation of the Sussex County Engineering Department, that Sussex County Council approves an estimated annual billing rate of \$63.93 for the first year and \$32.63 after the first year, per residential or commercial improvement within the Oak Meadows Streetlighting District, which shall be adjusted each year thereafter based upon the number of assessable units and fuel costs.  <b>Motion Adopted:</b> 5 Yea.

M 478 02 (continued)	<b>Vote by Roll Call:</b> Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
M 479 02 Adopt Resolution No. R 024 02/ Public Hearing/ Oak Meadows Street- lighting District	<b>A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to Adopt Resolution No. R 024 02 entitled "A RESOLUTION ESTABLISHING THE DATE, TIME, AND PLACE FOR A PUBLIC HEARING TO BE HELD TO CONSIDER THE REQUEST FOR INSTALLATION OF ADDITIONAL STREETLIGHTING IN THE OAK MEADOWS STREETLIGHTING DISTRICT".</b>  <b>Motion Adopted:</b> 5 Yea.  <b>Vote by Roll Call:</b> Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Cedar Landing Suburban Community Improvements Project/ Balancing Change Order	Mr. McCabe discussed the Cedar Landing Suburban Community Improvements Project. Cedar Landing is a 137-lot subdivision in Cedar Neck. The Property Owners Association has gone through the Suburban Community Improvements Program for the purpose of bringing the existing private streets into compliance with DelDOT's standards to be accepted into the DelDOT maintenance system. A letter was received on May 28th from the South District, recommending that the streets be accepted into the State maintenance system. At this time, the Engineering Department is determining final project costs and reconciling the final payment and release of retainage to the contractor. The project was completed at 6 percent under the contract price of \$176,875.62. Mr. McCabe presented a balancing change order credit for Council's approval.
M 480 02 Approve Change Order/ Cedar Landing Suburban Community Improvements Project	<b>A Motion was made by Mr. Cole, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, that a Change Order be approved for Sussex County Project No. 99-17, Cedar Landing Suburban Community Improvements to balance quantities, providing a credit of \$10,156.70, decreasing the contract price from \$176,876.62 to \$166,719.92.</b>  <b>Motion Adopted:</b> 5 Yea.  <b>Vote by Roll Call:</b> Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Public Hearing/ Rehoboth Beach Fire Company	<b>A Public Hearing was held to consider a "RESOLUTION APPROVING A WRITTEN AGREEMENT FOR FIREFIGHTING SERVICES WITH THE REHOBOTH BEACH VOLUNTEER FIRE COMPANY, INC. AND THE ISSUANCE OF CERTAIN BONDS BY THE REHOBOTH BEACH VOLUNTEER FIRE COMPANY, INC."</b>

**Public Hearing/ Rehoboth Beach Fire Company/ Bond Issuance (continued)**

Mr. Baker reported that the Rehoboth Beach Volunteer Fire Company is proposing to obtain a tax exempt loan for up to \$850,000 from Citizens Bank to pay for its share of a firehouse located on Route 24. The firehouse is a joint venture with the Lewes Volunteer Fire Company. In accordance with Federal regulations, the County must authorize the Rehoboth Beach Volunteer Fire Company to issue the bonds. A written service agreement authorizing the Fire Company to provide fire protection is also needed. There is no obligation of bond repayment by the County.

Mr. Baker advised that the Proposed Resolution, if adopted, authorizes the form of Agreement to be entered into between the County and the Fire Company and approves the issuance of the Bonds by the Fire Company in a maximum aggregate principal amount of up to \$850,000.

**M 481 02 Adopt Resolution No. R 022 02**

A Motion was made by Mr. Rogers, seconded by Mr. Cole, to Adopt Resolution No. R 022 02 entitled "RESOLUTION APPROVING A WRITTEN AGREEMENT FOR FIREFIGHTING SERVICES WITH THE REHOBOTH BEACH VOLUNTEER FIRE COMPANY, INC. AND THE ISSUANCE OF CERTAIN BONDS BY THE REHOBOTH BEACH VOLUNTEER FIRE COMPANY, INC."

**Motion Adopted:** 5 Yea.

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

**FEMA Flood Mitigation Project/ Change Order**

Mr. Brady, Private Roads Coordinator, submitted two change orders related to the FEMA Flood Mitigation Program. He noted that the County is acting as Project Administrator of this Program. FEMA provides 75 percent of the funding and the homeowner provides the remaining 25 percent. The project consists of four separate contracts affecting twelve homes. The project is approximately 70 percent complete and construction of all the homes is scheduled to be completed by September 18th.

Mr. Brady advised that the first change order is Change Order No. 1 for Contract No. 2. The contractor is Venture Crane. This change order is a result of homeowners requesting additional work and it is funded entirely by the homeowner. The original contract sum is \$195,131.86. The change order request amount is \$1,840.00. The new contract amount is \$196,971.86.

**M 482 02 Approve Change Order**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that a change order be approved for Sussex County Project No. 01-08, Sussex County Flood Hazard Mitigation Grant Program, Contract No. 2, to perform extra work at a cost of \$1,840.00, thereby increasing the contract amount from \$195,131.86 to \$196,971.86.

M 482 02 (continued)	<b>Motion Adopted:</b> 5 Yea.  <b>Vote by Roll Call:</b> Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
FEMA Flood Mitigation Project/ Change Order	Mr. Brady advised that the second change order is Change Order No. 1 for Contract No. 3. The contractor is Sun Marine Maintenance. This change order is a result of unforeseen site conditions and a request by the homeowner for additional work. FEMA and the effected homeowner will fund the change order. The original contract sum is \$183,000.00. The change order request amount is \$15,209.00. The new contract amount is \$198,209.00.
M 483 02 Approve Change Order	A Motion was made by Mr. Phillips, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, that a change order be approved for Sussex County Project No. 01-08, Sussex County Flood Hazard Mitigation Grant Program, Contract No. 3, to perform extra work at a cost of \$15,209.00, thereby increasing the contract amount from \$183,000.00 to \$198,209.00.
	<b>Motion Adopted:</b> 4 Yea, 1 Abstention.
	<b>Vote by Roll Call:</b> Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Abstained; Mr. Rogers, Yea; Mr. Jones, Yea
Public Hearing/ C/Z No. 1477	A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A LI-2 LIGHT INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 86.84 ACRES, MORE OR LESS" (Change of Zone No. 1477) filed on behalf of United Foods, Inc.
	The Planning and Zoning Commission held a Public Hearing on this application on July 11, 2002. The Commission recommended that the application be approved.
	The record of the Planning and Zoning Commission was incorporated into the record of this Public Hearing.
	Mr. Lank reported that one additional comment has been received since the Public Hearing before the Planning and Zoning Commission. Mr. Steve Masten, Sussex County Economic Development Office, submitted a letter recommending that the project be approved.

Public  
Hearing/  
C/Z  
No. 1477  
(continued)

**Mr. Tim Willard, Attorney; Mr. Wesley Ubanks and Homer Semens of United Foods, Inc.; and Ms. Amanda Pollock of George, Miles & Buhr, LLC, were present on behalf of the application.** Mr. Willard stated that the applicant proposes to develop the site with a vegetable processing plant for peas, limas, and corn; that the initial phase will include the entrance road, the parking area, a receiving area, a warehouse, cooler, and the spray irrigation facility; that over time the site will be expanded to a vegetable processing plant; that a need exists in the area for a plant of this type; that two older plants have recently closed in the area; that the plant will benefit the agricultural industry; that letters of support from agencies and the private sector show a need for the use.

Public comments were heard from the following in support of the application: Jack Tarburton, Director of Business Development for the Delaware Economic Development Office; Edward Kee, Extension Specialist for the University of Delaware Cooperative Extension; Joseph Conaway, President of the Bridgeville Town Council; and Barbara Sapp of Richard L. Sapp Farms.

There were no public comments in opposition to the application.

The Public Hearing was closed.

M 484 02  
Adopt  
Ordinance  
No. 1556  
(C/Z  
No. 1477)

**A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt Ordinance No. 1556 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A LI-2 LIGHT INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 86.84 ACRES, MORE OR LESS” (Change of Zone No. 1477) filed on behalf of United Foods, Inc.**

**Motion Adopted: 5 Yea.**

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

Findings  
of Fact

The Council found that the change of zone was appropriate legislative action based on the following findings of fact:

1. The area proposed for rezoning is appropriate for LI-2 zoning. The area surrounding the site is generally agricultural in character. The proposed Light Industrial use is a vegetable cleaning and processing facility which use will be of great benefit to the agricultural community. By its nature, such a use needs to be easily accessible to area farmers and transportation routes. The site of the rezoning is located near State Route 404 and State Route 13 being two major arterial north, south, east, west roadways in Sussex County. The site is also adjacent to the

**Findings  
of Fact  
(continued)**

**existing railroad and will utilize a railroad siding in future phases.**

**2. The proposed development is in accordance with the 1997 Sussex County Comprehensive Plan in that:**

- The Plan recognizes that the purpose of the agricultural district is to provide a full range of agricultural uses and that industrial uses that support or depend on agricultural products are appropriate in agricultural areas.**
- This site is located adjacent to existing property already zoned LI-2.**

**3. The proposed development is in accordance with the Delaware Strategies for State Policies and Spending for the reasons set forth in the letter dated July 3, 2002 from the Office of State Planning Coordination, a copy of which is incorporated herein.**

**4. That the requested change of zone promotes the health, safety, morale, morals, convenience, order, prosperity and welfare of present and future inhabitants of Sussex County based on the evidence and testimony presented by the applicant including the following.**

- Comments received by DelDOT indicate that use will have no significant impact on traffic.**
- That the character of the area is appropriate for LI-2 rezoning in that LI-2 zoning currently exists adjacent to this site.**
- The development will provide substantial direct economic impact to Sussex County in terms of jobs, payrolls, and taxes and significant benefit to the agricultural community.**
- That natural resources will be conserved in that there will be no adverse environmental impact from the site and the proposed spray irrigation system for the facility wastewater is supported by DNREC and is subject to DNREC Regulations.**
- That the Sussex County Planning and Zoning Commission held a public hearing on the proposed application on July 11, 2002 and unanimously recommended to the County Council that the application be approved.**
- That the application received strong support from the agricultural community as evidenced by letters submitted in support.**
- That the Findings of Fact and Conclusions stated herein are based on substantial evidence comprised that the reasons stated above in testimony and evidence presented by the applicant in the Findings**

<b>Findings (continued)</b>	of the Planning and Zoning Commission's recommendation of approval.
<b>Requests</b>	<b>Mr. Stickels presented funding requests for Council's consideration.</b>
<b>M 485 02 Council- manic Grant</b>	<b>A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$100.00 from Mr. Dukes' Councilmanic Account to the Eastern Cheerleading Association for trip expenses for Chelsea Espenlaub.</b>
	<b>Motion Adopted: 5 Yea.</b>
	<b>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</b>
<b>M 486 02 Council- manic Grant</b>	<b>A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$300.00 from Mr. Phillips' Councilmanic Account to the Greater Millsboro Chamber of Commerce for the Big Thursday Festival.</b>
	<b>Motion Adopted: 5 Yea.</b>
	<b>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</b>
<b>Citizen's Comments</b>	<b>Mr. Dan Kramer questioned how someone can own a property for five years and never have to pay taxes. Mr. Kramer would not provide any further information.</b>
<b>M 487 02 Recess</b>	<b>At 11:32 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Rogers to recess until 1:30 p.m. Motion Adopted by Voice Vote.</b>
<b>Reconvene</b>	<b>Mr. Jones called Council back into session at 1:35 p.m.</b>
<b>Public Hearing (C/U No. 1451)</b>	<b>The Public Hearing on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTOMOTIVE, BOAT, AND SMALL ENGINE REPAIRS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 12,694.65 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1451) filed on behalf of Rickie L. Clogg was continued. County Council opened the Public Hearing on June 4, 2002 at which time Mr. Clogg notified the County that he was too ill to attend. The Public Hearing was continued until this date.</b>
	<b>The Planning and Zoning Commission held a Public Hearing on this application on May 9, 2002. The Commission recommended that the application be approved with two conditions.</b>

**Public Hearing (C/U No. 1451) (continued)** The record of the Planning and Zoning Commission was incorporated into the record of this Public Hearing.

Mr. Clogg was present on behalf of his application and stated that he has been in business since 1976; that he repairs automotive, boat and small engines; that this is a full time job; that he does not have any employees; that he works on neighboring farmers' equipment; that he is not aware of any objections from surrounding property owners; and that his business is an asset to the neighborhood.

There were no persons present in support of or in opposition to the application. The Public Hearing was closed.

**M 488 02 Adopt Ordinance No. 1557 (C/U No. 1451)** A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 1557 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTOMOTIVE, BOAT, AND SMALL ENGINE REPAIRS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 12,694.65 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1451) filed on behalf of Rickie L. Clogg, with the following conditions:

1. Business hours shall be from 8:00 a.m. to 6:00 p.m. Monday through Saturday, with no Sunday hours.
2. One (1) unlighted wall sign, not exceeding 4-foot by 8-foot may be permitted.

**Motion Adopted:** 5 Yea.

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

**Findings of Fact** The Council found that the conditional use was appropriate legislative action based on the following findings of fact:

1. The applicant established by substantial evidence that the proposed use has been in existence for twenty-five years, serving the convenience of neighbors and surrounding communities, without adverse impact of any sort, and consistent with the Comprehensive Land Use Plan.
2. The findings of fact and recommendation of the Planning and Zoning Commission are incorporated herein.

**Public Hearing** A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL

Public  
Hearing  
(C/Z  
No. 1474)  
(continued)

**DISTRICT AND GR GENERAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 303 ACRES, MORE OR LESS" (Change of Zone No. 1474) filed on behalf of A.A.S.C.D. Ventures.**

The Planning and Zoning Commission held a Public Hearing on this application on June 11, 2002 at which time they deferred action. On July 25, 2002, the Commission recommended that the application be approved, with fifteen (15) conditions, as follows:

1. The maximum number of units shall not exceed 660 dwelling units, comprised as follows:
  - 160 single family lots (10,000 square feet minimum)
  - 144 single family lots (7,500 square feet minimum, age restricted)
  - 192 condominium units
  - 164 multi-family units (age restricted)
2. Residential building permits shall not exceed 100 per year.
3. Commercial floor area shall not exceed 15,000 square feet with this project. The sale of petroleum products and the sale of alcohol are not permitted.
4. Site plan review shall be required for each phase of development.
5. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include rolled curbs and sidewalks, street lighting, and street trees spaced every fifty (50) feet. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscaping design.
6. All entrances, intersections, roadway improvements, and multi-modal facilities required by DelDOT shall be completed by the applicant as required by DelDOT or in accordance with any further modification required by DelDOT.
7. The development shall contain a "Park and Ride" parking and pick-up facility available to the public at a location to be determined by DART and subject to site plan review by DelDOT and the Planning and Zoning Commission. These improvements shall be completed within two (2) years of the issuance of the first building permit.
8. Within one (1) year of the approval of the master plan, the applicant shall coordinate with the State, County, and other local emergency planning offices in the development and implementation of an emergency evacuation procedure for the project.

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(C/Z  
No. 1474)  
(continued)

9. Recreational facilities, e.g., tennis courts, swimming pool, community building, pathways, tot-lot, and multi-purpose field, shall be constructed and open to use by the residents within two (2) years of the issuance of the first building permit.
10. The RPC shall be served by an existing or an extended Sussex County sanitary sewer district.
11. The RPC shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
12. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements. If it is determined that additional areas are required for stormwater management, parking, or other use, the additional area shall be taken from lot areas, not designated Federal wetlands or open space areas.
13. Wetlands shall not be included in individual lots. Federal wetlands shall be maintained as non-disturbance areas.
14. No site preparation, site disturbance, site excavation or other site construction shall be commenced until all permits required by all other laws, ordinances, rules and regulations shall have been issued and the approved final site plan is recorded, except such site work for which a permit has been issued by the Sussex Conservation District. The site work authorized by the Sussex Conservation District permit may be commenced upon submission of copies of the application for permits from the Sussex County Engineering Department and DelDOT to the Director of Planning and Zoning and submission of a bond in an amount equal to 125% of the cost of the site work authorized by the Sussex Conservation District permit and in a form acceptable to the County Attorney. The bond shall be released upon the issuance of all other permits and the filing of an approved master plan or final site plan.

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

Prior to the meeting, the Council received a booklet of information that included an introduction, an executive summary, a property description, the proposed concept, references to existing infrastructure, improvements and impact assessments, phasing, market conditions, housing types, economic impact references, and conclusions.

Mr. Jim Yori, Attorney, and Mr. Rick Woodin and Mr. Keith Adams, members of A.A.S.C.D. Ventures, were present on behalf of the application and stated that this application is to rezone 302 acres from AR-1 and GR to MR-RPC; that the MR-RPC would contain a variety of residential units totaling 780 units; that the density proposed by this application is

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(C/Z  
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(continued)

approximately 2.6 units per acre; that there will be approximately 2.9 acres of commercial with the maximum floor space of 15,000 square feet; that there will be 33 percent open space (approximately 100 acres) which includes 50 percent open space in the wooded area; that there will be no adverse impact to the environment; that there are central water and sewer available; that they are concentrating growth in a growth area; that there are no tidal wetlands on the site; that no threatened or endangered species were noted on the property; and that all communities will be interconnected by use of public streets with curb and sidewalks and a series of access ways through open space areas; that a central community center will provide recreational amenities; and that a park and ride lot will be constructed for connection with the existing bus service on Route 24.

Mr. Yori stated that the project will be in accordance with LUPA and State Strategies and that the applicant will address all the issues that are raised by the agencies that have jurisdiction over this project.

Mr. Woodin referred to the density reduction as recommended by the Planning and Zoning Commission. The applicant stated that they believe the density requested is reasonable, however, if there is a density reduction requirement, they would prefer to have the flexibility to determine the market conditions as to what units should be reduced and that the multi-family would be best suited to be altered to a gated community of one-story level homes.

Mr. Cole suggested reducing density in the forested area. The applicant responded that the higher percentage of open space has been proposed for the forested area.

Mr. Adams stated that he serves on a subcommittee of the Governor's Livable Delaware Council, the Green Infrastructure Committee. He pointed out that it is a consensus among that committee that approximately 50 percent of development open space in wooded areas is going to be an appropriate recommendation to that Council.

Mr. Stickels suggested a fifteenth stipulation, as follows: "Road names and addresses shall be approved by the County's Mapping and Addressing Department".

Mr. Yori advised that the applicant is scheduled to meet with the Office of State Planning Coordination for a LUPA Review on Wednesday, July 31, 2002.

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

Mr. Cole asked that action on the application be deferred until after the meeting with the Office of State Planning Coordination and until the LUPA report has been received.

M 489 02  
Defer  
Action  
(C/Z  
No. 1474)

**A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Change of Zone No. 1474 until the close of business on August 30th for LUPA comments from the Office of State Planning Coordination and further, that the record will remain open until the close of business on September 9th to permit comments pertaining to the LUPA Report.**

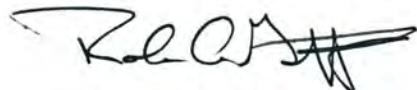
**Motion Adopted: 3 Yea, 2 Nay.**

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

M 490 02  
Adjourn

**A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to adjourn at 3:20 p.m. Motion Adopted by Voice Vote.**

Respectfully submitted,



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