

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 6, 2002

Call to Order The regular meeting of the Sussex County Council was held Tuesday, August 6, 2002, 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
George B. Cole	Member
Dale R. Dukes	Member
Vance Phillips	Member
Robert L. Stickels	County Administrator
David Baker	Finance Director
Eugene Bayard	County Attorney

M 491 02 A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to approve the
Approve Agenda, as presented.
Agenda

Motion Adopted: 5 Yea.

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

M 492 02 A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to approve the
Approve minutes of July 30, 2002, as distributed.
Minutes

Motion Adopted: 5 Yea.

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

Corre- Mr. Bayard read the following correspondence:
spondence

DEBRA L. ABSHER, ACTING DISTRICT COORDINATOR, SUSSEX
CONSERVATION DISTRICT, GEORGETOWN, DELAWARE.

RE: Letter in appreciation of grant to help offset conference expenses.

TIL PURNELL, LEAGUE OF WOMEN VOTERS.

RE: Letter in appreciation of grant for the printing of additional
pamphlets.

Award/ Ms. Rose Cline, Director Elect, Water and Wastewaters Operations
Heather Association (WWOA/CWEA), Eastern Shore Section, was in attendance to
Sheridan present the W. McLean Bingley Award to Heather Sheridan for

**Award
(continued)**

distinguished wastewater services. The award recognizes the person who has impacted significantly the administration, operation, and maintenance of a wastewater treatment facility and displayed exemplary commitment to the fundamental principles governing the treatment of wastewater and protection of the water environment.

**Adminis-
trator's
Report**

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

1. Route 54 Community Working Group

The Community Working Group appointed for the Route 54 Planning Study will meet on August 8, 2002, at 2:00 p.m. at Fenwick Island Town Hall. The project team will be presenting specific transportation improvements within the study area including Route 54, Alternate Route 54, and local roads. All Community Working Group meetings are open to the general public, as well as the media.

2. Public Information Meeting

The Delaware Department of Transportation (DelDOT) is hosting a public meeting regarding DelDOT and Fenwick Island's Pedestrian and Bicycle Plan. The meeting will be held on Friday, August 16, 2002, at Fenwick Island Town Hall in the parking lot, 800 Coastal Highway, Fenwick Island. The public is invited to attend any time between 11:00 a.m. and 2:00 p.m.

The Fenwick Island Pedestrian and Bicycle Plan will propose ideas to create a safe network of sidewalks, bicycle facilities, and aesthetic median treatments to enhance the mobility of residents and visitors. The project limits extend on State Route 1 from the Delaware/Maryland border to Lewes Street in Fenwick Island. Representatives from Fenwick Island, DelDOT, and the study team will be available to present and explain the proposed concepts.

**Old
Business/
Change
of Zone
No. 1468**

Change of Zone No. 1468 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 258.11 ACRES, MORE OR LESS" filed on behalf of Boca East, LLC was discussed.

The Planning and Zoning Commission held a Public Hearing on this application on May 9, 2002 at which time action was deferred. On June 13, 2002, the Commission recommended that the application be denied.

**Old
Business/
Change
of Zone
No. 1468
(continued)**

The County Council held a Public Hearing on this application on June 4, 2002, at which time action was deferred for (1) additional comments from the Delaware Department of Transportation, (2) a copy of DNREC's on-site inspection report relating to endangered species, and (3) a response to DNREC's comments made by Mr. Pingree.

Mr. Lank read letters into the record from the Delaware Department of Transportation, dated June 27, 2002, and from the Department of Natural Resources and Environmental Control, dated July 16, 2002.

Mr. Stickels read a list of proposed conditions for Council's consideration, as follows:

1. The maximum number of residential units shall not exceed ____ of which no less than 50 shall be assisted living units.
2. Residential building permits shall be limited to 100 permits per year.
3. The RPC shall be served by a lagoon treatment and spray irrigation central sewer system in accordance with applicable regulations of DNREC. The collection and transmission lines shall be subject to approval by the Sussex County Engineering Department.
4. The RPC shall be served by a central water system providing water for consumption and fire protection per applicable regulations and approvals of DNREC, the State Fire Marshal, the Public Service Commission, and Public Health.
5. All entrance, intersection and roadway improvements required by DelDOT shall be completed by the applicant in accordance with the requirement of DelDOT.
6. Site plans for each phase of the development shall be subject to review and approval by the Sussex County Planning and Zoning Commission.
7. The applicant will provide the community recreation facilities within two (2) years of the issuance of the first building permit.
8. The development shall provide a fifty foot (50') buffer from all tidal wetlands in accordance with Sussex County Ordinance 115-193.
9. The B-1 commercial use area shall not exceed 10,000 square feet of floor area and shall be limited to the Community Center and Services Building.
10. The development shall be "age-restricted" as authorized by and in accordance with the Fair Housing Act of 1988 and The Older Person Act of 1995 and applicable regulations thereunder.

Old
Business/
Change
of Zone
No. 1468
(continued)

11. The development shall operate a shuttle service for residents providing bus service to shopping areas and nearby municipalities and shall provide connection to State operated area bus service.
12. The development shall have an emergency evacuation plan implemented with the coordination of applicable State and County agencies.
13. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include curbs, sidewalks, and street lighting.
14. Road naming and addressing shall be subject to approval by the County Mapping and Addressing Division.
15. 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 applications 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 percent of the costs of 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.

M 493 02
Amend
Condition
No. 1 to
Change
of Zone
No. 1468

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, that Condition No. 1 should read as follows: "The maximum number of residential units shall not exceed 508 of which no less than 50 shall be assisted living units.

Motion Adopted: 4 Yea, 1 Nay.

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

Condition
No. 2

Mr. Cole recommended that Condition No. 2 be amended to read as follows: "Residential building permits shall be limited to 50 permits per year." There was no consensus of Council.

M 494 02
Amend
Condition
No. 2 to
C/Z
No. 1468

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, that Condition No. 2 should read as follows: "Residential building permits shall be limited to 75 permits per year."

Motion Adopted: 4 Yea, 1 Nay.

**M 494 02
(continued)**

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

**M 495 02
Adopt
Proposed
Ordinance
(C/Z
No. 1468)
DENIED**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 258.11 ACRES, MORE OR LESS” (Change of Zone No. 1468) filed on behalf of Boca East, LLC, with the following conditions:

- 1. The maximum number of residential units shall not exceed 508 of which no less than 50 shall be assisted living units.**
- 2. Residential building permits shall be limited to 75 permits per year.**
- 3. The RPC shall be served by a lagoon treatment and spray irrigation central sewer system in accordance with applicable regulations of DNREC. The collection and transmission lines shall be subject to approval by the Sussex County Engineering Department.**
- 4. The RPC shall be served by a central water system providing water for consumption and fire protection per applicable regulations and approvals of DNREC, the State Fire Marshal, the Public Service Commission, and Public Health.**
- 5. All entrance, intersection and roadway improvements required by DelDOT shall be completed by the applicant in accordance with the requirement of DelDOT.**
- 6. Site plans for each phase of the development shall be subject to review and approval by the Sussex County Planning and Zoning Commission.**
- 7. The applicant will provide the community recreation facilities within two (2) years of the issuance of the first building permit.**
- 8. The development shall provide a fifty foot (50') buffer from all tidal wetlands in accordance with Sussex County Ordinance 115-193.**
- 9. The B-1 commercial use area shall not exceed 10,000 square feet of floor area and shall be limited to the Community Center and Services Building.**
- 10. The development shall be “age-restricted” as authorized by and in accordance with the Fair Housing Act of 1988 and the Older Person Act of 1995 and applicable regulations thereunder.**

M 495 02
Adopt
Proposed
Ordinance
(C/Z
No. 1468)
DENIED
(continued)

11. The development shall operate a shuttle serve for residents providing bus service to shopping areas and nearby municipalities and shall provide connection to State operated area bus service.
12. The development shall have an emergency evacuation plan implemented with the coordination of applicable State and County agencies.
13. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include curbs, sidewalks, and street lighting.
14. Road naming and addressing shall be subject to approval by the County Mapping and Addressing Division.
15. 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 applications 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 percent of the costs of 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.

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

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

Findings
of Fact
(C/Z
No. 1468)

The Council found that the change of zone was not appropriate legislative action based on the following findings of fact:

1. The project is out of character with the area in which it is proposed to be located. The surrounding area is made up of single family homes and manufactured housing units in AR-1 Agricultural Residential and GR General Residential Districts, many of which are non-conforming uses existing prior to the adoption of zoning ordinances. This project includes one hundred fifty-three (153) of the proposed units as apartments as multi-family structures and fifty (50) units in an assisted living structure. This project requires that it be closer to municipalities and town centers.

**Findings
of Fact
(C/Z
No. 1468)
(continued)**

2. The single road that provides access to the project is inadequate to meet the needs of the project and the surrounding area. The road is narrow, curved, and lacks adequate shoulders. The roadway is inadequate to serve emergency vehicles, construction vehicles, or to provide for an emergency evacuation plan.
3. The project is in an environmentally sensitive area that should be conserved. The project is located adjacent to Rehoboth Bay and within the project site, and that 104 acres, more or less, or 40 percent of the project, are State tidal wetlands. State agencies and individuals familiar with the site report rare species of plants and animals. Angola Neck contains several protected areas of high conservation value, such as Delaware Wild Lands.
4. Infrastructure is not in place to serve this project.

**Public
Hearing/
Recorder
of Deeds
Fees**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY, TO ADD AND DELETE CERTAIN FEES CHARGED BY THE RECORDER OF DEEDS OF SUSSEX COUNTY”.

This Ordinance eliminates fees no longer being charged by the Recorder of Deeds to the public and adds a fee for obtaining copies of documents pursuant to provisions of the Uniform Commercial Code (which is currently being charged by policy).

Public comments were heard. Mr. Dan Kramer questioned whether any of the fees are increases and questioned what was deleted.

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

**M 496 02
Adopt
Ordinance
No. 1558-A**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Ordinance No. 1558-A entitled “AN ORDINANCE TO AMEND CHAPTER 62 OF THE CODE OF SUSSEX COUNTY, TO ADD AND DELETE CERTAIN FEES CHARGED BY THE RECORDER OF DEEDS OF SUSSEX COUNTY”.

Motion Denied: 5 Yea.

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

**W/W
Facilities**

Mr. Green, Director of Utility Construction, discussed the construction of wastewater facilities.

**M 497 02
Villages of
Five Points**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 281, that the Sussex County

M 497 02
Villages of
Five Points/
Village
Shopping
Center/
Execute
Agreements
(continued)

Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Village of Five Points Ventures, LLC for wastewater facilities to be constructed in Villages of Five Points – Village Shopping Center, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

M 498 02
Canal
Corkran,
Phase II/
Execute
Agreements

A Motion was made by Mr. Cole, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 243, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Canal Corkran LLC, for wastewater facilities to be constructed in Canal Corkran, Phase II, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

M 499 02
The
Village at
Bear Trap
Dunes,
Phase II/
Execute
Agreements

A Motion was made by Mr. Cole, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 232, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Carl M. Freeman Associates, Inc. Communities for wastewater facilities to be constructed in The Village at Bear Trap Dunes, Phase III, located in the South Bethany Sanitary Sewer District.

Motion Adopted: 5 Yea.

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

South
Ocean
View
SSD

Mr. Archut, Assistant County Engineer, reported that the eligible voters of the proposed South Ocean View Sanitary Sewer District approved the creation of the sewer district by a vote of 137 to 45 in an election held on July 20, 2002.

M 500 02
Adopt
Resolution

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to Adopt Resolution No. R 025 02 entitled "SOUTH OCEAN VIEW SANITARY SEWER DISTRICT DECLARED UNDER THE PROVISIONS OF

M 500 02 TITLE 9, CHAPTER 65, OF THE DELAWARE CODE".

**Adopt
Resolution
No.**

Motion Adopted: 5 Yea.

**R 025 02
(continued)**

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

**Award/
Lt. Jeff
Christopher**

Sheriff Reed announced that Lt. Jeff Christopher received the Medal of Merit Award from the National Sheriff's Association for his contribution to his community and to the field of law enforcement and criminal justice.

**M 501 02
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$300.00, (\$100.00 from Mr. Rogers' Councilmanic Account and \$50.00 each from Mr. Cole's, Mr. Dukes', Mr. Jones', and Mr. Phillips' Councilmanic Accounts) to the Delaware Dairy Princess Committee of Sussex County for promotional literature.

Motion Adopted: 5 Yea.

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

**M 502 02
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$250.00 from Mr. Jones' Councilmanic Account to the Slam Softball Team for traveling expenses.

Motion Adopted: 5 Yea.

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

**Funding
Request**

The funding request from the Bad Company Softball Team was discussed. Action was deferred.

**M 503 02
Council-
manic
Grant**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$500.00, \$250.00 each from Mr. Rogers' and Mr. Jones' Councilmanic Accounts, to the Milford Parks and Recreation Department for the Mispillion River Festival.

Motion Adopted: 5 Yea.

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

**M 504 02
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$650.00 (\$350.00 from Mr. Jones' Councilmanic Account and \$150.00 each from Mr. Phillips' and Mr. Dukes' Councilmanic Accounts) to the Bridgeville Apple-Scrapple Festival for the 2002 Festival.

Motion Adopted: 5 Yea.

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

**Introduction
of Proposed
Ordinance**

Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 44.83 ACRES, MORE OR LESS" (Change of Zone No. 1482) filed on behalf of Donald Derrickson. The Proposed Ordinance will be advertised for Public Hearing.

**M 505 02
Adjourn**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to adjourn at 11:39 a.m. Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith
Clerk of the Council