



Sussex County Council Agendas & Minutes

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 22, 2006

**Call to
Order**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 22, 2006 at 9:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Lynn J. Rogers	President
Dale R. Dukes	Vice President
George B. Cole	Member
Finley B. Jones, Jr.	Member
Vance Phillips	Member
Robert L. Stickels	County Administrator
David Baker	Finance Director
James D. Griffin	County Attorney

**M 578 06
Approve
Agenda**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the Agenda, as distributed.

Motion Adopted: 5 Yea.

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

**Presen-
tations by
Land Use
Plan
Consultants**

Mr. Rogers announced that, at the August 15th meeting, the Council elected to invite Johnson, Mirmiran & Thompson and Urban Research & Development Corporation, the top two ranked consulting firms who submitted Land Use Consultant Contract proposals, to give presentations at the August 22nd Council meeting on their contract proposals to assist the County with the review and update of the 2007 Comprehensive Land Use Plan.

The first presentation was given by Urban Research & Development Corporation (URDC) of Bethlehem, Pennsylvania. Charlie Schmehl, Vice President and Partner and the Proposed Project Manager, and Paul Driscoll, Vice President and Partner, were present on behalf of the firm. They stated that they are a 20-person firm of planners, economic development specialists and designers. They stated that they are not an

engineering firm and that their specialty is land use planning and zoning. (URDC was ranked No. 2 by Sussex County's Planning Consultant Selection Committee.)

Presentations (continued)	The second presentation was given by Johnson, Mirmiran & Thompson (JMT) of Newark, Delaware. Dave DuPlessis, P.E., Principal-In-Charge; April Showers, AICP, Project Manager; and Bruce McClure, PE, were present on behalf of the firm. They stated that they are a 450-person firm comprised of planning and engineering professionals. They stated that their firm is a nationally ranked planning and engineering firm and that JMT only works for public agencies. (JMT was ranked No. 1 by Sussex County's Planning Consultant Selection Committee.)
M 579 06 Recess Regular Session & Go Into Executive Session	<p>At 10:20 a.m., a Motion was made by Mr. Phillips, seconded by Mr. Dukes, to recess the Regular Session and to go into Executive Session for the purpose of discussing personnel issues.</p> <p>Motion Adopted: 5 Yea.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Jones, Yea; Mr. Rogers, Yea</p>
Executive Session	An Executive Session of the Sussex County Council was held on August 22, 2006 at 10:21 a.m. in the Caucus Room of the Sussex County Council for the purpose of discussing personnel issues. The Executive Session concluded at 10:36 a.m.
M 580 06 Come out of Executive Session & Reconvene Regular Session	<p>At 10:37 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Phillips, to come out of Executive Session and to reconvene the Regular Session of the Sussex County Council.</p> <p>Motion Adopted: 5 Yea.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Jones, Yea; Mr. Rogers, Yea</p>
Land Use Consultant Selection	The Council discussed the selection of a Land Use Consultant to assist the County with the review and update of the 2007 Comprehensive Land Use Plan.
M 581 06 Enter into Nego- tiations w/Urban Research & Develop-	<p>A Motion was made by Mr. Phillips, seconded by Mr. Jones, to authorize the County Administrator to enter into contract negotiations with Urban Research & Development Corporation of Bethlehem, Pennsylvania for the 2007 Sussex County Comprehensive Land Use Plan Update.</p> <p>Motion Adopted: 4 Yea, 1 Abstention.</p>

ment Corpor- ation	Vote by Roll Call: Mr. Cole, Abstained; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Jones, Yea; Mr. Rogers, Yea
M 582 06 Approve Minutes	A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to approve the minutes of August 1, 2006.
M 582 06 (continued)	Motion Adopted: 5 Yea. Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Jones, Yea; Mr. Rogers, Yea
M 583 06 Approve Minutes	A Motion was made by Mr. Jones, seconded by Mr. Dukes, to approve the minutes of August 8, 2006.
	Motion Adopted: 5 Yea.
	Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Jones, Yea; Mr. Rogers, Yea
Corre- spondence	Mr. Griffin read the following correspondence: FAITH ENNIS, MILFORD HIGH SCHOOL AFTER-PROM COMMITTEE, MILFORD, DELAWARE. RE: Letter to Councilman Jones and Rogers in appreciation of their \$500.00 donation.
Surface Water Manage- ment Program/ Joint Level of Service Analysis	Frank Piorka, Administrator for DNREC's stormwater and drainage programs, was in attendance to present a proposal for a joint Level of Service (LOS) Analysis for Surface Water Management Program needs in Sussex County, i.e. stormwater management programs, drainage programs, watershed management, and flood management programs throughout the County. He stated that the LOS Analysis is being proposed for Sussex County with costs to be shared by DNREC, the Sussex Conservation District, and the Sussex County Council. The LOS Analysis would determine the level and extent of public services offered in Sussex County related to Surface Water Management, and to what degree and cost they may be initiated or increased to adequately meet the needs of the rapidly expanding population of Sussex County.
M 584 06 Appropriate \$25,000 for Joint Level of Service Analysis/ DNREC	A Motion was made by Mr. Cole, seconded by Mr. Jones, to approve a one-time appropriation in the amount of \$25,000 to DNREC for a joint Level of Service (LOS) Analysis for Surface Water Management Program needs in Sussex County.
	Motion Adopted: 4 Yea, 1 Nay
	Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;

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

**Sussex
County
CTIP
Request**

Mr. Baker reviewed the Sussex County Council's Capital Transportation Improvement Program Request that is being proposed to be presented to DelDOT on September 7, 2006 at the Capital Transportation Program (CTP) Hearing in Sussex County. The County's request recommends projects to be funded by DelDOT in their five-year capital budget. Mr. Baker reviewed a list of the projects that were included in the report:

**Sussex
County
CTIP
Request
(continued)**

- 1. Indian River Inlet Bridge**
- 2. North-South Limited Access Highway**
- 3. East-West Roadway Improvements**
 - SR 36 from US 113 west of Milford to SR 404 west of Greenwood**
 - SR 16 from SR 36 west of Greenwood to the termination of the road at the Delaware Bay**
 - SR 404 from the Maryland border to SR 1**
 - Road 40 between US 13 and US 113**
 - SR 24 from US 113 east to the SR 1 intersection north of Rehoboth Beach**
 - SR 26 from the Assawoman Canal west to US 113**
 - SR 54 from Road 58C west to US 113**
- 4. SR 1 Improvements**
- 5. Seaford and Blades Area Flood Repairs**
- 6. Delayed Project Concerns**
- 7. Local County Road Concerns**
- 8. SR 30 and SR 5 from SR 24 north to SR1**
- 9. Georgetown – Zoar Road and South Bedford Street Ext. Intersection**
- 10. Georgetown – Park Avenue, Arrow Safety Road & US 113**
- 11. Fred Hudson Road – SR 1 to Cedar Neck Road**
- 12. Roxana – Burbage Road (Alternate SR 26)**
- 13. Reconsideration Requests**
- 14. Sussex County Aviation**

Mr. Baker reported that the first five projects listed are on DelDOT's high priority list.

Mr. Rogers asked that Prime Hook Beach Road be included in the list of "Local County Road Concerns".

Mr. Baker stated that the meeting will provide an opportunity to review the current CTP and suggest transportation projects and/or services to be considered for the proposed CTP for Fiscal Years 2008-2013.

Mr. Baker asked the Council to submit any additional road concerns for insertion in the CTIP Report, prior to September 7th.

Mr. Cole questioned if there are any basic guidelines that DelDOT follows in managing developer contributions and how they negotiate road improvements, i.e. entrances, shoulders, lights, etc.

**Supple-
mental
Funding
Requests**

**Funding
Requests
(continued)**

Mr. Baker presented funding requests received but not funded in the Fiscal Year 2007 Budget. He reported that over \$1.5 million in funding requests were received from various agencies. Mr. Baker reported that he met with Robert Stickels, Susan Webb, Director of Accounting, and William Lecates, Director of Community Development & Housing, to select a few requests for the Council's consideration, as follows:

- First State Community Action
- NCALL
- Diamond State Community Land Trust
- University of Delaware, College of Agriculture
- Cape Henlopen Senior Center
- CHEER
- Easter Seals
- Laurel Senior Center
- Lewes Senior Center
- Nanticoke Senior Center

Mr. Baker noted that the request from DNREC was addressed earlier in the meeting and a \$25,000 grant was approved for a joint Level of Service (LOS) Analysis for Surface Water Management Program needs in Sussex County.

Mr. Baker and Mrs. Webb, Director of Accounting, recommended that the funding for these requests (and the funding previously allocated to DNREC) come from the Constable's Budget (\$250,000 that was allocated for dog control that will not be needed for that purpose in Fiscal Year 2007). Mr. Baker stated that they focused on the requests for housing and senior transportation programs.

**M 585 06
Allocate
Grants**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to allocate the following one-time grants:

First State Community Action	\$ 50,000
NCALL	\$ 20,000
Diamond State Community Land Trust	\$ 50,000
University of Delaware, College of Agriculture, for a Safety Agent	\$ 15,000

Motion Adopted: 5 Yea.

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

M 586 06
Allocate
Grants

A Motion was made by Mr. Cole, seconded by Mr. Jones, to allocate a total of \$74,600.00 for the following one-time grants for senior transportation programs to supplement the funding provided by the State of Delaware:

Cape Henlopen Senior Center	\$ 4,200
CHEER	\$50,000
Easter Seals	\$ 4,700
Laurel Senior Center	\$ 9,300
Lewes Senior Center	\$ 2,400
Nanticoke Senior Center	\$ 4,000

M 586 06
Allocate
Grants
(continued)

Motion Adopted: 5 Yea.

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

Appeal
Request/
Lacrosse
Homes
of DE

Mr. Lank, Director of Planning and Zoning, reported that a letter dated August 14, 2006 has been received from James A. Fuqua, Jr. of Fuqua and Yori, P.A. asking the Council to consider an appeal of the Planning and Zoning Commission's recommendation of denial of Subdivision No. 2005-12, an application of Lacrosse Homes of Delaware, Inc. (Hayfield).

M 587 06
Accept
Appeal &
Schedule
Hearing/
Lacrosse
Homes
of DE

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to accept the appeal of Lacrosse Homes of Delaware, Inc. on Subdivision Application No. 2005-12 and to authorize the scheduling of a Public Hearing on September 19, 2006 to hear the appeal.

Motion Adopted: 5 Yea.

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

Old
Business/
Proposed
Ordinance
Relating
to CR-1
District

The County Council discussed the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115, ZONING, ARTICLE XI, PART ONE, RELATING TO PERMITTED USES AND TO CLOSE THE EXISTING C-1 DISTRICT; PART TWO, SECTION 3, TO CREATE A NEW CR-1 DISTRICT; PART THREE, ARTICLE X, TO AMEND THE B-1 DISTRICT RELATING TO CONDITIONAL USES; AND PART FOUR, ARTICLE XX TO AMEND THE HEIGHT, AREA AND BULK REQUIREMENTS."

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on March 23, 2006 at which time they deferred action. On May 11, 2006, the Commission recommended that the County Council reject the Proposed Ordinance which would close the existing C-1 District and create a new CR-1 District and stated that they do not support an

ordinance amendment that potentially allows 20 units per acre in a new zoning district.

Old
Business/
Proposed
Ordinance
Relating
to CR-1
District
(continued)

The County Council held a Public Hearing on the Proposed Ordinance on April 11, 2006 at which time the Council deferred action since a recommendation had not been received by the Commission. The record was left open for written comments for thirty (30) days after the submission of the Planning and Zoning Commission's report on their decision. On April 11th, four people offered public comment and written correspondence was received from Preston Dyer of Dyer McCrea Ventures, L.L.C.

Several clarifications were made regarding the Proposed Ordinance: that existing C-1 zonings would be grandfathered; that a CR-1 District would not allow residential uses as a matter of right; and that the new CR-1 District would be a new district and the zoning classification would not be assigned to any properties; therefore, an applicant would be required to go through public hearings to create such a district and then apply for a conditional use to request multi-family uses (two public hearings).

The Council discussed the fact that the Proposed Ordinance would potentially allow 20 units per acre in the new zoning district.

M 588 06
Amend
Proposed
Ordinance

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to amend the Proposed Ordinance on Page 12, Part Five, Section 7, "Lot Area" from 2178 square feet per dwelling unit (20 units per acre) to 3630 square feet per dwelling unit (12 units per acre).

Motion Adopted: 5 Yea.

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

Mr. Griffin pointed out that an issue that was brought up at the Public Hearing was that the Proposed Ordinance, as originally drafted, did not contain the words required by State Statute that "THE COUNTY OF SUSSEX HEREBY ORDAINS". The wording was inserted into the text of the Proposed Ordinance after the Public Hearing before the County Council. Mr. Griffin asked the Council to vote on that amendment. He noted that it was a housekeeping matter and that although it is a required preamble, amending the ordinance to include the wording, in his opinion, is not a matter of substance embraced by the title of the ordinance and is not a part of the operable language of the statute that the Council is trying to amend.

M 589 06
Amend
Proposed
Ordinance

A Motion was made by Mr. Cole, seconded by Mr. Jones, to amend the Proposed Ordinance by adding the wording "THE COUNTY OF SUSSEX HEREBY ORDAINS" to the Proposed Ordinance, as required by State Statute.

Motion Adopted: 4 Yea, 1 Nay.

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

**M 590 06
Adopt
Ordinance
No. 1870**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to Adopt Ordinance No. 1870 entitled “AN ORDINANCE TO AMEND CHAPTER 115, ZONING, ARTICLE XI, PART ONE, RELATING TO PERMITTED USES AND TO CLOSE THE EXISTING C-1 DISTRICT; PART TWO, SECTION 3, TO CREATE A NEW CR-1 DISTRICT; PART THREE, ARTICLE X, TO AMEND THE B-1 DISTRICT RELATING TO CONDITIONAL USES; AND PART FOUR, ARTICLE XX TO AMEND THE HEIGHT, AREA AND BULK REQUIREMENTS.”, as amended.

Motion Adopted: 5 Yea.

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

**Status of
Funding for
Amendment
to
Consultant
Agreement
with Delta
Airport
Consultants**

Mr. Hickin, Project Engineer, updated the Council on the funding status for Amendment No. 17 to the County’s Consultant Agreement with Delta Airport Consultants, which was presented on August 15, 2006. The Amendment, at a total cost of \$634,694.00, is for an environmental assessment and benefit cost analysis for all projects at the Airport over the next five years. Mr. Hickin reported that, as of this date, August 22, 2006, the FAA has indicated that they have no funding for the project.

Mr. Baker reported that funds could be used that have been set aside for the Clear Zone Project by deferring on some of the property purchases. Mr. Baker also stated that the County can try to work with the congressional delegation to put pressure on the FAA to give the County’s project a higher priority.

Mr. Hickin noted that the Contract Amendment was approved at the August 15, 2006 Council meeting, pending Mr. Baker’s approval.

**Contract
Proposal/
Gillan &
Hartman,
Inc.**

Mr. Izzo, County Engineer, presented a contract proposal in the amount of \$151,100.00 with the firm of Gillan & Hartman, Inc. Mr. Izzo advised that the firm was selected as the County’s fire service consultant several years ago and that they have performed a planning study that looked at the fire service that was needed at the Sussex County Airport and the Industrial Park. In the performance of the study, it was determined that sufficient water storage is not being provided. Mr. Izzo explained that currently, there are two 150,000 gallon storage tanks; it was determined that another 350,000 gallons is needed.

Mr. Izzo stated that they are proposing a Phase I project, which would upgrade the fire pumps, provide the additional storage, and upgrade some of the water supply pipes throughout the Industrial Park. He noted that Phase II would extend the water supply lines to the Airport side and Phase III would extend the water supply when the undeveloped area of the Airport is developed.

Mr. Phillips left the meeting.

**M 591 06
Execute
Amendment
to Contract/
Gillan &
Hartman,
Inc.**

A Motion was made by Mr. Cole, seconded by Mr. Jones, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council hereby authorizes its President to execute Amendment No. 1 to its contract with Gillan and Hartman, Inc. for design services for the fire and domestic water upgrade at the Sussex County Airport and Industrial Park, at a cost not to exceed \$151,100.00.

Motion Adopted: 4 Yea, 1 Absent.

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

**Airport
Consultant
Selection**

Mr. Izzo reported that the County Engineering Department recently went through a Consultant Selection Process for an Airport Consultant. He noted that the County's current consultant is Delta Airport Consultants, who were hired back in 1999 for a term of five years.

Mr. Izzo reported that eight firms responded to the Request for Proposals (RFPs). The list of eight firms was short-listed to five firms by a Committee. The five firms were interviewed by a Committee of five people. Mr. Izzo presented a fact sheet of the results of the interviews. The highest scoring firm was Urban Engineers Inc. of Philadelphia, Pennsylvania; the second ranked firm was Delta Airport Consultants. Mr. Izzo recommended that Urban Engineers, Inc. be selected to perform all airport related work for the next five years. Mr. Izzo noted that the County would still have to negotiate a contract with the selected firm.

In response to questions from the Council, Mr. Izzo stated that Urban Engineers, Inc. was selected based on their experience with the implementation of instrument landing systems. Mr. Izzo stated that "they had a real good handle on how we could manipulate the glide slope" and how it could be implemented and that "they were head and shoulders on the glide slope above everyone else."

Mr. Izzo presented the following Proposed Motion:

Based upon the recommendation of the Consultant Selection Team, that Urban Engineers, Inc. be selected to provide engineering services for

aviation related activities at the Sussex County Airport for a five year period, effective this date.

**Airport
Consultant
Selection
(continued)**

Mr. Stickels questioned whether the firm, Urban Research & Development Corporation of Bethlehem, Pennsylvania, selected on this date as the County's Land Use Consultant was in any way affiliated with Urban Engineers, Inc. of Philadelphia, Pennsylvania. The Council agreed to defer action on the Proposed Motion pending additional information on the two companies. Mr. Izzo responded that he would research the matter and report back to the Council prior to the public hearings scheduled at 1:30 p.m.

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

**M 592 06
Community
Investment
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$2,500.00 from Mr. Cole's Community Investment Grant Account to the West Rehoboth Community Land Trust, Inc. for administrative costs.

Motion Adopted: 4 Yea, 1 Absent.

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

**M 593 06
Motion
Died**

A Motion was made by Mr. Cole to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to the First State Antique Tractor Club. The Motion died for the lack of a Second.

**M 594 06
Council-
manic
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Jones, to give \$1,000.00 (\$200.00 from each Councilmanic Grant Account) to the First State Antique Tractor Club for the Annual Truck-Tractor-Car Show.

Motion Adopted: 4 Yea, 1 Absent.

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

**M 595 06
Youth
Activity
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$1,000.00 from Mr. Phillips' Youth Activity Grant Account to Families Connected, Inc. for their school supply drive.

Motion Adopted: 4 Yea, 1 Absent.

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

Comments/

Under Additional Business, Stephanie Hansen thanked the Council for

appropriating money for the Surface Water Management Program. She stated that she is legal counsel for the Surface Water Management Advisory Council and she advised that the Council has changed its name several times and is now called the Clean Water Advisory Council. Ms. Hansen emphasized that the legislation is enabling legislation and that the decision to create a stormwater utility in Sussex County is completely up to the County Council.

M 596 06
Recess

At 12:20 p.m., a Motion was made by Mr. Dukes, seconded by Mr. Jones, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene

Mr. Rogers called the Council back into session at 1:45 p.m.

Report on Firms

Mr. Izzo stated that, at the request of the Council during the morning session, he researched whether there was any connection between Urban Engineers, Inc. of Philadelphia, Pennsylvania and Urban Research & Development Corporation of Bethlehem, Pennsylvania. He reported that, although their names are similar, there are no ties between the two firms.

M 597 06
Select
Airport
Consultant

A Motion was made by Mr. Jones, seconded by Mr. Dukes, based upon the recommendation of the Consultant Selection Team, that Urban Engineers, Inc. be selected to provide engineering services for aviation related activities at the Sussex County Airport for a five year period, effective this date.

Motion Adopted: 4 Yea, 1 Absent.

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

**Public
Hearing
(C/U
No. 1665)**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL/MEDICAL OFFICE COMPLEX TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 20.433 ACRES, MORE OR LESS” (Conditional Use No. 1665) filed on behalf of L. T. Assoc., LLC.

The Planning and Zoning Commission held a Public Hearing on this application on August 10, 2006 at which time they deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated August 10, 2006 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

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

Public
Hearing
(C/U
No. 1665)
(continued)

Eugene Bayard, Attorney; Tom Ford of Land Design, Inc.; and William Lingo of L.T. Associates, Inc., were present on behalf of the application. They stated that this project is proposed to provide medical office space as an extension to the Beebe Medical Campus; that the medical/professional office complex will be called the MedExec Complex; that the 20 acre site is located off of Route 1 on County Route 275 (Warrington Road), southeast of Route 24 (John J. Williams Highway); that the site is located adjacent to the Beebe Medical Center; that with residential markets on the rise in Coastal Sussex County, other services will need to be provided for the growing population; that medical services are one of the most necessary and urgent needs to fulfill; that environmental investigations, a traffic impact study and soils work were conducted; that this application seeks the approval of ±150,000 square feet of medical and related professions office suites along with open park-like amenities and associated parking; that entry features, signage and a boulevard drive are proposed along with sidewalks, an open space campus, landscape features along the streetscape, shared access points into each leased pad site; drainage and stormwater management facilities; that there are no State or Federal wetlands; that 100 percent of the site is upland area; that the site plan indicates a planted Boulevard Entrance Road off of County Route 275 (Warrington Road); that parking shall be encouraged to the rear of the buildings; that an 85-foot building setback is proposed from the rear of each lot; that 30 foot building setbacks are proposed along the interior driveway frontage; that 19 percent of the site would be left as open space; that they will comply with all of DelDOT's determinations; that the project will be designed to compliment the Beebe Medical Complex; that the Beebe Medical Center supports the application; that there has been a change of land use along the Route 24 corridor from residential to conditional uses and rezonings; that approximately 17 parcels are being utilized for business; commercial or conditional uses; and that it is anticipated that the trend will continue. (The Applicant submitted an Exhibit Booklet and an aerial map depicting the location of existing businesses and commercial uses along Route 24.)

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

M 598 06
Defer
Action on
C/U
No. 1665

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to defer action on Conditional Use No. 1665, an application filed on behalf of L. T. Assoc., LLC.

Motion Adopted: 4 Yea, 1 Absent.

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

Public
Hearing
(C/U

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR

No. 1666) GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 28.18 ACRES, MORE OR LESS” (Conditional Use No. 1666) filed on behalf of Wilkinson Properties, LLC.

Public Hearing (C/U No. 1666) The Planning and Zoning Commission held a Public Hearing on this application on August 10, 2006 at which time they deferred action. (See the minutes of the meeting of the Planning and Zoning Commission dated August 10, 2006 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

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

Mr. Lank reported that correspondence had been received since the Public Hearing before the Commission. In a letter written to Kevin Burdette of McCrone, Inc. from the Cape Henlopen School District, the School District requested that the County and developers begin considering impact fees and in the case of large developments, setting aside land for additional schools since the School District is experiencing large enrollment increases and will need assistance in meeting the growing needs of the growing population.

Mr. Lank reported that the County received a copy of a letter from Steve Wilkinson addressed to DelDOT, referencing the project and the Commission’s Public Hearing on August 10th. Mr. Wilkinson noted that during the Public Hearing, several residents from the Lazy Lake community voiced their concerns about heavy traffic at the intersection of Route 9 and Hudson Road and he stated that if DelDOT is planning on installing a traffic signal at the above mentioned intersection, that he would like to contribute to the improvement.

Mr. Lank reported that a copy of a letter addressed to the Applicant from Artesian Water Company, Inc. was also received. The letter references several concerns that were brought to their attention at the Public Hearing regarding the delivery of water and wastewater services. The letter further defined the delivery of services and addressed the questions asked at the Public Hearing. In reference to water service, Artesian stated that water service will be provided to the community from a regional water system being developed by Artesian Water Company; that the water system will contain several wells which will draw water from deep confined aquifers; that the wells will be permitted by DNREC and an allocation will be assigned to each well, limiting the amount of water that can be drawn from them; that there will be no disturbance or interference with existing wells located in the area; that in reference to wastewater service, Artesian Wastewater Management will provide wastewater service to the community; and that Artesian utilizes state-of-the-art wastewater treatment

technologies to treat the water that creates an almost drinking water quality effluent; and that the effluent will be disposed of via a land-based application.

Mr. Lank reported that a letter was also received from the Sussex Conservation District in reference to soil types.

Public
Hearing
(C/U
No. 1666)
(continued)

Mr. Lank reported that a letter in opposition to the application was received from Perry and Sharon Templin. They referred to the added traffic that the proposed project would cause on an already congested Route 9; that the additional traffic would cause a treacherous condition at Hudson Road and Route 9 and it would also cause a dangerous entering and exiting from or to Route 9 for all residents of Lazy Lake, and Hudson and Fisher Roads, including the residents of the proposed development. They questioned if there has ever been a traffic study or environmental study performed on this area. They stated that the proposed development has been presented as preserving the wooded areas and creating a 50 foot buffer zone from the structures to the property lines of the homeowners on Hudson Road and Lazy Lake and that there would be a hiking/walking trail in the buffer zone, which would be only 30 feet from the adjacent property lines of homeowners. They stated that they oppose the hiking/walking trail since off-road vehicles would use the trail, even it is posted that they are prohibited. They stated that the environmental impact would be devastating to the pristine, quiet country-side and that the Applicant's statement that he did not observe any wildlife in the area is untrue. The Templin's also expressed concern about groundwater run-off, flooding problems, and a negative impact on wells in the area. In conclusion, they questioned why a contractor would want to build homes near high-tension wires.

Steve Wilkinson was present with Eugene Bayard, Attorney, and Kevin Burdette and Keith Rudy of McCrone, Inc. They stated that the site is located on Route 290 on the northwest corner of the intersection of Route 9 and Hudson Road (County Road 258); that the project would front on Route 9 to the south; that the area is a rapidly developing area; that it is almost a fully developed area; that this property is an in-fill; that the subdivision is intended to be developed with 96 townhouses; that the project is known as Shoreview Woods Subdivision; that they are proposing to maintain 71 percent of open space; that they propose a forested buffer around the complete perimeter of the site where woods presently exist; that the width of the buffer is approximately 50 feet; that from the buffer to the rear of the units is approximately 30 feet; that they propose 0.9 mile of trails and 1 mile of sidewalks providing ample multi-modal movement within the development; that a multi-modal path is also proposed along Route 9 per DelDOT's requirements; that after discussions with PLUS and other consulting agencies, the stormwater managements ponds are proposed to be located at the front of the site; that they plan to hide the development with trees; that the closest townhouse building would be at least 200 feet from

Route 9 behind the line of the hedgerow; that they plan to maintain massive wooded areas in the back; that a boulevard entrance is planned; that amenities are planned; that the areas that will be cleared will be select cut and not clear cut; and that they propose to replant native trees on the site. (The Applicant submitted an Exhibit Booklet.)

Public
Hearing
(C/U
No. 1666)
(continued)

Joe Conaway, Land Use Consultant and Real Estate Agent, stated that he read the PLUS comments and that he does not agree with the State's comments on roads. Mr. Conaway reviewed the different types of development and he stated that commercial development on Route 9 is ongoing. He stated that townhouses are located in Mills Chase, three miles east of the proposed project. He stated that he agrees with Mr. Bayard that the area is an in-fill area; that townhouses would be in keeping with the area; and that the proposed price level would provide affordable housing for firemen, teachers, paramedics, nurses, etc.

Public comments were heard.

Patricia Perkins was present on behalf of the residents of North Lake Drive to speak in opposition to the proposed project. She stated that they oppose the project because townhouses are out of character with the area; that traffic is already a problem in the area; that they are concerned about drainage and the impact on the water quality and existing aquifers; that there are still a lot of vacant houses in the area; that they question if the 50 foot buffer is sufficient; and that if the project is approved, they would insist that high fencing be constructed between their properties and the project to restrict access to their private fishing pond.

Mary Dunning was present on behalf of the residents of Dans Lane at Lazy Lake in opposition to the proposed project. She stated that they are concerned about insufficient police protection; that it is too much density; that over-crowded schools will become a problem; and that she would prefer to see single-family homes and less density.

Ray Ganz of Hunters Mill spoke in opposition to the proposed project. He stated that a new power line was just installed 29 feet away from his house and another line is proposed within the next ten years which will result in the removal of trees; that he doesn't want to see houses there; and that if the project is approved, he wants a buffer to be maintained, leaving 30 or 40 feet of the woods.

R. P. Elwell of Lazy Lake spoke in opposition to the proposed project. He stated that public safety is an issue; that it is almost impossible now to pull out onto Route 9 from Hudson Road; and that the intersection of Route 9 and Hudson Road is hazardous.

Bruce McFarland of West Lake Drive of Lazy Lake spoke in opposition to the proposed project. He referred to traffic problems and safety factors (fire and police) and the high density proposed.

Hilda Meisten of Hudson Road stated that the roads are too narrow to accommodate any more development.

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

**M 599 06
Defer
Action on
C/U
No. 1666**

A Motion was made by Mr. Dukes, seconded by Mr. Jones, to defer action on Conditional Use No. 1666, an application of Wilkinson Properties, LLC.

Motion Adopted: 4 Yea, 1 Absent.

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

**Public
Hearing
(C/Z
No. 1600)**

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 HR-1 HIGH DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.53 ACRES, MORE OR LESS” (Change of Zone No. 1600) filed on behalf of Bayville Shores Associates, L.L.C.

The Planning and Zoning Commission held a Public Hearing on this application on August 10, 2006 at which time they recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated August 10, 2006 for additional information on the application, correspondence received, the Public Hearing before the Commission and the Commission’s recommendation of approval.)

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

Mr. Lank reported that a memorandum was received from the Sussex Conservation District in which they stated that the Applicant is requested to contact the Army Corps of Engineers for any wetland permits that may be required.

Coleman Bunting, Principal of Bayville Shores Associates, L.L.C. was present with John Sergovic, Attorney; Shannon Carmean, Attorney; and Mike Wigley and Gerald Friedel of Davis, Bowen & Friedel, Inc. They stated that the name of the project is Bayville Shores at Route 54; that they are asking for HR-1 zoning because of a consistency in zoning along a drive

Public
Hearing
(C/Z
No. 1600)
(continued)

that has been created by the landowners to serve as an entrance to Bayville Shores and Bayville Woods; that in close proximity is the Mallard Lake project that was developed at 7.2 units per acre; that a joint boulevard agreement has been established between the Applicant and the developers of Bayville Shores and Bayview Acres; that the project would be developed under restrictive covenants that will enhance the life internally in the community; that total open space is approximately 2.42 acres, including wetlands and retained forested areas; that the total project acreage equals 3.45 acres with approximately 1.07 acres of federal wetlands; that they propose 17 townhouse-style condominium units in 3 buildings; that the largest building would be an 8-unit building; that the other two buildings would contain 5 units and 4 units; that the maximum density proposed is 4.93 units per acre based on gross land area; that the project design is in keeping with the Bayville Shores multi-family residential community; that a 40 foot buffer for buildings and pavement buffer has been established along State Route 54 where existing forest will be retained; that a walk system has been introduced to connect to the existing Bayville Shores trail system along Bayville Shores Drive; that in reference to the defined 404 wetlands, there is some question about whether they are jurisdictional wetlands and a determination has not yet been made; that due to the recent United States Supreme Court decision, it is very unlikely that the lands contain 404 wetlands; that Charles Miller, Bayville Shore wetlands consultant, has opined that the lands are “isolated” “wet fields” and do not fall within the purview of the Clean Water Act; that notwithstanding the likelihood that these lands contain “isolated wet fields”, Bayville Shores will protect the wet fields by restriction; that the 1.07 acres will not be developed and will be open space; that no entry on Route 24 is required or proposed; that they are selling 40 – 50 units per years in Bayville Shores; that the units in Bayville Shores at Route 54 will be more affordable than the ones on the waterfront in Bayville Shores; that they have prepared a Declaration of Restrictions on behalf of the legal owners of the land; that the beneficiaries of the covenants are Bayville Woods and DelDOT or DNREC; that the restrictive covenants have been fully executed but not recorded yet because they want to change the State agency from DelDOT to DNREC and they are waiting to hear from DNREC to see if they are interested in having these restrictions in their favor; that they are willing to record the restrictions as is, but they wanted to make sure there wasn’t another entity that might better benefit from the restrictions; that the restrictions reduce the buildable portion by 33 1/3 percent; that the property designated as wet fields will be preserved as a forested buffer area and will be prohibited from being improved by any buildings or structures other than passive recreational structures such as walkways, paths, and seating areas; that the restrictions further provide that the grantor further agrees to submit the lands as the common element lands of the condominium to be maintained by the Condominium Association; that the grantor agrees to restrict the use of the property to a maximum of 17 residential structures with related driveways and parking; that the grantor agrees that the lands may not be improved by any use authorized by the HR-1 zoning except for townhomes; and that the Declaration of Restrictions have not been recorded so as to give the Council

and the Commission the opportunity to review them and to make any comments or recommendations prior to recordation.

Mr. Sergovic stated that they expect to hear from DNREC within a week's time (regarding the Declaration of Restrictions).

Public Hearing (C/Z No. 1600) (continued)	(The Applicant submitted an Exhibit Booklet and an addendum to the Exhibit Booklet that included a copy of the proposed Declaration of Restrictions.) There were no public comments and the Public Hearing was closed.
M 600 06 Defer Action on C/Z No. 1600	A Motion was made by Mr. Dukes, seconded by Mr. Cole, to defer action until September 12, 2006 on Change of Zone No. 1600 filed on behalf of Bayville Shores Associates, L.L.C. and to leave the record open until September 12, 2006 for the Applicant to record the Declaration of Restrictions and to notify the County Attorney of the recordation. Motion Adopted: 4 Yea, 1 Absent. Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Absent; Mr. Dukes, Yea; Mr. Jones, Yea; Mr. Rogers, Yea
M 601 06 Adjourn	A Motion was made by Mr. Dukes, seconded by Mr. Cole, to adjourn at 3:39 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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