

SUSSEX COUNTY COUNCIL-GEORGETOWN, DELAWARE-SEPTEMBER 10, 2002

Call to Order The regular meeting of the Sussex County Council was held Tuesday, September 10, 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 C. Phillips	Member
Robert L. Stickels	County Administrator
David B. Baker	Finance Director
Eugene H. Bayard	County Attorney

The meeting was opened by repeating the Lord's Prayer and Pledge of Allegiance to the Flag.

**M 543 02
Amend
and
Approve
Agenda**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to amend the Agenda by striking "South Coastal Library Parking Lot Addition, Bid Award" and "Introduction of Proposed Zoning Ordinances"; and to approve the Agenda, as amended.

Motion Adopted: 4 Yea, 1 Absent.

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

**M 544 02
Approve
Minutes**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the minutes of August 27, 2002, as distributed.

Motion Adopted: 4 Yea, 1 Absent.

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

**Corre-
spondence**

Mr. Bayard read the following correspondence:

ALAN SHIELDS, COACH, DELAWARE STORM 16U GIRLS FASTPITCH SOFTBALL TEAM, LAUREL, DELAWARE.

RE: Letter in appreciation of grant.

JANICE B. DAVIS, MILLSBORO, DELAWARE.

RE: Letter thanking all concerned for the renovations made to her home through the County's Community Development and Housing Division.

Councilman Mr. Cole joined the meeting.

M 545 02 **Authorize Executive Session/ Land Acquisition** A Motion was made by Mr. Rogers, seconded by Mr. Dukes, authorizing an Executive Session to be held on this date, immediately following the morning session of the County Council meeting, for the purpose of discussing "Land Acquisition."

Motion Adopted: 5 Yea.

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

M 546 02 **Adopt Proclamation** A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to Adopt the Proclamation entitled "PROCLAIMING THE MONTH OF SEPTEMBER 2002 AS 'OVARIAN CANCER AWARENESS MONTH' ."

Motion Adopted: 5 Yea.

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

Capital Transportation Improvement Program (CTIP) Request Mr. Stickels distributed the *Sussex County Council Capital Transportation Improvement Program Request* which will be presented to the Delaware Department of Transportation (DelDOT) at the Public Hearing to be held on Thursday, September 12, 2002, beginning at 6:00 p.m. The ten projects included in the request are as follows:

1. **North-South Limited Access Highway**

2. **East-West Improvements**

- (a) SR 36 from US 113 west of Milford to SR 404 east of Greenwood
- (b) SR 16 from SR 36 east of Greenwood to the termination of the road at the Delaware Bay
- (c) SR 404 east of US 113 to Delaware Technical & Community College in Georgetown west of US 113, and east of SR 5 to SR 1 west of Lewes
- (d) US 113 and east of SR 5 to SR 1 west of Lewes
- (e) SR 24 from US 113 east to the Route 1 intersection north of Rehoboth
- (f) SR 26 from the Assawoman Canal west to US 113
- (g) SR 54 from S 58C west to US 113

3. **SR 1 Dewey Beach Improvements, Salisbury Road, Dewey Beach, to Lewes and Rehoboth Canal**

**CTIP
Request
(continued)**

- 4. SR 30 and SR 5 from SR 24 north to Route 1
- 5. Georgetown-Park Avenue SR 318 east of Georgetown and SR 321 south of SR 9 have been designated as a Truck Relief Route for the Town of Georgetown
- 6. US 13 Corridor Capacity Improvements
- 7. Stationary Message Information System
- 8. Indian River Inlet Bridge
- 9. Sussex County Aviation
- 10. County Road Concerns**

In addition to highlighting the requests for funding for projects that have not been fully funded in the past, Mr. Stickels noted that two new programs are being submitted for consideration by DelDOT this year; namely, the Stationary Message Information System and the Indian River Inlet Bridge.

The Stationary Message Information System entails the development of a fixed location electronic message sign and information system which would allow for the distribution of information to include transportation advisories such as evacuation routes, public safety notices, outdoor burning bans, etc. This system would alleviate the need for portable signs which can cause problems if not properly secured, has the capability of being updated momentarily, and would allow for the dissemination of information 24 hours a day.

Mr. Stickels stated that the Indian River Inlet Bridge project is essential to the economy and safety of Sussex County residents in the southeast section of the County. Therefore, it is important that cost estimates for several alternatives in the event that the existing bridge becomes unstable be completed in FY '03, with recommendations being funded in the fourth quarter of FY '03 or the first quarter of FY '04.

The listing of County Road Concerns in the Capital Transportation Improvement Program Request was also referred to by Mr. Stickels. It was agreed that a number of the secondary roads in Sussex County are in need of upgrade and expansion, as many of these roads are currently being used as alternative routes for major thoroughfares. Without the upgrade and/or expansion of these roads, Sussex County will not have a complete transportation program.

CTIP Request (continued) **Mr. Dukes complimented Mr. Stickels and staff for an excellent job in putting together the *Sussex County Council Capital Transportation Improvement Program Request*.**

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

1. Burning Ban

State Fire Marshal Willard F. Preston III has lifted the burning ban in Sussex County. The recent heavy rainfall throughout the County has improved conditions enough to temporarily lift the ban on burning. All open burning must be in accordance with regulations of the Delaware Department of Natural Resources and Environmental Control.

State Fire Marshal Preston is requesting Sussex County citizens to continue to exercise extreme caution when conducting any legal open burning. Mr. Preston also urges everyone to practice fire safety when using grills, campfires, bonfires, and other activities involving fire. Discarded cigarettes continue to be the leading cause of outdoor fires.

Conditions throughout the State will be monitored closely. Without continued improvement in rainfall, a burning ban may be reinstated.

2. "United We Stand - A Celebration of America"

A reminder that the Sussex County Council will be sponsoring "United We Stand - A Celebration of America" on September 11, 2002, on The Circle in Georgetown. The Circle will be closed to traffic at 7:30 a.m. Fire and police apparatus will be assembled on The Circle at 8:30 a.m. The Milford Community Band will provide instrumental entertainment starting at 9:30 a.m. The program will end at 10:40 a.m. Included with this report is a copy of the program.

Proposed Ordinance for Funding **Mr. Baker discussed a proposed ordinance authorizing the issuance of general obligation bonds for the construction and equipping of the Bay View Estates and Sea Country Estates Sanitary Sewer Districts. The maximum aggregate principal amount to be borrowed from the State of Delaware Water Pollution Control Revolving Fund is not to exceed \$2,636,000. The term of the loan will be 20 years with a 1.5 percent interest rate. It is expected that debt service will be paid from revenues of the Bay View Estates and Sea Country Estates Sewer Districts.**

Introduction of Proposed Ordinance Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$2,636,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE CONSTRUCTION AND EQUIPPING OF THE BAY VIEW ESTATES AND SEA COUNTRY ESTATES SANITARY SEWER DISTRICTS AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH." The Proposed Ordinance will be advertised for a Public Hearing.

Proposed Ordinance for Funding Mr. Baker discussed a proposed ordinance authorizing the issuance of general obligation bonds for the construction and equipping of the Miller Creek Sanitary Sewer District. The maximum principal amount to be borrowed is not to exceed \$6,750,000—\$3,450,000 from the Rural Development Agency (RDA) and \$3,300,000 from the State of Delaware Water Pollution Control Revolving Fund. The term of the RDA loan will be 40 years with a 4.5 percent interest rate, and the term of the State of Delaware loan will be 20 years with a 1.5 percent interest rate. It is expected that the debt service will be paid from revenues of the Miller Creek Sanitary Sewer District.

Introduction of Proposed Ordinance Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$6,750,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE CONSTRUCTION AND EQUIPPING OF THE MILLER CREEK SANITARY SEWER DISTRICT AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH." The Proposed Ordinance will be advertised for a Public Hearing.

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

M 547 02 Execute Agreements/ Cape Henlopen Middle School 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. 248, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Cape Henlopen School District for wastewater facilities to be constructed to serve Cape Henlopen Middle School, 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 548 02 A Motion was made by Mr. Cole, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 247, that the Sussex County Council grant Beneficial Acceptance for the wastewater and water facilities constructed in Rehoboth Cottages, located in the Dewey Beach Sanitary Sewer and Water 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 549 02 A Motion was made by Mr. Dukes, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 264, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in Bear Trap Dunes Golf Club – Phase 1A, 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

M 550 02 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. 250, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Ocean Atlantic Associates IX, L.L.C., for wastewater facilities to be constructed in Oyster Bay Villas I and 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 551 02 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. 253, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Taramino, L.L.C., for wastewater facilities

M 551 02 to be constructed in The Summerlyn, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.
(continued)

Motion Adopted: 5 Yea.

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

Dagsboro-Frankford Sewer District Extension Mr. Stewart, Project Engineer, discussed substantial completion of the Dagsboro-U.S. 113 Sewer Extension of the Dagsboro-Frankford Sanitary Sewer District. The sewer extension will serve the west side of U.S. 113 (southbound side) in the vicinity of the Dagsboro Church of God property, and north and south of that property.

M 552 02 A Motion was made by Mr. Cole, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council grant Substantial Completion to Bunting and Murray Construction Corporation for the Dagsboro-U.S. 113 Sewer Extension, Dagsboro-Frankford Sanitary Sewer District, Sussex County Project No. 02-01.
Grant Substantial Completion/
Dagsboro-U.S. 113
Sewer Extension

Motion Adopted: 5 Yea.

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

Public Hearing/Assessment Roll/Cedar Landing Community Improvement Project A Public Hearing was held to consider the final assessment roll for the Cedar Landing Suburban Community Improvement Project. Mr. McCabe, Director of Public Works, advised that the Public Hearing is being held in accordance with Title 9, Chapter 5, of the Suburban Community Improvement Program to provide the property owners of the Cedar Landing Subdivision an opportunity to voice any objections they may have to their front footage assessment for the repayment of the Suburban Community Improvement Project.

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

M 553 02 A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to Adopt Resolution No. R 026 02 entitled "A RESOLUTION TO DECLARE THE AMOUNT OF THE ASSESSMENT AND LEVY AGAINST EACH FREEHOLDER OF PROPERTY OF THE CEDAR LANDING SUBURBAN COMMUNITY IMPROVEMENT PROJECT #99-17."
Adopt Resolution R 026 02

Motion Adopted: 5 Yea.

M 553 02
(continued)

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

Public Hearing/ Modification of Oak Meadows Street- lighting District

A Public Hearing was held to consider the modification of the existing Oak Meadows Streetlighting District. Mr. McCabe, Director of Public Works, stated that the property owners association has requested that the County add ten streetlights to the Oak Meadows community. Mr. McCabe introduced Craig Merritt, P.E., Supervisor of Planning and Design with Conectiv Power Delivery (Millsboro Office), and advised that the Public Works Division has been working with the homeowners association and Mr. Merritt to determine the best configuration for the streetlights.

Mr. Bayard submitted for the record five letters in support of the additional streetlighting received from John G. Sweet, Jr., Joseph N. Rendi, Mr. and Mrs. Albert Gaull, Mary L. Gede, and Walter and Susan Jones; one letter in opposition from Patricia Bonk; and a letter from Edward J. Laucks, Jr., requesting that a sign language interpreter be provided for the Public Hearing since he and his wife are deaf.

Alfred Dohrn spoke in support of the project citing better visibility, safer night driving and walking, and increased assistance for 9-1-1 emergency vehicles in finding residents.

Comments were heard in opposition to the project from William McClearen, Larry Lawson, and Edward J. Laucks, Jr. Although they are each in favor of the additional streetlights, Mr. McClearen and Mr. Lawson expressed displeasure at the proposed removal of trees that currently enhance their property, while Mr. Laucks spoke in opposition to the additional cost involved.

By a show of hands, there were seven people present in support of the project.

Mr. McCabe stated he would be happy to work with the property owners involved in an effort to meet their needs and wishes in determining the placement of the ten additional streetlights in the Oak Meadows community.

The Public Hearing was closed.

**M 554 02
Adopt
Resolution
R 027 02**

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to Adopt Resolution No. R 027 02 entitled "A RESOLUTION PROVIDING FOR THE MODIFICATION OF THE OAK MEADOWS STREETLIGHTING DISTRICT BY THE INSTALLATION OF ADDITIONAL STREETLIGHTING."

Motion Adopted: 5 Yea.

M 554 02
(continued)

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

Public Hearing/ Boundary Extension/ Dagsboro- Frankford Sanitary Sewer District

A Public Hearing was held to consider the extension of the Dagsboro-Frankford Sanitary Sewer District to include the lands of Anthony Manuel, situate, lying north of Honolulu Road, and being in Dagsboro Hundred, Sussex County, Delaware. Mr. Archut, Assistant County Engineer, discussed extending the boundaries of the Dagsboro-Frankford Sanitary Sewer District to include the lot with a single-family home owned by Mr. Manuel, whose request for annexation was made due to the fact that his septic tank is failing.

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

**M 555 02
Adopt
Resolution
R 028 02**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to Adopt Resolution No. R 028 02 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE DAGSBORO-FRANKFORD SANITARY SEWER DISTRICT (DFSSD) TO INCLUDE THE LANDS OF ANTHONY MANUEL, SITUATE, LYING NORTH OF HONOLULU ROAD, AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, DELAWARE."

Motion Adopted: 5 Yea.

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

Cedar Neck Expansion/ Bethany Sewer District/ Contract Amendment

Mr. Izzo, County Engineer, discussed Amendment No. 18 to the existing agreement with Whitman, Requardt & Associates regarding the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District. Amendment No. 18 authorizes Whitman, Requardt & Associates to perform construction management for the construction of a pump station and force main to serve the Bethany Lakes Subdivision, which would accommodate the Cedar Neck Sanitary Sewer District, with all costs to be borne by the developer.

M 556 02
Authorize
Contract
Amend-
ment/
Cedar Neck
Expansion/
Bethany
Beach Sewer
District

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council authorize its President to execute an Amendment No. 18 to its contract with Whitman, Requardt & Associates, LLP, to perform construction management for Pump Station #172 and the force main to Ocean View within the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District, with all said costs to be incurred by the developer, Hockessin Chase, LLP.

Motion Adopted: 5 Yea.

M 556 02 (continued)	Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Requests	Mr. Stickels presented requests for grant funding.
M 557 02 Youth Activity Grant	A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$400.00, \$100.00 each from Mr. Phillips', Mr. Cole's, Mr. Rogers', and Mr. Jones' Youth Activity Accounts, to Sussex Central Pop Warner Football for operating expenses. Motion Adopted: 5 Yea. Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
M 558 02 Council- manic Grant	A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$200.00, \$100.00 each from Mr. Phillips' and Mr. Jones' Councilmanic Accounts, to Sussex Central Swim Team Boosters for a timing system and scoreboard. Motion Adopted: 5 Yea. Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
M 559 02 Council- manic Grant	A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$500.00 from Mr. Cole's Councilmanic Account to the Kiwanis Foundation of Rehoboth Beach for the Third Annual Folk Music 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 560 02 Recess	At 11:26 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Rogers, to recess and go into Executive Session. Motion Adopted by Voice Vote.
Executive Session/ Land Acquisition	An Executive Session of the Sussex County Council was held Tuesday, September 10, 2002, at 11:30 a.m., in the Caucus Room of the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Executive Session (continued)	Finley B. Jones, Jr. Lynn J. Rogers George B. Cole Dale R. Dukes Vance C. Phillips Robert L. Stickels David B. Baker Eugene H. Bayard Michael A. Izzo	President Vice President Member Member Member County Administrator Finance Director County Attorney County Engineer
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Matters relating to land acquisition were discussed.

M 561 02 At 11:48 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Cole, to adjourn the Executive Session. Motion Adopted by Voice Vote.

M 562 02 At 11:50 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.

Reconvene Mr. Jones called Council back into session at 1:30 p.m.

Public Hearing (CZ No. 1475) Ribera-Odyssey Ventures, LLC 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 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 787.787 ACRES, MORE OR LESS" (Change of Zone No. 1475) filed on behalf of Ribera-Odyssey Ventures, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on August 22, 2002, at which time action was deferred. This application will be discussed by the Planning & Zoning Commission under "Old Business" on September 12, 2002.

The record of the Planning & Zoning Commission was incorporated into the record of this Public Hearing. Council was presented with a summary of the Commission's Public Hearing on August 22, 2002, as well as a document dated August 22, 2002 compiled by Mr. Lank, consisting of approximately 94 pages of correspondence received from various agencies regarding the proposed application. Mr. Lank stated that the applicant had submitted 19 conditions to the Planning & Zoning Commission. Since the Commission's Public Hearing on August 22, 2002, one additional letter, dated September 4, 2002, was received from the Indian River Volunteer Fire Company, which Mr. Lank read into the record.

Public
Hearing
(continued)

In attendance on behalf of the applicant were: James Fuqua, attorney; Larry Goldstein, Managing Partner of Ribera-Odyssey; K. Scott Aja of McCrone, Inc., an engineering firm; Craig Studler of Niles Bolton Associates, a land planning firm; Bob Rodgers and Derrick Kennedy of Orth-Rodgers Associates, Inc., a traffic consulting firm; James C. McCulley of Environmental Consultants, Inc., an environmental consulting firm; Carter McCamy of Environmental Quality Resources, LLC, an environmental consulting firm; and Mark Gionet of Lewis, Scully Gionet Landscape Architects. This application, The Peninsula, is located on both sides of Road 299 (Bay Farm Road), southeast of Road 299A (Trinity Road) and north of Indian River Bay. The Peninsula is a 787.787 acre site, designed as a private, gated, resort/second home community. The project will include, for members only, an 18-hole golf course and club, various recreational amenities, a 3.9 acre lake, 10,250 square feet of retail space, and a nature center. There will be 8 residential neighborhoods containing 1404 units.

Mr. Fuqua presented Council with documents consisting of the applicant's original submittal of information entitled, "The Peninsula - A Waterfront Community, April 2002"; "The Peninsula - A Waterfront Community Between Bethany & Rehoboth, Supplemental Information #1, June 25, 2002"; as well as "The Peninsula - A Waterfront Community, Amendment #1, August 2002" showing changes made to the April 2002 submission. Mr. Fuqua also distributed an additional packet of information, entitled "The Peninsula CZ #1475 - Documents Referenced in Presentation of Applicant's Attorney". These documents were also incorporated into the record of Council's Public Hearing.

Mr. Fuqua read into the record the testimony presented by him at the Planning & Zoning Commission's public hearing. The applicant's other attendees presented either an overview of their presentations made at the Planning & Zoning Commission's Public Hearing, or answered questions, which included the site plan, sanitary sewer and water service, stormwater management, traffic/transportation, environmental impact, etc.

Mr. Fuqua mentioned that in the design of the site plan for The Peninsula, extensive review and discussions were held with DNREC. Mr. Fuqua read from a letter received from Phillip Cherry of DNREC (dated August 6, 2002), in which Mr. Cherry stated that The Peninsula should be a model of how development can occur within the inland bays area. Mr. Fuqua assured Council that due to the location of the site, environmental sensitivity was the number one goal of the design team, and that the project was designed to comply with the County's Land Use Plan, as well as being located in a designated Development District between Long Neck and Oak Orchard. Mr. Fuqua also stated that extensive studies were done for the development and design of the site plan taking into consideration the County's Land Use Plan and the State Strategy Plan. Mr. Fuqua read into the record LUPA comments

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(continued)

received from the Delaware Department of Agriculture, dated March 21, 2002, supporting the "balanced environmentally sensitive development of this site." A preapplication meeting was held on March 7, 2002 with Connie Holland, Director of the State Planning Office. This meeting included all LUPA agencies, as well as Mr. Lank. Mr. Fuqua also made note of a letter received from Ms. Holland, dated August 20, 2002, in which she expresses her appreciation to the applicant in their "diligence and willingness to work with DNREC on the environmental issues". As a result of comments and concerns expressed during this and many other meetings with various persons, state and nonprofit agencies, there was a redesign of the development, which resulted in a reduction in the original density from 1550 units to 1404, which is less than 2 units per acre; different site locations had been selected to protect wetlands and to provide additional forest; the deletion of a proposed 250-room conference center; as well as provision for electrical service along Bay Farm Road to be run underground.

Mr. Fuqua reviewed the economic impact of the project. He noted that The Peninsula would create substantial employment opportunities, both in the construction phase and long term, as well as generating significant revenues for the County, the State of Delaware, and the Indian River School District through permit and plan review fees, real estate transfer fees, school taxes, State income taxes, and other charges.

Mr. Goldstein pointed out that due to concerns expressed regarding the addition of a Kayak Center and its environmental impact on "Emily's Gut", another launching area had been selected (Lingo's Creek).

Mr. Cole expressed concern regarding traffic and sewer, and inquired if other County staff, other than Mr. Lank, had been given the opportunity to make comment regarding the application. Other county staff contacted included Mr. Stickels, Mr. Izzo and Mr. Archut. Mr. Lank read from the Sussex County Engineering Department Planning & Permits Subdivision Plan Review Comments, dated August 8, 2002, which stated, "The proposed and existing wastewater transmission system has sufficient capacity to serve the units as proposed. Although capacity at the Inland Bays Regional Wastewater Facility is sufficient to serve the proposed project, the developer will be asked to participate in a Planning Study to review the long term needs of the projected service area." Mr. Stickels also read from a February 20, 2002 letter, signed by Mr. Archut, which stated that, "The Bay Farm project is located in the Long Neck Planning Area. A copy of Amendment No. 1 to the Long Neck Planning Study is enclosed for your reference. The Study assumes four units per developable acre for purposes of wastewater capacity and identifies the developable acreage of the Bay Farm parcel at 585 acres. This assumption provides capacity for approximately 2,340 EDUs." Regarding Mr. Cole's traffic concerns, Mr. Fuqua stated that all proposed DelDOT traffic improvements would be done upfront, and also reviewed the services and

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(continued)

amenities that would help reduce offsite traffic use. It was reported that with the deletion of the Conference Center, the average daily traffic for the development would be reduced by 24 percent. Mr. Fuqua also stated that all amenities (including the golf course, recreational facility, tennis, and kayak center) would be completed within the first two years of the development.

Mr. Fuqua stated that the services of a professional management company will be retained to manage the activities and property of the Homeowner's Association, with a board of directors to be elected by the homeowners. Mr. Fuqua further explained that the development was not intended to have public access, however, a proposed nature center would be accessible to local school districts for educational purposes, etc.

Questions were expressed regarding the impact of nutrients as they relate to the golf courses. It was reported that the USGA has developed an environmental program that requires golf course superintendents to abide by set guidelines that minimize the impact associated with golf courses. This program takes into account the use of chemicals, pesticides, fertilizers, as well as water, wetlands and forestry features within golf sites. The golf course located within The Peninsula will be required to develop a nutrient management budget, in addition to the current plan developed for the Best Management Practices. The Nutrient Management Plan requires a reduction in the amount of nutrient loading that will go into the bay, with the development exceeding the State's recommendation (Delaware Nutrient Management Plan) of a 40 percent reduction. Mr. Fuqua stated that one of the conditions being proposed by the applicant would address this concern, namely # 16.

Mr. Fuqua submitted the applicant's proposed 21 conditions, as follows:

- (1) The maximum number of residential units shall not exceed 1404, comprised as follows:
 - 323 single-family lots
 - 378 single-family detached condominiums
 - 325 single-family attached townhouses
 - 378 multi-family condominium units
- (2) Commercial retail floor area shall not exceed 10,250 square feet.
- (3) Residential Certificates of Occupancy shall not exceed 350 per year cumulatively commencing with Council approval.
- (4) All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's letter dated April 23, 2002 and any further modifications required by DelDOT.

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(continued)

- (5) The development will operate a community shuttle bus service to shopping areas and connecting to a bus stop location operated by DART. This service shall be operational within two (2) years of the issuance of the first building permit.
- (6) Recreational facilities, e.g. tennis courts, swimming pool, and community buildings shall be constructed and open to use by the residents within two (2) years of the issuance of the first building permit.
- (7) The development shall be served as part of the Sussex County Long Neck Sewer District.
- (8) The RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
- (9) Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
- (10) 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.
- (11) Site plan review for each phase of development, including the placement of curbs, sidewalks, and street lights, shall be subject to approval by the Planning & Zoning Commission.
- (12) The interior street design shall be in accordance with or exceed Sussex County street design requirements. The applicant shall submit as part of the site plan review, a landscape plan showing the proposed tree and shrub landscaping design.
- (13) State and Federal wetlands shall not be included within the boundaries of individual lots and shall be maintained as nondisturbance areas except where authorized by approval State and/or Federal permits.
- (14) No individual boat docks or boat launching facilities for motorized boats shall be permitted except a community water taxi.
- (15) The existing cemetery areas on site shall be undisturbed and maintained by the applicant/Homeowners Association. The applicant, its successors and assigns shall provide perpetual access to family members and guests to areas within The Peninsula Development in order to visit the "Burton Family" cemeteries located within The Peninsula Development boundaries.
- (16) Applicant, its successors, and assigns shall design and operate the stormwater system and golf course in a manner consistent with the Best Management Practices (BMPs) set forth in applicant's exhibits submitted

Public
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(continued)

as part of the record including implementation of a stormwater facility maintenance program.

- (17) 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 & 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 plans or final site plan.
- (18) The applicant has voluntarily offered to contribute the sum of One Thousand Dollars and No Cents (\$1,000.00) to the Sussex County Land Trust from the settlement proceeds of each initial sale of residential lots or units in the development.
- (19) The applicant has voluntarily offered to contribute the sum of One Hundred Dollars and No Cents (\$100.00) to the Indian River Volunteer Fire Company from the settlement proceeds of each initial sale of residential lots or units in the development and to provide in the development restrictions that the Development Homeowners Association shall contribute the sum of One Hundred Dollars and No Cents (\$100.00) per year to the Indian River Fire Company for each residential lot or unit after its transfer from the application.
- (20) The kayak launching access to the Indian River Bay shall be placed at a location other than "Emily's Gut" as approved by the Planning & Zoning Commission as part of the site plan approval.
- (21) The applicant has agreed that with the approval of Delaware Electric Cooperative, Inc. electrical service along Bay Farm Road to The Peninsula shall be placed underground.

Mr. Fuqua submitted, for the record, a copy of the approved Resolution for the vacation of a portion of Bay Farm Road, signed by Delaware Transportation Secretary Nathan Hayward. It was noted that the developer has also agreed to work with the members of the Burton Family to repair and enhance the condition of the current graves located within the development.

Mr. Joseph Romeo spoke in support of the application, noting the applicant's willingness to provide underground electrical service along Bay Farm Road,

Hearing and that trees would be planted on the south side of Bay Farm Road.
(continued)

Recess At 4:05 p.m., Mr. Jones declared a 5 minute recess.

Reconvene At 4:15 p.m. Mr. Jones called Council back into session.

Public Hearing Those persons speaking in opposition to the proposed application included:
(continued) Wolfgang von Baumgart, Till Purnell, Albert Gargano, Cheryl Gargano, and Teresa Townsend. Mr. Wolfgang read a letter into the record, on behalf of Cathy Johnson, President of Consumers for Housing Choice. Mr. von Baumgart also submitted a list of questions regarding the environmental impact, as well as the archeological impact regarding native American artifacts and remains, if they are found.

Speaking on behalf of The Friends of Herring Creek, Mrs. Purnell stated that they would like a deed restriction included that would prohibit future expansion to include a marina. Mrs. Purnell went on the express concern regarding the impact that such a large development would have on nearby wells located outside of the development; she also expressed concern that as a member of numerous "nonprofit agencies", she was not aware of meetings that had been held even though it was mentioned that nonprofit agencies had been invited; clarification was made that the National Audubon Society does not certify golf courses; concern was also expressed regarding the evacuation plan and she suggested that the development not be approved until the infrastructure (road improvements) is in place.

Due to this being a gated community, Mr. Gargano expressed concern regarding the impact placed on emergency personnel in locating specific residences who are in need of medical or emergency assistance.

Mrs. Gargano expressed concern regarding the impact this development would have on local hospitals, which are currently operating at their maximum levels in serving patients. Mr. Cole requested that the County include local hospitals in the public notice process for all rezonings and conditional uses.

Mr. Clark stated that he would like to go on record as rescinding his opposition due to the relocation of the kayak, canoe center and piers from Emily's Gut, as well as contingent on the fact that all the environmental concerns that the applicant has promised are, in fact, followed through on.

Teresa Townsend expressed concern regarding sufficient access by the Burton Family to the family's cemeteries located within the boundaries of the development; she presented Council with copies of two newspaper articles regarding the Burton Family cemetery. Ms. Townsend also made note of a Sunday, July 7, 2002, article contained in The News Journal, which made reference to an interoffice memo of County Engineer Michael Izzo, regarding

Public Hearing (continued) sewer for the project. Ms. Townsend mentioned that she had attempted to get a copy of Mr. Izzo's memo, but was declined. Ms. Townsend also expressed traffic safety concerns.

By show of hands, there was one additional person present who was in opposition of the application.

Mr. Bayard explained that Council, by Ordinance and State law, could not act on the application because it must first receive the recommendation of the Planning & Zoning Commission.

Action Deferred The Public Hearing was closed and action was deferred.

M 563 02 Adjourn A Motion was made by Mr. Dukes, seconded by Mr. Jones, to adjourn at 4:55 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

Susan W. Webb
Susan W. Webb
Acting Clerk of the Council
Nancy Cordrey
Nancy J. Cordrey
Assistant Clerk of the Council