



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 14, 2008

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 14, 2008 at 6:30 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

M 705 08 Amend and Approve Agenda

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to amend the Agenda by deleting “*Wings & Wheels Fall Festival*”; by moving “*Executive Session – Pending/Potential Litigation and Land Acquisition*” and “*Possible Action on Executive Session Items*” to immediately follow “*Reading of Correspondence*”; and to approve the Agenda, as amended.

Motion Adopted: 4 Yeas, 1 Absent.

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

Mr. Rogers joined the meeting.

M 706 08 Approve Minutes

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to approve the minutes of September 30, 2008.

Motion Adopted: 5 Yeas.

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

M 707 08 Recess Regular Session/ Go Into Executive Session M 707 08 (continued)	At 6:37 p.m., a Motion was made by Mr. Dukes, seconded by Mr. Rogers, to recess the Regular Session and to go into Executive Session for the purpose of discussing Pending/Potential Litigation and Land Acquisition. Motion Adopted: 5 Yeas. Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Executive Session	At 6:36 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing Pending/Potential Litigation and Land Acquisition. The Executive Session concluded at 6:56 p.m.
M 708 08 Come out of Executive Session/ Reconvene Regular Session	At 6:57 p.m., a Motion was made by Mr. Rogers, seconded by Mr. Dukes, to come out of Executive Session and to reconvene the Regular Session. Motion Adopted: 5 Yeas. Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Draft Ordinance Relating to Realty Transfer Tax	Mr. Baker presented a Draft Ordinance which would amend the County's Realty Transfer Tax to include construction contracts which may be entered into either prior to the date of the transfer of the land or within one year from the date of the transfer of the land to a grantee or buyer, within the meaning of documents which require the payment of the 1 1/2 percent County Realty Transfer Tax in order to insure that the transfer taxes paid to the County includes the value of such improvements to the land. Further, this amendment makes the County transfer tax ordinance consistent with the wording of the State's Realty Transfer Tax Law. The purpose of this amendment is to prevent sellers of real estate from attempting to split the improvements from the land and paying the transfer tax only on the value of the land while avoiding the payment of transfer tax on the improvements.
Introduction of Proposed Ordinance	Mr. Dukes introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 103 OF THE CODE OF SUSSEX COUNTY, ARTICLE IV, IMPOSING A COUNTY REALTY TRANSFER TAX". The Proposed Ordinance will be advertised for Public Hearing.
Proposed 2009 Council and Holiday Schedules	Mr. Baker presented the proposed 2009 Holiday Schedule, the proposed dates that the County Council would not meet in 2009, and the proposed 2009 night meeting schedule. Mr. Cole suggested that the Council defer action on the night meeting

schedule until January, when the three new Councilmembers take office. The Council was advised that a schedule needs to be adopted for January and February so that Public Hearings can be scheduled and zoning applications are not further delayed.

**M 709 08
Adopt
January
and
February
Night
Meeting
Schedule**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Council, having met in public session, adopts the January and February 2009 Night Meeting Schedule, as amended and as follows:

**January 13
February 10**

; and to defer on the remainder of the 2009 Night Meeting Schedule until January 2009.

Motion Adopted: 5 Yeas.

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

**M 710 08
Adopt
2009
Holiday
Schedule**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Council, having met in public session, adopts the 2009 Holiday Schedule, as presented and as follows:

<u>Holiday</u>	<u>State Observance</u>	<u>County Observance</u>
New Year's Day	January 1 (Thursday)	January 1 (Thursday)
Martin Luther King, Jr.'s Day	January 19 (Monday)	January 19 (Monday)
Presidents' Day	February 16 (Monday)	February 16 (Monday)
Good Friday	April 10 (Friday)	April 10 (Friday)
Memorial Day	May 25 (Monday)	May 25 (Monday)
Independence Day	July 3 (Friday)	July 3 (Friday)
Labor Day	September 7 (Monday)	September 7 (Monday)
Columbus Day	October 12 (Monday)	October 12 (Monday)
Veterans Day	November 11 (Wednesday)	November 11 (Wednesday)
Thanksgiving Day	November 26 (Thursday)	November 26 (Thursday)
Day After Thanksgiving	November 27 (Friday)	November 27 (Friday)
Christmas Eve		December 24 (Thursday)
Christmas Day	December 25 (Friday)	December 25 (Friday)

Motion Adopted: 5 Yeas.

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

**M 711 08
Adopt
2009
Schedule**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Council, having met in public session, adopts the 2009 No Council Meeting Schedule, as presented and as follows:

**M 711 08
Adopt
2009
No
Council
Meeting
Schedule
(continued)**

March 3	-	Winter Holiday
March 10	-	NACo Conference
April 14	-	Easter Holiday
May 26	-	Memorial Day Holiday
July 7	-	Summer Holiday
July 14	-	Summer Holiday
September 1	-	Summer Holiday
September 8	-	Summer Holiday
November 24	-	Thanksgiving Holiday
December 22	-	Christmas Holiday
December 29	-	Winter Holiday

Motion Adopted: 5 Yeas.

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

**Adminis-
trator's
Report**

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

1. Sussex County Recertified as *StormReady*

Joseph Thomas, Director of the Office of Emergency Preparedness for Sussex County, has received a letter from the National Weather Service notifying us that the County has been recertified by the National Weather Service as a *StormReady* community. This certification reflects the County's establishment of a system for the rapid exchange of information regarding severe weather with Sussex County residents and a recurring public information campaign to ensure that Sussex County residents understand action needed when a warning is issued by the National Weather Service. Attached is a copy of the letter.

2. Governor's Advisory Council on Planning Coordination

The Governor's Advisory Council on Planning Coordination will meet October 17, 2008, at 10:00 a.m. in the Tatnall Building in Dover to consider Sussex County's Comprehensive Plan. We expect a recommendation to the Governor as a result of this meeting.

3. Delaware Department of Transportation Public Workshop – US Route 13 Intersection Improvements

The Delaware Department of Transportation will be holding a public workshop at the Seaford Middle School on October 15, 2008, from 4:00 to 7:00 p.m. regarding design plans for proposed improvements on US Route 13 near Seaford.

**Adminis-
trator's
Report
(continued)**

4. Clean Hands Ordinance Results

As a result of passage of the Clean Hands Ordinance, \$409,126.81 in County and school property taxes and water and sewer charges have been collected since October 2007. This ordinance requires that prior to the issuance of a building permit, other County obligations for taxes and/or sewer and water bills must be satisfied and current.

**Delaware
Community
Foundation
Account**

Mrs. Webb stated that, at the October 7th Council meeting, there was some discussion concerning the specifics of the Delaware Community Foundation account and options regarding the funds. Mrs. Webb presented three options for the \$50,000 that is currently invested in the account:

- Keep the funds in the Delaware Community Foundation Account and maintain the purpose of the funds.
- Pull the funds out of this investment account and return the funds to the General Fund.
- Pull the funds out of this investment account, open a Certificate of Deposit under the County's General Fund and keep the Certificate rolling over for a future grant program.

**M 712 08
Authorize
Withdrawal
from
Delaware
Community
Foundation
Account**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, that the Sussex County Council authorizes the withdrawal of the remaining balance in the Delaware Community Foundation Account and directs that it be added to the General Fund for a future grant program, to be decided with the Fiscal 2010 Budget.

Motion Adopted: 5 Yeas.

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

**Wastewater
Agreements**

Mr. Godwin presented Wastewater Agreements for the Council's consideration.

**M 713 08
Approve
Wastewater
Agreements/
Frankford**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 857, that the Sussex County Council execute a Construction Administration and Construction

**Retail Center/
Banks Plaza** **Inspection Agreement between Sussex County Council and East-Side Developers, Inc. for wastewater facilities to be constructed in Frankford Retail Center – A/K/A Banks Plaza, located in the Dagsboro Frankford Sanitary Sewer District.**

Motion Adopted: 4 Yeas, 1 Abstention.

**M 713 08
(continued)**

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

**Draft Ordinance
Relating
to Small
Accessory
Buildings**

Lawrence Lank, Director of Planning and Zoning, presented a Draft Ordinance relating to the replacement of small accessory buildings. He noted that this Draft Ordinance is specifically oriented towards mobile/manufactured home parks. The purpose of this ordinance amendment is to provide a method by which small accessory buildings known as sheds can be replaced without a variance provided the building is 120 square feet or less and a County building permit is issued before the replacement shed is installed and it will be located on the basic same footprint as the building it replaces and the building being replaced was either grandfathered or installed pursuant to a valid building permit.

After some discussion, Mr. Lank stated that the Draft Ordinance relates to accessory buildings located anywhere and it should only reference parks.

**M 714 08
Defer
Action on
Draft
Ordinance**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action on the Draft Ordinance relating to the replacement of small accessory buildings so that it can be amended to apply only to mobile/manufactured home parks.

Motion Adopted: 5 Yeas.

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

Requests

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

**M 715 08
Community
Grant**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to give \$1,000.00 from Mr. Rogers' Community Grant Account to Boy Scout Troop 198 for educational programs.

Motion Adopted: 5 Yeas.

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

M 716 08

Community Grant **A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to give \$5,000.00 from Mr. Rogers' Community Grant Account to Milton Lions Club for the Handicapped Equipment Program.**

Motion Adopted: 5 Yeas.

M 716 08
(continued) **Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;**
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea

M 717 08
Community Grant **A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to give \$4,000.00 from Mr. Rogers' Community Grant Account to the Milton Fire Department for the Milton Community Christmas Parade.**

Motion Adopted: 5 Yeas.

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

M 718 08
Community Grant **A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$500.00 from Mr. Rogers' Community Grant Account to First State Community Action Agency for *Make a Difference Day* in Lucas Development.**

Motion Adopted: 5 Yeas.

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

M 719 08
Community Grant **A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$5,000.00 from Mr. Rogers' Community Grant Account to Broadkill Beach Preservation Association for operating expenses.**

Motion Adopted: 5 Yeas.

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

M 720 08
Community Grant **A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$2,000.00 from Mr. Cole's Community Grant Account to the Sussex Family YMCA's Annual Strong Kids Campaign.**

Motion Adopted: 5 Yeas.

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

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

M 721 08
Community Grant **A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$1,250.00 (\$250.00 from each Community Grant Account) to Southern Delaware Tourism for the Delmarva Birding Weekend event.**

M 721 08
(continued) **Motion Adopted: 4 Yeas, 1 Nay.**
 Vote by Roll Call: Mr. Phillips, Nay; Mr. Cole, Yea;
 Mr. Rogers, Yea; Mr. Jones, Yea;
 Mr. Dukes, Yea

M 722 08
Community Grant **A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$1,000.00 (\$500.00 each from Mr. Cole's and Mr. Phillips' Community Grant Accounts) to Lower Sussex Little League for press box improvements.**

Motion Adopted: 5 Yeas.

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

M 723 08
Community Grant **A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$7,500.00 (\$1,500.00 from each Community Grant Account) to CHEER/Sussex County Mobility Consortium for senior transportation services.**

Motion Adopted: 4 Yeas, 1 Nay.

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

M 724 08
Community Grant **A Motion was made by Mr. Cole, seconded by Mr. Rogers, to give \$500.00 (\$100.00 from each Community Grant Account) to Delaware Technical & Community College for the Sussex County Today & Tomorrow Conference.**

Motion Adopted: 4 Yeas, 1 Nay.

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

**Additional Business/
Windmills** **Under Additional Business, Mr. Cole presented the concerns of a constituent regarding windmills and the noise that they make. He questioned action taken by the Board of Adjustment to approve applications for windmills. Mr. Cole asked that the Council consider not accepting any more applications for windmills until some standards are implemented. He stated that his main concern is the approval of windmills**

in small residential communities.

Mr. Griffin advised that windmills are permitted in the County Code and therefore, the Council would have to put a moratorium on windmills if it is decided not to accept any applications.

It was suggested that this issue be tabled until January 2009.

**Windmills
(continued)**

Mr. Lank, Director of Planning and Zoning, was asked to gather information regarding the number of permits that have been issued for windmills including the location of the windmills so that they can visit the site(s) and listen to the noise.

**Public
Hearing/
C/Z
No. 1666**

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

The Planning and Zoning Commission held a Public Hearing on this application on September 25, 2008 at which time the Commission deferred action; on October 9, 2008, the Commission recommended that the application be approved, with the following conditions:

1. The maximum number of lots shall not exceed 405 units with 399 of those units being in Sussex County. There shall be 233 single family lots and 172 townhouses. 60 of those units shall also be Moderately Priced Housing Units spread evenly throughout the project.
2. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT’s requirements.
3. The Development shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.
4. The RPC shall be served by central water.
5. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
6. There shall be sidewalks on both sides of all streets within the RPC.

7. A system of street lighting shall be installed.
8. The Developer shall form a homeowner's association responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.

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

9. There shall be active and passive recreational amenities provided. The location and description of the active amenities shall be subject to the review of the Commission and shown on the Final Site Plan.
10. A 50-foot wide bermed and vegetated buffer shall be established along the railroad. This shall be shown on the Final Site Plan.
11. Upon completion of development, all silt fences shall be removed from the site.
12. A school bus stop shall be provided with parking for at least 12 vehicles. The location of the bus stop area shall be shown on the Final Site Plan.
13. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
14. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
15. The Final Site Plan shall include a landscape plan for all of the open space and buffers areas, showing all of the landscaping and vegetation to be included in those areas.
16. The Final Site Plan shall include a phasing plan and shall be subject to the review and approval of the Planning and Zoning Commission.

(See the minutes of the meeting of the Planning and Zoning Commission dated September 25 and October 9, 2008.)

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

The Applicant submitted two books for the Council's review and consideration.

Doug Simpson and Dale Wheatley, Applicants and Owners of the Project, and Jim Willey of George, Miles & Buhr, LLC, were present with Dennis Schrader, Attorney. They stated that the site is currently zoned GR General Residential and is vacant; that the total project contains 100.71 acres of which 97.66 acres are located in the County and 3.05 acres are

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

located in the Town of Ellendale; that the proposed use is a GR-RPC with a moderately priced housing unit component; that if the project is approved, they will probably apply for annexation into the Town of Ellendale; that they have applied for and been granted permission to participate in the County's MPHU Program; that the project will be known as Ingram Village; that the site is located in a growth area according to the Sussex County Comprehensive Plan Update and the Town of Ellendale Comprehensive Plan proposal; that the proposal is consistent with both the County's and the Town's Comprehensive Plan and consistent with the State Strategies Map; that the site is located in Investment Level Areas 2 and 3 according to the State Strategies Map; that the site is located immediately adjacent to the Town of Ellendale on Old State Road; that central sewer will be provided by Sussex County; that central water is proposed to be provided by Artesian Water Company; that no State wetlands exist on the site; that 405 units are proposed, which includes 399 units within the unincorporated area, 4 units within the Town of Ellendale, and 2 units that are split by the Town and County boundaries; that the 405 units include 233 single-family lots and 172 townhouses; that the MPHU allows for a 20% density bonus, if approved; that 60 MPHU units are planned; that phasing is required and proposed; that the grid concept pattern of the project duplicates the layout of the Town of Ellendale; that there are no proposed cul-de-sacs; that the layout is a typical small Delaware town street network; that they are proposing a 5.6 acre Village Center Park with a community building; that the streets will be private; that they are asking for sidewalks on one side of the streets; that they had shown sidewalks on both sides of the streets in areas of the townhomes and single family units; that they hope to use sidewalks on the side of street closet to the Village Center Park; that single-family homes will be built next to existing single-family parcels; that they are planning landscaped buffers along the railroad and the north property line and a wooded buffer along the northerly side, adjacent to the existing Glatfelter property; that the main entrance off of Old State Road will be improved with three (3) water feature ponds; that the phasing plan will include at least three (3) phases; that Phase 1 will be adjoining the Town of Ellendale, Phase 2 is the middle section and Phase 3 is the northern section; that in regards to housing types, they are proposing that the single family home construction be contracted to builders such as Beracah Homes; that the owners have entered into discussions with Milford Housing in order to build portions of the MPHUs; that the PLUS comments were generally favorable; that the TAC comments were generally favorable; that the northern property line was altered to square off the property line by agreement with Glatfelter Pulpwood Company, the adjoining landowners; that the excellent recharge area on the site is a small tip of the southerly property and is a portion of proposed open space; that they may have to realign and relocate the tax ditch that crosses the property; that the proposed single-family units will be, at a minimum, 2-bedroom units including the MPHUs; that the townhouses will be typical townhouse designed units; that the 60 MPHU units will vary in price from \$152,000 to \$222,000 per unit, depending on the number of bedrooms; that the MPHUs will be interspersed throughout the community; that they have calculated

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

that the property could be developed as 402 units with GR zoning; that there are approximately 14 acres of landscaping buffer area and a total of 20 acres of open space; that the overall density of the project is 4.0 units per acre; that the roads will be built to the County's Private Road Standards; that the majority of the site is already located within the Ellendale Sanitary Sewer District; that there are other green spaces in the project; that they may design trails into the buffer areas; that DelDOT will require widening of Old State Road and a contribution of improving a railroad crossing; that DelDOT has provided a letter of "No Objection"; that Best Management Practices will be utilized in the development of the project; that the project will be a benefit to the Town of Ellendale by generating revenue for the Town; that the Town is working with the County Engineering Department to do inspections on sewer, water, streets, etc.; that covenants are proposed and include maintenance provisions and will meet the MPFU requirements; that the buffer along the railroad is intended to be a 50-foot wide buffer with berms and environmentally landscaped; that the type of plants has not yet been determined; that the southerly entrance access road will be wider to allow for access to the future commercial/industrial area next to the railroad; that a school bus stop location will be provided; that economically, they do not know when to start the project and it is hard to state how many units may be built in a given year; that if the economy improves, they may build 100 units per year; and that all open space amenities and the clubhouse will be built after construction of 125 units.

Mr. Shrader noted that, in regards to the reference that the roads will be built to County standards, they were not referencing the new County Roads Construction Agreement which will go into effect on January 1, 2009, as this application was already filed prior to the adoption of the new standards.

Mr. Shrader noted that he has heard that the County Engineering Department has already begun to impose the new road regulations even though they do not go into effect until January 2009.

In response to questions raised by Mr. Cole, Mr. Schrader stated that there is no formal annexation agreement with the Town of Ellendale and that amenities include a green area, a Clubhouse and the Village Center Park.

Mr. Cole stated that no amenity package is proposed; that the proposal is a cookie cutter layout; and that the "superior design" aspect is weak. Mr. Cole stated that he agrees with the Commission's recommendation that active and passive recreational amenities should be provided. He stated that the impact of this project on the Town's services will be substantial. Mr. Cole recommended that the conditions include a requirement that the Applicants make application for annexation into the Town.

Mr. Griffin stated that he does not believe the County can place a condition on an application regarding annexation.

Mr. Schrader responded that they have agreed to an amenity package and that the amenities would be located in the park area to the north end of the project; however, it was also suggested that amenities be placed at the south end.

Mr. Schrader stated that the only problem that they have with the conditions recommended by the Planning and Zoning Commission is the requirement for sidewalks on both sides of the road and how that condition affects the project both as to cost and impervious service.

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

Public comments were heard.

Delores Price, President of the Town Council of the Town of Ellendale, stated that the Town's only amenity is the Town Park; that the Applicants have submitted an application for annexation; that she wants the project annexed into the Town; that she wants the MPHU units to be integrated in the community; that she does not want matchbox houses; that the Town is working on a sidewalk project with sidewalks on both sides of the roads and that they have completed Phase II of the project; that she supports the construction of sidewalks on both sides of the roads; that the Town's Ordinance requires sidewalks on both sides of the road; that the Town's Comprehensive Plan calls for a trailway along the railroad and she supports that trailway; and that green space and amenities are important in any development. Ms. Price stated that the Town Council supports the project because MPHUs are needed.

Mr. Cole suggested that the Applicant be required to coordinate an amenity package with the Town Council of Ellendale.

Ann Ennis, an adjacent property owner, stated that she is in favor of the development; however she is concerned about extra traffic on Washington Street.

In response to questions and comments, Doug Simpson, one of the applicants, stated that the traffic circle was designed to address traffic concerns regarding volume and speed; that they have secured financing and it is their intention to proceed with the construction of the project; and that their project exceeds the County's open space requirements.

Mr. Dukes referenced the Commission's Condition No. 6 which states that "There shall be sidewalks on both sides of all streets within the RPC."

The Public Hearing was closed.

M 725 08

Motion
Withdrawn

A Motion was made by Mr. Dukes to amend the Planning and Zoning Commission's recommended Condition No. 6 (F) so that the new Condition No. 6 (F) would read as follows: "There shall be sidewalks subject to the conditions on the Applicant's Exhibit." The Motion died for the lack of a Second.

M 726 08

**Amend
Condition/
C/Z
No. 1666**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to amend the Planning and Zoning Commission's recommended Condition No. 6 (F) so that the new Condition No. 6 would read as follows: "Sidewalks shall be required consistent with the Phasing Plan of Ingram Village (Sheet C2.0) in the Exhibit Book, as prepared by George Miles & Buhr, dated September 2008 as Sheet C2.0.

M 726 08

(continued)

Motion Adopted: 4 Yeas, 1 Nay.

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

M 727 08

**Adopt
Ordinance
No. 1997
(C/Z
No. 1666)**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt Ordinance No. 1997 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 101.6 ACRES, MORE OR LESS" (Change of Zone No. 1666) filed on behalf of Beaver Properties, LLC, with the following conditions:

1. The maximum number of lots shall not exceed 405 units with 399 of those units being in Sussex County. There shall be 233 single family lots and 172 townhouses. 60 of those units shall also be Moderately Priced Housing Units spread evenly throughout the project.
2. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.
3. The Development shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.
4. The RPC shall be served by central water.
5. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
6. Sidewalks shall be consistent with the Phasing Plan of Ingram Village on Sheet C2.0 of the Exhibit Book, as prepared by George, Miles & Buhr, dated September 2008.
7. A system of street lighting shall be installed.

**M 727 08
Adopt
Ordinance
No. 1997
(C/Z
No. 1666)
(continued)**

8. The Developer shall form a homeowner's association responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
9. There shall be active and passive recreational amenities provided. The location and description of the active amenities shall be subject to the review of the Commission and shown on the Final Site Plan.
10. A 50-foot wide bermed and vegetated buffer shall be established along the railroad. This shall be shown on the Final Site Plan.
11. Upon completion of development, all silt fences shall be removed from the site.
12. A school bus stop shall be provided with parking for at least 12 vehicles. The location of the bus stop area shall be shown on the Final Site Plan.
13. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.
14. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
15. The Final Site Plan shall include a landscape plan for all of the open space and buffers areas, showing all of the landscaping and vegetation to be included in those areas.
16. The Final Site Plan shall include a phasing plan and shall be subject to the review and approval of the Planning and Zoning Commission.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
C/U
No. 1745**

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 LANDSCAPING AND GARDEN CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.702 ACRES, MORE OR LESS" (Conditional Use No. 1745) filed on behalf of Gray's Creative Touch.

The Planning and Zoning Commission held a Public Hearing on this application on September 25, 2008 at which time the Commission recommended that the application be approved with conditions.

(See the minutes of the meeting of the Planning and Zoning Commission dated September 25, 2008.)

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

**Public
Hearing/
C/U
No. 1745
(continued)**

In response to questions, Mr. Lank advised that DelDOT reported that no Traffic Impact Study is necessary and that the Level of Service D on Vines Creek Road (Route 26) will not be impacted. Mr. Lank noted that the Applicant will be required to obtain an entrance permit from DelDOT or a letter stating that there is no necessity for an improvement to the existing entrance.

Mr. Lank stated that the use is established and has been there for some time; however, the Applicant was advised by County staff that he needed to apply for a Conditional Use Permit and he did so immediately.

Willard Gray, the Applicant, was present on behalf of his application. He stated that he proposes a family-run landscaping and greenhouse facility. Mr. Gray commented that he agrees with the Commission's recommended conditions.

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

**M 728 08
Adopt
Ordinance
No. 1998
(C/U
No. 1745)**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to Adopt Ordinance No. 1998 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING AND GARDEN CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.702 ACRES, MORE OR LESS" (Conditional Use No. 1745) filed on behalf of Gray's Creative Touch, with the following conditions:

1. The use shall be permitted for 6 days per week, from 8:00 a.m. to 8:00 p.m. and shall be closed on Sundays.
2. Two (2) lighted signs, not to exceed 32 square feet in size on each side, may be permitted. Only one sign shall be permitted on each road frontage.
3. There shall be no employees other than family members.
4. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission. The Final Site Plan shall show the location of greenhouses, storage bins, sheds, parking and signs.

5. All displays, bins, wagons, etc. shall be located at least 25-feet from all roadways.
6. Any future lighting on the site shall be down screened so as not to shine on neighboring properties or roadways.

M 728 08
(continued)

Motion Adopted: 5 Yeas.
Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea

**Public Hearing/
C/Z
No. 1746**

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 TO AMEND CONDITIONAL USE NO. 1321 (ORDINANCE NO. 1361) TO ALLOW AN OFFICE, SHOWROOM, AND AN ARTISANS/ARTISTS SPACE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 36,000 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1746) filed on behalf of JCBB, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on September 25, 2008 at which time the Commission recommended that the application be approved with conditions.

(See the minutes of the meeting of the Planning and Zoning Commission dated September 25, 2008.)

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

William Peden, the Applicant, was present on behalf of his application. He stated that they propose to use part of the existing building (in the front) for an artist display area; that they will continue to use the site for a contractors office; that he would like to display some of the outdoor furniture that they make on the site for sale outside; that the storage building/garage already exists on the site; that business hours are normally Monday through Friday from 9:00 a.m. to 5:00 p.m. and may be extended to 6:00 p.m. with some Saturday hours; that he may need to alter his existing 4 foot by 8 foot sign to exhibit the artist showroom area; and that all construction equipment is stored behind the storage building/garage.

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

M 729 08
Adopt Ordinance
No. 2000
(C/U)

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to Adopt Ordinance No. 2000 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 1321 (ORDINANCE NO. 1361) TO ALLOW AN OFFICE, SHOWROOM, AND

No. 1746) AN ARTISANS/ARTISTS SPACE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 36,000 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1746) filed on behalf of JCBB, LLC, with the following conditions:

**M 729 08
Adopt
Ordinance
No. 2000
(C/U
No. 1746)
(continued)**

- 1. All of the stipulations imposed by Conditional Use No. 1321 (Ordinance No. 1361) shall still apply.**
- 2. No additional signs are permitted, rather the existing 32 square foot sign may need to be altered in order to advertise the additional uses.**
- 3. Any outside displays shall not be located in the front yard setback.**
- 4. The hours of operation for the businesses located on the property shall be Monday through Saturday from 8:00 a.m. to 6:00 p.m. with some Sunday hours for occasional exhibits.**
- 5. If there are no structural changes proposed, a Final Site Plan review by the Planning and Zoning Commission shall not be required.**

Motion Adopted: 5 Yeas.

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

**M 730 08
Adjourn**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to adjourn at 9:33 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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