



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 16, 2007

**Call to
Order**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 16, 2007 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

The meeting was opened with the Lord's Prayer and the Pledge of Allegiance.

**Senator
Vaughn**

Mr. Dukes expressed condolences to the family of Delaware State Senator James Vaughn, who died on October 10, 2007.

**M 608 07
Approve
Agenda**

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

Motion Adopted: 5 Yeas.

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

**M 609 07
Approve
Minutes**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the minutes of September 18, 2007.

Motion Adopted: 5 Yeas.

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

M 610 07

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

**Approve
Minutes**

minutes of September 25, 2007.

Motion Adopted: 5 Yeas.

**M 610 07
(continued)**

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

**Corre-
spondence**

Mr. Griffin read the following correspondence:

DELAWARE HOUSING COALITION, DOVER, DELAWARE.

RE: Note thanking the Council for its participation in the Sussex Housing Forum panel on October 10, 2007.

EL CENTRO CULTURAL, INC., GEORGETOWN, DELAWARE.

RE: Letter thanking the Council for being a sponsor of the Festival Hispano through a Human Service Grant.

**Sussex Con-
servation
District
Grants**

Mr. Baker announced that the County budgeted \$75,000 for tax ditch maintenance for the Sussex Conservation District and for the fourth year in a row, the State has provided an additional \$100,000 to the Conservation District, contingent on the County matching the \$100,000. All funds are to be used for tax ditch-related projects. The \$100,000 grant from the County would be transferred from the General Fund Contingency Account. Mr. Baker reported that, in addition to the \$175,000 grant from the County, \$53,595.00 has been budgeted for salary costs for the Conservation District.

**M 611 07
Approve
Additional
Grant/
Sussex Con-
servation
District**

A Motion was made by Mr. Cole, seconded by Mr. Jones, that the Sussex County Council approves a \$100,000 matching grant to the Sussex Conservation District for tax ditch-related projects, which would be in addition to the \$75,000 grant included in the Fiscal 2008 Budget.

Motion Adopted: 5 Yeas.

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

Ms. Debbie Absher of the Sussex Conservation District thanked the Council for its continued support of the Conservation District programs. She stated that the funds from the County will be used to help the Tax Ditch organizations maintain nearly 1,400 miles of tax ditches.

The Council presented a check in the amount of \$175,000 to Debbie Absher, Rich Kirscher, and Debbie Hastings of the Sussex Conservation District.

**Discussion/
Draft**

Mr. Griffin stated that on October 9, 2007, the Council discussed revisions to a Draft Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER

Ordinance 72, HOUSING UNITS, MODERATELY PRICED”.

**Discussion Mr. Griffin presented the following proposed changes to the Draft
and Possible Ordinance, which were recommended by the working group:
Introduction**

of a Draft §72-4. Declaration of public policy

Ordinance/ Strike the original Paragraph G; replace with new paragraph

Moderately

Priced §72-5. Definitions –QUALIFYING LAND – All land

**Housing Add “or land that is designated on a town’s comprehensive
Units plan as lying within the town’s growth and future annexation area”;**

Program

(MPHU) §72-6. Minimum standards of eligibility for eligible buyers

**(continued) Add “including changes to eligibility requirements for home
 buyer applicants as recommended by the Department”;**

§72-7. Density incentive; other incentives

**Strike original Paragraph (2) regarding fee waivers and replace with
the following: “The project entering the MPHU Program with the
execution of an MPHU agreement will be allowed to utilize the
density permitted by the zoning district in which the property is
located, provided that the total density, including MPHU incentives,
shall not exceed 12 units per acre”;**

§72-8. MPHU agreements – Paragraph J

**In the first line, add “units” and add the following “and shall not be
substantially different in appearance from non-MPHU units. When
the MPHU units are a part of a phased development a proportionate
number or percentage of said units shall be placed within each phase
and/or constructed within each housing type appearing in the
development”;**

Paragraph K

**In the first sentence add “ and except for a second mortgage which is
approved by the first mortgage lender and the Department prior to
the date of sale and, the proceeds of which are used solely to pay or
reimburse some or all of an eligible buyer’s down payment and/or
settlement costs”.**

**In the last sentence add “and an approved second lien mortgage to
defray some or all of the down payment and/or settlement costs, as
defined above”.**

§72-14. Phased implementation of provisions; test period

**Add Paragraph D regarding standard documents which must be
executed by all applicants and eligible buyers;**

§72-15. Government regulations; enforcement

Amended to give County Administrator authorization to promulgate and approve various agreements and documents.

**Discussion/
(continued)** **The term County “Council” will be replaced with County “Administrator” throughout the Ordinance.**

**Introduction
of Proposed
Ordinance** **Mr. Jones introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 72, HOUSING UNITS, MODERATELY PRICED”. The Proposed Ordinance will be advertised for Public Hearing.**

**Adminis-
trator’s
Report** **Mr. Baker read the following in his Administrator’s Report:**

1. Recorder of Deeds Research Area – Temporary Closing

Attached is a copy of a memo from John Brady, Sussex County Recorder of Deeds, regarding closing the research area of the Recorder of Deeds Office on this coming Friday, October 19, as well as October 20 and 21, 2007. The research area will reopen on Monday, October 22, at 8:00 a.m. The Recorder of Deeds Office is making changes to provide additional space for title searchers in the research area. Various books and documents will be moved on Friday and Saturday and additional tables will be installed, as well as additional computer equipment for usage by the title searchers.

2. Delaware State Police Report – August 2007

Attached is a copy of the August 2007 Delaware State Police Report for Sussex County. As noted, 4,788 complaints were handled, 1,362 criminal arrests were made and 4,095 traffic arrests were made.

3. Beneficial Acceptance

The Engineering Department has granted Beneficial Acceptance to the following projects:

- Ashley Manor - Phase 2, Agreement No. 539-2, was granted Beneficial Acceptance on October 5, 2007. The developer is Beazer Homes Corp., and the project is located on Route 20, north of Route 54, in the Fenwick Island Sanitary Sewer District, consisting of 39 townhouses and one community building.**
- Hawkseye Subdivision (Phase 1A), Agreement No. 391-1, was granted Beneficial Acceptance on October 12, 2007. The developer is L.T. Associates, L.L.C., and the project is located on Gills Neck Road in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, consisting of 55 single-family lots.**

Included with this Report was a fact sheet on each of the projects.

T-Hangar Lease Termination **Jim Hickin, Director of Airport Operations & Industrial Park, reported that one of the County's T-Hangar tenants, Earl Waller, has moved his aircraft to another airport and is requesting termination of his lease. Mr. Hickin stated that early termination is not included in the current lease and, therefore, must be approved by the Council. He stated that new hangar leases will address the issue of early termination.**

M 612 07 Approve Termination of T-Hangar Lease **A Motion was made by Mr. Jones, seconded by Mr. Rogers, that the Sussex County Council authorizes the termination of the existing Lease Agreement with Earl Waller for T-Hangar No. 2, 21385 Rudder Lane, at the Sussex County Airport.**

Motion Adopted: 5 Yeas.

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

South Ocean View SSD/ Change Order Nos. 4 & 5 **Mike Izzo, County Engineer, presented two proposed credit Change Orders for the South Ocean View Sanitary Sewer District project, which serves Shady Dell Park and Quaint Acres.**

Mr. Izzo explained that the price of the asphalt at the time of the paving had decreased since the bidding, resulting in the credit Change Order No. 4 in the amount of \$14,681.

Mr. Izzo stated that a balance to quantities across the project resulted in credit Change Order No. 5 in the amount of \$78, 479.

M 613 07 Approve Change Orders Nos. 4 & 5/ South Ocean View SSD **A Motion was made by Mr. Jones, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department and its consultant, Whitman, Requardt, and Associates, LLP, that Change Orders Nos. 4 and 5 for Sussex County Contract 06-02, South Ocean View Sanitary Sewer District, with Edward McGinn, General Contractors, Inc., decreases the contract by the credit amount of \$93,161.39, which allows for a final contract total of \$4,690,758.55, contingent upon the receipt of approval from the State of Delaware Water Pollution Control Revolving Fund.**

Motion Adopted: 5 Yeas.

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

- M 614 07 Grant Substantial Completion/ SOV-SSD M 614 07 Grant Substantial Completion/ South Ocean View SSD (continued)**
- A Motion was made by Mr. Jones, seconded by Mr. Phillips, based on the recommendation of the Engineering Consultants, Whitman, Requardt, and Associates, LLP and the County Engineering Department, that the Sussex County Council grants Substantial Completion, effective August 30, 2007, for Sussex County Contract No. 06-02, South Ocean View Sanitary Sewer District, to Edward McGinn, General Contractors, Inc., and the final payment be made and any held retainage be released in accordance with the terms and conditions of the contract occupants.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Yea**
- Captain's Grant Expansion/ Oak Orchard SSD**
- John Ashman, Director of Public Works, updated the Council on the Public Hearing regarding the Captain's Grant Expansion of the Oak Orchard Sanitary Sewer District. On October 11, 2007, the Sussex County Engineering Department held a Public Hearing at the Indian River Fire Hall. Mr. Ashman reported that ninety-two residents from Captain's Grant were in attendance and a letter in support of the boundary extension was received from the Board of Directors of Captain's Grant. Mr. Ashman stated there was overwhelming support at the Public Hearing to be included in the Oak Orchard Sanitary Sewer District.**
- M 615 07 Adopt R 027 07 Captain's Grant Expansion/ Oak Orchard SSD**
- A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Resolution No. R 027 07 entitled "RESOLUTION TO EXTEND THE BOUNDARY OF THE OAK ORCHARD SANITARY SEWER DISTRICT (OOSD) TO INCLUDE PARCELS OF LAND IN THE COMMUNITY OF CAPTAIN'S GRANT LOCATED NORTH OF OAK ORCHARD ROAD (STATE OF DELAWARE ROUTE 5), BEING SITUATE IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE".**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mr. Cole, Yes; Mr. Phillips, Yea; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Yea**
- Requests**
- Mrs. Webb presented a grant request for the Council's consideration.**
- M 616 07 Community Investment Grant**
- A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$5,000 from Mr. Cole's Community Investment Grant Account to the Rehoboth Beach Historical Society for the Rehoboth Beach Museum.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Rogers, Yea; Mr. Jones, Yea;**

Mr. Dukes, Yea

Introduction of Proposed Ordinance
Introduction (continued)

Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (472 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 186.56 ACRES, MORE OR LESS” (Conditional Use No. 1772) filed on behalf of L.T. Associates, LLC.

Introduction of Proposed Ordinance

Mr. Phillips introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 68.30 ACRES, MORE OR LESS” (Change of Zone No. 1630) filed on behalf of L.T. Associates, LLC.

Introduction of Proposed Ordinance

Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.0 ACRES, MORE OR LESS” (Change of Zone No. 1631) filed on behalf of Garrett W. Herring (Herring Real Estate, LLC).

Introduction of Proposed Ordinance

Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 13.64 ACRES, MORE OR LESS” (Change of Zone No. 1632) filed on behalf of Pelican Landing – Route 24, LLC.

Introduction of Proposed Ordinance

Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONVENIENCE STORE WITH GAS PUMPS AND CAR WASH TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 4.047 ACRES, MORE OR LESS” (Conditional Use No. 1773) filed on behalf of Davis, Bowen & Friedel, Inc.

The Proposed Ordinances will be advertised for Public Hearing.

Additional Business	Mr. Cole suggested that the names of the principals of companies applying for Change of Zones and Conditional Uses be requested on the application. Mr. Griffin stated that since the application forms are not statutorily mandated, Planning and Zoning could amend the applications to request that information.
Additional Business (continued)	<p>Mr. Dukes stated that the decisions made regarding Change of Zones and Conditional Uses are based on the land use requests.</p> <p>Mr. Cole referred to the proposed “Clean Hands” Ordinance and stated that it would be appropriate to have the names and addresses of those making application.</p> <p>Mr. Phillips was in agreement with Mr. Dukes and he stated that the Council’s obligation is to make a decision based solely on the land use request and that the names of the owners of the company making application should not be a factor in the decision-making process.</p> <p>Mr. Rogers stated that names of the principals of a company applying for a Conditional Use or a Change of Zone may be obtained from Planning and Zoning.</p> <p>Mr. Jones suggested delaying making any policy changes until after the Public Hearing on the “Clean Hands” Ordinance.</p> <p>Mr. Dukes stated that since this item was not on the Agenda, the Council could not vote on whether or not to change the current policy regarding requiring the names of the owners of a company applying for a permit or County services. The consensus was that the Council will discuss this further following the Public Hearing on the “Clean Hands” Ordinance.</p>
M 617 07 Recess	At 10:45 a.m., a Motion was made by Mr. Jones, seconded by Mr. Phillips, to recess until 11:00 a.m. Motion Adopted by Voice Vote.
Reconvene	Mr. Dukes called the Council back into session at 11:07 a.m.
Public Hearing/ Relating to “Clean Hands” Ordinance	<p>A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO ADOPT CHAPTER 116, ENFORCEMENT OF COUNTY OBLIGATIONS, TO REQUIRE RESIDENTS AND PROPERTY OWNERS TO BE CURRENT IN THE PAYMENT OF TAXES AND OTHER COUNTY OBLIGATIONS AS A CONDITION PRECEDENT TO MAKING APPLICATION FOR AND RECEIVING COUNTY APPROVALS, SERVICES, AND/OR PERMITS”.</p> <p>Mr. Griffin reviewed the Proposed Ordinance which creates Chapter 116 as a new Chapter of the Sussex County Code.</p> <p>Applicants for County approvals, permits, licenses and/or the use, receipt or provision of County services shall be current on all of the following obligations to the County prior to receiving such approvals:</p>

**Public
Hearing
Relating
to “Clean
Hands”
Ordinance
(continued)**

- 1. Property taxes.**
- 2. Capitation taxes.**
- 3. Water and/or sewer connection, front footage and/or usage charges.**
- 4. Application fees.**
- 5. Permit fees, including building permits, building code and inspection fees.**
- 6. Interest, penalties, court costs and/or attorney’s fees if applicable to a default in any of the above listed obligations.**

The directors or heads of various County departments shall refuse to accept applications and grant permits and/or approvals for the use, receipt or provision of County services, including but not limited to building permits, mobile home placement permits, building code plan reviews and/or inspections, subdivisions, rezonings, conditional uses, variances and/or special exceptions until the owner and/or applicant has demonstrated that all County obligations identified in Section 116-2 have been paid current as to all lands and property owned by the individual requesting the permit, approval or County services.

Applicants may appeal a denial to the Sussex County Administrator within 20 calendar days of the denial.

This Amendment creates a “clean hands policy” that will require a property owner’s monetary obligations to the County to be paid current prior to the County accepting an application from the property owner for any license, permit, approval or additional service to the delinquent property or its owner. without this amendment, the property owner who is delinquent in their obligations can file an application for zoning approval, a variance, a building permit, or building code review or other County service without paying the delinquent obligations owed to the County.

Public comments were heard.

Dan Kramer questioned if an applicant would be advised immediately if he would be granted the permit or service for which he was applying. He was advised by Mr. Griffin that the computer system now has a new software program that will allow the staff immediate accessibility to delinquencies in any of the six areas mentioned.

Mr. Kramer also questioned if an application would be denied if the person requesting the application is noncompliant, but is not the owner of the property. Mr. Griffin stated that the property owner would be checked.

Mr. Cole asked if an application would be denied if one of several property owners was delinquent in any of the above-mentioned obligations. Mr. Griffin advised that the owner in noncompliance would be required to make all outstanding obligations current.

Mr. Cole offered the following question: if a person makes an application under a Corporation or an LLC, how would the County Department know if any of the principals in the LLC or corporation are delinquent?

**Public
Hearing
Relating
to “Clean
Hands”
Ordinance
(continued)**

Mr. Griffin responded that the Proposed Ordinance could be further amended to state that any person who is an equity owner in a land-owning entity must be current with all County obligations.

Mr. Kramer raised the following question: if a person making application for a permit or other County services leases the land, would the applicant or the landowner be checked for noncompliance? Mr. Griffin stated that adoption of some administrative provisions or policy changes may be necessary in order to implement the Ordinance.

Eddy Parker, Director of Assessment, reported that the owner of a mobile home on leased land is billed separately from the landowner for his County taxes; therefore, if the applicant owns a mobile home on leased land and is delinquent with County taxes or other County obligations, the application would be denied. He further stated that if an applicant has been determined to be in noncompliance with any County obligations, and the applicant disputes this information, the Assessment staff will immediately research the delinquency in question.

The Public Hearing was closed.

**M 618 07
Adopt
Ordinance
No. 1938**

A Motion was made by Mr. Cole, seconded by Mr. Jones, to Adopt Ordinance No. 1938 entitled “AN ORDINANCE TO ADOPT CHAPTER 116, ENFORCEMENT OF COUNTY OBLIGATIONS, TO REQUIRE RESIDENTS AND PROPERTY OWNERS TO BE CURRENT IN THE PAYMENT OF TAXES AND OTHER COUNTY OBLIGATIONS AS A CONDITION PRECEDENT TO MAKING APPLICATION FOR AND RECEIVING COUNTY APPROVALS, SERVICES AND/OR PERMITS”.

Motion Adopted: 5 Yeas.

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

**M 619 07
Recess**

At 11:35 a.m., a Motion was made by Mr. Phillips, seconded by Mr. Jones, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

Reconvene

Mr. Dukes called the Council back into session at 1:30 p.m.

**Public
Hearing
(C/U
No. 1701)**

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 NEW AND USED FURNITURE SALES, THRIFT SHOP AND OFFICE TO BE

LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 23,899 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1701) filed on behalf of Bridget M. Nicholson.

**Public
Hearing
(C/U
No. 1701)
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on September 27, 2007 at which time the Commission deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated September 27, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Lawrence 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.

The Council found that Bridget Nicholson was present on behalf of her application. She stated that the site was previously approved for a Conditional Use for a cabinet shop; that she currently operates a thrift shop on the site; that she sells used furniture and knick knacks and some appliances; that she displays some merchandise outside on a concrete pad; that she could not operate the business without an outside display due to the size of the building; that her current hours of operation are Tuesday through Saturday from 9:00 a.m. to 5:00 p.m.; that she is closed on Sundays and Mondays; that she anticipates one truck coming to the site two to three times a week; that the use will not draw a lot of traffic; that she was involved with a moving company that is no longer operating from the site; that the moving company has relocated to Route 54; and that she made application for a Conditional Use to bring the present activities into compliance.

Public comments were heard.

Sally Ford spoke in opposition to the application. She stated that the site continually has merchandise displayed outdoors, to the edge of the property, and it looks like a year round yard sale. She also stated that, should the County approve the Conditional Use, she and her husband, Tom Ford, would request that the County require a minimum of the following: a Letter of No Objection from DelDOT, appropriate on-site parking, a DelDOT approved entrance to said parking; new construction to adhere to the County’s setback requirements; no outdoor display; restrictions on hours, signage, and lighting, and approval from the State Fire Marshal. Mrs. Ford submitted a written copy of her comments for the record.

Sally Ford read a letter into the record which was written by Glenn S. Roberts of Custom Mechanical, Inc. Mr. Roberts wrote in support of the Conditional Use; however, he expressed “our prime concern as the roads and area surrounding us continue to grow and change, are the safety of

**Public
Hearing
(C/U
No. 1701)
(continued)**

business patrons as well as the quality of life for all nearby businesses and homes.” Mr. Roberts requested that that the Conditional Use be granted with the following guidelines: off-site parking for patrons and moving vans; maintenance and upkeep of the store-front and surrounding land in accordance with a professional aesthetic and applicable State and County codes for commercial establishments; and the addition of restrooms for use by employees and patrons, as need necessitates. Mrs. Ford submitted Mr. Roberts’ letter for the record.

Chris Eslenger stated that she lives within 200 feet of the site and she did not receive any notification of the application; that she doesn’t have any objection to Ms. Nicholson continuing her business although she does have concerns about the outdoor display of merchandise; and that she hopes the Applicant plans to fix up the store.

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

Mr. Cole stated that the outside display of merchandise should be curtailed.

**M 620 07
Defer
Action
on C/U
No. 1701**

A Motion was made by Mr. Cole, seconded by Mr. Jones, to defer action on Conditional Use No. 1701 filed on behalf of Bridget M. Nicholson.

Motion Adopted: 5 Yeas.

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

**Public
Hearing
(C/U
No. 1702)**

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 RESIDENTIAL SCHOOL AND COUNSELING FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 6.01 ACRES, MORE OR LESS” (Conditional Use No. 1702) filed on behalf of Shiloh House of Hope.

The Planning and Zoning Commission held a Public Hearing on this application on September 27, 2007 at which time the Commission deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated September 27, 2007 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Lawrence 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 11 additional letters of opposition were received since the Public Hearing before the Planning and Zoning Commission.

**Public
Hearing
(C/U
No. 1702)
(continued)**

The Council found that Lori Rider, owner of the property and Vice President of the Board of Shiloh House of Hope, was present with David Rutt, Attorney; Ken Christenbury of Axiom Engineering, LLC, and Robyn Sturgeon, President of Shiloh House of Hope.

Mr. Rutt stated that the application is for a facility to house a maximum of 48 students in a campus setting on approximately 6 acres of land; that they propose 6 dormitories, a chapel, an administration building, and a school with a dining room and fitness center; that this would be a residential school and counseling center directed towards teenagers 13 to 18 years of age who have problems in their lives; that some of the teens have had drug and alcohol problems, physical and mental abuse, and possibly, minor brushes with the law; that they are not bad kids; that they are kids that need to be refocused, reassured and redirected, which is the purpose of the organization; that the education program is the accelerated Christian Education Program, a proven curriculum; that the program will be registered with the State Board of Education; that the Shiloh House of Hope is part of a national organization whose emphasis is to provide assistance to troubled teens through Christian counseling and rigid adherence to the organization's programs; that this would not be a jail nor a detention center and it would not be controlled by or affiliated with the State; and that it is a non-profit, 501(c)3 organization that has very strict criteria for admissions, retention and graduation.

Mr. Rutt referred to the Exhibit Books on the Shiloh House of Hope which were distributed to the Council. He explained that the Books are essentially the same (99%) as those provided to the Commission and that there are only a couple of minor changes which will be noted during the presentation.

Ken Christenbury showed a video on the National House of Hope program.

Lori Rider presented information on the history and background of the project. She stated that she would like to address the valid concerns that are created when a new program such as this one is being presented; that many of the concerns have occurred because of the distribution of misinformation; that this has created a lot of confusion about who will be served by Shiloh House of Hope; that she hopes that some of the fears can be put to rest by their presentation at this Public Hearing; that she had property that was available and an interest in the House of Hope and she has conveyed 6 acres of her property to the Shiloh House of Hope; that she believes this is a good way to use a portion of her property; that her property would provide a peaceful setting; that the six acres sits directly in front of her own home and is surrounded on all three sides by her own land; that a buffer would be provided between McDowell Road and the

Public
Hearing
(C/U
No. 1702)
(continued)

Shiloh property; that Shiloh House of Hope is a Christ-centered counseling and education center established for the healing of teenagers' lives and the restoration of their families; that the typical youth that is served in this program are ages 13 up to 18; that the national program that Shiloh is modeled after has been restoring families for over 22 years; that Shiloh is an affiliate of this well established organization; that Shiloh House of Hope would use the National House of Hope as a guideline to establish their program; that Shiloh would be held accountable to them and would report quarterly to them; that as an affiliate, personnel would be required to attend training programs at the national headquarters; that Shiloh will also have training for volunteers and other staff members; that a parent or guardian must be involved in this program for each student; that no student is taken into the program without parental involvement; that parents must be willing to be involved in the counseling; that it is not a program that is mandated by anyone, it is sought out; that it is not a correctional facility; that youth with a history of serious violent behavior or have any history of being a sexual predator will not be admitted in this program; that it is a recovery center; that the youth will spend 7 to 14 months in a residential private school setting under 24-hour supervision by trained teachers, counselors and pastors; that the program will not endanger her own children who will live near the site; that it will not endanger the neighbors; that there will be no more than 8 teens in a home at night and they will be supervised by an adult; that each home will have a fire alarm and security system on all doors and windows; that parents are the only visitors allowed; that there is currently a non-residential Shiloh House of Hope program in place in the Town of Bridgeville; that a residential program would allow for closer monitoring and daily progress as well as the removal of the student from the temptations of alcohol and drug abuse, pornography, and sex; that the students could be brought back up to speed in their schools; that they will have a response plan in place in the event a teen leaves the premises; that they have spoken to the State Police and they have expressed that they will be glad to establish an appropriate response plan for missing students, which would include the notification of residents in the area and a reverse 911 calling system; that students will not be permitted to have vehicles on the campus; and that she realizes the area is heavily hunted, however, her family has never felt in danger on this property during hunting season.

Robyn Sturgeon presented information on the educational process, the application process and how the Shiloh House of Hope ties into the national program. She stated that the Shiloh House of Hope is a Christ-centered, non-denominational, not-for-profit, residential school and counseling program to help hurting teens and their families receive healing and restoration; that they have a 4-member Executive Board and a 6-member Board of Directors; that in their current non-residential program, they have served teens from Sussex County only; that Shiloh will not accept applicants who have been convicted of a crime involving serious physical injury as defined in Chapter 11 Delaware Code Section 222 Subchapter 24; that they will not accept applicants convicted or adjudicated of a violent felony under Chapter 11 Delaware Code Section 4102(c) without full Board review and

Public
Hearing
(C/U
No. 1702)
(continued)

unanimous approval; that they do not take any State or government funding, therefore court orders may be referred but they do not have to take any court ordered teens; that this program is not only for teens but also for the parents who are seeking help and support; that they would like to exceed some of the Delaware childcare licensing regulations (DELACARE) which recommend a ratio of 1 to 12; that Shiloh proposes a ratio of 1 to 8, with an awake person on staff throughout the night; that there are details on the security system that have been added to the Exhibit Book; that many of the children that will attend Shiloh currently attend local schools; that there is no security fencing, etc. at area schools but they propose some extra security for the residents at Shiloh for the residents' safety as well as the safety of others; that students will be under strict supervision and they will be monitored and accompanied at all times; that there is a separation of boys and girls in the program; that the only interaction time would be chapel time and when they are taken to area youth groups; and that any student who violates the established school policies and procedures will be subject to expulsion.

Robyn Sturgeon read into the record a letter of support from a neighbor of the Susquehanna Valley House of Hope.

Ken Christenbury presented a video from the Orange County Sheriff's Department showing how law enforcement views the Orlando National House of Hope.

Ken Christenbury presented information on the site plan and on technical issues. He stated that the site is surrounded by residents, but mostly by agricultural fields and wooded lands; that the site plan consists of two phases; that there is a minor subdivision proposed for the project; that the proposed residential area consists of a total of 6 buildings and the chapel; that one LPP septic is proposed for those facilities; that the school building and the administrative offices are on a separate parcel with another 2,500 gallon per day LPP septic proposed; that DelDOT did not require a Traffic Impact Study due to the limited traffic that will be generated; that the two areas shown on the site plan for LPP septic have been approved by DNREC; that one of the questions has been whether the Council has had similar applications; that applications for private schools and rural lands have come before the Council – the Cedars Academy, Epworth Christian School, the Jefferson School, Eagles Nest Christian School, Lincoln Christian Tabernacle, and Greenwood Mennonite School – which are all located in AR-1 lands with a Conditional Use; that this application is a similar Conditional Use in terms of the use of rural lands for a private educational facility.

Mr. Cole expressed concern that this application is for 48 students, which would be a larger enrollment than the examples presented; that he questions if the proposal is an appropriate land use; that the Council cannot enforce some of the things that are proposed as conditions by the Applicant; that conditions can only be placed on the application that relate to zoning

issues; that the State has concerns about locating schools outside of the Development District; that many of the example facilities are associated with existing churches; and that if this project fails, a new owner of the land should not be able to open another school facility.

**Public
Hearing
(C/U
No. 1702)
(continued)**

Public comments were heard.

The Council found that Mandy McCuffee, Thomas Towers, Rebecca Jones, Paul Alexander (Administrator of Mission of Hope in Seaford), Gary McWhite, Annabelle McWhite, Ed Cooling, Charity Collins, Brenda Will, Robert Marx, Bethany Callaway, and Bill Sykes spoke in support of Shiloh House of Hope; some read personal letters and testimonials. They stated that they support this application since it will benefit teens in the area; that teens need help in facing challenges in today's society; that the program would be for teens in Sussex County communities and schools; that it will be effective in changing teens' lives; that the students will be screened, monitored and observed; that a Christian facility is needed for troubled teens; that the teens will benefit from counseling to renew their relationship with God and their family; and that they have personally experienced and seen teens and families that have benefited from Shiloh's help; that the curriculum works and will improve the quality of life for the students that use the services; that a rural setting is ideal for this therapy and the setting would provide a safe environment, away from the pressures of sex, drugs, and a number of other negative alternatives; that everything heard in opposition to the application is about how everyone is scared of 13 to 18 year old teens; that they are the next generation; that the proposal will not cause any additional traffic problems; and that the Shiloh House of Hope non-residential program has already done great things and a residential facility could do more.

The following people submitted written comments for the record: Robert Marx, Brenda Will, and Annabelle White (who read a letter written by her daughter). Mandy McCuffee read a letter into the record from another teen in support of the application.

Recess

Mr. Dukes declared a short recess at 4:01 p.m.

Reconvene

Mr. Dukes called the Council back into session at 4:10 p.m.

**Public
Hearing
(C/U
No. 1702)
(continued)**

Tim Willard, Attorney, was present on behalf of 32 individuals in opposition to the application. He presented a packet of Supplemental Material including Shiloh House of Hope Information, Orlando House of Hope Location, Orange County Sheriff Responses to Orlando House of Hope, Orange County Sheriff Responses to National House of Hope, Illinois House of Hope Location, Minnesota House of Hope Location, Seaford House Delaware, Grace – Snowden Cottages Delaware, and Information on Non-Public Schools Delaware.

Mr. Willard stated that this is a land use decision; that this application is

Public
Hearing
(C/U
No. 1702)
(continued)

not a permitted use in the AR-1 District, therefore, the Applicant has applied for a Conditional Use; that the Council must determine if the site is appropriate for a Conditional Use based on State and County regulations; that the use would conflict with the character of the zone; that the use must be without risk to public welfare; that the use must not cause a real detriment to the neighborhood; that according to the State Strategies, the site is in an Investment Level 4 and that educational facilities should be located in Investment Level 1 or 2 areas only; that the State Strategies reference that school facilities should be contiguous to existing towns or where access to public water and sewer services are available; that the site is at least 7 miles from any town centers and fire and police services; that this is not an opposition organized against helping teens; that it is a local-oriented opposition to oppose the location of the intended use, not the use itself; that the use is not a typical day school as depicted by the Applicant; that the contract is contingent – Lori Rigby is donating the property for this use and if it is not used for this purpose, it will revert back to her; that the seller of the land will be an officer of the program; that residents are concerned about response times by the State Police, Fire and EMS personnel; that hunting activities in the area should be a major concern for the Shiloh House of Hope; that traffic is a major concern; that the residents in the area are concerned about the students “escaping” and teenage friends of the students coming to and from the facility; that the residents in the area are concerned about the type of teens using the facility since they may be suffering from drugs, alcohol, occult, sexual, mental, and emotional abuse; that the Delaware Department of Education registers all non-public schools; that Shiloh should have to abide by all these requirements including getting certification; that Shiloh would have to obtain a license from the Office of Child Care Licensing, Department of Services for Children, Youth and their Families, obtain approval from the Office of State Fire Marshal, obtain a permit from the Office of State Fire Marshal, and obtain necessary permits from local zoning and building code authorities; that the Applicant has submitted new information regarding their credentials for screening; that the Applicant indicated there would be no felons admitted to the program; that there are teens with felonies that could get through Shiloh’s screening process; that there is an effort on behalf of the Applicant to state that this would be a school and that they would address the neighbors’ concerns but some of things they plan to do, such as the security ratio and reverse 911 option are not conditions that would normally apply to a school; that, for this reason, their argument that other schools have been located in rural areas does not make sense based on their own application; and that the area is a rural, farming community, which is not appropriate for such institutional development.

Mr. Willard reported that, according to the Orange County Sheriffs Office, from the years 2000 to 2007, there were 354 individual sheriff and police officer responses to the Orlando House of Hope and 277 responses to the National House of Hope.

Mr. Willard played a video of a WBOC news broadcast reporting on an

escape from a school facility in Woolford, Maryland and the comments of the Sheriff and area residents in response to the incident.

Public
Hearing
(C/U
No. 1702)
(continued)

The Council found that Carl Barrons, Sandy Smith, Eileen Craft, Patricia Stewart, William Stewart, Ken McDowell, Jennie Betts, Bernice Parsons, Diane Eskridge, Gordon Sylvester, Doug Wilson, Rosalie Hastings, Phil Carey, Sharon McDowell, Chuck Eskridge, William Vandegrift, Melissa Patterson, Cindy McDowell, and Bonnie Perry were present and spoke in opposition to the application. Comments included the following: that the Council must consider property rights as that is the major issue; that the Vision Quest Morning Star Academy which exists in Woolford, Maryland for teens with drug and alcohol problems has had teens leave the property, they have invaded area homes and stolen vehicles; that the Shiloh facility needs to be placed somewhere other than in a rural community; that Shiloh needs to be closer to a hospital and police and fire services; that security is a major concern; that everything the Applicant has proposed shows that this will be a dangerous situation; that once a Conditional Use is granted, it is hard to take away; that the Applicant is pursuing a noble cause but the use is not appropriate in this location; that they fear depreciation of their property values; that realtors are already experiencing problems selling homes in the area due to the proposal; that the residents have a fear of threat and harm; that this is a land use matter and not a religious matter; that the application has already caused problems and discontent in the neighborhood; that they are concerned about the questionable response time for emergency responders; that they question what happens to the facility if the use fails; that the hunting activities in the area create a safety concern for children and staff of Shiloh; that they are concerned about escapes and how that will be handled; that they question if they will be notified of an escape; that one guard watching 48 children at night is insufficient; that they question if drug testing will be performed; that they question if back-up generators will be available; that they are concerned about water quality due to the capacity of the septic systems proposed; that the proposal will cause additional traffic problems for the farming community; that the use should be located in an area where there is sewer and water infrastructure; that they question who will get the money that will be received to run the facility; that they question if the students will be permitted to work in Lori Rider's greenhouses; that the use will impact the area negatively; that in severe weather conditions, deliveries to the site would be impossible; that they are concerned about the safety of their children and grandchildren playing outside; and that, if a majority of the neighbors oppose the application, which they do, the Council should deny it.

Jennie Betts read a letter into the record from Rev. James D. Scott, Jr. expressing concern about the site selected for the facility.

In conclusion, Tim Willard presented a graft on the local opposition, Petitions opposing Shiloh House of Hope with 93 signatures; and several letters of opposition. Mr. Willard stated that the law is clear - the use will

conflict with the character of the zone; it will pose a risk to the public, and it does not belong in the proposed location, which is a rural neighborhood.

The Public Hearing was closed.

**M 621 07
Defer
Action
on C/U
No. 1702**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Conditional Use No. 1702 filed on behalf of Shiloh House of Hope.

Motion Adopted: 5 Yeas.

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

**M 622 07
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Jones, to adjourn at 6:11 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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

**Gaye King
Administrative Secretary**