



# SUSSEX COUNTY COUNCIL

## AGENDAS & MINUTES

### SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 30, 2007

#### Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 30, 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

#### M 636 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 637 07 Approve Minutes

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the minutes of October 9, 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 638 07 Approve Minutes

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the minutes of October 16, 2007.

Motion Adopted: 5 Yeas.

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:**

**BOYS & GIRLS CLUB, WILMINGTON, DELAWARE.**

**RE: Letter in appreciation of \$5,000 grant.**

**WILLIAM A. CRIBB, WILMINGTON, DELAWARE.**

**RE: Letter regarding the Angola Sewer District and requesting that it be made more affordable.**

**WILLIAM CASSOT, LEWES, DELAWARE.**

**RE: Letter regarding the Angola Sewer District and requesting the Council's financial assistance to help pay for the District.**

**ROBERT AND GERALDINE SHARP, LEWES, DELAWARE.**

**RE: Letter regarding the Angola Sewer District and requesting the Council's financial assistance to help pay for the District.**

**ROBERT AND JO-ANN SHIFFLETT, LEWES, DELAWARE.**

**RE: Letter regarding the Angola Sewer District and requesting the Council's financial assistance to help pay for the District.**

**GREGORY CAFFIER, LEWES, DELAWARE.**

**RE: Letter regarding the Angola Sewer District and requesting the Council's financial assistance to help pay for the District.**

**The Way  
Home  
Program**

**Barbara Del Mastro was present representing The Way Home, Inc., a program that exists to help prisoners transition from prison to home and the community. She stated that their primary area of service is in Sussex County; and that they work closely with the Sussex Correctional Institution and other prisons, if possible. Ms. Del Mastro thanked the Council for their past support and asked that they be considered for financial support again this year.**

**M 639 07  
County  
Council  
Grant/  
Council-  
manic  
Grants**

**A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$5,000.00, \$2,500.00 from County Council Grants and \$500.00 from each Councilmanic Grant Account to The Way Home, Inc.**

**Motion Adopted: 5 Yeas.**

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

**Grant/  
Habitat  
for  
Humanity**

**Grant to  
Habitat  
(continued)**

The County Council presented a grant to Sussex County Habitat for Humanity in the amount of \$25,000.00. Kevin Gilmore, Executive Director, was present to accept the check. Mr. Gilmore reported that there are currently six residents in their first subdivision, Concord Village near Seaford; that the area will eventually house 19 families; that two more houses are to be started on this month and one more is to be closed on this month; and that they plan to start their first townhome in Laurel. Mr. Gilmore stated that their goal is not only to build homes, but also to engage the community in that process.

**Grant/  
Interfaith  
Mission**

The County Council presented a check to the Interfaith Mission of Sussex County in the amount of \$10,000.00. Deborah Schiffer, Executive Director, was present to accept the check. She stated that their mission is to improve the quality of life in Sussex County by building and maintaining affordable housing. She stated that they have the Acorn Acres community in Georgetown, a multi-family complex, and the Adams Street house that houses single, adult, working men. Ms. Schiffer noted that that all of their work is done by volunteers.

**Proposed  
Agreement  
with  
Delaware  
State  
Police**

Mr. Baker reviewed a Proposed Agreement (Memorandum of Understanding) with the Delaware State Police for the Council's consideration. Mr. Baker introduced David Mitchell, Secretary of Homeland Security, and Colonel Tom McLeish, Superintendent of the Delaware State Police, who spoke in support of the cooperative agreement and partnership.

Mr. Baker stated that the County and the Delaware State Police currently have two agreements in place; a 1994 Agreement that provides 12 additional troopers and a 2002 Agreement that provides 20 additional troopers. Currently, the County pays for approximately 50 percent of the cost of 32 additional troopers above and beyond the State's allocation for Sussex County. He noted that there are currently 175 troopers dedicated to Sussex County.

Mr. Baker stated that the Proposed Agreement is modeled after the 2002 Agreement and that it is a shared cost approach to address police staffing needs in Sussex County. The new Agreement would provide four new troopers per year for the next five years.

**M 640 07  
Approve  
MOU  
Agreement/  
Delaware  
State  
Police**

A Motion was made by Mr. Rogers, seconded by Mr. Jones, that the Sussex County Council approves a Memorandum of Understanding between the Department of Safety and Homeland Security, Division of State Police representing the State of Delaware and Sussex County.

**Motion Adopted:** 5 Yeas.

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

**2008  
Holiday  
Schedule**

**Mr. Baker presented the proposed 2008 Holiday Schedule, the proposed dates that the County Council would not meet in 2008, and the proposed 2008 night meeting schedule.**

**M 641 07  
Adopt  
2008  
Holiday  
Schedule**

**A Motion was made by Mr. Jones, seconded by Mr. Phillips, that the Sussex County Council, having met in public session, adopts the 2008 Holiday Schedule, the 2008 No Council Meeting Schedule and the 2008 Night Meeting Schedule, as follows:**

**2008 Holiday Schedule**

<b>Holiday</b>	<b>State Observance</b>	<b>County Observance</b>
New Year's Day	January 1 (Tuesday)	January 1 (Tuesday)
Martin Luther King, Jr.'s Day	January 21 (Monday)	January 21 (Monday)
Presidents' Day	February 18 (Monday)	February 18 (Monday)
Good Friday	March 21 (Friday)	March 21 (Friday)
Memorial Day	May 26 (Monday)	May 26 (Monday)
Independence Day	July 4 (Friday)	July 4 (Friday)
Labor Day	September 1 (Monday)	September 1 (Monday)
Columbus Day	October 13 (Monday)	October 13 (Monday)
Election Day	November 4 (Tuesday)	November 4 (Tuesday)
Return Day	November 6 (Thursday) *	November 6 (Thursday)
Veterans Day	November 11 (Tuesday)	November 11 (Tuesday)
Thanksgiving Day	November 27 (Thursday)	November 27 (Thursday)
Day After Thanksgiving	November 28 (Friday)	November 28 (Friday)
Christmas Day	December 25 (Thursday)	December 25 (Thursday)
Day After Christmas		December 26 (Friday)

\* The State's observance of Return Day is after 12:00 noon in Sussex County only.

**2008 – No Council Meetings**

January 1	-	New Year's Holiday
February 19	-	Winter Holiday
March 4	-	NACo Conference
March 25	-	Easter Holiday
May 27	-	Memorial Day Holiday
July 4	-	Independence Day Holiday
July 8	-	Summer Holiday
August 26	-	Summer Holiday
September 2	-	Labor Day Holiday
November 4	-	Election Day

November 11	-	Veterans Day
November 25	-	Thanksgiving Holiday
December 23	-	Christmas Holiday
December 30	-	Winter Holiday

**M 641 07  
Adopt  
2008  
Holiday  
Schedule  
(continued)**

**2008 Night Meeting Schedule**

January 15	July 15
February 12	August 12
March 11	September 9
April 8	October 14
May 13	November 18
June 10	December 9

**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. Delaware State Police Report – September 2007**

**Attached is a copy of the monthly Delaware State Police Report for September 2007. The Delaware State Police responded to 4,143 complaints in Sussex County during September and they made 3,286 traffic arrests, as well as 1,482 criminal arrests. A breakdown by troop is also included.**

**2. Constables' Office Tax Collections**

**The County Constables' Office has collected over \$133,000 in delinquent taxes and sewer fees since January of this year. They have assisted as requested by the County Treasury Division and Utility Division. This work is in addition to other work they perform enforcing zoning, property maintenance, and building permit issues.**

**Wastewater  
Agreement**

**Hal Godwin presented wastewater agreements for the Council's consideration.**

**M 642 07  
Execute  
Wastewater  
Agreement/  
Windhurst  
Manor-**

**A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 719, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Millville**

Old

**Business/  
C/Z  
No. 1613**

**The Council considered Change of Zone No. 1613 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 34,386 SQUARE FEET, MORE OR LESS” filed on behalf of Bayshore Plaza II, LLC.**

**Old  
Business/  
C/Z  
No. 1613  
(continued)**

**The Planning and Zoning Commission held a Public Hearing on this application on June 28, 2007 at which time they deferred action; on August 9, 2007, the Commission recommended that the application be approved.**

**The County Council held a Public Hearing on this application on July 24, 2007.**

**M 645 07  
Adopt  
Ordinance  
No. 1939  
(C/Z  
No. 1613)**

**A Motion was made by Mr. Cole, seconded by Mr. Jones, to Adopt Ordinance No. 1939 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 34,386 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1613) filed on behalf of Bayshore Plaza II, LLC.**

**Motion Adopted: 5 Yeas.**

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

**Proposed  
Golf  
Village  
Sanitary  
Sewer  
District**

**Russell Archut, Assistant County Engineer, reported that they have received petitions to create a sanitary sewer district for Golf Village, located outside of the Town of Georgetown and near the Town’s existing wastewater treatment plant. Golf Village consists of 67 parcels/74 lots and single family homes. More than 50 valid petitions were received which authorizes the County to proceed with the creation of a sewer district. Mr. Archut advised that some work has been done - the Town of Georgetown previously contacted the homeowners, there has been a preliminary agreement to provide service through the Town and some sewer plans have been prepared by Davis, Bowen & Friedel. Mr. Archut also advised that the Town of Georgetown does not want to be involved in the financing of the project; therefore, they are asking the County to establish a sanitary sewer district. It is proposed that the County do the financing of the project and then turn the system over to the Town to operate and maintain it.**

**Mr. Archut requested permission to establish a public hearing date on the question of creating the sanitary sewer district and to verify the boundaries of the district, as required by the State of Delaware.**

**In response to questions raised by Mr. Cole, Mr. Archut stated that Golf**

Village is not contiguous to the Town of Georgetown; that there would be no pumping stations associated with the project, and that the Town would maintain the collection lines.

**M 646 07**  
**Set Public**  
**Hearing**  
**M 646 07**  
**Set Public**  
**Hearing/**  
**Proposed**  
**Golf**  
**Village**  
**SSD**  
**(continued)**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, based on the receipt of petitions submitted pursuant to 9 Del.C. §6503, that the Sussex County Council hereby sets a date and time of January 30, 2008 at 6:00 p.m. for a Public Hearing on the boundaries of the Proposed Golf Village Sanitary Sewer District.

**Motion Adopted: 5 Yeas.**

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

**SCRWF**  
**Treatment**  
**Upgrade**  
**No. 2**  
**Personnel**  
**Facilities/**  
**Change**  
**Order**

Bob Jones, Project Engineer, presented Change Order No. 3 to the SCRWF Upgrade No. 2 – Personnel Facilities Project, which is under construction by Conventional Builders, Inc. The Change Order will result in a cost increase of \$9,061.49. Change Order items include: remove and reinstall the electric room door frame (a safety consideration); supply and install Tyvek vapor barrier behind the metal siding; install approximately 350 feet of 4 inch PVC conduit, etc. for the main Verizon phone lines leading into the complex, and revisions to the handicapped ramp and sidewalks in front of the existing and the new building.

**M 647 07**  
**Approve**  
**Change**  
**Order/**  
**SCRWF**  
**Treatment**  
**Upgrade**  
**No. 2**  
**Personnel**  
**Facilities**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department and its Consultant, Stearns & Wheler, LLC, that Change Order No. 3 for Sussex County Project No. 05-07, SCRWF Upgrade No. 2, Personnel Facilities, be approved, which increases the contract amount by \$9,061.49, for a new total of \$3,697,214.23.

**Motion Adopted: 5 Yeas.**

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

**T-Hangar**  
**Lease**  
**Agreement/**  
**John Dehn**

Jim Hickin, Director of Sussex County Airport and Industrial Park, presented a Lease Agreement for T-Hangar No. 2 at the Airport with John Dehn. Mr. Hickin proposed a 3-month lease, at \$360.00 a month, from November to January, which would bring it in line with other T-Hangar leases which will be up for renewal in January.

Mr. Hickin noted that he will be proposing a new Lease Agreement for all T-Hangars at the November 13th meeting.

**M 648 07**  
**Approve**

A Motion was made by Mr. Jones, seconded by Mr. Rogers, that the Sussex



**T-Hangar Lease Agreement/John Dehn**      **County Council approves the Lease Agreement with John Dehn for T-Hangar No. 2 (21385 Rudder Lane) at the Sussex County Airport.**  
**Motion Adopted:      5 Yeas.**

**M 648 07 (continued)**      **Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;  
Mr. Rogers, Yea; Mr. Jones, Yea;  
Mr. Dukes, Yea**

**Grants**

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

**M 649 07 Community Investment Grant and Councilmanic Grant**      **A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$2,000.00 (\$1,000.00 from Mr. Phillips' Community Investment Grant Account, \$500.00 from Mr. Phillips' Councilmanic Grant Account, and \$500.00 from Mr. Dukes' Councilmanic Grant Account) to the Laurel Public Library (\$1,000.00 for the purchase of microfilm equipment and \$1,000.00 for lettering).**

**Motion Adopted:      5 Yeas.**

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

**M 650 07 Councilmanic Grant**      **A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$250.00 (\$50.00 from each Councilmanic Grant Account) to the Dr. Martin Luther King, Jr. Celebration Organization for the purchase of an ad in their booklet for this year's celebration weekend.**

**Motion Adopted:      5 Yeas.**

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

**M 651 07 Councilmanic Grant**      **A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to give \$1,000.00 (\$500.00 each from Mr. Rogers' and Mr. Jones' Councilmanic Grant Accounts) to the Milford Housing Development Corporation for housing 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 652 07 Youth**      **A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$200.00**

**Activity Grant** (\$100.00 each from Mr. Jones' and Mr. Phillips' Youth Activity Grant Accounts) to Delaware Tech Baseball/Softball to sponsor Hannah Wagamon in the marathon games.

**Motion Adopted:** 5 Yeas.

**M 652 07**  
**(continued)**

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

**M 653 07**  
**Council-**  
**manic**  
**Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$500.00 (\$100.00 each from Mr. Phillips', Mr. Dukes', and Mr. Rogers' Councilmanic Grant Accounts and \$200.00 from Mr. Jones' Councilmanic Grant Account) to the Georgetown Historical Society for sponsorship of the Annual Christmas House Tour.

**Motion Adopted:** 5 Yeas.

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

**M 654 07**  
**Youth**  
**Activity**  
**Grant**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$250.00 (\$50.00 from each Youth Activity Grant Account) to the Delaware Diamonds 16-U Softball Team for tournament 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 655 07**  
**Recess**

At 11:19 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 1:33 p.m.

**Public**  
**Hearing**  
**C/U**  
**No. 1758**  
**and**  
**C/U**  
**No. 1759**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 16.18 ACRES, MORE OR LESS" (Conditional Use No. 1758) filed on behalf of Bridle Ridge Properties, LLC. and 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 TO BE LOCATED ON A CERTAIN

**PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 13.00 ACRES, MORE OR LESS” (Conditional Use No. 1759) filed on behalf of Bridle Ridge Properties, LLC.**

**Public  
Hearing  
C/U  
No. 1758  
and  
C/U  
No. 1759  
(continued)**

**Mr. Griffin stated that, at the Public Hearing before the Commission, Assistant County Attorney Vince Robertson, who is with the law firm of Griffin & Hackett, indicated that he was abstaining from advising the Commission on Conditional Use No. 1758 and Conditional Use No. 1759. The reason for his abstention was that their law firm rents a building from Joe Reed, one of the principals in the application. Mr. Griffin stated that, if the Council has legal questions regarding these applications, the questions will be turned over to Assistant County Attorney Richard Berl, who is with the law firm of Smith, O'Donnell, Feinberg & Berl. Mr. Berl would then respond to the questions. Mr. Griffin clarified that he would be “directing traffic” at the Public Hearings on this date, but he would not be advising the Council.**

**The Planning and Zoning Commission held a Public Hearing on these applications on October 11, 2007 at which time the Commission deferred action.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated October 11, 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 read a letter, dated October 25, 2007, into the record from Richard Berl, Assistant County Attorney, relating to Henlopen Landing. He stated that it was his understanding that Phase IV of the subdivision will be eliminated entirely from the subdivision under the developer's plan; that under Sussex County Code, Section 99-13(A), the approval of 51 percent of lot owners is necessary for resubdivision only in the event the alteration or resubdivision results in increased density within the subdivision; that according to the calculations provided by the developer, the overall density of Phases I, II and III will be reduced with the elimination of Phase IV; that assuming the acreage and numbers of lots used in those calculations is accurate, “I would agree with the developer that the issue need not be opened to lot owners for any voting purpose”. (Mr. Berl's letter was in response to a request from Mr. Lank for his legal opinion on the matter.)**

**Mr. Lank advised the Council that he received a fax on October 29, 2007 from Joe and Annette Campos in opposition to the application. The fax was made a part of the record of this Public Hearing.**

**An Exhibit Book was provided for each Councilmember by the Applicant.**

The Council found that Preston Dyer, a member of the Applicant; Joe Reed, a member of the Applicant, and Mark Davidson of Designs Consultant Group were present on behalf of the Application.

**Public  
Hearing  
C/U  
No. 1758  
and  
C/U  
No. 1759  
(continued)**

Mr. Dyer submitted and reviewed a Memo he had written, dated October 30, 2007. In the Memo, he stated that when Henlopen Landing received final subdivision approval by the Sussex County Planning and Zoning Commission on October 24, 2002, the plan consisted of four phases with a total acreage of 105.47 acres consisting of 277 lots at a density of 2.63 lots per acre with the DelDOT right-of-way (ROW) included and that there were 104.46 acres of land after the DelDOT ROW dedication which was 2.65 lots per acre density. All of this information is included in the Declaration of Covenants, Conditions and Restrictions (Restrictions) for Henlopen Landing. He stated that there was another parcel of ground consisting of 13.41 acres of land that is owned by an entity related to Bridle Ridge Properties, L.L.C. (Developer) that was not part of Henlopen Landing; that this 13.41 acre parcel of ground is referred to in the Restrictions as “Annexed Property” and the Restrictions provide that the Developer may, but is not obligated to, add or annex said 13.41 acres (including the DelDOT ROW dedication, or 13 acres with the .41 acres dedicated to DelDOT for ROW) of land to the development.

Mr. Dyer stated that Section 4.6 of the Restrictions entitled, “Changes in Boundaries; Additions to Common Area”, gives the Developer the right to change and realign the boundaries of the Common Area, any Lot or other portion of the Development owned by the Developer, including the realignment of boundaries between adjacent Lots and Common Area. Section 2.1.1 gives the Developer the right to make changes in the location of the boundaries of the Common Area, any Utility System, any Recreational Facility and any Lot owned by the Developer. Section 2.1.2 also empowers the Developer to plan, design, develop and construct as the Developer deems appropriate for its purpose, the Common Area, the Annexed Property and the Developer-owned Lots. This section goes on to say “This reservation of right includes, without limitation, the right to change the number, shape, size and location of Lots, the shape, size and locations of Common Area, Utility Systems, Recreational Facility, Annexed Property or any part thereof”.

Mr. Dyer stated that the developer has decided to change the number of lots in Henlopen Landing by moving the boundary line to exclude Phase IV of Henlopen Landing from the Project in accordance with the provisions listed in the Restrictions and that Phase IV will not be withdrawn from Henlopen Landing unless the approval for the townhouses through Conditional Use No. 1758 and No. 1759 has been obtained.

Mr. Dyer stated that an analysis of the Restrictions and the Sussex County

Subdivision Regulations reveals two important conclusions: (1) the Developer's decision to withdraw Phase IV from Henlopen Landing is in accordance with the provisions in the Restrictions which permit it to change the number of lots and common area within Henlopen Landing by adjusting boundary lines and (2) because the density is not increased, there is no need to obtain the consent of the homeowners in the development.

Public  
Hearing  
C/U  
No. 1758  
and  
C/U  
No. 1759  
(continued)

Mr. Dyer stated that the plan presented to the Commission and to the Council is for a totally separate and distinct project that will combine the former Phase IV (16.37 acres with ROW included or 16.18 acres with ROW not included) with the residual land that is not part of Henlopen Landing (13.41 acres with ROW included or 13 acres with ROW not included), which is referred to in the Restrictions as the Annexed Property, for a total of 29.78 acres with ROW included or 29.18 acres with ROW not included. The new project, which again will not be part of Henlopen Landing, is proposed for 138 townhomes at 4.73 units per acre with the ROW not included; that a portion (2.81 acres) of the 29.18 acres is being set aside for utilization by DelDOT for the new Five Points traffic pattern, which when removed will yield a density of 5.44 units per acre.; that the townhouse project will have its own governance and homeowner's association, its own amenity package and the residents of the new project will not be entitled to utilize any of the amenities of Henlopen Landing; that the project will be totally distinct and separate which is consistent with its geographic location on the other side of the 70 foot wide right-of-way known as Salt Marsh Boulevard that separates the property from Phases I, II and III.

Mr. Dyer stated that a new townhouse project on Phase IV of Henlopen Landing and the 13-acre parcel eliminates the risk of future commercial development on the 13-acre parcel; that the separation of Phase IV and the 13-acre parcel by the 70 foot right-of-way creates a natural border and also presents a transition buffer between the big box commercial use of a Lowe's supercenter and the single family homes in Phases I, II and III of Henlopen Landing, and that not only is this appropriate transitional zoning, it also keeps the adjacent parcels residential in nature and not commercial.

Preston Dyer, Mark Davidson, and Joe Reed stated that the site is located within the Environmentally Sensitive Developing Area; that they are proposing dry ponds, rain garden parks, bio-filtration, the use of Best Management Practices, and natural parks and vegetative landscaping; that Tidewater Utilities will provide central water; that the County will provide central sewer; that access to the project will be from Salt Marsh Boulevard, not Beaver Dam Road or Plantations Road; that two access points are proposed off of Salt Marsh Boulevard; that they have submitted a nutrient budget analysis in compliance with proposed regulations; that sidewalks will be provided on one side of all streets; that amenities will include a clubhouse, several park areas, pools, paths, sidewalks and 1.46 miles of pedestrian trails; that Salt Marsh Boulevard will be maintained by this project, not Henlopen Landing; that two areas have been earmarked for additional drainage which will benefit Henlopen Landing; that they have

agreed to mitigate Pond 2 within Henlopen Landing by taking drainage for overflow emergencies in the project; that the ponds will be maintained at the cost of Villas by the Cape; that multi-family allows for more open space; and that the project will provide 48 percent open space compared to less than 5 percent in the old plan.

Public  
Hearing  
C/U  
No. 1758  
and  
C/U  
No. 1759  
(continued)

Mr. Dyer read the ten conditions proposed by the Applicant.

Mr. Cole referred to the calculations of the Engineering Department - 4 units per acre, which is 100 units.

Public comments were heard.

Mike Bragdon, a resident of Henlopen Landing, spoke in support of the project. He stated that he would prefer townhouses to single family homes and commercial uses; that the proposal would benefit stormwater management in Henlopen Landing; that commercial development would create more traffic; that the residents of Henlopen Landing are ready to take over the Homeowners Association; and that the proposed use would result in less use of the amenities in Henlopen Landing.

Robert Steinback, a resident of Henlopen Landing, stated that he spoke in support of the application at the Public Hearing before the Commission; however, since that time, he has changed his mind and he asked Council to deny the application. He stated that, since the Public Hearing before the Commission, he has read the Covenants that he signed when he moved into the development. He stated that the Covenants are a legal document and all parties should have to adhere to and respect the documents, including the author – Bridle Ridge; and that the proposal is a breach of trust with the property owners in Henlopen Landing, a single-family development. He stated that the original document was for 277 units and 13.81 acres of commercial use; that the residents fear the commercial area and that is why, at first, he thought the townhouses would be a better idea.

Edward Mutch, Jr., a resident of Henlopen Landing, stated that he is opposed to the townhouses in the Phase IV area of Henlopen Landing; that the proposal will divide the community in half; that the community was advertised as a single-family community; that the covenants state “single-family detached homes”; that the developer wants to put Henlopen Landing’s stormwater ponds in the new project and this could cause legal battles; that the two stone pillars with Henlopen Landing would have to be changed; and that the stormwater management does not work and they have problems with their ponds, both wet and dry. (Mr. Mutch submitted documents and pictures into the record.)

Joe Campos submitted petitions with 87 signatures against the Applicant’s proposal to eliminate the original 46 single family homes and replacing them with 138 townhomes. He stated that their homes were purchased based on the expectation of a single family community master plan; that now where were townhouses shown in the information provided at the time

**Public  
Hearing  
C/U  
No. 1758  
and  
C/U  
No. 1759  
(continued)**

of purchase; that there are significant unresolved questions concerning the total site's wastewater management design; that the current system adequately handled at least two storms in the past two years; that there will be additional traffic due to the greater occupant density with the proposal, increasing traffic on Salt Marsh Boulevard and making exit onto Plantation Drive and Beaver Dam Road even more dangerous; that changing the community environment may adversely affect property values; and that there are questions concerning potential legal issues with the separate communities sharing resources.

Annette Campos, a resident of Henlopen Landing, spoke in opposition to the project and invited the Councilmembers to come to their development and experience traffic on Plantation Road.

Thomas Negran, a resident of Henlopen Landing, spoke in opposition to the project. He stated that the State refused to maintain Salt Marsh Boulevard; that this creates an issue between the townhome development and Henlopen Landing with respect to maintenance; that stormwater management is a concern; and that enforcement of maintenance with two separate communities would be an issue.

There were no additional public comments.

Mr. Cole requested a response from the Engineering Department regarding their assumption of 4 units per acre and whether there is capacity to serve the proposed townhouse project.

Mr. Cole noted that the parcel of land being presented as part of the application shows a portion of it as being conveyed; that the parcel of land of conveyance is 3.88 acres; that "conveyance" implies that it is taken off the table since it has been conveyed to someone else; and that the County should be looking at the parcel that is going to be developed not including the parcel being conveyed. Mr. Cole stated that the County should be looking at the true acreage of the application, the acreage without the 3.88 acres.

Preston Dyer stated that the total acreage of the application is 25.38 acres.

**M 656 07  
Defer  
Action on  
C/U  
No. 1758  
and  
C/U  
No. 1759**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Conditional Use No. 1758 and Conditional Use No. 1759 filed on behalf of Bridle Ridge Properties, LLC and to leave the record open for a period of two weeks (until November 13th) for written comment from the County Engineering Department regarding sewer capacity; thereafter, the record will be left open until November 20th for written comments related to the Engineering Department's written submission regarding sewer capacity.

**Motion Adopted: 5 Yeas.**

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

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

**M 657 07  
Adjourn**

**A Motion was made by Mr. Jones, seconded by Mr. Phillips, to adjourn at  
3:12 p.m. Motion Adopted by Voice Vote.**

**Respectfully submitted,**

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