

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 3, 2002**

**Call to Order**            The regular meeting of the Sussex County Council was held Tuesday, December 3, 2002, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Finley B. Jones, Jr.</b>	<b>President</b>
<b>Lynn J. Rogers</b>	<b>Vice President</b>
<b>George B. Cole</b>	<b>Member</b>
<b>Dale R. Dukes</b>	<b>Member</b>
<b>Vance Phillips</b>	<b>Member</b>
<b>Robert L. Stickels</b>	<b>County Administrator</b>
<b>David Baker</b>	<b>Finance Director</b>
<b>Eugene Bayard</b>	<b>County Attorney</b>

**M 708 02**            A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to amend the  
**Approve**            Agenda by deleting "Eddy Parker, Director of Assessment, 911 Line  
**Agenda**            Service, Contract Approval; and to approve the Agenda, as amended.

**Motion Adopted:**    5 Yea.

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

**M 709 02**            A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve  
**Approve**            the minutes of November 19, 2002, as distributed.  
**Minutes**

**Motion Adopted:**    5 Yea.

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

**Corre-**            Mr. Bayard read the following correspondence:  
**spondence**

**DELAWARE NATURE SOCIETY, ABBOTT'S MILL NATURE  
CENTER, MILFORD, DELAWARE.  
RE: Letter in appreciation of grant.**

**Gordon**            Mr. Brian Page, Sussex County Historic Planner, introduced Gordon Evans  
**Evans**            Wood, Sr. Mr. Wood has completed one of the first and most significant  
**Wood, Sr./**        books on the history and legacy of families in Baltimore Hundred. The  
**History**            book, Letters to the Little Ones, details the family histories of the Evans,  
**Book**            Hall, Daisy and Green families who have lived in Baltimore Hundred of  
                                 Sussex County for three centuries or more.

**M 710 02**  
**Adopt**  
**Procla-**  
**mation/**  
**Gordon**  
**Evans**  
**Wood, Sr.**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt the Proclamation entitled "RECOGNIZING GORDON EVANS WOOD, SR." for his contribution to the history of the State of Delaware.

**Motion Adopted:** 5 Yea.

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

**Book**  
**Presentation**

Mr. Wood presented a signed copy of his book to the County Council for placement in the South Coastal Library.

**Adminis-**  
**trator's**  
**Report**

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

1. Caroling on The Circle

On Monday, December 2, 2002, the Caroling on The Circle program was successful in raising over 19,000 items of food to date. This food will be distributed among the food pantries throughout Sussex County. We will still continue to collect food items up until Friday, December 20. Food items may be left at the County Administrative Office Building, 2 The Circle, Georgetown, or by calling 855-7840.

The Sussex County Mobile Home Tenants Association raised 7,000 items of food; North Georgetown Elementary, 1,594 items; Lewes Middle School, 1,016; and the Punkin Chunkin Association and Harley Davidson of Rehoboth raised 500 items of food. Additional contributions were received from Georgetown Elementary, Millsboro Middle School, and Seaford High School.

I would like to thank Kevin Short and Eddie Shockley for once again putting together an outstanding performance. I would also like to recognize committee members for their time and assistance in providing outreach to those who are in need in Sussex County including Ira Hitchens, Rocio Flores, Nancy Cordrey, Gonzalo Martinez, Dale McDowell, Diana Pettyjohn, Susan Smart, Brad Whaley, Ray Webb, Richard King, and Jamie Hall.

2. County Closings

The County Administrative Office Building will be closed on Tuesday, December 3, 2002, from 11:45 a.m. to 1:15 p.m. to allow employees to attend the annual Mildred King Memorial Luncheon.

Milton Library will be closed Wednesday, December 4, 2002, at 6:00 p.m. because of the Milton Christmas Parade.



**Administrator's  
Report  
(continued)**

**3. Public Workshop - Route 26 Planning Study**

The Delaware Department of Transportation is holding a Public Workshop to present facts and solicit public comments regarding proposed changes to a specific intersection in the Town of Dagsboro. The meeting will be held on Thursday, December 5, 2002, at the Dagsboro Fire Hall, 200 Waples Street, Dagsboro, Delaware. The public is invited to attend between 4:00 and 7:00 p.m.

As part of the Route 26 Planning Study, the Department and its working group have identified the need to improve this intersection due to its operational deficiencies. Workshop attendees will have the opportunity to review the proposed improvement plan for the intersection of Vines Creek Road and Main Street in Dagsboro. The proposed improvements would include realigning the intersection to allow continuous flow from Vines Creek Road to Main Street and the future signalization of this intersection when warranted.

**Route 54  
Gravity  
Realignment  
Change  
Order**

Mr. Izzo, County Engineer, presented Change Order No. 1 to the Route 54 Gravity Realignment Project. The Route 54 Project is being performed in conjunction with DelDOT's work on the Route 54 Bridge. Mr. Izzo advised that the change order provides a credit in the amount of \$8,586.23 and is a result of fewer quantities being used than estimated.

**M 711 02  
Approve  
Change  
Order/  
Route 54  
Gravity  
Realignment**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, based on the recommendation of the Consulting Engineers, Whitman, Requardt and Associates, LLP and the County Engineering Department, that the Sussex County Council approve the Balancing Change Order for Contract 01-02, "SR 54 Gravity Realignment" that provides a credit of \$8,586.23 and reduces the final contract total to \$421,252.27.

**Motion Adopted:** 5 Yea.

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

**Wastewater  
Facilities**

Mr. Green, Director of Utility Construction, discussed wastewater facilities constructed in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

**M 712 02  
Grant  
Beneficial  
Acceptance**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 261, that the Sussex County Council grant Beneficial Acceptance for the wastewater facilities constructed in The Villages of Old Landing, Section II, Phase V, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.



**M 712 02  
Villages  
of Old  
Landing  
(continued)**

**Motion Adopted: 5 Yea.**

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

**M 713 02  
Approve  
Agreements/  
Edgewater  
Park**

**A Motion was made by Mr. Cole, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 254, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Edgewater Park, LLC, for wastewater facilities to be constructed in Edgewater Park, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.**

**Motion Adopted: 5 Yea.**

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

**Funding  
Requests**

**Mr. Stickels presented several funding requests. He noted that the request from the Sussex County Employee Benefit Committee for the Mildred King Luncheon was deleted since funding in the amount of \$2,000 was allocated in the FY 2003 Budget.**

**M 714 02  
Grant**

**A Motion was made by Mr. Dukes to give \$100.00, \$50.00 each from Mr. Jones' and Mr. Dukes' Councilmanic Accounts, to St. Jude Children's Research Hospital for medical research.**

**M 715 02  
Council-  
manic  
Grant**

**An Amended Motion was made by Mr. Dukes, seconded by Mr. Rogers, to give \$250.00, \$50.00 from each Councilmanic Account, to St. Jude Children's Research Hospital for medical research.**

**Motion Adopted: 5 Yea.**

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

**M 716 02  
Council-  
manic  
Grant**

**A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to give \$100.00, \$50.00 each from Mr. Jones' and Mr. Dukes' Councilmanic Accounts, to the Dr. Martin Luther King, Jr. Community Day of Celebration for sponsorship of the 2003 celebration.**

**Motion Adopted: 5 Yea.**

**M 716 02  
(continued)**

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

**M 717 02  
Council-  
manic  
Grant**

**A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to give \$500.00 from Mr. Jones' Councilmanic Account to the Town of Bridgeville for Land Use Plan costs.**

**Motion Adopted:** 5 Yea.

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

**M 718 02  
Council-  
manic  
Grant**

**A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$250.00, \$125.00 each from Mr. Rogers' and Mr. Jones' Councilmanic Accounts, to The American Legion, Sussex Post #8 and Station 93, Ambulance Service, for their annual fundraiser.**

**Motion Adopted:** 5 Yea.

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

**Defer  
Request**

**The funding request from the Center for Human Services was deferred until December 17, 2002.**

**M 719 02  
Youth  
Activity  
Grant**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$125.00, \$25.00 from each Youth Activity Grant Account, to the Sussex Central Pop Warner Football for State Championship recognition.**

**Motion Adopted:** 5 Yea.

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

**M 720 02  
Youth  
Activity  
Grant**

**A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$250.00 from Mr. Phillips' Youth Activity Grant Account, to the Millsboro Hut, Inc. for building expansion costs.**

**Motion Adopted:** 5 Yea.

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



**M 721 02**      At 10:45 a.m., a Motion was made by Mr. Rogers, seconded by Mr. Dukes,  
**Recess**      to recess until 11:00 a.m. Motion Adopted by Voice Vote.

**Reconvene**      At 11:00 a.m., Mr. Jones, called Council back into session.

**Funding**      Captain Randy Hughes of the Delaware State Police, Linda Rogers of the  
**Request/**      RSVP Program and the Sussex County S.A.L.T. (Seniors and Law  
**S.A.L.T.**      Enforcement Together) Council, and Jamie Megee of the Alzheimer's  
Association were in attendance to present a funding request for the  
purchase of identification bracelets for Alzheimer patients in the County.  
Captain Hughes informed Council that the Delaware State Police has  
donated \$500.00 to this cause.

**M 722 02**      A Motion was made by Mr. Cole, seconded by Mr. Dukes, to give \$500.00,  
**Council-**      \$100.00 from each Councilmanic Account, to the Sussex County S.A.L.T.  
**manic**      Council for the purchase of identification bracelets for Alzheimer patients.  
**Grant**

**Motion Adopted:**      5 Yea.

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

**Public**      A Public Hearing was held to consider extending the South Bethany  
**Hearing/**      Sanitary Sewer District to include a portion of the proposed Forest Reach  
**South**      subdivision, located in the Town of Ocean View. Mr. Archut, Assistant  
**Bethany**      County Engineer, reported that the project consists of approximately 5.83  
**SSD**      acres and that a portion of the project is already located in the sewer  
**Extension/**      district. Annexation of the other parcel would result in the entire project  
**Forest**      being located in the sewer district.  
**Reach**

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

**M 723 02**      A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to Adopt  
**Adopt**      Resolution No. R 032 02 entitled "A RESOLUTION TO EXTEND THE  
**Resolution**      BOUNDARY OF THE SOUTH BETHANY SANITARY SEWER  
**No.**      DISTRICT TO ENCOMPASS THE FOREST REACH SUBDIVISION,  
**R 032 02**      LYING CONTIGUOUS TO THE SOUTH BETHANY SANITARY  
SEWER DISTRICT, SITUATE SOUTH OF THE TOWN OF OCEAN  
VIEW AND WEST OF THE TOWN OF SOUTH BETHANY AND BEING  
IN BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE".

**Motion Adopted:**      5 Yea.

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



**Public  
Hearing  
West  
Rehoboth  
Expansion/  
Estates of  
Sea Chase**

A Public Hearing was held to consider extending the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District to include a parcel of land northwest of the intersection of Sussex County Roads 275 and 274, known as the Estates of Sea Chase. Mr. Archut, Assistant County Engineer, reported that the project consists of approximately 11 acres and has been approved for a maximum of 45 units. The developer will be responsible for building a sub-regional pump station and will be required to build some regional infrastructure.

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

**M 724 02  
Adopt  
Resolution  
No.  
R 033 02**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Resolution No. R 033 02 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE WEST REHOBOTH EXPANSION OF THE DEWEY BEACH SANITARY SEWER DISTRICT (WRX) TO ENCOMPASS A CERTAIN PIECE, PARCEL, OR TRACT OF LAND KNOWN AS ESTATES OF SEA CHASE, LYING CONTIGUOUS TO THE WRX, SITUATE NORTHWEST OF THE INTERSECTION OF SUSSEX COUNTY ROADS 275 AND 274, AND BEING IN LEWES-REHOBOTH HUNDRED, SUSSEX COUNTY, DELAWARE".

**Motion Adopted: 5 Yea.**

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

**Citizen's  
Comments/  
Smoking  
Law**

Mr. Dan Kramer asked Council where they stand on the Smoking Law. Mr. Dukes responded that the law is a State Law and that Council has no comment; however, he noted that smoking has not been permitted in County facilities since 1995.

**M 725 02  
Recess**

At 11:15 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Rogers, to recess until 6:00 p.m. Motion Adopted by Voice Vote.

**Reconvene**

Mr. Jones called Council back into session at 6:00 p.m.

**Public  
Hearing/  
2002  
Update  
of the  
Land  
Use  
Plan**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE ADOPTING THE 2002 UPDATE OF THE COMPREHENSIVE PLAN FOR SUSSEX COUNTY AND REPEALING THE 1997 COMPREHENSIVE PLAN".

Representatives from several State agencies were in attendance: Connie Holland and Anne Marie Townsend of the Office of State Planning Coordination; Kathy Howard and John Schneider of the State Department of Natural Resources and Environmental Control; and Bobbi Geier of the Delaware Department of Transportation.

**Public**



Hearing/  
2002  
Update  
of the  
Land  
Use  
Plan  
(continued)

Mr. Stickels gave a detailed history of the process followed in developing the Proposed 2002 Land Use Plan Update, including public meetings/workshops and public hearings; meetings with Tom Shafer, the County's Land Use Consultant; and meetings with the Office of State Planning Coordination.

Mr. Lank reviewed the report of the Planning and Zoning Commission's Public Hearing held on November 21, 2002. The Commission's report and recommendation are attached to and made a part of these minutes.

Mr. Bayard read the following correspondence received on December 3, 2002:

1) RICHARD H. ANTHONY.

2) PHIL FLEMING, SUSSEX COUNTY ASSOCIATION OF REALTORS.

Mr. Anthony's and Mr. Fleming's letters were made a part of the public record associated with the revisions to the Land Use Plan Update. The letters are attached to and made a part of these minutes.

The Council found that Harry Haon of the Association of Coastal Towns (ACT) was present. Mr. Haon read and submitted written comments. His written comments are attached to and made a part of these minutes.

The Council found that James Fuqua was present and referred to the position of the Association of Coastal Towns on the Environmentally Sensitive Area; he stated that there is no "Environmentally Sensitive Area in this Plan"; that it is called the Environmentally Sensitive Developing Area; that it is called a Developing Area for a reason; that it is the area that is developing and historically, has been the area that is developed, and that from every indication, it is the area where the demand to develop will continue to influence. Mr. Fuqua stated that in the Environmentally Sensitive Developing Area, if Council limited density to two units per acre (the same density as the agricultural areas of the County), that there would be no distinction; that in fact, there would probably be an influence to build in the agricultural areas because there would be less scrutiny under the environmentally required guidelines; that if you equate those densities (from a Land Use Plan point of view), you will have created a formula and a policy where you are going to cause sprawl; that the goal of the 1997 Land Use Plan was to preserve farmland and preserve agricultural areas, and the goal stated in that Plan was to concentrate development in certain areas; that to do a 180 degree turn three or four years later, and in effect say "no, we don't want to concentrate development areas, we want to spread it out all over the County", does not make sense; that from a land use point of view, this would be a bad policy. Mr. Fuqua stated that the other factor is that, in the Plan, the information the County is providing (based on solid information) is that there is going to be an increase in population in Sussex

Public



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(continued)**

County over the next 28 years of about 92,000; that these people have to go somewhere, and we know that the majority of the people are going to be heading towards the eastern side of the County, all of which is in the Environmentally Sensitive Developing Area.

Mr. Fuqua stated that at a conference at the University of Delaware in March, the best thing that was said there was that “the two things that people don’t want is density and sprawl”; that is our ongoing problem that we always deal with; that the fact of the matter is that you can’t have it both ways; that sprawl is the worst scenario as opposed to density; and that density with proper design and considerations, and the environmental aspects that the supporting ordinances would provide, creates the protection that is needed.

Mr. Fuqua concluded by saying that the language in the Land Use Plan under the Environmentally Sensitive Developing Area regarding density is correct, fair, and is a balanced approach.

The Council found that Mabel Granke, Director of the Citizens Coalition, was present. Ms. Granke read and submitted written comments along with a Groundwater Recharge Potential Map. Her written comments are attached to and made a part of these minutes.

The Council found that Preston Dyer was present. Mr. Dyer read and submitted written comments. His written comments are attached to and made a part of these minutes.

The Council found that Richard Collins, Executive Director of the Positive Growth Alliance, was present and stated that “The Land Use Plan should be a guide, not a straight jacket.”; that a five-year Plan can be a disaster; that five years is forever; that the Council needs to retain flexibility; that every Plan creates some sort of distortion; that if Council sees some of these distortions forming, Council needs to have the power to act (through an ordinance) to correct them; that the single thing that causes the County’s biggest source of benefits and problems is tourism, not sprawl and/or density; that there are traffic jams because approximately 4 million people came here for a day trip in 2001 and another 2 million came here and stayed overnight; and that housing is not going to make any big difference in congestion on the roads.

Mr. Collins made the following recommendations:

On Page 12 of the Plan (the right side, the last few words, regarding Town Centers) eliminate the words “dry wastewater collection”. (Mr. Collins does not think such a thing exists and asked that this be corrected if he is right.)



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(continued)

On Page 15 of the Plan (the right side, under Guidelines for Non-Residential Use), eliminate two sentences "These uses should be limited to neighborhood shopping and businesses to serve the rapidly expanding population. Village scale shopping centers are the preferred location for these services."

On Page 13 of the Plan (the right side, seventh line, under Guidelines for Density (relating to the Developing Zone) remove the words "in unique circumstances".

Mr. Cole questioned Mr. Collins on the removal of the words "in unique circumstances" and stated that if you read the whole sentence, it makes sense and he didn't understand Mr. Collins' request to remove the words.

Mr. Collins retracted his request and instead, requested that the entire sentence be deleted.

Mr. Collins concluded by emphasizing that Council should maintain its flexibility and its ability to make a decision.

The Council found that Mike Tyler, President of the Citizen's Coalition, was present and stated that the Land Use Plan ought to show that it is law by using words like shall versus should, require versus recommend, must versus may; that if you don't have this kind of wording, it does allow a small chink for anybody to jump into; that to give the Plan teeth, words such as shall and required must be used; and that this would make the Plan clear.

Mr. Tyler read into the record an excerpt written about Sussex County and its many resources.

Mr. Tyler stated that the Coalition feels that there should be no residential in the Commercial District and that maybe, if there is residential, there ought to be commensurate or an equal amount of commercial required; that regardless of what we do, the Commercial District is a planning tool; that if we start using the Commercial District for residential purposes, it is possible that the County will run out of commercial property; and that we don't want to deplete those areas that are already designated as commercial.

Mr. Tyler stated that what Preston Dyer has said offers something for Council to think about; that it brings the public into the process; and that otherwise, there is no due process and no public comment.

Mr. Tyler stated that no development should be allowed in the Environmentally Sensitive Area greater than two units per acre unless there is a central sewer system controlled by a public entity.

Public



Hearing/  
2002  
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(continued)

Mr. Stickels advised that the term "Environmentally Sensitive Developing Area" came from the Carper Cabinet Committee. Mr. Stickels suggested changing the term to "Development District with Special Environmental Design and Protection Requirements".

The Council found that Henry Gloviak was present and stated that Sussex County needs adequate agricultural zoned land; that agriculture is the biggest employer in Sussex County; that in order to protect agriculture, we have to have true agricultural zoning; that he believes Sussex County has the lowest standard for protecting agriculture lands than any other County on the Delmarva Peninsula; that one of the biggest problems in the County is sprawl; and that he suggests Sussex County follow something on the path of Kent County's language on agricultural zoning.

There were no further public comments.

Mr. Stickels noted that the recommendation of the staff is the same as the recommendation of the Planning and Zoning Commission.

Council discussed whether the testimony heard during this Public Hearing should be considered for changes to the Draft 2002 Land Use Plan Update.

Ms. Holland, Office of State Planning Coordination, advised that substantive changes to the text of the Draft Plan cannot be made without (1) the Plan going back to the Livable Delaware Council for a review of the recommended changes and (2) additional Public Hearings being held by the Planning and Zoning Commission and the Sussex County Council. Ms. Holland noted, however, that changes/issues can be addressed in the supporting ordinances.

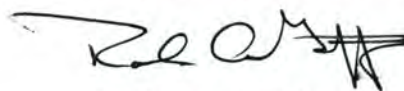
It was noted that in accordance with the law, the Draft Land Use Plan Update had to go to the Livable Delaware Council first, prior to the final Public Hearing before the Sussex County Council.

The Public Hearing and the record were closed. It was the consensus of Council to table action until December 10, 2002.

M 726 02  
Adjourn

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to adjourn at 8:35 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,



Robin A. Griffith  
Clerk of the Council



**[Attachments to the minutes, as referenced, are attachments to the original minutes which are filed in the Office of the Clerk, Sussex County Administrative Office, 2 The Circle, Georgetown, Delaware. The attachments are available for public review.]**



## MINUTES OF THE REGULAR MEETING OF NOVEMBER 21, 2002

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 21, 2002 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Vice-Chairman Wheatley presiding. The following members of the Commission were present: Mr. Gordy, Mr. Johnson, Mr. Lynch, and Mr. Wheatley with Mr. Schrader – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Richard Kautz - Planner.

Also in attendance was Robert Stickels, County Administrator, acting as Moderator for the public hearing.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the agenda as circulated.

Mr. Schrader described how the public hearing would be conducted.

Mr. Stickels stated that there were representatives of some of the State agencies present and asked the representatives to introduce themselves. Those present that introduced themselves were Anne Marie Townsend of the Office of State Planning Coordination, Kathy Howard and John Schneider of the State Department of Natural Resources and Environmental Control, and Bobbi Geier of the Delaware Department of Transportation.

### PUBLIC HEARINGS

Mr. Stickels read five (5) pages of comments received from the Office of State Planning Coordination titled "TYPOS AND ERRORS" into the record. The TYPOS AND ERRORS comments are attached as Exhibit #1.

Mr. Lank advised the Commission that there was a duplication of page numbers on pages 45 and 76 and that the typos and errors corrections referenced on page 76 was the second page 76.

Mr. Stickels read two (2) pages of comments received from the Office of State Planning Coordination titled "CLARIFICATIONS" into the record. The CLARIFICATIONS comments are attached as Exhibit #2.

Mr. Stickels read four (4) pages of comments received from the Office of State Planning Coordination titled "TEXT ADDITIONS/DELETIONS/CHANGES" into the record and added that the purpose of the Table 9A Chart on page 5 is to provide a comparison to changes in land uses in 1992 to 1997; that the FUTURE LAND USE Map has been corrected to show the error in the Bridgeville Municipality boundaries and Developing Area around Bridgeville. The TEXT ADDITIONS/DELETIONS/CHANGES comments are attached as Exhibit #3.



Mr. Lank advised the Commission that the addition recommended for page 45 is proposed to be placed on the second page 45.

It was noted that the page numbers will change as the typos, errors, clarifications, additions, deletions, and changes are incorporated into the text.

Mr. Stickels read two (2) pages of comments received from the Livable Delaware Advisory Committee Meeting of November 18, 2002 titled "TEXT ADDITIONS" into the record. The TEXT ADDITIONS comments are attached as Exhibit #4.

Mr. Schrader asked Mr. Stickels if all of the comments read are to be made a part of the record for this public hearing.

Mr. Stickels stated that the intent of reading the comments was for inclusion into the record.

The Commission found that Anne Marie Townsend of the Office of State Planning Coordination stated that she thinks everything was addressed and that the Office of State Planning Coordination did issue a letter to the Lieutenant Governor prior to the meeting stating that if the criteria set-forth in the September 30, 2002 letter were incorporated into the Plan their Office would recommend the certification of the Plan; that it has been done and that the Office has a matrix that shows how it has been done; and that with the text added this evening everything is satisfactory.

The Commission found that Rich Collins, Executive Director of the Positive Growth Alliance, stated that in the very beginning of the preparation of the Plan it tells us that the Delaware Population Consortium tells us that we are going to have 30,000 additional citizens from the year 2000 to the year 2010 and that as the County applies the Plan in the years to come simple arithmetic tells us that we are going to have to build about 13,000 additional homes over the next 10 years and that because it takes 10 years to build out a project it will require approval of more projects to meet the demand; that if we do not meet the demand, housing prices of \$300,000 and \$400,000 today will increase to, who knows, the sky is the limit; that he suggest that we figure out a way to allow some density where people really want to live, which is in the easterly parts of the County; that otherwise we will consume more and more farmland in the center and in the westerly part of the County; that the free enterprise system is self correcting; that we have had soaring prices and that sooner or later that will almost surely start slowing demand; that he urges the County to not over react to what's happening today and to give the system time to work because sooner or later there will be a slow down and that he thinks that the County needs to be cautious not to make that slow down a lot worse than it could be.



The Commission found that Michael Tyler, President of the Citizens Coalition, Inc., read and submitted three (3) pages of written comments as attached as Exhibit #5.

The Commission found that Stan Jachym of Lewes stated that he is concerned about mixing residential and commercial uses in the same communities; that commercial uses impact residential uses; referenced restaurants and parking lots and the questionable outdoor activities of some of the patrons in commercial areas; and that residential and commercial uses should be separated.

The Commission found that Henry Glowiak of the Citizens Coalition stated that a lot of reference to preservation of farmland and the preservation of the agricultural economy has been referenced; that research indicates that Sussex County has one of the lowest standards for protecting agriculture on the Peninsula; that Maryland counties around Sussex County have gone further to protect agricultural lands; that Kent County, Delaware provides for an Agricultural Conservation District, which covers a lot of the County, where the density provides one dwelling unit per 10 acres; that if the County is serious about preserving farmland, it needs to be more specifically addressed in the Plan. Mr. Glowiak submitted copies of the Code of Kent County, Delaware Article V, AC – Agricultural Conservation District for the record as attached as Exhibit #6.

The Commission found that Pat Torelli of the Citizens Coalition read and submitted written comments as attached as Exhibit #7.

The Commission found that Mable Granke of the Citizens Coalition stated that the County needs to take its responsibility and use its expertise to address well head and recharge area protection; that developments are consistently being approved in the area, especially along the Route One corridor; that projects are covering over the prime recharge areas with asphalt and structures; that we simply cannot afford to continue this process; that there is a map that delineates the recharge areas, and that if this is ignored it will be totally irresponsible on the part of any planning body in the County.

The public hearing was closed.

The Commission discussed the process.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to forward the 2002 Comprehensive Plan Update to the Sussex County Council with the recommendation that the Update be approved with the inclusion of the four (4) sets of comments read into the record by Mr. Stickels. The four (4) sets of comments include all of the comments in Exhibit #1 through Exhibit #4.

Motion carried 4 – 0.



Meeting adjourned at 7:03 P.M.



SUSSEX COUNTY COMPREHENSIVE PLAN UPDATE  
OCTOBER 29, 2002

TYPOS AND ERRORS

- Page 1      First column, first line, change the word "current" to "last."
- First column, last paragraph, fourth line, insert the words "and certified by the Governor" between "Committee" and "prior."
- Second column, first line, change the word "current" to "1997."
- Page 7      Second column, second full paragraph, ninth line, delete the word "should" and add an "s" to the end of "accommodate."
- Page 8      First column, second line, insert the word "to" after the word "is."
- Second column, ninth line, insert the word "income" between the words "lower" and "families."
- Second column, tenth line, insert paragraph break after the word "municipalities."
- Second column, first full paragraph, second line, change the word "has" to "have."
- Second column, last paragraph, fifth line, change the word "contaminates" to "contaminants."
- Page 9      First column, second bullet, second line, change the word "to" to "of."
- Page 12     Delete blank space at bottom of first column.
- Page 14     Second column, first line, date should be "December 10, 1998," not "December 16, 1999."
- Second column, third line from bottom, change the word "amount" to "amounts."



Page 15 First column, first full paragraph, fourth line, insert a paragraph break after the word "desirable."

Second column, under "Guidelines for Non-Residential Use," eleventh line, insert the word "Zone" between "Coastal" and "Act."

Page 16 First column, thirtieth line, delete stray period (.) in the middle of the line.

Second column, under "Guidelines for Density," insert at the beginning of the paragraph "There is a . ." and change the word "Three" to lowercase.

Page 19 First column, under "Guidelines for Infrastructure," fourth line, insert a period (.) after the word "systems."

Second column, under "Guidelines for Density," fourteenth line, change the words "a central" to "an on-site."

Page 26 Second column, second line from bottom, change the word "ranges" to "range."

Page 38 Formatting errors.

First column, second line, delete "Sussex County's residents that are served by central water systems" and insert in lieu thereof "the water of Sussex County's residents whom are served by central water systems."

Page 39 Formatting errors.

Page 40 Note: Units of measure for Table 20 in first column are listed in "gallons per day."

First column, last paragraph, delete first sentence.

First column, last paragraph, third line, delete "use in this area" and insert in lieu thereof "eastern Sussex County."



Page 41 Second column, last paragraph, second line, insert the words "United States" prior to the word "Geological."

Page 46 Formatting errors (blank space at top of second column, paragraph break needed after the word "County" on third line following table).

Second column, first full paragraph, eighth line, change the word "projected" to "protected."

Page 47 First column, beginning with fourth line, punctuation should be as follows: ". . . excessive algae growth, phytoplankton blooms, large daily swings in dissolved oxygen levels, loss of submerged aquatic vegetation, and fish kills."

First column, second full paragraph, fifteenth line, delete stray period (.) within the line.

Second column, ninth line, insert the word "is" between the words "Bays" and "carrying."

Note: Second column, second paragraph, refers to nitrogen loading.

Second column, insert a paragraph break following the bulleted list.

Page 50 First column, fourth line, insert end quote (") after the words "project-specific."

First column, third line below the bulleted list, change the word "is" to "are."

Second column, second bullet, second line, insert the words "land in" between the words "of" and "designated" and the word "State" between the words "designated" and "Resource."

Page 51 First column, first bullet, third line, delete the hyphen (-) from the word "wildlife" and add an "s" to the end of "recreationist."

Page 52 Formatting error (placement of "GOAL").

Page 52 Second column, last paragraph, beginning with first line, delete hyphen (-) from the word "Statewide," delete the words "Demand and Needs Assessment" and insert in lieu thereof "(SCORP)," and replace the word "Assessment" with "SCORP" in the remainder of the paragraph.

Note: Table 27 is continued to Page 53 and reformatting is needed.

Page 53 First column, delete first paragraph.

First column, second paragraph, beginning with twelfth line, delete "regions four and five being in Sussex County" and insert in lieu thereof "western Sussex County being region four and eastern Sussex County being region five."

Page 54 Second column, first full paragraph, last line, delete "Seashore Park" and insert in lieu thereof "Delaware Seashore State Park."

Page 55 First column, insert paragraph break between eighth and ninth lines.

Page 56 Second column, last bullet, delete "Seashore Park" and insert in lieu thereof "Delaware Seashore State Park."

Page 57 Second column, last paragraph, fourth line, capitalize the word "census."

Page 58 Second column, first bullet, change the word "Administrate" to "Administer."

Page 59 Second column, last paragraph, seventh line, the word "create" is misspelled.

Page 61 Second column, second line, delete the word "them."

Page 62 Second column, under "Coordination with State Agencies," insert a paragraph break between the ninth and tenth lines.

Page 63 Second column, delete bullet mark on first line.

Page 64 Formatting errors (blank spaces, "GOAL" is off-center).



Page 76

Formatting error (text wrapping to right of "GOAL").

First column, sixteenth line, insert a comma (,) between the words "industry" and "and."

SUSSEX COUNTY COMPREHENSIVE PLAN UPDATE  
OCTOBER 29, 2002

CLARIFICATIONS

- Page 13      Second column, under "Guidelines for Non-Residential Uses," fourth line, delete "in the Inland Bays and other."
- Page 14      First column, first paragraph, beginning with seventh line, delete "New industrial uses in the Inland Bays area should be located outside the Conservation District unless they are water dependent."
- Page 26      Change to reflect Page 34.
- Page 27      Change to reflect Page 35.
- Page 28      Change to reflect Page 36.
- Page 29      Change to reflect Page 37.
- Page 30      Change to reflect Page 26.
- Page 31      Change to reflect Page 27.
- Page 32      Change to reflect Page 28.
- Page 33      Change to reflect Page 29.
- Page 34      Change to reflect Page 30.
- Page 35      Change to reflect Page 31.
- Page 36      Change to reflect Page 32.
- Page 37      Change to reflect Page 33.
- Page 44      Second column, first line, insert "Lewes and Rehoboth" between the words "the" and "canal" and capitalize the word "canal." Insert two new sentences after the word "Canal" to read, "On October 22, 2002,



the County entered into an agreement with the City of Rehoboth to study discharge alternatives. This study is being funded 50 percent by the State of Delaware, 25 percent by the County, and 25 percent by the City of Rehoboth."

SUSSEX COUNTY COMPREHENSIVE PLAN UPDATE  
OCTOBER 29, 2002

TEXT ADDITIONS/DELETIONS/CHANGES

Page 5 Insert following at the end of second column:

"Changes to the land use in Sussex County from 1992 to 1997 were as follows:

Table 9A

<u>USE</u>	<u>1992</u>	<u>1997</u>	<u>INCREASE/ DECREASE</u>
Residential/ Urban	7.41%	9.07%	+1.66%
Commercial/ Industrial	0.89%	0.97%	+0.08%
Transportation, Government/ Utilities	0.65%	0.74%	+0.09%
Agricultural	44.62%	43.56%	-1.06%
Forest	21.37%	19.91%	-1.46%
Water	4.84%	4.92%	+0.08%
Wetlands	18.36%	18.12%	-0.24%
Other	1.87%	2.70%	+0.83%"

Page 8 First column, first paragraph, beginning with fifteenth line, delete:

"The County has received preliminary approval for a matching grant for a detailed study of the Environmentally Sensitive Developing Area. It is important for the State to advance these funds so the study can be completed and an overlay ordinance adopted to accomplish this."

Insert in lieu thereof the following:



"The County has received a matching grant from the Department of Natural Resources and Environmental Control for a detailed study of the Environmentally Sensitive Developing Area. This study will be used in developing the overlay ordinance for this area."

Page 11      Insert following paragraph at the end of second column:

"The following pages describe the plan's districts. Several of the districts described are shown on the Future Land Use Map, Figure 2. These include the Municipalities, Town Centers, Developing Area, Environmentally Sensitive Developing Area, and the Low Density Area. The location of those not depicted on the map are explained in the text. Following the adoption of the Comprehensive Plan, overlay zones will be adopted for the Town Centers, Developing Area, and Environmentally Sensitive Developing Area. The other districts described either do not require an overlay zone or would need to be studied prior to developing an overlay zone."

Page 26      First column, insert following paragraphs after "Transportation Operations Management Plan Data Collection":

"In the summer of 2001, Sussex County and the Delaware Department of Transportation (DelDOT) partnered to address the problem of mobility along the SR1 corridor between Five Points and the Rehoboth/Dewey Beach area. The primary goal of the SR1 Land Use/Transportation Study is to develop a coordinated plan for land use in this area and a supporting transportation system that emphasizes interconnections.

"After working with a public advisory committee for a year, two scenarios were presented to the public: one that showed build-out under current zoning using conventional development patterns, and one that showed build-out using activity centers and clustered development. While the activity center scenario would preserve open space and farmland and reduce congestion along SR1 (compared with the conventional build-out scenario), it has not been embraced by the public. The partnership between the County and DelDOT is continuing, and both the County and DelDOT are committed to addressing the issues of congestion and safety along SR1."



Page 45 Add following paragraph at the end of second column:

"The Delaware Division of Fish and Wildlife manages 17,750 acres of land in Sussex County, including 19 pond and access areas (three are in both Kent and Sussex with actual access in Kent County), and eight State Wildlife Areas. Redden State Forest, managed by the Delaware Department of Agriculture, includes 9,528 acres of land."

Page 48 Insert following paragraph at the end of first paragraph in second column:

"In 1998, the Department of Natural Resources and Environmental Control established a Total Maximum Daily Load (TMDL) for the main stems of the Nanticoke River and Broad Creek calling for a 30 percent reduction in nitrogen and 50 percent reduction in phosphorous. A Tributary Action Team is currently working with the Department to develop a Pollution Control Strategy to reduce nutrient loadings to meet those targets."

Page 51 Delete last bullet in second column and insert in lieu thereof the following:

- "Consider how the County can assist in protecting resources contained within State Resource Areas, through regulation, purchase or other means."

Page 52 Insert following sentence after last bullet in second column:

"In addition, many municipalities manage parks and provide recreation programs for their residents."

Page 54 Delete last bullet in first column.

Page 62 Second column, under "Coordination with State Agencies," after ninth line, insert new paragraph to read as follows:

"The County will also work with DNREC and the Office of State Planning Coordination in the development of the Environmentally Sensitive Developing Area overlay ordinance. The Office of State



Planning Coordination will continue to be a partner with Sussex County in implementing the goals of the Comprehensive Plan.”

Page 63 Add new bullet at end of second column to read as follows:

- “Work with the Office of State Planning Coordination and other state agencies to implement the Comprehensive Plan.”

Figure 2 Bridgeville area map to be adjusted to reflect Municipality, Town Center, and Developing Area.

SUSSEX COUNTY COMPREHENSIVE PLAN UPDATE  
OCTOBER 29, 2002

*TEXT ADDITIONS*  
*LIVABLE DELAWARE ADVISORY COMMITTEE MEETING*  
*NOVEMBER 18, 2002*

- Page 35      The third bullet under "Strategy 1" includes a series of sub-bullets. Add a sub-bullet that says, "Work with DelDOT to expedite planning on the Sussex County north-south highway. Determine the highway's route where it will differ from the existing route, so that the county can begin to protect the right of way for the project."
- Page 62      Under "Coordination with State Agencies":
- Add a sentence at the end of the paragraph on transportation that says, "The County will work closely with DelDOT to determine the route of this highway and begin protecting the right of way."
- Add a sentence at the end of this section that says, "The County will work with the Delaware Economic Development Office and the Delaware Department of Agriculture to attract agricultural related industry and biotech industry."
- Page 63      Add the following bullet:
- "Work with the Delaware Economic Development Office and the Delaware Department of Agriculture to keep agriculture as a viable and thriving industry through attracting agriculture and biotech industries to Sussex County and continuing to provide incentives to preserve prime agricultural land."
- Page 76      Add paragraph breaks in the following locations to improve the flow of the agricultural industry section: Line 14 before sentence that begins "It is important . . ."; the ninth line from the bottom before the sentence that begins "To protect existing . . ." Also, the word "Division" should be deleted from the sixth line from the bottom in the first column.



Add the following three bullets after the second bullet:

- "Modify the zoning ordinance to allow agricultural industry and biotech industry, with adequate buffers, in the low density area."
- "Support research efforts to find new uses for agricultural products."
- "Work closely with the Delaware Economic Development Office to attract agricultural related and biotech industry to Sussex County."

Citizens Coalition, Inc.  
PO Box 56  
Nassau, DE 19969

November 21, 2002

Chairman John Allen  
Sussex County Planning and Zoning Commissioners

Sussex County Comprehensive Plan update-Draft October 29, 2002

Gentlemen:

Citizens Coalition, Inc. is a 501 (c) 3 non-profit watchdog organization comprised of more than 250 households in Coastal Sussex as well as in other adjacent communities. It focuses on responsible land use, managed growth and sustainable development. All of its members are volunteers and most are full-time residents of Sussex County. The comments and concerns addressed here are based on a comprehensive review by members of the Coalition's Board of Directors.

The intensity and concentration of development both residential and commercial have had and are having a serious negative impact on the inland bays and adjoining waterways and tributaries. Such unforeseen growth has changed the way we must look at preserving natural resources and protecting the inland bays watershed. Things are not as they were and it is important that the County take an aggressive approach toward development especially since there is ample lands to the west and outside the watershed area.

Land Use Element

Page 11-

Paragraph 3 refers to the "Environmentally Sensitive Developing Area." and makes reference that the "intent of the Plan is to encourage higher residential densities." The Citizens Coalition urges the Commission to consider that there is no point in designating an environmentally sensitive area whose intent is to encourage higher residential densities. It is time that the County realize the value of these sensitive areas and establish appropriate guidelines to protect them. It is difficult to understand how a "developing" area protects our inland bays. Whether this is an exercise in semantics or an attempt to placate the development interests, we cannot accept such an oxymoron to be included in the plan. Thus we urge the commission to strike the word "developing" from the Environmentally Sensitive District.

Page 14-

We are pleased that the Environmentally Sensitive Area now includes Rehoboth Beach and Lewes however we believe that the entire inland bay watershed should be designated environmentally sensitive because of its importance to the economic stability of the communities which depend on the health and well-being of the bays.

Page 15-

"Guidelines for Density" mentions that a major development requires an environmental impact report, then under the heading "Special Requirements" is a "suggestion" that prior to approval of any preliminary plan for a major subdivision or development there should be a report detailing required public facilities and that environmental impacts must be provided. What? Which language prevails? What is the definition of a large development? How does simply addressing "large" developments address the impact of cumulative developments? Density should not be the defining concept that drives the planing of residential communities.



Page 18-

The Executive Summary on Page 9 references implementing ordinances that will reduce residential units in the C-1 zone. We believe that including *any* residential in this zone compromises the integrity of the commercial district and is an inappropriate use. We would accept residential in the B-1 business zone as mixed use. Further, this restriction must apply to *existing* and *future* C-1 designated zones. This is not a down-zoning, because commercial is the leading designation. Residential must be situated in zones designated for residential.

Page 25-

The Environmentally Sensitive Area is included in the Low to Medium Density column with notation that density of the underlying zone prevails and lists MR, GR and C-1. Such zones with accompanying densities cannot protect the inland bays and should not be included in this designated area.

### **Mobility Element**

Page 26-

The evacuation plan information has been improved, however as outlined in the Land Use Plan it is not sufficient for citizens to comprehend. We suggest that the County produce and distribute an information pamphlet and map. This piece should be distributed widely to all taxpayers and residents of Sussex County.

### **Water/Wastewater Element**

Pages 41 & 42-

The water usage discussion on these two pages does not make sense, particularly since the statement that the return of spray irrigation water to the aquifer is quick and therefore good. Our concern is that spray irrigation water can be harmful if return to the aquifer takes place before proper elimination of nutrients. Also we cannot accept and we hope you cannot either, the statement that "total water use in the Columbia Aquifer is not known." The continuing use of old and obsolete data is unacceptable. We cannot play guessing games with water supply and water quality because they are too important to the citizens of Sussex County.

Page 43-

We cannot accept permitting on-site septic systems. Citizens Coalition offers this documentation of the inefficiency of such systems: In an August 26, 2002 letter to the Sierra Club from Daniel J. Soeder, hydrologist: "Many parts of Sussex County have on-site wastewater treatment facilities known in the old days as septic tanks. The effluent from these facilities is discharged into a 'leach field' where it is allowed to percolate into the shallow ground water. this can be an important source of ground water contamination if the facilities are placed too close together and if there are shallow water supply wells in the area.. Recent USGS work has shown that enteric viruses can survive significant migrations through the sandy aquifers of the coastal plain"

He goes on to caution that septic effluent can have an impact on inland bays if the "facilities are fairly close to the body of water and there is ground water discharge into it. USGS drilling, sampling, geophysical and geochemical investigations in the past few years have indicated that there are significant inputs of ground water from submarine springs." Frank Manheim of the USGS has evidence that shows "up to 80 percent of the freshwater inputs into the inland bays may be from ground water. This makes nutrient management much more challenging and adds yet another possible source to be considered. Centralization of sewage treatment infrastructure will prevent these nutrients from entering the ground water, but they must be removed from overloaded watersheds as well..."



Page 45

We believe that the plan must include action steps regarding well head protection and recharge area protection.

### Conservation Element

Page 48-

We applaud the watershed approach for the Nanticoke and request the same approach for the Inland Bay Watershed. Citizens Coalition emphasizes that if the Nanticoke Watershed is being looked at from the standpoint of watershed planning because of the pressures from Maryland and the Chesapeake Bay, the Inland Bay watershed is just as important to the people of the State of Delaware and Sussex County because it is an invaluable resource. It fifth in the US as being at risk from degradation by development. We need to protect the watershed, not make it a growth area. The Whole Basin Assessment Plan (DNREC Document 40-01) must be put in place rather than rely on an out dated voluntary CCMP. If these steps are not taken for this watershed as they have for the Nanticoke, then this equates to Environmental Discrimination to the residents of the Inland Bay Watershed.

Page 51-

We believe that the County Land Use Plan should go beyond simply supporting State recharge protection programs. The Plan must require that development applications include the information regarding critical recharge areas and how they will protect them. Current DGIS maps are available that show these areas and they've been accepted and approved by DNREC. We request that you include these maps in the Plan.

We support increasing buffers to 100 feet in tidal wetlands and creating 25-foot buffers along non-tidal wetlands. It is important that the County not only designate such buffers but the Plan should provide guidelines to landowners regarding appropriate vegetation and management.

### Housing Element

Page 60-

The Discussion and Strategies section makes no reference to maintaining existing affordable housing such as Burton Village. Further, we would like the Plan to include the Eight Strong Communities Program and offer a plan for continued assistance to maintain housing in those communities.

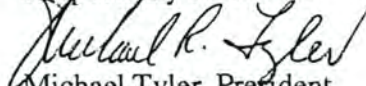
### Community Design Element

Page 67-

This element states that "Sussex County's future is dependent on providing the land development opportunities that meet market trends." Shouldn't the needs of the citizens and the surrounding environment be the focus here? Market trends are just that, trends. The Coalition believes that it is more important that the County remain flexible by managing development and discouraging inappropriate types of development.

We urge the County to designate the required open space including golf courses as permanent open space. This would retain the original intent and integrity of the community.

Respectfully submitted

  
Michael Tyler, President  
Citizens Coalition, Inc.



CODE OF KENT COUNTY, DELAWARE, v6 Updated 7-20-2002

PART II GENERAL LEGISLATION

Chapter 205, ZONING

ARTICLE IV, General Provisions

§ 205-43.3. Towers, broadcasting and telecommunications. [Added 1-15-2002 by Ord. No. 02-01]

C. Any subsequent collocation is considered a permitted use in all zoning districts, subject to the conditions given in § 205-360.

**ARTICLE V, AC - Agricultural Conservation District [Amended 7-9-1991 by Ord. No. 9-11; 2-27-1996 by Ord. No. 96-06 <sup>EN</sup>]**

**§ 205-44. Purpose.**

The purpose of the AC - Agricultural Conservation District is:

- A. To provide for a wide range of agricultural use and farm related services while providing for low-density residential development in areas that are rural in character and where farming may not be the optimum land use activity.
- B. To foster environmentally sound development in areas of environmental concern.
- C. To allow for a variety of low-density planned residential and cluster developments in a rural setting.
- D. To serve as a transitional/buffer zone between agricultural and residential uses.

**§ 205-45. Scope.**

The provisions of this article apply to each AC - Agricultural Conservation District.

**§ 205-46. Uses.**

- A. Any use not listed below as a permitted or conditional use is not permitted in the AC - Agricultural Conservation District.
- B. Accessory uses shall not be permitted without a principal use.
- C. All uses in the AC - Agricultural Conservation District can be referenced in the Standard Industrial Classification Manual of 1987, under sections entitled "Agriculture," "Forestry and Fishing," "Private Households," "Wholesale Trade," "Mining," "Services" and "Transportation, Communications, Electric, Gas and Sanitary Services."

Exhibit # 6 - 1 -



**CODE OF KENT COUNTY, DELAWARE, v6 Updated 7-20-2002****PART II GENERAL LEGISLATION****Chapter 205, ZONING**

**ARTICLE V, AC - Agricultural Conservation District [Amended 7-9-1991 by Ord. No. 9-11; 2-27-1996 by Ord. No. 96-06]**

**§ 205-49. Maximum density.**

A. Standard development. The maximum density in an AC - Agricultural Conservation District is one dwelling unit for each 10 acres\* which is to be allowed only when accompanied by an official certificate from the Delaware Department of Natural Resources and Environmental Control (DNREC) which states that a septic system has been designed and permitted by DNREC on the ten-acre parcel. If a larger sized parcel is required by DNREC, then that determination shall have precedence over the maximum density requirements of this Zoning Chapter.

\*NOTE: All properties that qualify for minor subdivision review will be allowed to subdivide (a maximum of four lots and a remainder) at the minimum requirements as set forth in the Kent County Zoning Chapter, adopted 7-9-1991 under the AC District.

B. Village development. Areas with individual on-site septic and water shall be a maximum of one dwelling unit per acre.

C. Two-mile overlay zone. Areas within the two-mile radius overlay zone with central sewer and water shall be a maximum of three dwelling units per acre. [NOTE: The two-mile radius overlay zone (density bonus zone) is established from each of the 29 pumping stations with the eastern boundary line being the SR-1 bypass that runs from the Town of Smyrna to the Town of Milford and includes the areas from the Town of Felton to the Town of Frederica and from the Town of Milford to the Town of Frederica.]

D. Two-mile overlay zone. Areas partially within the two-mile radius overlay zone with central sewer and water shall be a calculated number of dwelling units per acre based on the formula below: [Added 6-12-2001 by Ord. No. 01-13]

$$\text{Density [units per acre]} = \frac{(\text{Area within overlay zone} \times 3) + (\text{Area outside overlay zone} \times 1)}{\text{Total Area}}$$

**§ 205-50. Area requirements.**

A. For area requirements for standard development, see the AC - Agricultural Conservation Matrix located at the end of this chapter.

B. For area requirements for cluster development, see Article XIX, Cluster Regulations.

**§ 205-51. Coverage.**

No more than 20% of each lot in an AC - Agricultural Conservation District shall be covered by man-made impervious surfaces.

Exhibit # 6 - 2 -



**§ 205-52. Yards and setbacks (standard development).**

A. Each lot in an AC - Agricultural Conservation District shall have:

- (1) A front building line at least 40 feet from and parallel to the front street right-of-way line.
- (2) For waterfront lots, a building line at least 50 feet from and parallel to the water lot line or mean high-water line, whichever is closer.



November 21, 2002

To: Chairman, John Allen  
Sussex County Planning and Zoning Commissioners

From: Pat Torelli, Citizens Coalition

Re: Sussex County Comprehensive Plan update-Draft October 29, 2002

Gentlemen:

We would like to see language in the Plan that would focus on open space requirements. Requirements that would protect the integrity of a community by preserving green space and maintaining the overall design of the community.

It seems inappropriate for a developer to change the character of a community that was built around a golf course, where homeowners have paid a premium for the lot facing the golf course, only to find five, ten years down the road, they will now be facing another community because the golf course is no longer profitable. The land has been rezoned for housing. Not only do they lose the open space of the golf course, but they are now faced with the additional traffic generated by the additional homes.

The Planning & Zoning Commission makes decisions based on golf courses and golf course communities in the interest of preserving open space. By changing the zoning, or building houses on that open space, takes away from the original concept, and the intent of the approved golf course/open space that the community was approved for. In many cases the golf course is figured into the density, therefore by building on the golf course changes the basis for a RPC.

We hope you will take this concern into consideration when you are making revisions to the Plan.

Respectfully submitted,

Pat Torelli, Citizens Coalition



P. O. Box 653

Lewes, DE 19958

**TO: The Sussex County Council**

**IN RE: Proposed Updating of The Sussex County Comprehensive Plan**

It is respectfully requested that the following comments be made part of the public record associated with the revisions to Sussex County's Comprehensive Plan. Rather than critique the entire plan I would instead draw attention to several items which I consider egregious flaws. These include, without limitation, the proposed positions on the following issues:

**RESIDENTIAL USAGE IN COMMERCIAL DISTRICTS:**

The recent trend to deplete the county's commercially zoned land by utilizing it for high density residential development will only result in a demand for yet more land to be zoned for commercial use. Rather than pursue this concept would it not be more logical, not to mention a better utilization of land, to promote conditioned mixed use? By establishing a tiered zoning district conditions could be established within the current height restrictions and subject to parking availability to allow residential usage as a secondary right with the mix determined by the extent of commercial development.

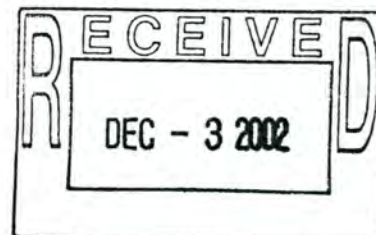
e.g. - For every square foot of first level [ground] commercial development an equal amount of upper level residential development would be permitted. Not complex, simply logical.

**CLUSTERING IN AGRICULTURAL DISTRICTS:**

I submit that promoting the use of on site community septic and/or private sewage facilities to facilitate cluster housing in agricultural districts under the guise of protecting farmland is a fallacy! The concept being promoted will drive sprawl, consume farmland and result in financial chaos for the county and its residents. The Council need look no further than a similar proposal which was presented for a land parcel on Round Pole Road near Milton. The tract had one area which would accept an on site waste facility. The balance of the land was comprised of soils types which were not conducive to accepting on-site waste and would, therefore, under normal zoning practices be undevelopable. If this fallacy is permitted the questions become: [1] Who will accept the responsibility of providing wastewater treatment facilities for such developments when the on-site systems fail? [2] When the developers are no longer involved, the costs to connect to central sewer systems located miles away are prohibitive for the homeowners and the failed system is polluting the water table. Will the general public have to subsidize connection to municipal or county systems through the use of tax dollars? I submit that this concept is a self serving ploy designed to allow the development of inexpensive farmland at densities far beyond anything the soils can sustain and should be removed from the Comprehensive Plan.

**CLUSTERING IN DEVELOPMENT DISTRICTS:**

On the other hand, I will again say that clustering in the development districts should be mandatory! However, the minimum lot size should be standardized at 7,500 sq. ft. regardless of the base zoning category. However, density should be predicated upon the number of lots which could be developed [less roads, wetlands and riparian buffers] under the base zone's parameters.






**RESIDENTIAL PLANNED COMMUNITIES:**

RPC zoning should remain subject to the public hearing process. Moreover, the entire RPC classification needs to be revised so that future RPCs reflect the real meaning of the concept rather than an excuse to maximize yield without the benefits of actually creating a community. Furthermore, Commercial usage in an RPC must be revisited to embrace all activities which require a commercial license.

**TRANSPORTATION:**

If the existing county codes were strictly adhered to there would be less transportation chaos than currently exists. Alas, such is not the case and chaos reigns, especially on SR-1. However, to attempt to blame citizen advisory panels for the combined sins of former administrations and the failure to require adherence to existing law by stating that *"possibly the public has been given too much power"* as was recently done by one member of Sussex County's administration is wholly unacceptable and displays a level of unacceptable arrogance and a lack of understanding for the structure of this nations government. In a democracy the people can not have too much power!

Respectfully submitted,



R. H. Anthony



December 2, 2002

Robert Stickels, County Administrator  
Sussex County Council  
Georgetown DE 19947

Dear Mr. Stickels:

The Sussex County Association of REALTORS® has been an active and visible participant in the County's process of updating its Comprehensive Plan.

In addition to encouraging our membership to attend the many public hearings that have been a part of this process, we have submitted written comments to you. We have also requested help from The National Association of REALTORS® (NAR) in analyzing and understanding the land use planning process. In response to this request, The National Association of REALTORS® retained a nationally recognized land use law firm to examine the draft plan for Sussex County. The results of this analysis, endorsed by our Association, are provided below.

#### **Recommendation 1**

The Plan should more clearly explain the extent to which the size of the areas designated as Developing Areas will be reduced and the resulting overall decrease in the development potential of the County. Similarly, the Plan should more clearly explain the extent to which the proposed ESDA designation would change currently allowed development densities. Although the ESDA designation is described as a medium to low density area, the Plan indicates that only low densities would be allowed in the ESDA areas unless central sewer is available. Therefore, even though the ESDA designation is described as a Growth Area overlay, it may in fact result in a low density development pattern.

#### **Recommendation 2**

Plan strategies should address how to encourage cluster development. For example, incentives to promote cluster development could include increased density for cluster development or standards that reduce the cost of road and other improvements that support this type of development. These incentives can help offset the higher costs that may be associated with cluster developments, such as an increase in carrying costs due to longer and more expensive review and approval processes and the cost of maintaining or improving open space areas.

The exclusion of wetland, open space, or recreational areas from the area used to calculate densities would be a significant disincentive to cluster development and could drastically reduce the development potential of property. Because such a regulation would be a major disincentive to cluster development, our Association



believes that the Plan should state that such areas will not be excluded.

### **Recommendation 3**

Wetland buffers and similar requirements should be established as performance measures that set flexible requirements. Our concern with excessive buffer requirements is that they can substantially constrain the development potential of a site. As with other proposals, the County should assess the impact of these requirements on private property rights before adopting more restrictive buffer area regulations.

### **Recommendation 4**

We recommend that the Plan include more specific strategies to make clear the extent to which open space requirements will effectively result in mandating cluster development. The Plan should also clarify whether these new open space requirements would apply to any development regardless of size or proposed density, or whether the County would continue to follow the current system of increasing open space requirements as density increases.

### **Recommendation 5**

Mixed-use, village district and similar prescriptive design concepts that mandate certain community elements should not be adopted. Instead, incentives for such innovative uses of parcels should be encouraged to promote desired development and circulation patterns. These types of communities are often promoted as more desirable, and in fact they may be, in that they may support mixed use and other services, yet they are small enough to support walking to such services. However, markets change, as do delivery systems, and this type of development must remain consistent with the changing and evolving demands of the market.

Thank you for the opportunity to participate in this process. We appreciate your efforts in forming the plan and we look forward to participating in its implementation.

Very truly yours,

Phil Fleming  
Chairman Government Affairs Committee  
Sussex County Association of REALTORS



## ASSOCIATION OF COASTAL TOWNS

---



### Members

Town of Bethany Beach	City of Lewes
Town of Dewey Beach	Town of Ocean View
Town of Fenwick Island	City of Rehoboth Beach
Town of Henlopen Acres	Town of South Bethany

December 3, 2002

Sussex County Council  
Administrative Office Building  
Georgetown, DE 19947

Gentlemen:

Thank you for this opportunity to once again express the point of view of the Association of Coastal Towns regarding the Environmentally Sensitive District which surrounds our Towns and the Inland Bays.

We are pleased that the County has decided to adopt the directive made two years ago by the State that this area be designated an Environmentally Sensitive District requiring different standards for development than other growth areas. In previous Comprehensive Plans, the development problems of this area have been clearly identified but, unfortunately, no specific solutions or special requirements were specified.

This plan is a step in the right direction in some instances. For example, the recommendation made to you by our association over a year ago that minimum lot size be reduced specifically to 7500 ft<sup>2</sup> has been included. This change will allow developers more design flexibility in providing cluster-type housing with more open space and lower infrastructure costs without the need for upzonings to higher densities.

However, in several other important instances, the differences between the Environmentally Sensitive District and other growth areas has been left vague and unclear and, therefore, subject to many different interpretations. We believe that on certain critical issues the plan should be clear and precise, not uncertain and unspecific.

To this end, we have five recommendations for editorial modifications as shown in the attached Table.

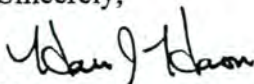
Page 2  
Sussex County Council  
December 3, 2002

We should point out that these modifications are consistent with recommendations previously presented to the public by your planning staff and consultant during the extensive public hearing process that has occurred throughout this year. We believe these modifications will go a long way to making the plan more clear and precise both for developers and the citizens of this area.

We respectfully request that, in the spirit of intergovernmental cooperation, you consider and adopt by vote each of these modifications before the plan is submitted to the State for approval.

Thank you for your consideration.

Sincerely,



Harry J. Haon, Deputy Mayor  
Fenwick Island

Joseph F. McHugh, Mayor  
Bethany Beach

Patricia F. White, Mayor  
Dewey Beach

Peg Baunchalk, Mayor  
Fenwick Island

Wanda Davis, Mayor  
Henlopen Acres

George H. P. Smith, Mayor  
Lewes

Gary Meredith, Mayor  
Ocean View

Samuel R. Cooper, Mayor  
Rehoboth Beach

Don H. Beck, Mayor  
South Bethany

cc: Lt. Gov. John C. Carney, Jr. - Livable Delaware  
Nathan Hayward - DelDot  
John Hughes - DNREC  
Constance Holland - State Planning  
Robert L. Stickels - County Administrator  
Lawrence Lank - County Planning



**TABLE OF PROPOSED MODIFICATIONS  
TO SUSSEX COUNTY COMPREHENSIVE PLAN**

Land Use Element

Environmentally Sensitive District  
Guidelines for Density – page 15

#1

existing sentence

“When a central wastewater system is provided, residential density would be permitted up to the maximum allowable density of the underlying zoning district.”

replacement sentence

“When a central wastewater system is provided, the base density should be a maximum of 2 dwelling units per acre based on the net acreage of uplands not dedicated to roads and right-of-ways.”

\*\*\*\*\*

#2

existing sentence

“Any increased density ~~by~~ rezoning should only be permitted with proper environmental safeguards.”

replacement sentence

“Any increased density by rezoning should only be permitted under unique circumstances in which (a) additional environmental safeguards beyond those required at the base density are approved by DNREC and (b) traffic studies approved by DelDot confirm that existing or planned road systems in the area will provide acceptable levels of service.”

Community Design Element

Page 65 – open space requirements

#3

existing sentence

“The recommended minimum requirements are as follows:”

replacement sentence

“The minimum requirements are as follows:”

Conservation Element

Page 51 – wetlands buffer zones

#4

existing sentences

“Evaluate increasing the 50 ft. buffer zone around tidal wetlands” and  
“Evaluate the necessity to create a 25 ft. buffer zone around non-tidal  
wetlands.”

replacement sentence

“Adopt a 100 ft. buffer zone around tidal wetlands and a 25 ft. buffer zone  
around non-tidal wetlands as recommended by DNREC and required else-  
where in Delaware and the State of Maryland.”

Community Design Element

Page 65 – open space requirements

#5

existing sentence

“A portion of the non-tidal wetlands may be counted as open space if  
sufficient recreational and buffer areas are provided.”

replacement sentence

“Buffer zones around wetlands may be counted as open space, but not the  
wetlands they protect.”

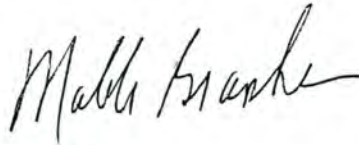
12/3/02



December 3, 2002

To: All Members of the Sussex County Council

From: Mable Granke, Citizens Coalition Director



Re: Water/Wastewater Element, Land Use Plan Update

The Citizens Coalition has for some time expressed concern and presented factual testimony with regard to our water quality and sufficient water quantity during peak period use (reference report placed in the public record February 7, 2002 by the Community and Environmental Defense Council) and the Citizens Coalition request to defer further system connections until indicated deficit resolved.

It is no comfort to the citizens of Coastal Sussex to read the language in the proposed Water/Wastewater Element of the Land Use Plan Update:

1. Page 41 did correct freshwater use to approximately 93 million gallons/day, but does not follow through with actual figures in discussion re total water to total water balance. In addition, we are supposed to be assured by statement "treatment facilities using spray irrigation return the water to the aquifer." Balance this against the USGS Hydrologist, Dan Soeder, statement (letter in the public record as of October 1, 2002), page 3, 3) "The Inland Bays Regional Wastewater Facility utilizes spray irrigation to dispose of the treated affluent on land, as does the Wolfe Neck Wastewater Treatment Facility. The biggest problem with spray irrigation is that it does not remove the nutrients from the watershed. As long as it is the growing season and the plants are active, the nutrients will be utilized, but otherwise they remain on the ground surface or enter the ground water, in either case, eventually ending up in the Inland Bays.."

What is critical is level of treatment.

2. Page 42: "Total water use in the Columbia Aquifer is not currently known". Those of us living in Coastal Sussex cannot afford a guessing game, either in the Land Use Plan or as it is applied to land use decisions.

There is a need to know usage as illustrated in the USGS Hydrologist letter of August 26, 2002:

Page 2, 2)... "There is no doubt that much more than 520,000 gallons per day is being pumped in 2002. A new MODFLOW simulation was run last year by Scott Andres of DGS for the DNREC Source Water Assessment Program (SWAP) in the Lewes-



Rehoboth area, and some of these results should be available to help estimate aquifer capacity and drawdown effects."

"Water in confined aquifers is pressurized by the weight of the water above it. Overpumpage of these aquifers runs the risk of significantly reducing this pressure (known as "hydraulic head") over large areas. For example, excessive pumpage by the City of Dover in the Piney Point aquifer has caused up to 160 feet of drawdown in the town well fields, and resulted in head losses of 20 to 40 feet as far away as Cambridge, NJ (Lacombe and Rosman, 2001)...."There is indeed a potential for "adverse effects" from overpumpage, and while the Manokin and Pocomoke aquifers probably do have room for additional resource development, the potential for problems should be considered."

"The LUP states that approximately 77% of the major public wells draw water from the unconfined Columbia aquifer. Drawdown in this aquifer does not cause the long-distance pressure effects seen in confined units, but a "cone of depression" around a pumping well actually pulls the physical water table downward in the vicinity of the well. Large public supply wells pumping vigorously from this aquifer could possibly drop the water table in nearby shallow domestic wells, causing them to go dry. The unconfined aquifer has two other unique potential problems: because it is shallow, ground water travel times are relatively short, meaning that pesticides, fertilizers, septic effluent, volatile organic compounds and other contaminants can enter the water supply more easily. In eastern Sussex County, in the vicinity of the ocean, excessive freshwater withdrawal on the unconfined aquifer can result in saltwater intrusion from the sea. This has happened in other coastal communities, including Wildwood, NJ and Ocean City, MD. Recharge area protection plans to combat pollutants and careful water management to minimize saltwater intrusion are two ways to avoid these problems."

In addition, Mr. Soeder in comments made July 15, 2002, states that "The other major issue in the coastal zone is salt water intrusion." History shows that both the Lewes and Rehoboth wells were moved because of salt water intrusion.

3. At this time and because of the quotes from Mr. Soeder's letter, the Citizens Coalition wishes to place in the public record additional evaluation of the Community and Environmental Defense Council by the firm New Fields Companies, LLC, George Frigon, Hydrologist dated March 29, 2002, which in part states:

"The "committed" peak day demand for the Rehoboth/Lewes water system as we have shown earlier is 2,976,111 gallons per day. Based on the available data the maximum certified available capacity is 2,793,600 gallons per day. Therefore, it appears



Mr. Frigon's letter continued:

that the utility resources are overcommitted. Yield testing should be conducted on all wells to measure the reliable output. The test data available for all wells is insufficient."

"It should be noted that the age of many of the wells is approaching their design life. Wells can be productive for decades however, the design life of a well is generally considered to be 20 years. Wells approaching the 20 year mark should be inspected and retested to confirm their condition and yield."

Mr. Frigon's letter represents a conservative evaluation in light of the March 29 date and the significant approvals made since then, not including residential developed on commercially zoned land.

In light of the fact we don't know total water use in the Columbia aquifer, that there is every indication that peak period demand cannot be met, Tidewater wells are approaching 20 year life span and therefore should be inspected and retested, potential for overpumpage in the confined aquifers, and the very nature of the Columbia aquifer, requires two specific actions on your part:

First, absolute wording in the Land Use Plan that a study will be performed posthaste to determine water use in the Columbia aquifer.

Second, specific language will be placed in the Land Use Plan indicating appropriate language requiring all development applications to show critical re-charge areas on the site and sufficient protection for same provided, for both quantity and quality.. A map of Sussex County exists and according to letter dated November 15, 2002 from A. Scott Andres Delaware Geological Survey, has been accepted by DNREC. For example, excellent and considered critical re-charge areas already lost because of development or approved development are Bulk of Village at 5 Points, Wolfe Runne, Wolfe Glade, Midway Shopping Area. Pending applications or designated for development are The Vineyard at Nassau Valley and the entire expanded secondary development district. Both have a combination of excellent and good and must be addressed.

There should be similar requirement for wellhead protection areas. That information is forthcoming.

With the continued pace of development, it is neither responsible or safe to ignore the need to address the issue of water quantity and water quality in this Land Use Plan this year 2002!.

“



State of Delaware  
DELAWARE GEOLOGICAL SURVEY  
UNIVERSITY OF DELAWARE  
Newark, DE 19716

Robert R. Jordan, State Geologist  
Phone: 302-831-2833  
Fax: 302-831-3579

November 15, 2002

Ms. Mabel Granke  
1013 Scarborough Rd  
Rehoboth Beach, DE 19971

RE: Wellhead and Recharge maps

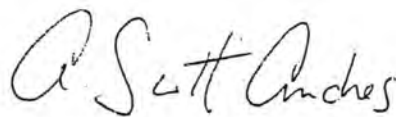
Dear Ms. Granke:

In a recent telephone conversation you requested printed maps showing wellhead protection and ground-water recharge areas. Enclosed find two maps, one of ground-water recharge areas for Sussex County, the second of wellhead protection areas (WHPAs) near Rehoboth Beach. The ground-water recharge areas map has been accepted by the Department of Natural Resources and Environmental Control (DNREC).

The Delaware Geological Survey has been working on WHPA delineations in the Lewes - Rehoboth Beach area in conjunction with the Source Water Protection Program of the DNREC. The attached draft map illustrates recommended WHPAs for six wells owned by Rehoboth Beach, as well as four nearby wells owned by Tidewater Utilities. The WHPAs represent the end result of one year of detailed research. A detailed report explaining the methods and results has been submitted for technical review. Pending the review, the map should be used for illustrative purposes only. More detailed, final map products will be made available at a later date.

Please contact me should you have any questions about the maps and mapping projects. Contact John Barndt or Doug Rambo (739-4793) of DNREC should you have any questions about the status of the WHPA maps or the Source Water Protection Program..

Yours truly,



A. Scott Andres

Enclosures

# NEWFIELDS

March 29, 2002

Mr. Michael Tyler  
Citizens Coalition, Inc.  
P.O. Box 56  
Nassau, Delaware 19969

Re: Rehoboth-Lewes Water Supply

Dear Mr. Tyler,

Richard Klein sent me information on the water supply in your area and asked that I comment on the adequacy of the system with respect to current and proposed development in the utilities service area. When I read Richard's letter to Kirsten Whitaker it reminded me of the issues I faced when I ran a small water utility in Connecticut in the early 80's.

The core of your coalitions concern is the ability of the existing water system to meet projected demand that is just that, only a projection. In order to get a better perspective, consider the following:

- The current existing and permitted residence count plus the approved development is 4,059 (2,171 + 1,888 from Table 1 Klein letter).
- There are currently 94 commercial connections.
- Approved commercial space not included in the 94 commercial connections is 410,000 square feet. A generous projection of water use would be 0.1 gallons per square foot.
- Current use per connection according to the Killam report is 229 gallons per day per connection.
- From the above, the estimated current average water use after everything is built out, is around 992,037 gallons per day.
- If a peaking factor of 2 is used, then the production capacity should be 1,984,074 gallons per day. Using a factor of 3 the required supply is 2,976,111 gallons per day to meet the "committed" demand.

The estimated demand represents the committed portion of the resource. The availability of the resource is another matter. According to the water utility, the pumping capacity is 3010 gallons per minute. If these wells were pumped 24 hours a day, the potential daily yield is 4,334,400 gallons. Thus, it would appear that the resource is greater than the "committed" demand and therefore can accommodate growth.

Newfields Companies, LLC  
116 Defense Highway, Suite 102  
Annapolis, Maryland 21401  
Phone 410.897.0897 Fax 410.897.0887



However, a closer look at the capacity reported by the utility raises questions.

- The Gosling Creek Wells 1 and 2 are described as lead and lag. This suggests that these wells are not intended to operate in tandem and overstate production by 250 gallons per minute. The listing of only 1 Gosling Creek well in the Killam Report supports this interpretation.
- The current capacity for 4 wells is rated higher than the maximum yield in the Killam Report, pages 4.2 and 4.7. What is even more worrisome is that the maximum yield exceeds the test yield reported in Table 2.1 and the table indicates that in many instances reported well yield values are unsupported by hydraulic testing.

Well	Max Yield Killam (gpm)	Current Capacity (gpm) Tidewater 7/01	Table 2.1 Test Flow Killam (gpm)	Comment based on table 2.1
Aspen Meadows	Not reported NR	100	NR	
Bay Vista	75	70	50	Const. '78
Breakwater	250	400	50	Const. '86 Pump capacity 75
Gosling Creek 1	175 pg. 4.6 Killam	250	No test record	Pump capacity 175 alternates with 2
Gosling Creek 2	175 pg. 4.6 Killam	250	No test record	Pump Capacity 175 alternates with 1
The Landing	350	400	250	Const. '85
Maplewood	350	400	200	Const. '86 At 200 drawdown is 50 ft.
Midway	NR	200	NR	
Orchard Townhomes	NR	60	NR	
Plantations 1	325	325	No test record	Const. '86 Based on Specific

				Capacity, this well is over drafted
Plantations 2	325	75	No test record	Const. '86 Based on specific capacity this well could produce more
Rehoboth Mall 3	175	130	30	Const. '85
Rolling Meadows	250	350	No test record	Const. '88 Specific Capacity reported 4gpm/ft. Therefore well is over drafted at 250 and 350 is impossible

- If the capacity of the untested wells is accepted and flows for the tested wells adjusted to the test flow, the total safe yield is reduced substantially from the current yield reported by the utility in their 7/01 fact sheet.

Well	7/01 Reported Capacity (gpm)	Test Capacity (bold type) Or Current Capacity (standard type) if well not tested (gpm)
Aspen Meadows	100	100
Bay Vista	70	50
Breakwater	400	50
Gosling Creek 1 & 2	500	250
The Landing	400	250
Maplewood	400	200
Midway	200	200
Orchard Townhomes	60	60
Plantations 1	325	325



Plantations 2	75	75
Rehoboth Mall 3	130	30
Rolling Meadows	350	350
Total Capacity	3010	1940
Capacity (gallons per day)	4,334,400	2,793,600

- The maximum safe yield of the water system can only be stated to be 2,793,600 gallons per day unless and until the proper yield tests are conducted.

Having established the best estimate possible of yield, the issue of peak demand must be revisited. The concept of peak demand is very complicated but in overly simplistic terms it is nothing more than a safety margin. The size of the margin is influenced by many factors. One of these factors is the size of the storage facilities built into the water system. The storage reported in the Killam Report is minimal. Without larger storage to absorb demand variation, a large peak factor is mandated. Therefore, the use of a peaking factor of 3 is a reasonable engineering decision.

The "committed" peak day demand for the Rehoboth/Lewes water system as we have shown earlier is 2,976,111 gallons per day. Based on the available data the maximum certified available capacity is 2,793,600 gallons per day. Therefore, it appears that the utility resources are overcommitted. Yield testing should be conducted on all wells to measure the reliable output. The test data available for all wells is insufficient.

It should be noted that the age of many of the wells is approaching their design life. Wells can be productive for decades however, the design life of a well is generally considered to be 20 years. Wells approaching the 20 year mark should be inspected and retested to confirm their condition and yield.

We hope that this discussion addresses your questions. If you wish to discuss the matter further, please call.

Newfields Companies, LLC



George Frigon  
Associate

cc: Richard Klein

**DYER MCCREA VENTURES, L.L.C.**

**P.O. BOX 212**

**LEWES, DE 19958**

**302-644-1400**

**302-644-1183 (FAX)**

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December 3, 2002

The Honorable Dale R. Dukes  
Sussex County Council  
2 The Circle  
P.O. Box 589  
Georgetown, DE 19947

*Dale*  
Dear Mr. Dukes:

This letter is a response to the proposed Sussex County Comprehensive Plan Update (the "Plan").

The most important area that merits discussion is the suggestion that has been made that would limit the number of multi-family units in a future request for rezoning to a C-1 Commercial District to 4 units per acre in contrast to the current 12 residential units per acre. The Plan appropriately confirms that existing C-1 would be grandfathered to permit the current maximum number of 12 residential units per acre. "It is the expressed intent of the plan to retain the existing zoning districts as shown on the official Zoning Map." However, the suggestion that future or new rezoning requests for C-1 should be limited to 4 residential units per acre is an inappropriate answer and it confuses the issues of use with density. Density for multi-family residential units has been addressed throughout the Plan.

The goal of the 2002 Draft of the Sussex County Comprehensive Plan (the "Plan") is to direct growth with the provision of public infrastructure and services. The plan confirms that since central wastewater facilities exist or are planned, higher densities are appropriate, thus reducing the pressure for the conversion of farmland to residential use. The express purpose of encouraging higher residential densities and commercial and industrial uses in the Developing Areas District is established to reduce pressure for development in the Natural Resource Protection and Agricultural Areas. Throughout the Plan, the guidelines for Density is consistently stated as ten dwelling units per acre for townhouses and 12 dwelling units per acre for multi-family housing such as apartments and multi-story condominiums.

The question which should be asked is; what is the intent of reducing residential density in a C-1 District from 12 to 4 units per acre? If the challenge is one of use, i.e., that the public has the right to know if the intended rezoning use is multi-family, then make residential use in C-1 a conditional use (which is site plan specific) not a permitted use as provided in the current zoning



ordinance within the C-1 District. That would give the interested parties the information necessary to respond at a public hearing. Under this approach, the number of permitted units of residential in a new C-1 rezoning application would be 0, not 4, however, the conditional use within C-1 or rezoning to HR would be 10 units per acre for townhouses and 12 units per acre for apartments and condominiums as stated in the Plan. To suggest that 4 units per acre in new rezonings is appropriate is inconsistent with the stated densities for HR and the expressed purposes of the Plan. If HR zoning can support 10 townhouses or 12 apartments or condominiums under the Plan, then C-1 which is as intensely developed or probably a higher intensity of development should also support the same number of residential units, if residential is an appropriate use. If notice of intended use is the problem, then make the applicant disclose the number of multi-family units as a conditional use with a site plan or opt for an HR zoning for the portion that is for residential use. If the suggestion is that 4 units per acre is the maximum permitted in C-1, then this is in conflict with the density in HR and the expressed purposes of the Plan, which are to concentrate higher densities (10 to 12 units per acre) where the appropriate infrastructure is located. This correctly addresses the negative sprawl which can occur. If multi family residential use is not an appropriate permitted use for C-1 then the density should be 0, not a reduced density from 12 to 4 units per acre.

Council must answer this question first and if it decides that multi-family for future rezonings needs to be identified as an HR rezoning, then the density for HR should apply not an ill conceived compromise of 4 units per acre.

The suggestion that property zoned commercial in the future should be reduced from twelve (12) units per acre to four (4) units per acre flies in the face of the stated goals of the Plan. Land that is zoned Commercial is presumed by definition and in fact to be suitable for intense development. That development could be for a traditional commercial/retail use, a business professional use, or high density residential use. If the goal of the Plan is to direct growth with high residential densities to the areas with centralized public infrastructure and services, then the current twelve (12) units per acre for multi-family units is both consistent and appropriate for that zoning classification for future C-1 rezonings.

Nowhere is there any substantiation for reducing the density from 12 units to 4 units, in fact, the goal of the Plan and supporting structure of the document directly contradict that suggestion.

The Plan addresses the needs of affordable housing for the elderly and families in Sussex County. It even asserts that it will be necessary to plan for areas of multi-family dwelling units. However, the Plan on page 9 suggests a decrease in allowable residential density in Commercial Districts to four dwelling units per acre. All of the several affordable Tax Credit Projects funded by the Delaware State Housing Authority, in Lewes and Rehoboth and Long Neck areas totaling more than 400 units have been developed in Commercial C-1 zoned property at twelve (12) units per acre utilizing 42 acres of land. Under the suggested 4 units per acre, the land mass utilized would have taken up over 127 acres and would not, with certainty, have been financially feasible under the suggested 4 units per acre.



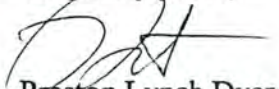
The 4 units per acre contradicts the provisions of Livable Delaware which encourages affordable housing production and the desire to provide higher densities in areas where infrastructure and intense development are encouraged.

We respectfully request the Plan be implemented without regard to the "strategy" of reducing the density to 4 units per acre in Commercial Districts.

Another area of concern is the definition of Development District. Council may wish to provide a case by case analysis of property which is not shown on the Future Land Use Map as in the Development District or Environmentally Sensitive Developing Area, but which now have or will have in the future, central sewer and water systems and other adequate infrastructure that meet the test of inclusion in the Development District. This would allow flexibility in the land use process dictated by the existence of physical infrastructure requirements, not arbitrary lines drawn on a large-scale map. Conversely, if property is in a Development District on the map and adequate infrastructure cannot be provided, then the property should not receive favorable land use rezonings, because it happens to be in a shaded area.

We appreciate your efforts in addressing the 2002 Comprehensive Plan and thank you for your consideration of these issues.

Very truly yours,



Preston Lynch Dyer  
Member