



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 24, 2009

Call to Order A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 24, 2009, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Vance Phillips	President
George B. Cole	Vice President
Joan R. Deaver	Councilwoman
Michael H. Vincent	Councilman
Samuel R. Wilson, Jr.	Councilman
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Deputy Administrator
James D. Griffin	County Attorney

Mr. Phillips called the meeting to order.

The Invocation and Pledge of Allegiance were led by Mr. Phillips.

Motion Died A Motion was made by Mrs. Deaver to amend the Agenda by moving Old Business to the afternoon session. The Motion died for the lack of a Second.

M 150 09 Amend and Approve Agenda A Motion was made by Mr. Vincent, seconded by Mr. Cole, to amend the Agenda by deleting "Approval of Minutes" and to approve the Agenda, as amended.

Motion Adopted: 4 Yeas, 1 Nay.

Vote by Roll Call: Mrs. Deaver, Nay; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea

Correspondence Mr. Griffin read the following correspondence:

AMANDA FLETCHER, GEORGETOWN, DELAWARE.

RE: Letter thanking the Council for sponsoring her participation in the People to People Ambassador Program.

Mrs. Deaver announced that she has received letters from almost every town and police department in the coastal area asking that the Council preserve the revenue sharing in the amount of \$25,000 per year to municipal police departments.

Mrs. Deaver read the following correspondence:

Corre-
spondence
(continued)

MAYOR JIM FORD, CITY OF LEWES, LEWES, DELAWARE.
RE: Letter requesting that the Council postpone action on the Hunters Walk application until the City of Lewes has completed their traffic study.

W.D. WHALEY.

RE: Letter requesting that (1) the Council discontinue the slush funds for Council members and (2) drop the lawsuit against DNREC.

Western
Sussex
Byway
Project

Dan Parsons, Historic Preservation Planner, and David Ames, University of Delaware, Center for Historic and Architectural Design, presented a request for the Sussex County Council's sponsorship of the Western Sussex Byway. The sponsorship is needed to formalize the project so that the application can be filed with DelDOT and so that the Committee that is formed can become its own entity that will combine all of the municipalities.

Mr. Parsons reported that the proposed Western Sussex Scenic and Historic Byway extends 22.2 miles along several roads in western Sussex County, from the exit for Bridgeville Road on US-13 through Seaford, across Woodland Ferry to Bethel, then on to Laurel, rejoining US-13 at Sycamore Road for a brief detour to Old Christ Church.

Mr. Parsons explained that the project began in 2004 under the direction of the University of Delaware and DelDOT along with interested citizens. At that time, they were unable to find a sponsor.

Mr. Phillips questioned if the proposal would require any regulations in the project area. Mr. Parsons stated that there would be no regulations with the exception of signage and roadway design.

Mr. Parsons stated that the funding would eventually come from the Federal Highway Administration through DelDOT.

Once sponsored, the project will begin again with the reformation of the Committee, which will be composed of civic leaders from each of the municipalities along the route. Mr. Ames stated that the Committee will also include involvement by the historical societies in the area.

Mr. Phillips stated that the Corridor Management Plan, in the past, has caused some citizens to be concerned regarding limited access to the roads. At the request of Mr. Phillips, the matter was deferred for one week to allow time for the review of additional information.

Wastewater Project Funding Update	<p>Mr. Baker reported that the State of Delaware Clean Water Advisory Council met on March 18, 2009 and considered Sussex County's requests. This Council makes recommendations to the Secretary of DNREC regarding wastewater funding. At that meeting, the Council considered how to appropriate the funds received from the Federal Stimulus Program and five projects were funded, including Johnson's Corner, Woodlands of Millsboro, Oak Orchard, Inland Bays Regional Wastewater Facility Expansion, and Angola Neck refinancing, all totaling \$14.6 Million. Mr. Baker advised that construction contracts for these projects must be awarded by February 17, 2010; in addition, projects must comply with Davis-Bacon wage rates and the use of American iron, steel and manufactured goods are required. Mr. Baker reported that it is proposed that \$7,695,640 of \$14.6 Million will be grant funding and \$6,926,000 will be low interest loan money. Of that amount, the Johnsons' Corner Sanitary Sewer District project was approved for funding, as follows: a loan of \$3,835,935 for twenty years at 1.5 percent and a grant (principal forgiveness) in the amount of \$1,248,033. In addition, the Angola Neck Sanitary Sewer District was approved for a grant in the amount of \$1,500,000.</p>
Wastewater Project Funding Update (continued)	
Group Hospital Plan Recommendation	<p>Mr. Baker presented a recommendation for the Council's consideration in regards to the renewal of the County's Group Hospital Plan. He noted that this proposal pertains to the Fixed Cost Portion of the Health Care Plan. He advised that fixed costs are composed of the following:</p> <ol style="list-style-type: none">1. Reinsurance – for catastrophic claims over \$250,000 per year per person.2. Administration – for processing each medical bill.3. Health Advocate – provides an employee help-line and third-party assistance regarding medical issues.4. One Net/Inetco – covers precertification for surgery and hospital stays, as well as discounting. <p>Mr. Baker reported that, currently the County uses the Zurich Insurance Company and that Integra shopped this out with several companies. Based on the results, the best option is United Health Care; the estimated cost of their premium is \$216,390 versus \$216,365 (Zurich). He noted that the advantage of United Health Care is the lower aggregate limits; the County's maximum liability would be \$11,210,000 versus \$11,469,000 (with Zurich).</p> <p>Mr. Baker stated that it is also recommended that the County continue with Integra for the administration of the Plan; Integra has administered the County's Plan for over fifteen years. Mr. Baker noted that Integra's cost to the County is up approximately 2 percent; their estimated annual cost is \$276,000.</p>

Mr. Baker reported that the estimated cost for Health Advocate Services is \$9,813.00 for the year and the estimated cost for One Net/Inetco is \$58,823.000.

Mr. Baker concluded that the only change proposed is the change from Zurich Insurance Company to United Health Care.

**Group
Hospital
Plan
Recom-
mendation
(continued)**

Mr. Baker reported that a bid was received from Blue Cross Blue Shield; the bid had higher fixed fees but they did note a 42 percent total discount on claims paid. The County discussed this Bid with Insurance Buyers Council, the County's insurance consultant, and they did not feel there was sufficient time to make a major change or to re-evaluate the plan submitted by Blue Cross Blue Shield. They did suggest that, prior to renewal time next year, the County could send out a Request for Proposals, which would give the County sufficient time to complete the evaluation of all proposals submitted.

**M 151 09
Approve
One Year
Renewal of
Health
Care Plan**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, that the Sussex County Council approves a one year renewal of its Health Care Plan with Integra, United Health Care, Health Advocate and OneNet.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

**Register of
Wills Fees
Proposal**

Greg Fuller, Register of Wills, was present to discuss a proposal to increase the fees of the Register of Wills Office for adjusting, settling, and certifying accounts from 1.25 percent of net estate to 1.75 percent of net estate. The 1.75 percent of net estate is the fee that Kent County and New Castle County charge at the present time. Mr. Fuller noted that this will administratively simplify estate settlements and eliminate controversy, since all three counties would have the same fee.

Mr. Baker reported that, it is estimated, based on 2008 numbers, that increasing this fee from 1.25 percent to 1.75 percent would increase County revenues by approximately \$310,504 per year. It was noted that the actual amount of savings would depend on estate activity in the County.

It was the consensus of the Council that staff would prepare a Draft Ordinance regarding the proposal for fees for the Register of Wills; the Draft will be considered by the Council at a future meeting for Introduction and scheduling of a Public Hearing.

**Adminis-
trator's
Report**

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

1. Association of Public Safety Communication Officials Award

We are pleased to announce the following awards for Sussex County

Adminis-
trator's
Report
(continued)

employees:

- (1) **Center Manager of the Year – Mr. Joseph Thomas, Director of Emergency Preparedness, has been awarded the Center Manager of the Year for Delaware for 2008. Mr. Thomas oversees the day-to-day operations of the 9-1-1 Center for Sussex County. He has worked for Sussex County Council since December 1986.**
- (2) **Telecommunicator of the Year Runner-Up – Mr. Charles Stevenson IV was selected by APCO as Runner-Up for Telecommunicator of the Year for the State of Delaware. Mr. Stevenson has worked for Sussex County Council since September 2007 and currently manages our Local Emergency Planning Committee efforts in Sussex County.**
- (3) **Unit Citation Award – Chris Moore, Bob Parson, Lillie Fitzgerald, and Earl Chaffinch have been selected as Runner-Up for the Unit Citation Award. This award recognizes their professionalism, expertise, and thoroughness in handling an event that occurred in February 2009.**
- (4) **Unit Citation of the Year Award – Joseph Pepper, Steven Deery, Jason Boyce, and Jason Faulkner have been awarded the Unit Citation of the Year for Delaware. They have been recognized for their outstanding response to an incident that occurred on June 17, 2008, involving County Paramedic Stephanie Callaway.**

We wish to commend these County Dispatchers and Mr. Thomas for the outstanding job that they do on a day-to-day basis for Sussex County residents. It is indeed a pleasure to see County staff recognized for their outstanding efforts and work.

2. **Emergency Medical Service Memorial Bike Ride – May 18, 2009**

For your information, attached is a draft of a schedule for the National Emergency Medical Service Memorial Bike Ride that will be arriving in Georgetown from Tinicum, Pennsylvania on May 18, 2009. The purpose of this Bike Ride is to honor Sussex County Paramedic Stephanie Callaway and Michelle Smith (from New Castle County).

3. **Sussex County Prayer Breakfast**

For your information, the Sussex County Prayer Breakfast Committee has scheduled Friday, May 15, 2009, at 7:30 a.m., for their annual event. This breakfast will be held at the CHEER Center in Georgetown. Revenue from the event will cover the costs

associated with the Prayer Breakfast.

4. Delaware Tech Aviation Maintenance Education Center

**Report
(continued)**

On Monday, March 30, 2009, a dedication ceremony for the Delaware Tech Aviation Maintenance Education Center will be held at the Sussex County Industrial Airpark. The Sussex County Council contributed \$1.2 Million toward the cost of purchasing and renovating a hangar at the Industrial Airpark to provide an education program for airframe mechanics.

**Economic
Develop-
ment
Stimulus
Loan
Application**

Mrs. Webb reported that the Economic Development Stimulus Loan Committee met on January 22 and February 27, 2009 to consider a loan application submitted by the Town of Georgetown. The Town's application was for an amount not to exceed \$200,000 to be used to assist Softball World, LLC (Sports at the Beach) with infrastructure improvements, specifically sewer.

Mrs. Webb referred to the qualification criteria for Economic Development Stimulus Loans, i.e. new jobs, new business, and expansion. She stated that the Committee found that through this loan, if approved, some of the funds would be used as reimbursements; that there is a serious accounts payable issue and vendors to be paid; that they have paid an interest-only payment on their debt for the last seven years; that financial soundness is in question; that there is a negative cash position; that the loan would not result in new jobs; that the Town did not agree to not seek relief from the County Council in event of default on the loan; and that the payment of reimbursement of accounts payable is not the focus of the Economic Development Stimulus Committee.

Mrs. Webb advised that the Committee adopted a Motion (5 – 1) to deny the Town of Georgetown's application for a \$200,000 Economic Development Stimulus Loan on behalf of Softball World, LLC.

**M 152 09
Deny
Economic
Develop-
ment
Stimulus
Loan
Application**

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to approve the Motion set forth by the Economic Development Stimulus Committee to deny the \$200,000 loan application (submitted by the Town of Georgetown to assist Softball World, LLC.)

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

**Wastewater
Agreement**

Mr. Godwin presented a Wastewater Agreement for the Council's consideration.

M 153 09

A Motion was made by Mr. Cole, seconded by Mr. Vincent, based upon the

Approve Wastewater Agreement/ L.T. Associates, LLC	recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 777-1, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and L.T. Associates, LLC, for wastewater facilities to be constructed in Hawkseye Regional Forcemain (Phase 2B), located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.
M 153 09 (continued)	Motion Adopted: 5 Yeas.
	Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Phillips, Yea
Delaware National Bank/ Lease Amendment Proposal	Mr. Godwin presented a Proposed Amendment to the 1996 Commercial Lease between Sussex County and Delaware National Bank. In accordance with this Agreement, the Bank leases 8,612 square feet of office space at the County's West Complex.
	Mr. Godwin reported that the Bank has preliminarily agreed to give back to the County the use of 2,100 square feet, effective May 1, 2009. This would allow the County to use the space, which would then free up space at the Administrative Offices on The Circle, thus allowing the Clerk of the Peace to return to the Administrative Offices and eliminate the need to lease space at the Tunnell and Raysor building. Mr. Godwin stated that the net impact to the County's budget will be a positive \$12,000 annually; however, an approximate cost of \$4,000 would be incurred the first year to construct security walls to accommodate the sharing of office space on the second floor by the Bank and the County.
	Mr. Phillips stated that this has been an initiative to better utilize the County's existing facilities.
M 154 09 Authorization to Proceed with Lease Amendment with DNB	A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to authorize the Deputy County Administrator to proceed with the Amendment to the Lease with Delaware National Bank.
	Motion Adopted: 5 Yeas.
	Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Phillips, Yea
Laurel Paramedic Station Project Update	Glenn Luedtke, Director of Emergency Medical Services, and Bobby Schoonover, Project Manager, presented an update on the Green Environmental Initiatives of the Laurel Paramedic Station Project.
	Mr. Schoonover reported that the Request for Proposals for the building went out on March 9th; that the Department is working with contractors to obtain quotes for site work; that the Department is also seeking quotes for

the entrance, as required by DelDOT; that the site evaluation is being performed by Sussex County Engineering Department; that a pre-bid meeting was held on Friday, March 20th and approximately 24 contractors attended; and that the bids will be opened on April 1st.

**Laurel
Paramedic
Station
Project
Update
(continued)**

In regards to the green environmental initiative, Mr. Schoonover covered four areas: building construction, solar electric generation (net cost to County - \$15,300.00); Geothermal HVAC (net cost to County - \$8,370.00); and tank-less on-demand hot water heater (net cost to County - \$720.00). The County's total cost would be \$24,390.00. Mr. Shoonover asked for the Council's approval to obtain firm quotes on the different systems for presentation to the Council on April 7th.

It was noted that a State Energy Grant and Paramedic Grant reduces the cost of the solar panels from \$51,000.00 to \$15,300.00.

**M 155 09
Continue
Green
Environ-
mental
Initiative/
Laurel
Paramedic
Station**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to continue with the Green Environmental Initiatives for the Laurel Paramedic Station, as recommended.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

**Johnsons
Corner SSD/
Contract
No. 1/
Bid Results**

Michael Izzo, County Engineer, presented the Bid Results for the Johnsons Corner Sanitary Sewer District, Contract No. 08-09, for Zion Church Road and Pump Station No. 305/Pump Station No. 308. The Engineer's Estimate for the project was \$4,868,925.00. Mr. Izzo reported that ten bids were received and that the low bidder was Bunting & Murray Construction Corp. of Selbyville in the amount of \$4,159,873.85.

Mr. Izzo noted that there is one Bid Alternate for the paving of a portion of Route 20. DelDOT has committed to fund the cost of the work in the amount of \$63,344.00.

Mr. Izzo stated that there will be SRF funding for this project and he noted that, if Economic Development Stimulus funds are used, Davis – Bacon wages will be required. He noted that the Bid included State-wage rates; therefore, there will be a possibility of a change order for the difference in wage rates.

**M 156 09
Award Bid/
Johnsons
Corner SSD/
Contract
No. 1**

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, based upon the recommendation of the Engineering Consultants, Whitman, Requardt and Associates, LLP, and the Engineering Department, that Sussex County Project No. 08-09, Johnsons Corner Sanitary Sewer District Fenwick West, Zion Church Road and Pump Station No. 305/Pump Station No. 308, be awarded to Bunting & Murray Construction Corporation of Selbyville,

Delaware, at the alternate bid amount of \$4,159,873.85, contingent upon the receipt of approval from the Delaware Department of Natural Resources and Environmental Control and/or Rural Utility Service.

Motion Adopted: 5 Yeas.

**M 156 09
(continued)**

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

**Industrial
Airpark/
GAC
Filtration
and
Building**

Julie Cooper, Project Engineer, presented the Bid Results for Sussex County Project No. 09-02, Industrial Airpark GAC Filtration and Building, a project which involves the purchase and installation of a water filtration system, the design and construction of a permanent enclosure, and all associated pipe and utilities for the filtration and the enclosure.

The Engineer's Estimate for the project was \$189,000.00 (Base Bid) and \$231,000.00 (Alternate Bid). The Base Bid amount reflects the cost of the enclosure, one filtration unit and piping for one unit. The Alternate Bid amount reflects the cost of the enclosure, two filtration units, and the piping for two units. Ms. Cooper stated that the Engineering Department recommends the Alternate Bid.

Ms. Cooper reported that ten bids were received and that the apparent low bidder is Shure-Line Construction, Inc. of Kenton, Delaware, with a Base Bid amount of \$144,462.00 and an Alternate Bid amount of \$189,573.00.

**M 157 09
Award Bid/
Industrial
Airpark/
GAC
Filtration
and
Building**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project No. 09-02, Industrial Airpark GAC Filtration and Building, be awarded to Shure-Line Construction, Inc. of Kenton, Delaware, at the Alternate Bid amount of \$189,573.00.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

**Discussion
of Draft
Zoning
Ordinances**

Lawrence Lank, Director of Planning and Zoning, and Vince Robertson, Assistant County Attorney, reported on several ordinance amendments that relate to land use which have been proposed by the Planning and Zoning Commission:

1. Period of Validity of Conditional Uses

This proposed amendment states that conditional uses shall be valid for a period of three years unless the construction or use is substantially

underway during that period. Previously, the time period had been one year, with a maximum of two subsequent one year extensions if approved by the Planning and Zoning Commission. There is a common recognition that it is difficult to get all of the agency comments and approvals within one year; therefore, if everyone is given the three year maximum, applicants would not need to come before the Commission to request time extensions.

**Discussion
of Draft
Zoning
Ordinances
(continued)**

2. Subdivision Preliminary Approval Time Limit

This amendment confirms the authority of the Commission on subdivision applications consistently with the recent Supreme Court decision of Ashburn v. Kent County Regional Planning Commission. It inserts language, with slight revisions for consistency, directly from the Court decision into Section 99-9A.

This Amendment also extends the period of validity for a preliminary approval from one year to three years, recognizing the fact that it is difficult to obtain all necessary agency approvals required for final approval within just one year. It modifies Section 99-9C to make the introductory sentence more consistent with the wording of the Cluster Subdivision Ordinance in Section 115-25 of the Zoning Code.

Mr. Phillips referenced the seventeen provisions that are required to be considered for subdivisions and he commented that there has been some discussion about looking at the seventeen provisions to determine if specific criteria could be developed so that there is predictability in the process. He noted that this has not been addressed in the ordinance amendment and he suggested that prior to the introduction of this ordinance, it may be something the Council wishes to consider.

3. Street Design Standards

In late 2008, the Council adopted street design standards, as recommended by the County Engineering Department; some of the standards conflict with Section 99, Subdivision Regulations, of the Sussex County Code. These standards went into effect on January 1, 2009.

This proposal, made at the request of both Planning and Zoning and County Engineering, deletes the prior street design standards contained in Chapter 99 of the Sussex County Code, which are no longer current. By removing them from the Code, they would be established by the County Engineering Department and approved by the County Council. In this way, the Code does not need to be amended every time the specifications must be changed and it eliminates the outdated language and cross-section drawings that are currently in the Code.

To avoid the necessity of constantly amending the Code as the standards, construction methods, technology, materials, etc. change, this amendment allows the County Engineering Department to establish appropriate

standards, subject to County Council's approval. In addition, by deleting Section 99-18C(1) referencing "typical cross-section illustrations at the end of this chapter...", it is the intention to also remove those cross-section drawings from inclusion within the Code, as well.

**Discussion
of Draft
Zoning
Ordinances
(continued)**

4. Three-Lot Subdivisions

The Commission currently has a policy of allowing a minor subdivision of three or fewer lots without a Public Hearing if those three lots are on a single property and served by an existing road, right of way, or easement. In addition to being a long-standing policy of the Commission, it is also consistent with the four lots that are permitted without a Public Hearing under the Subdivision Ordinance if those lots have frontage along an existing street.

This ordinance amendment would allow, under certain limited conditions, the Planning and Zoning Director for Sussex County to approve for recordation, subdivisions of three or fewer lots. The ordinance amendment further defines those conditions while still allowing minor subdivisions and the division of agricultural land.

The Amendment covers several different sections of the Subdivision Code, as necessary; it states that if an Applicant desires three lots on an existing easement, driveway, etc., it can be approved by staff. However, upon application, notice is given to adjacent property owners and the Commission, and if a party desires a Public Hearing, that can occur.

This amendment would eliminate those items from Commission Agendas, since they are typically simple in form and can properly be approved by staff. However, if staff, the Commission, or a neighbor has concerns, a Public Hearing on an application can occur; this way, neighbors and residents are protected in appropriate circumstances, yet County resources are also streamlined.

Mr. Lank stated that the fee schedule is also to be revised; however, he noted that he still needs to check the wording since it does not specifically reference the fee for a minor subdivision.

Mr. Lank also noted that the County would have to come up with a method of sending notices to the residents within a certain area of a site and to ask them if they object and/or desire a Public Hearing to be held.

Mr. Phillips stated that he expects several of the ordinance amendments to be placed on the Council's Agenda for introduction in the near future.

**M 158 09
Defer**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1627 filed on behalf of P.G.S. Properties, LLC.

**Action on
C/Z
No. 1627**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

**M 159 09
Defer
Action on
C/Z Nos.
1672 and
1673**

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to defer action on Conditional Use No. 1672 and Conditional Use No. 1673 filed on behalf of P.G.S. Properties, LLC.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

**Old
Business/
C/Z
No. 1623**

Under Old Business, the Council considered the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.96 ACRES, MORE OR LESS” (Change of Zone No. 1623) filed on behalf of W and Jones Family, L.P.

The Planning and Zoning Commission held a Public Hearing on this application on December 11, 2008; on January 22, 2009, the Commission recommended that the application be approved.

The County Council held a Public Hearing on this application on January 13, 2009.

Mrs. Deaver stated that, when the Planning and Zoning Commission made their decision, they had not had the benefit of receiving the letter from James Ford, Mayor of the City of Lewes, dated February 19, 2009.

A question was raised as to whether Mayor Ford’s letter was admissible into the record since it was received after the record was closed on January 13, 2009. Mr. Griffin stated that the Council would have to reopen the record.

Mrs. Deaver clarified that Councilwoman Barbara Vaughn (City of Lewes) testified at the Public Hearing before the County Council on January 13th, 2009 and that the Mayor’s letter is a follow-up to assure the Council that Councilwoman Vaughn had the authority to speak on behalf of the City. Mrs. Deaver noted that the Mayor is asking that the County Council support Councilwoman Vaughn’s request that the Council postpone further consideration until information is available to the City and the County

regarding their upcoming traffic study.

No action was taken to reopen the Public Hearing.

M 160 09
Adopt
Ordinance
M 160 09
Adopt
Ordinance
No. 2035
(C/Z
No. 1623)

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to Adopt Ordinance No. 2035 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.96 ACRES, MORE OR LESS” (Change of Zone No. 1623) filed on behalf of W and J Jones Family, L.P.

Motion Adopted: 4 Yeas, 1 Nay.

Vote by Roll Call: Mrs. Deaver, Nay; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea

Old
Business/
C/Z
No. 1624

The Council considered the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 44.49 ACRES, MORE OR LESS” (Change of Zone No. 1624) filed on behalf of W and J Jones Family, L.P.

The Planning and Zoning Commission held a Public Hearing on this application on December 11, 2008; on January 22, 2009, the Commission recommended that the application be approved with the following conditions:

- a. The maximum number of dwelling units shall not exceed 144, in addition to the apartment that currently exists above the golf course pro shop.
- b. All entrances, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT’s requirements.
- c. Recreational facilities and amenities shall be constructed and open to use by residents of the development within 3 years of the issuance of the first residential building permit. These amenities shall include a tennis court, a multi-use court, community center and a swimming pool.
- d. The development shall be served by County sewer as part of the

West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

**Old
Business/
C/Z
No. 1624
(continued)**

- e. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- f. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, using Best Management Practices with regard to the construction and maintenance of these features. The Final Site Plan shall contain the approval of the Sussex Conservation District for the location and design of the stormwater and erosion and sedimentation control facilities.**
- g. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. In addition, as stated by the applicant, sidewalks shall be built along both sides of the streets.**
- h. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design, along with the wetland buffers as delineated on the preliminary site plan.**
- i. As proposed by the applicant, there shall be a minimum 50-foot buffer as delineated on the preliminary site plan, from the Federal Wetland areas. Any required silt fencing shall be installed on the upland side of the buffer areas.**
- j. The applicant shall form a homeowners' or condo association to be responsible for the maintenance of the streets, roads, buffers, open space, stormwater management facilities and other common areas.**
- k. Road naming shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- l. A school bus stop with parking shall be provided, and shown on the Final Site Plan. The location shall be coordinated with the Cape Henlopen School District.**
- m. A system of street lighting shall be provided throughout the project.**
- n. The existing entrance from Route One shall be used for access to the golf course only, as has been the case for years. But, since the golf course is an amenity to the residential property, the Final Site Plan shall include better vehicular access, pedestrian access**

and parking from within the residential area. There shall not be any direct vehicular interconnection between the residential roads and the golf course access road from Route One. If the golf course should cease operations, then the access via Fairways Village shall be eliminated.

Old
Business/
C/Z
No. 1624
(continued)

- o. As the Applicant has agreed, the area for the golf course shall remain as open space, even if the golf course is no longer in operation.
- p. Site Plan review shall be subject to approval of the Planning and Zoning Commission.

The County Council held a Public Hearing on this application on January 13, 2009.

M 161 09
Amend
Condition
No. F
(C/Z
No. 1624)

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to amend Condition “f” so that it reads as follows:

“Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, using Best Management Practices with regard to the construction and maintenance of this project and the golf course. The Final Site Plan shall contain the approval of the Sussex Conservation District for the location and design of the stormwater and erosion and sedimentation control facilities.”

Motion Adopted: 3 Yeas, 2 Nays.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Nay; Mr. Cole, Yea;
Mr. Phillips, Nay

M 162 09
Adopt
Ordinance
No. 2036
(C/Z
No. 1624)

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to Adopt Ordinance No. 2036 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 44.49 ACRES, MORE OR LESS” (Change of Zone No. 1624) filed on behalf of W and J Jones Family, L.P., with the following conditions:

- a. The maximum number of dwelling units shall not exceed 144, in addition to the apartment that currently exists above the golf course pro shop.

M 162 09
Adopt
Ordinance
No. 2036
(C/Z
No. 1624)
(continued)

- b. All entrances, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's requirements.**
- c. Recreational facilities and amenities shall be constructed and open to use by residents of the development within 3 years of the issuance of the first residential building permit. These amenities shall include a tennis court, a multi-use court, community center and a swimming pool.**
- d. The development shall be served by County sewer as part of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.**
- e. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- f. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, using Best Management Practices with regard to the construction and maintenance of this project and the golf course. The Final Site Plan shall contain the approval of the Sussex Conservation District for the location and design of the stormwater and erosion and sedimentation control facilities.**
- g. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. In addition, as stated by the applicant, sidewalks shall be built along both sides of the streets.**
- h. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design, along with the wetland buffers as delineated on the preliminary site plan.**
- i. As proposed by the applicant, there shall be a minimum 50-foot buffer as delineated on the preliminary site plan, from the Federal Wetland areas. Any required silt fencing shall be installed on the upland side of the buffer areas.**
- j. The applicant shall form a homeowners' or condo association to be responsible for the maintenance of the streets, roads, buffers, open space, stormwater management facilities and other common areas.**
- k. Road naming shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**

l. A school bus stop with parking shall be provided, and shown on the Final Site Plan. The location shall be coordinated with the Cape Henlopen School District.

m. A system of street lighting shall be provided throughout the project.

**M 162 09
Adopt
Ordinance
No. 2036
(C/Z
No. 1624)
(continued)**

n. The existing entrance from Route One shall be used for access to the golf course only, as has been the case for years. But, since the golf course is an amenity to the residential property, the Final Site Plan shall include better vehicular access, pedestrian access and parking from within the residential area. There shall not be any direct vehicular interconnection between the residential roads and the golf course access road from Route One. If the golf course should cease operations, then the access via Fairways Village shall be eliminated.

o. As the Applicant has agreed, the area for the golf course shall remain as open space, even if the golf course is no longer in operation.

p. Site plan review shall be subject to the approval of the Planning and Zoning Commission.

Motion Adopted: 4 Yeas, 1 Nay.

**Vote by Roll Call: Mrs. Deaver, Nay; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

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

**M 163 09 A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to give
Community \$300.00 (\$100.00 each from Mr. Phillips', Mr. Cole's, and Mr. Wilson's
Grant Community Grant Accounts) to Sussex Central High School for the
Lacrosse Program.**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

**M 164 09 A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give \$500.00
Community (\$200.00 from Mr. Phillips' Community Grant Account, \$100.00 from Mr.
Grant Cole's Community Grant Account, \$100.00 from Mr. Vincent's Community
Grant Account, and \$100.00 from Mr. Wilson's Community Grant
Account) to Miss Delaware's Outstanding Teen Pageant for scholarship
awards.**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

M 165 09 Community Grant A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give \$2,500.00 from Mr. Cole's Community Grant Account to the Town of Millville for vehicles for Millville's neighborhood watch program, the Millville Volunteer Group.

Motion Adopted: 4 Yeas, 1 Nay.

**Vote by Roll Call: Mrs. Deaver, Nay; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

M 166 09 Community Grant A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give \$2,500.00 from Mr. Cole's Community Grant Account to Rehoboth Art League, Inc. for youth art classes.

Motion Adopted: 4 Yeas, 1 Nay.

**Vote by Roll Call: Mrs. Deaver, Nay; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

M 167 09 Community Grant A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$5,000.00 from Mr. Cole's Community Grant Account to the Dewey Beach Lions Club for construction of a new community center.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

M 168 09 Community Grant A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$250.00 from Mr. Cole's Community Grant Account to People to People for Nicholas McLaughlin's participation in the 2009 Leadership Summit.

Motion Adopted: 4 Yeas, 1 Nay.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Nay**

Additional Under Additional Business, Lori Allen, Office Manager for the Emergency

Business/ Public Comment/ Lori Allen	Medical Services Department, commented on the email she sent to Councilman Phillips in opposition to the proposed changes to the County's existing health care plan. She noted, based on the responses she received from fellow employees, that she believes she shares those employees' opinion regarding the proposed changes. Ms. Allen reported that she has completed a comparison of the County's existing plan, the County's proposed plan, and the State's Comprehensive PPO Plan and she found that the County's proposed plan is not comparable to the State's Comprehensive PPO Plan and, in fact, the County's proposed plan is substantially more costly to the employees. Ms. Allen formally requested that the County Council review a more detailed comparison of the health care plans and reconsider approving changes to the existing plan.
Public Comment/ Lori Allen (continued)	
Additional Business/ Public Comment/ Travis Woodyard	Travis Woodyard, President of the Sussex County Paramedics Association, stated that he was speaking on behalf of the Association. He strongly urged Mr. Baker and the Council to reconsider the proposed health care changes that were presented to the Council on March 17th. He stated that the Association believes the plan was put together in haste without adequate consideration of the impact it would have on all employees.
Additional Business/ Public Comment/ Barbara Vaughn	Barbara Vaughn of Lewes spoke in regards to the Hunters Walk Project (Change of Zone No. 1624) and she stated that the results of the traffic study referenced by Jim Ford, Mayor of the City of Lewes, will be presented at a public meeting on April 18th at the Lewes Library. She noted that the study is a part of the Greater Lewes Foundation's FutureScan Project. Ms. Vaughn invited the Council to attend the meeting. Barbara Vaughn also recommended that land preservation dollars (which are received by the County from developers in exchange for bonus density) be spent in the District in which the development is located.
M 169 09 Recess Regular Session/ Go Into Executive Session	At 12:40 p.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to recess the Regular Session and to go into Executive Session for the purpose of discussing issues relating to land acquisition, personnel, and pending/potential litigation. Motion Adopted: 5 Yeas. Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Phillips, Yea
Executive Session	At 12:41 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing issues relating to land acquisition, personnel and pending/potential litigation. The Executive Session concluded at 1:14 p.m.
M 170 09 Come	At 1:15 p.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to come out of Executive Session and to reconvene the Regular Session.

**out of
Executive
Session/
Reconvene
Regular
Session**

Motion Adopted: 3 Yeas, 2 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Absent;
Mr. Wilson, Absent; Mr. Cole, Yea;
Mr. Phillips, Yea**

**M 171 09
Recess**

At 1:16 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Cole, to recess until 1:30 p.m.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea**

Reconvene

Mr. Phillips called the Council back into session at 1:44 p.m.

**Public
Hearing/
C/Z
No. 1632**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 14.549 ACRES, MORE OR LESS” (Change of Zone No. 1632) filed on behalf of Pelican Landing – Route 24, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on February 26, 2009 at which time they deferred action; on March 12, 2009, the Commission recommended approval of the application.

(See the minutes of the meeting of the Planning and Zoning Commission dated February 26 and March 12, 2009.)

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

Mr. Lank distributed Exhibit Books which were provided by the Applicant.

Mr. Lank read the following correspondence which was received after the Commission’s Public Hearing on February 26, 2009:

- Letter in opposition from Larry and Karen Fischer.**
- Email in opposition from Christina Love.**
- Letter in opposition from Richard and Ruth Ross in opposition.**

Mark Handler, Principal of Pelican Landing – Route 24, LLC, was present with Dennis Schrader, Attorney, and Jason Palkewicz, P.E. and Holly Hearn, E.I.T. of McCrone, Inc.

Public
Hearing/
C/Z
No. 1632
(continued)

Mr. Schrader stated that that the proposed site is located in an area of existing communities that have formed from surrounding subdivisions and developments and is adjacent to crossroads-type commercial sites; that the Applicant proposes a commercial shopping project to provide retail shopping and personal service uses to service the needs of the neighboring areas; that the application contains five tax map parcels that are involved in the application; that the total acreage is 14.549 acres; that the property is currently vacant or has some abandoned residential structures; that a plumbing business existed on one of the parcels at one time; that they are proposing to develop the site with retail, office, and service type uses; that the site is in the middle of a developed area; that they are not creating any streets; that Tidewater Utilities will be providing water service; that this area of Route 24 is growing into a commercial corridor; that the use intended will be an infill of the commercial area between Windswept Farms and Peddlers Village; that there are 1,300 to 1,800 homes in or proposed in the area; that this site will be served by a County sewer district; that development in this area is on-going; that a need exists for retail shopping and service uses in the area; that the use will be a benefit to the residential area and reduces vehicular travel time for area residents, not requiring them to travel to Millsboro and the outlets at Rehoboth and Lewes; that the area contains single family lots, mobile home parks, commercial and business uses and recreational features; that they realize that the site plans being submitted are non-binding, but are exhibited to show the maximum potential of the site; that they do not anticipate developing the site at the maximum potential; that DelDOT has expressed no opposition to the proposal; that they have completed the Traffic Impact Study based on DelDOT's recommendations; that DelDOT has suggested that they will be permitted two entrances, one full movement and one with rights-in and rights-out; that a small portion of the site is located in a Wellhead Protection Area where DelDOT wants the entrance located; that an extra Stormwater Management Area is being proposed near the DelDOT entrance due to the wellhead protection area; that the central sewer will help eliminate 4 septic systems; that the wetlands line has been re-delineated showing both tidal and upland wetlands; that they are proposing a minimum 50-foot wide buffer from State wetlands that is further than 25 feet from non-tidal wetlands; that they propose a shopping center that will include up to 75,000 square feet of shopping and a 5,550 square feet of area for a bank facility; that the site will be improved with landscaping and a multi-modal path; that the site will be re-subdivided from 5 parcels into 2 parcels, one for the shopping center and one for the bank; that the Office of State Planning Coordination has stated that they have reviewed the application and they have no opposition; that they have responded to the PLUS Review and the Office of State Planning Coordination has responded back that there has been no change in their status; that by providing central water and central sewer, there should be no affect on neighboring properties; that all stormwater management will be maintained on-site; that the site is adjacent to commercial uses and conditional uses making the site appropriate for the proposed use; that the proposed use is consistent with

the Comprehensive Land Use Plan Update; that the proposed use conforms to the Environmentally Sensitive Developing District Overlay Zone requirements; that the proposed use conforms to the permitted B-1 Neighborhood Business District uses; that capacity is available in the Angola Neck Planning Area; and that the project will require less than 49.96 EDUs which have been allocated by the Engineering Department.

Public
Hearing/
C/Z
No. 1632
(continued)

Mr. Schrader asked that the new Concept Plan be made a part of the record. He stated that the most recent version of the Concept Plan, (Alternate Exhibit C) was prepared and submitted in response to some of the criticisms and comments made by some of the adjacent property owners. He acknowledged that the Concept Plan is not binding since it is a Change of Zone application; therefore, he stated that the Council needs to address whether or not the use is appropriate for the site. If the application is approved by the Council, the Applicant will have to go through the site plan approval process.

Mr. Palkiewicz stated that the four existing septic systems will be removed which will be a benefit to the Inland Bays; that the wetlands were re-delineated to be sure they are current; that the application is in compliance with the 50 foot buffer requirement; that the developer has agreed to DelDOT's requirements; and that adequate parking will be provided.

Mr. Schrader emphasized that the application is for B-1 zoning, not C-1 zoning; that C-1 zoning allows over 50 permitted uses whereas B-1 zoning allows only 20 to 30 different uses; and that B-1 zoning is for neighborhood businesses and is not regional in nature.

Public comments were heard.

The Commission found that Barbara Blazer, Connie Tyler, and Michelle Green spoke in support of the application. They stated that the proposed use accommodates growth in the area and creates a benefit for shopping access for local residents with less travel distances.

Gene O'Neill, Will and Donna Fink, Robert Waizenegger, Kim Zak, Louise White, Tom O'Neill, Tim Tenerovich, Ann Mitchell, Debbie Kempf, Joyce Cronin, and Lorraine Wasserman spoke in opposition to the application. They stated that the parcel backs up to some of their properties; that a commercial use will be an eyesore; that they are concerned about the loss of trees; that parking areas will replace trees; that they purchased their properties knowing the existing zoning; that they are concerned about run-off from the parking lots; that they are concerned about wetlands; that the Professional Engineer based his comments on 1987 rules and regulations regarding wetlands; that they question the wetlands demarcation line; that recent in-fill projects have been subdivisions, not commercial uses; that the proposed shopping center, if approved, would be situated between three established neighborhoods; that they are concerned about noise pollution, lighting from vehicles, parking lot lighting, odors, traffic increases, and

**Public
Hearing/
C/Z
No. 1632
(continued)**

depreciation of property values; that there are 15 shopping areas within one-half mile; that there are many vacant retail sites in the area; that the need is not there; that a commercial site will attract crime; that Route 24 is an evacuation route; that they are concerned about commercial wells impacting their private wells; that they are concerned about large septic systems impacting the water table; that they object to the minimal time that they have had to review the record; that the entrance location will cause backups on Route 24; that a shopping center will not improve their residential property values; that development of this site will impact the birds and other wildlife in the area; that there should be a minimum buffer of 100 feet as recommended by DNREC; that the use is not compatible with the residential character of the adjacent residential areas; that they oppose the size of the rezoning; that traffic is the major concern; that they oppose the scale of the project; that the project will impact Route 24, a Collector Route; that Route 24 is already a dangerous and congested road; that Route 24 is not wide enough; that there are many serious accidents on Route 24; that it is impossible to turn left out of developments onto Route 24; that the State does not support development in Investment Level 3 areas; that there is tidal water in the area and when there are high tides, water comes up on the property; that pollutants will work into the groundwater (from cars in the parking lot) and go into the creek and the bays; that some of them have no objection to the developer constructing single family homes on the site; that the proposal is not compatible with the surrounding community; that they do not need more retail stores; that the proposal is intense development – 75,000 to 100,000 of leased space and 500 parking spaces; that the proposal will affect the quality of life in the area; and that they are concerned about the environment and the health and safety of the residents.

It was noted that Ann Mitchell read an email in opposition to the application from Mary and Mike Nicklaus. The email was made a part of the record.

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

**M 172 09
Defer
Action on
C/Z
No. 1632**

A Motion was made by Mr. Vincent, seconded by Mr. Cole, to defer action on Change of Zone No. 1632 filed on behalf of Pelican Landing –Route 24, LLC.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
 Mr. Wilson, Yea; Mr. Cole, Yea;
 Mr. Phillips, Yea**

**Public
Hearing
(C/Z**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL

No. 1633) RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.708 ACRES, MORE OR LESS” (Change of Zone No. 1633) filed on behalf of Hertrich Properties V, Inc.

Public Hearing (C/Z No. 1633) The Planning and Zoning Commission held a Public Hearing on this application on February 26, 2009 at which time they deferred action and left the record open for receipt of the final PLUS response.

(continued) (See the minutes of the meeting of the Planning and Zoning Commission dated February 26, 2009.

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

Mr. Lank distributed Exhibit Books which were provided by the Applicant.

Mr. Lank reported that a letter dated March 13, 2009 was received from Constance Holland, Director, Office of State Planning Coordination, stating that “in reviewing the recently adopted County Certified Plan, it appears that the area is marked as commercial on the Future Land Use Map; with that in mind and knowing that other similar commercial uses exist in the area, the State has no objection to the rezoning of this parcel and we have no additional comments at this time.”

Frederick Hertrich, Principal of the Applicant, was present with James Sharp, Attorney, and Al Guckes, Licensed Engineer. They stated that the site contains two (2) parcels with a triangular shape at the corner of U.S. Route 13 and O’Neals Road; that the site is presently improved with three (3) billboards; that the Applicant seeks to expand his business; that they intend to utilize the site for vehicle sales and storage; that they anticipate that they can store 110 vehicles on the site; that a 4,500 square foot building is proposed; that they anticipate having three (3) to five (5) employees; that the site is directly across U.S. Route 13 from other sites utilized by the Applicant for automotive sales and service; that the site is in close proximity to other commercial and business uses; that the use is an expansion of an existing use, even though it is across U.S. Route 13; that DelDOT did not require a Traffic Impact Study; that no additional entrances are proposed on U.S. Route 13; that the Applicant is prepared to work with DelDOT on right-of-way dedications; that Best Management Practices will be utilized in maintaining stormwater management features; that two (2) ponds are proposed to the rear of the site and that they create a buffer from neighboring properties; that septic has been approved for the site; that a 20-foot wide landscape corridor buffer will be provided; that this site is the only corner of the intersection of U.S. Route 13 and O’Neals Road that is not zoned commercial; that the rezoning could be interpreted as an infill; that other commercial/business uses in the area include an insurance office,

**Public
Hearing
(C/Z
No. 1633)
(continued)**

an automotive body shop, automotive and truck sales, a radio station, a tractor sales and rental facility, etc.; that the site is limited in size; that the site is already being used commercially by the use of the billboards; that the site has been used to display trucks for sale; that the only entrance to be used to access the site will be from O'Neals Road; that there are no wetlands on the site; that they have not yet submitted a formal entrance plan for the site to DelDOT since they do not have the necessary zoning; and that the primary use of the site is for the storage of vehicles.

Mr. Sharp reported that, as a result of comments heard at the Public Hearing before the Planning and Zoning Commission, the initial site plan was amended by relocating the landscaped buffer. Mr. Sharp presented the amended site plan to the Council and it was made a part of the record.

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

**M 173 09
Defer
Action on
C/Z
No. 1633**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1633 filed on behalf of Hertrich Properties V, Inc.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
 Mr. Wilson, Yea; Mr. Cole, Yea;
 Mr. Phillips, Yea**

**C/Z
Nos. 1661
and 1662**

Mr. Lank, Director of Planning and Zoning, advised that the Applicants requested that the applications for Change of Zone No. 1661 and Change of Zone No. 1662 be combined for the purpose of presentation. Mr. Lank noted that the decisions for each application must be made separately. There was no opposition to this request by the Council members.

**Public
Hearing
(C/Z
Nos. 1661
and 1662)**

A Public Hearing was held on the Proposed Ordinances entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 9.03 ACRES, MORE OR LESS" (Change of Zone No. 1661) and "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 19.02 ACRES, MORE OR LESS" (Change of Zone No. 1662) filed on behalf of Wayne Baker.

The Planning and Zoning Commission held a Public Hearing on these applications on February 26, 2009 at which time they deferred action and left the record open for receipt of the final response from PLUS.

(See the minutes of the meeting of the Planning and Zoning Commission dated February 26, 2009.)

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

Public
Hearing
(C/Z
Nos. 1661
and 1662)
(continued)

Mr. Lank distributed Exhibit Books which were provided by the Applicant. Mr. Lank reported that the following correspondence was received after February 26, 2009, the date of the Public Hearing before the Commission:

1- Letter of opposition from Deborah Schultz dated March 20, 2009 commenting on the application.

2- Letter of opposition from Robert Howard dated March 24, 2009 commenting on the application.

3- Email from Don Post dated March 23, 2009 asking the Council to leave the record open for public comment for 30 days since the issue has been placed on the Milton Town Council's Agenda for April 6, 2009.

4- Letter from Jeffrey L. Stone, Director of Infrastructure and Intergovernmental Relations, Delaware Economic Development Office, stating that, from an economic standpoint, DEDO is supportive of the proposed zoning change, subject to whatever conditions Sussex County deems necessary to insure the appropriate development of the property; that they support the rezoning of this property because its current heavy industrial use is not appropriate in most other locations; that DEDO recognizes that this property is located in an Investment Level 4 Area according to the Strategies for State Policies and Spending and would not ordinarily be eligible for State support; and that, based on the information and representations provided by the Sussex County Attorney to the Office of State Planning Coordination, DEDO is satisfied that the County has officially included this property in the growth zone of the Sussex County Comprehensive Future Land Use Plan. In the letter, Mr. Stone concluded by stating "We are aware that Sussex County still must provide an official Comprehensive Plan map showing the change in the officially adopted future land use to the Office of State Planning Coordination to make the change official and this endorsement is conditioned on that taking place."

[Mr. Lank reported that the County is still awaiting a response from Constance Holland, Director, Office of State Planning Coordination.]

5- Julie Wheatley, Director, Sussex County Economic Development Office, supporting the economic impact statement relating to this application.

The letters were made a part of the record.

Mark Baker of Wilson Baker, Inc. was present with Mark Davidson of DC Group. They stated that the site for Change of Zone No. 1661 (Parcel 22)

Public
Hearing
(C/Z
Nos. 1661
and 1662)
(continued)

contains 9.03 acres that was approved in 2005 for a Conditional Use for a propane, kerosene, diesel fuel storage and transfer facility; that the site for Change of Zone No. 1662 (Parcel 23) contains 19.02 acres surrounding a State Emergency Operations Tower and is adjacent to an existing railroad line that will serve the property via a proposed spur line for access across the property; that Parcel 23 has been included within a Sussex County Growth Area; that both sites are proposed to be rezoned from AR-1 Agricultural Residential to HI-1 Heavy Industrial; that the site for Change of Zone No. 1661 adjoins the railroad; that both sites have frontage along Route 30, a State designated truck route; that the adjoining property to the west is in agricultural use and is separated from the sites by a hedgerow; that the sites drain from the north to the south; that the southerly portion of the site for Change of Zone No. 1662 is wooded to Pemberton Branch; that 0.78 acre of wetlands exist along Brittingham Branch; that, on the site for Change of Zone No. 1662, they are conceptually proposing four pad sites, containing 2 to 3 acres each; that a railroad spur is proposed to serve the existing pad site and the proposed pad sites; that a 30-foot wide buffer is proposed along the agricultural lands to the west; that the sites are located adjacent to an Investment Level 3 Area according to the State Strategies; that the County Comprehensive Plan Update designates the sites in a Town Center Area; that DelDOT has voiced no opposition to the applications; that there is an existing entrance along Route 30; that the entrance to the existing facility has already been built to DelDOT specifications and that DelDOT has issued a "Letter of No Objection" to the proposed access service road; that there is an existing stormwater management pond located on the site; that the site is utilized with an on-site wastewater septic system; that the proposed site is a vacant agriculture field that borders around lands of the State of Delaware; that the proposed stormwater management area is in an upland area to the southerly end of the site for Change of Zone No. 1662 and will be built to meet or exceed State and County regulations and that Best Management Practices will be utilized; that all stormwater will remain on-site; that they have no intent to disturb any wooded areas; that the soils are conducive to infiltration; that a Flood Zone A exists to the south of the site outside of any disturbance areas; that they will work with the State Fire Marshal's Office; that on-site septic disposal is proposed on each pad site and will be located between Route 30 and the service road creating a greater setback for any buildings; that the Delaware Department of Agriculture supports the application since it is located in a growth area; that it is hard to find property with industrial zoning for sale in the County; that this site has been found to be suitable due to the truck route and the railroad; that the use will enhance economic opportunities and job growth; that the location of the site being situated south of the railroad, west of Route 30, near a truck route, and with a large communication tower to the south, is not suitable for residential use; that the Coastal Zone Act boundary is located east of Route One; that they established the use on the site of Change of Zone No. 1661 in 2005 and they recently realized that to expand the use they may have to reapply for another Conditional Use; that they need room to expand; that all agencies can require changes; that rezoning eliminates the need to keep coming back for additional hearings

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before the Commission and the County Council; that the agricultural hedgerow will remain intact; that a 30-foot wide buffer will be provided along the hedgerow; that 60-foot will be dedicated for a railroad spur line into the properties; that wetlands have been delineated and will be left undisturbed; that, in the PLUS comments, they talk about rare species within the Pemberton Branch and Brittingham Branch; that their environmentalists did a survey in the area and a wetlands delineation; that they there are approximately .78 acres of wetlands located along Brittingham Branch and on the west and east sides of the tower in the wooded areas; that the rare species were located along Pemberton Branch; that their property line along Pemberton Branch is the lands of the State of Delaware, which is a wooded area; that they will be protecting the area that the State calls the riparian buffer area; that they have met with the Economic Development Office for Sussex County and are planning a meeting with the Delaware Economic Development Office; that there are unknowns related to Conditional Use projects and businesses do not like to commit to a Conditional Use project; and that they intend to operate their business on this site long term.

Mark Baker addressed comments that he has heard and read in various emails he has received, i.e. whether or not this rezoning is necessary for Sussex County. Copies of the emails were distributed and made a part of the record. In regards to the need for the rezoning, Mr. Baker referenced the comments of the Economic Development Office of the State and the County.

Mr. Baker stated that they retained the services of a realtor to see what sites are available. The realtor found 14 properties; however, only one property had rail access but it had poor road access and it was 25 percent unusable due to wetlands. Mr. Baker stated that these findings indicate that there are no sites in Sussex County comparable to the proposed sites. In regards to the granting of an easement for wetlands and the forested lands on the southern edge, it was claimed that the developer argues that because the acreage is unbuildable, it is the same as an easement. Mr. Baker stated that, in accordance with the topographic survey, on the southern edge around the tower, the property drops off very steeply and therefore, the lands are unusable. He stated that they would be open to an easement or a gift of the land to the State of Delaware, but that they would like to do it at the appropriate time of development. Further, he stated that it is their intent to work with the State to preserve those lands but they do not feel it is appropriate as a mandated condition of rezoning. In regards to the location of the stormwater ponds, Mr. Davidson previously addressed those issues; however, Mr. Baker noted that the final site plan may not have stormwater ponds. Mr. Baker stated that some comments by the opposition distort the facts of the application. Mr. Baker stated that his family has a vested interest in protecting these lands.

Mr. Baker stated that comments were also made that the Planning and Zoning Commission has said that they would prefer for these parcels to be

considered for Conditional Use instead of Change of Zone. Mr. Baker stated that this is untrue as the Commission has not made any decision on these applications.

Public comments were heard.

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B. J. Hughes spoke in support of the applications. He stated that it is difficult to find property along a truck route with rail access and that the applications have potential to bring more jobs and revenue to the area.

Virginia Weeks, Dara Schuamier, Clifford Newlands, Joyce Cronin, Deborah Shultz, Carol Basin (Citizens for Unincorporated Areas of Sussex County), Maria Simoes, Fran Falender and Ray Conlon spoke in opposition to the applications. They stated that the area is primarily residential and a Heavy Industrial District is totally out of character and intensity with the surrounding development and proposed developments; that the proximity is too close to an incorporated municipality and to the development known as Elizabethtown; that the Town of Milton will be encumbered with both fire and police responsibilities; that the location is on or near major roads; that DelDOT did not require a Traffic Impact Study, only an analysis; that a traffic study, based on all new and proposed growth, needs to be done; that there are no existing public water or public sewer facilities nearby; that if the Council is going to permit the project, it should be imperative that sewer and water be available; that the project, if approved, should be screened from the neighbors, including berms and trees; that the neighbors' quiet enjoyment of their homes will be jeopardized; that they question the days and hours of operation; that they are concerned about noise, storm water run-off and mineral and chemical run-off; that they are concerned about propane being transported on the railroad and the potential dangers; that the railroad runs close to homes in Ellendale; that they are concerned about the contamination of important water supplies; that currently, the rail line is largely un-used; that the County could maintain more control with a conditional use versus a change of zone; that the railroad track is a huge hazard to the area; that any catastrophe, such as a petroleum accident, would result in a huge exposure to the health of the residents; that there was no Public Hearing on the amendment to the Land Use Map to include these parcels in the County's growth zone; that the Baker family should have established communications with area residents and should have had regular meetings to discuss plans; and that the County's public hearing notice requirements are inadequate and the County should improve its communication with the people of Sussex County.

There were no additional public comments.

M 174 09
Withdrawn

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to close the Public Hearing on Change of Zone Nos. 1661 and 1662 filed on behalf of Wayne Baker and to leave the record open until April 15, 2009 for written comments from PLUS and the Town of Milton.

Mr. Cole and Mrs. Deaver withdrew their Motions.

M 175 09 **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to close the**
Close **Public Hearing on Change of Zone Nos. 1661 and 1662 filed on behalf of**
Public **Wayne Baker and to leave the record open until April 15, 2009 for written**
Hearing **comments.**
M 175 09 **Motion Adopted: 4 Yeas, 1 Nay.**
(continued)

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Phillips, Nay

M 176 09 **A Motion was made by Mr. Cole, seconded by Mr. Vincent, to adjourn at**
Adjourn **5:01 p.m. Motion Adopted by Voice Vote.**

Respectfully submitted,

Robin A. Griffith
Clerk of the Council