



Sussex County Council Agendas & Minutes

SUSSEX COUNTY COUNCIL
GEORGETOWN, DELAWARE, JANUARY 13, 2004

Call to Order

The regular meeting of the Sussex County Council was held Tuesday, January 13, 2004, at 6:30 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Dale R. Dukes	President
Finley B. Jones, Jr.	Vice President
Lynn J. Rogers	Member
George B. Cole	Member
Vance Phillips	Member
Robert L. Stickels	County Administrator
David Baker	Finance Director
James D. Griffin	County Attorney

M 038 03 Approve Agenda

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the Agenda of January 13, 2004.

Motion Adopted: 5 Yea.

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

M 039 03 Approve Minutes

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

A Motion was made by Mr. Rogers, seconded by Mr. Jones, to approve the minutes of January 6, 2004.

Corre- spondence

Motion Adopted: 5 Yea.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

**Corre-
spondence
(continued)**

Mr. Griffin read the following correspondence:

THE WAY HOME PROGRAM, GEORGETOWN, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

SUSSEX FAMILY YMCA, GEORGETOWN, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

**James
Farm
Lease**

DELAWARE HOSPICE, GEORGETOWN, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

**DELAWARE ECUMENICAL COUNCIL ON CHILDREN AND FAMILIES,
WILMINGTON, DELAWARE.**

RE: Letter in appreciation of Human Service Grant.

**M 040 04
Adopt
Occupancy
Agreement/**

DELAWARE SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS,

**Center for
the Inland
Bays**

STANTON, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

**Land
Acquisition
for
Dagsboro-
Frankford
SSD**

KINFOLK, WILMINGTON, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

**Land
Acquisition
for
Dagsboro-
Frankford
SSD
(continued)**

**SARAH COOKS EY, DELAWARE COASTAL PROGRAMS, DEPARTMENT OF
NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, DOVER,
DELAWARE.**

**RE: Letter in appreciation of the County Council holding a workshop on Riparian
Buffers.**

LEONARD P. KOBER, REHOBOTH BEACH, DELAWARE.

**RE: Letter commending Sussex County Employee, Richard McCabe, Director of Public
Works Division.**

**Mr. Stickels and Mr. Jim Alderman of the Center for the Inland Bays discussed the
renewal of an Occupancy Agreement between Sussex County Council and The Center for
the Inland Bays for the James Farm site. The original Agreement, which was executed in
1998, was for a term of five years with a five-year option. Mr. Alderman highlighted the
improvements that have been made at the James Farm during the first five years, including
the establishment of trails and an observation platform. He noted that all activities have
been in keeping with the deed restrictions established by Mary Lighthipe who conveyed the
lands to Sussex County.**

Mr. Stickels noted that the term of the new Agreement would be for five years, commencing on January 13, 2004 and ending on January 13, 2009. The annual occupancy fee is \$1.00 for each year of the Agreement.

A Motion was made by Mr. Rogers, seconded by Mr. Jones, to Adopt the Occupancy Agreement between Sussex County Council and The Center for the Inland Bays.

Motion Adopted: 5 Yea.

**M 041 04
Approve
Land
Acquisition
for
Dagsboro-
Frankford
SSD**

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

**Adminis-
trator's
Report**

Mr. Stickels and Mr. Izzo, County Engineer, discussed the purchase of 187± acres on Piney Neck Road in Dagsboro shown on Sussex County Tax Map 2-33 6.00 115.00 (approximately 64.37 acres); Sussex County Tax Map 2-33 6.00 116.00 (approximately 78.26 acres); and Sussex County Tax Map 2-33 6.00 116.10 (approximately 37.68 acres). Mr. Stickels informed the Council that the purchase of the land is necessary to expand the Dagsboro – Frankford Wastewater Facility.

**Register
of Wills
Lease
with the
State of
Delaware**

Mr. Baker distributed information on the proposed funding for the land acquisition:

Dagsboro-Frankford Sanitary Sewer District

	Available Funds – Connection Fees	\$ 100,000
M 042 04 Approve Register of Wills Lease with the State of Delaware IRB Committee Recommen- dation/ Nature Con- servancy Bond Nature Con- servancy Bond (continued)	County Council Realty Transfer Tax Grant FY 04	
	(Appropriated Reserves) \$ 450,000	
	County Council Realty Transfer Tax Grant FY 05	\$1,000,000
	(Appropriated Reserves)	
	Estimated Loan Funding – State Revolving Fund Loan	<u>\$3,050,000</u>
	Total Funding	\$4,600,000

Mr. Baker noted that it is believed that connection fees will be the source of funding to repay the loan.

Mr. Stickels reported that the County has received the following letters from the Town of Dagsboro:

- A letter dated December 17, 2002 advising the County that the Town is anticipating up to 1,500 new homes.
- A letter dated December 1, 2003 advising the County that an additional 110 townhouses are anticipated.
- A letter dated December 15, 2003 advising the County that an additional 370 homes is anticipated.

Mr. Stickels also reported that a letter was received from William B. Chandler III, a

**M 043 04
Adopt
Resolution
No.
R 010 04
(The
Nature
Con-
servancy
Project)**

member of the Town of Dagsboro Comprehensive Development Planning Committee, dated February 13, 2003, stating that the Planning Committee has been advised of two significant development projects immediately adjacent to Dagsboro; that both of the projects seek to be annexed by the Town of Dagsboro; and that together, the projects would add approximately 1,350 residential units to the Town. Mr. Izzo stated that the new homes planned for the area would necessitate the expansion of the current sewer plant.

**Millville
SSD/
Escrow
Agree-
ments**

Mr. Izzo stated that the County utilized the services of Skip Valliant to look for property, primarily in the Piney Neck Area where the wastewater treatment facility is already located and because the soils in the area are considered good for the use of spray irrigation. Mr. Izzo recommended that the County move forward with the purchase of the land.

**Millville
SSD/
Escrow
Agree-
ments
(continued)**

Mr. Stickels stated that it is necessary to plan for the expansion of the Dagsboro-Frankford facility. He noted that the County is attempting to make plans for all its treatment facilities to carry them through the Year 2025.

A Motion was made by Mr. Jones, seconded by Mr. Phillips, based on the recommendation of the County Administrator and the County Engineering Department, that the Sussex County Council approves the acquisition of the Dagsboro-Frankford Sanitary Sewer District land (3 parcels), as presented.

**M 044 04
Authorize
Execution
of Escrow
Agree-
ments/
Millville**

Motion Adopted: 5 Yea.

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

SSD

Mr. Dukes, Yea

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

**Millville
SSD/
Design
Agreement**

1. Holiday Schedule

**M 045 04
Authorize
Amendment
to Contract/
Design
Agreement/
Millville
SSD**

Sussex County government offices will be closed Monday, January 19, 2004, in observance of the Martin Luther King holiday. Offices will reopen at 8:30 a.m. on Tuesday, January 20. There will be a Council meeting in the Council Chambers on January 20th.

**SCAPS
Update/
Project
Priority
Presenta-
tion**

Mr. Baker discussed a Lease renewal between the Department of Administrative Services of the State of Delaware and Sussex County for the Office of the Register of Wills, which is located in the Georgetown Chancery Court Building. The previous lease, which expired on June 30, 2003, included office space in the Courthouse. The previous lease was for 998 square feet at \$9.00 per square foot totaling \$8,981 annually. The proposed lease is for 2,000 square feet at \$6.00 per square foot totaling \$12,000 annually. Mr. Baker advised that the proposed lease is for a five -year period, with three options to renew the Lease for a period of five years each.

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve a Lease with the State of Delaware for office space for the Register of Wills.

Motion Adopted: 5 Yea.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

Mr. Baker presented a request from The Nature Conservancy that the Sussex County Council approve a bond issue in an amount not to exceed \$7,000,000 to be issued by the Colorado Educational and Cultural Facilities Authority for the purpose of financing land to be purchased by The Nature Conservancy. The Nature Conservancy would use the funding to purchase 908 acres between Milton and Ellendale from the Glatfelter Pulpwood Company. The land would be reforested with native species including holly, pine and blueberry. The Nature Conservancy would also provide funds to care for and maintain the property.

Mr. Baker noted that this application is only a request for the County Council's approval of the bonds to be issued for The Nature Conservancy by the Colorado Authority. Mr. Baker explained that in order for the bonds to be tax-exempt, Federal tax law requires a public hearing and approval by the County Council.

**SCAPS
Update/
Project
Priority
Presen-
tation
(continued)**

Mr. Baker advised that a Public Hearing was held by the Industrial Revenue Bond Committee on January 6, 2004 and they have recommended that the County Council approve the bonds.

Maria Trabka, Director of Conservation for the Delaware Bayshores Program of The Nature Conservancy, was present to discuss the purpose of the request and the proposed use of the land. Ms. Trabka stated that the 908-acre parcel falls within the watershed of the Delaware Bay and is in close proximity to one of the four most forested areas in the

State of Delaware. She further stated that the Conservancy proposes that the property will be restored to a mixed forest community composed of native hardwoods and pine.

Ms. Trabka reported that State funds will be used to purchase a conservation easement over a section of the property. In addition, a Stewardship Endowment is being established for the maintenance of the land over the long term.

Mr. Baker reviewed a Proposed Resolution approving the issuance of the bonds for The Nature Conservancy Project.

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Resolution No. R 010 04 entitled “A RESOLUTION APPROVING THE ISSUANCE OF UP TO \$7,000,000 REVENUE BONDS BY THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY (THE NATURE CONSERVANCY PROJECT)”.

M 046 04
SCAPS
Update

Motion Adopted: 5 Yea.

M 046 04
Adopt
Findings
and
Recommen-
dations of
the SCAPS
Update
(continued)

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

Mr. Izzo, County Engineer, discussed Escrow Agreements with Caldera Properties – Millville, LLC and Bay Forest, LLC for the design of regional sewer infrastructure for the Millville Sanitary Sewer District. In accordance with the Agreements, Bay Forest and

**SCRWF
Sludge
Handling
Upgrade
Contract/
Change
Order**

Caldera shall deposit \$197,390.00 with the County, which will be held in escrow for the payment of fees under the engineering proposal. Fourteen (14) percent of the amount will be funded by Caldera and eight-six (86) percent of the amount will be funded by Bay Forest.

**M 047 04
Approve
Change
Order/
Sludge
Handling
Upgrade
Contract**

Mr. Izzo noted that the actual construction costs of the regional improvements are being proposed to be paid completely by Caldera.

It was noted that the Bay Forest, LLC project has not yet been approved by the County and that if the project is not approved, Caldera Properties – Millville, LLC will “be on the hook” to build the improvements.

It was further noted that Bay Forest, LLC will be providing the funding for the design phase whether or not they obtain approval of the project. The design of the regional sewer infrastructure will not commence until the funds have been deposited by both developers.

**Amend
Agenda**

Mr. Izzo clarified that Bay Forest would have to construct additional infrastructure beyond what is included in the Escrow Agreement to develop their property.

**Process
of Con-
ducting
Public
Hearings**

A Motion was made by Mr. Jones, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council authorizes its President to execute an Escrow Agreement with Caldera Properties – Millville, LLC and Bay Forest, LLC to provide the design of regional sewer infrastructure for the Millville Sanitary Sewer District.

**Public
Hearing
(C/U
No. 1515)**

Motion Adopted: 5 Yea.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

Mr. Izzo presented an amendment to a contract with Whitman, Requardt and Associates, LLP to perform design services at a cost of \$197,000.00. The cost will be 100 percent financed by the Escrow Agreements with Caldera Properties – Millville, LLC and Bay Forest, LLC.

**M 048 04
Adopt
Proposed
Ordinance
(C/U
No. 1515)
(Denied)**

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, based upon the recommendation of the County Engineering Department that the Sussex County Council authorize its President to execute an Amendment No. 22 to its contract with Whitman, Requardt and Associates, LLP to perform design services for the sub-regional pump station and force main and Cedar Lane Gravity Sewer within the Millville Sanitary Sewer District, contingent upon the appropriate funds being deposited by Caldera Properties – Millville, LLC and Bay Forest, LLC.

**Public
Hearing
(C/U
No. 1516)**

Motion Adopted: 5 Yea.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

Mr. Izzo reported that in April, 2003 the County Council entered into a contract with Whitman Requardt & Associates for a review of the South Coastal Area Planning Study (SCAPS). The original study was performed in 1989.

**M 049 04
Refer
Public
Hearing
to End
of Agenda**

Mr. Stickels introduced Clifton Murray, Mayor of Selbyville; Gary Taylor, Town Manager of Selbyville, and Chuck Hauser. Mr. Stickels reported that he received a letter from the Town of Selbyville, who currently utilize a portion of the County's ocean outfall (1.5 million gallons per day). The Town is requesting that the County allow them to upgrade to 2 million gallons per day due to the growth they are experiencing.

**Public
Hearing
(C/U
No. 1517)**

Dennis Hasson and Will Hinz of Whitman, Requardt & Associates presented a power point presentation on the South Coastal Area Planning Study Update. Topics of discussion included the project service area, priority projects, projected build-out EDUs, growth projections, and treatment and disposal alternatives. Mr. Hinz stated that one of the primary scopes of the project was to examine the impact of the Environmentally Sensitive Developing Area, including the priority projects of Doves Landing, Fairway Village, Townsend Property, Barrington Park and Union Wesley.

**Public
Hearing
(C/U
No. 1517)
(continued)**

Mr. Hinz stated that within the existing service area are several existing sewer districts including North Bethany, Bethany Beach, South Bethany, Fenwick Island, Ocean View, Holts Landing, and Cedar Neck. Future districts to be included are Bay View and Sea Country, West Fenwick, Bayard, Miller Creek, South Ocean View, Millville, Holts Landing Extended, and Vines Creek. He stated that the new service area is mostly defined by the Environmentally Sensitive Developing Area including Beaver Dam, a reduction in Vines

Creek, West Fenwick Extensions, and a 600' extension for parcels bordering Environmentally Sensitive Developing Area boundary.

The primary density assumptions used in calculating the build-out for the entire service area were:

**M 050 04
Adopt
Ordinance
No. 1655
(C/U
No. 1517)**

- Existing subdivisions will not be further sub-dividable.
- Density of 4 EDUs/acre for future unincorporated Residential.
- Density of 12 EDUs/acre for existing C-1 Commercial.
- 2,000 gallons per day/acre for existing B-1 and future Commercial.
- Densities within incorporated areas based on individual municipal zoning codes.
- State (DNREC) and County (James Farm) lands discounted.

Mr. Hinz reported that the total SCAPS build-out is calculated to be 89,000 EDUs, which is a build-out increase of approximately 22 percent over the 1990 SCAPS. Further, treatment/disposal requirements will increase to 8 – 11 million gallons per day.

Mr. Hasson reported that the SCAPS report looked at treatment/ disposal alternatives including the expansion of the SCRWF/Ocean Outfall; spray irrigation, deep well injection, and water reuse. Mr. Hasson presented the following treatment/disposal summary:

**Public
Hearing
(C/Z
No. 1528)**

- Potential treatment capacity of 24 MGD available at SCRWF.
- Existing Ocean Outfall adequate through 2065 (including 2 MGD for Selbyville).
- Before 2065 (useful life) – rehabilitate/parallel/replace effluent forcemain/outfall for build-out.
- Other options: spray irrigation and water reuse.
- Action items: monitor regional growth, monitor condition of Ocean Outfall, layout SCRWF for 24 MGD expansion, and identify land/easement acquisitions and permitting.

Mr. Hinz reported that the final draft of the complete study is scheduled for April, 2004.

**Public
Hearing**

**(C/Z
No. 1528)
(continued)**

Mr. Archut stated that the purpose of the presentation today was to update Council on the study and to confirm that the Engineering Department is proceeding in a manner satisfactory to the County Council. Mr. Archut asked for the Council's concurrence on:

- Flow allocations including proposed density calculations and flow allocations for the Town of Selbyville.
- Revised service area to accommodate the Environmentally Sensitive Developing Area.
- Proposed future improvements for the Ocean Outfall.
- Consolidation into single South Coastal Sewer District.
- Development of Regional Infrastructure for Beaver Dam service area.
- Preparation of system connection charge (impact fees) surcharge for expanded service area
- Improvements to the Ocean Outfall to be able to accommodate the larger service area.

Mr. Stickels noted that the existing users should not experience an increase from this program.

Mayor Murray of the Town of Selbyville stated that the proposal will meet their requirements and that they feel they need the additional capacity for future growth.

A Motion was made by Mr. Phillips, seconded by Mr. Jones, that the Sussex County Council hereby adopts the following findings and recommendations of the South Coastal Area Planning Study Update, as recommended by the County's Consultants, Whitman, Requardt & Associates, and the County Engineering Department:

- Concurrence with the flow allocations, revised service area, and future improvements.
- Consolidation of the planning area into a single South Coastal Sewer District.
- Development of regional infrastructure for the Beaver Dam Service Area.
- Creation of a system connection charge surcharge for the expanded service area.

**Public
Hearing
(C/Z
No. 1528)
(continued)**

Motion Adopted: 4 Yea, 1 Nay.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea**

Mr. Stewart, Project Engineer, presented Change Order No. 1 to the South Coastal Regional Wastewater Facilities (SCRWF), Sludge Handling Upgrade Contract. Mr. Stewart reported that during the bid process, the CSI sub-contractor submitted a price for a scope of work that was significantly higher than the one first provided to the Consulting Engineer and that some items in the scope of work were determined to be unnecessary. Tri-Jay Systems, the sub-contractor, was asked to delete these items from the sub-contract and to provide a credit for their deletion. This negotiation resulted in a reduction in scope and cost in the amount of \$68,250.00. In addition, the contractor (Bearing Construction) allowed a credit equal to five percent (\$3,412.50).

A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the County's Consulting Engineer, Stearns & Wheeler, LLC and the Sussex County Engineering Department, and contingent upon approval of the State Revolving Fund, acting through the Financial Assistance Branch, Division of Water Resources, Delaware Department of Natural Resources and Environmental Control, that Sussex County Council approves Credit Change Order No. 1 to the contract with Bearing Construction, Inc. for Sussex County Contract 02-12, South Coastal Regional Wastewater Facility Sludge Handling Upgrade in the amount of \$71,662.50, thereby decreasing the final contract total amount from \$3,466,835.00 to \$3,395,172.50.

**Public
Hearing
(C/Z
No. 1528)
(continued)**

Motion Adopted: 5 Yea.

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

It was the consensus of Council that “Grant Requests” be moved to the end of the Agenda.

Mr. Dukes told the County Council members that Mr. Griffin and he had been discussing how to handle future zoning hearings. Mr. Griffin had questioned how the hearings would be conducted and who would be conducting them. Mr. Dukes stated that Mr. Griffin would be conducting the Public Hearings.

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CLASSROOM/STUDIO TO TEACH POTTERY AND OTHER CRAFTS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 13,789 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1515) filed on behalf of Robin David Reifsnyder.

The Planning and Zoning Commission held a Public Hearing on this application on

December 18, 2003. Mr. Lank, Director of Planning and Zoning, reported that there were no parties present on behalf of the application at the Public Hearing. The Commission recommended that the application be denied since there was no record of support since no one appeared on behalf of the application.

**Public
Hearing
(C/Z
No. 1528)
(continued)**

Mr. Lank distributed a written statement from the applicant, which provided information about the application.

Mr. Lank questioned the audience as to whether anyone was present on behalf of the application.

The County Council found that there were still no parties present on behalf of the application.

The Public Hearing was closed.

A Motion was made by Mr. Jones, seconded by Mr. Rogers, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CLASSROOM/STUDIO TO TEACH POTTERY AND OTHER CRAFTS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 13,789 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1515) filed on behalf of Robin David Reifsnyder.

Motion Denied: 5 Nay.

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

Mr. Rogers, Nay; Mr. Jones, Nay;

Mr. Dukes, Nay

**M 051 04
Defer
Action on
C/Z No.
1528**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTO DETAILING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 20,095 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1516) filed on behalf of Michael and Heather Kirby.

**Public
Hearing
(C/U
No. 1516)**

The Planning and Zoning Commission held a Public Hearing on this application on December 18, 2003 at which time they recommended that the application be approved with four conditions.

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing. The summary and the findings and recommendations of the Commission were admitted as part of the County Council’s record.

**M 052 04
Adopt
Proposed
Ordinance
(C/U
No. 1516)
(Denied)**

The Council found that there were no parties present on behalf of the application.

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to refer this Public Hearing to the end of the Agenda.

Motion Adopted: 5 Yea.

**M 053 04
Council-
manic
Grant**

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

**M 053 04
(continued)**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO

**M 054 04
Youth
Activity
Grant**

**GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL
RESIDENTIAL DISTRICT TO BUILD AND DISPLAY BARNs, DOGHOUSES, ETC.,
TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN
BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 10.05 ACRES, MORE
OR LESS” (Conditional Use No. 1517) filed on behalf David Kiser.**

**M 055 04
Youth
Activity
Grant**

**Mr. Dukes announced that he would not be participating in the Public Hearing due to a
possible conflict of interest. Mr. Jones presided over the Public Hearing.**

**The Planning and Zoning Commission held a Public Hearing on this
application on December 18, 2003 at which time they recommended that the
application be approved with six conditions.**

**M 056 04
Council-
manic
Grant**

**Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public
Hearing. The summary and the findings and recommendations of the Commission were
admitted as part of the County Council’s record.**

The Council found that David Kiser was present on behalf of his application. Mr. Kiser

**M 057 04
Youth
Activity
Grant**

stated that he plans to build utility barns; that he has a 40' x 60' barn with a lean-to on the site; that there would be no more than five (5) display models displayed on the site; that he wants to open this business for purposes of a family income; that the product will be custom barns; and that the business will be called Sycamore Barns.

**M 058 04
Grant**

Mr. Cole recommended that the conditions should include the limitation of displaying only five display models. Mr. Cole also recommended that the display area should be limited to ½ acre.

**M 058 04
Youth
Activity
Grant
(continued)**

There were no parties present in support of or in opposition to the application.

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt Ordinance No.

**M 059 04
Council-
manic
Grant**

1655 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO BUILD AND DISPLAY BARNS, DOGHOUSES, ETC., TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 10.05 ACRES, MORE OR LESS" (Conditional Use No. 1517) filed on behalf David Kiser, with the following conditions:

**M 060 04
Council-
manic
Grant**

1. Business hours shall be restricted to 8:00 a.m. to 6:00 p.m. Monday through Saturday, with no Sunday hours.
2. All storage of materials shall be indoors.
3. Waste material storage shall be screened from the view from Road 475.
4. Lighting on the display area shall be directed so as not to reflect into neighboring properties.
5. The display area shall not exceed an area measuring 60' x 90' in front of the existing barn.
6. One two-side d unlighted ground sign, not exceeding 32 square feet, may be erected on the site.

**M 061 04
Adjourn**

Motion Adopted: 4 Yea, 1 Absent.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Absent

Mr. Dukes rejoined the meeting.

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 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 95.2 ACRES, MORE OR LESS”

(Change of Zone No. 1528) filed on behalf of Cadbury Senior Services, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on December 18, 2003 at which time they deferred action. On January 8, 2004 the Commission deferred action again.

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing, which included references to comments made by DelDOT, the Sussex County Engineering Department, the Office of State Planning Coordination, the Sussex Conservation District, the Natural Resources Conservation Service, and the Lewes Board of Public Works. Also included in the summary was a reference to a letter received from Fuqua & Yori, P.A., attorneys for the applicant. The summary and the findings and recommendations of the Commission were admitted as part of the County Council’s

record.

Mr. Lank reported that on December 29, 2003 a letter was received from the City of Lewes supporting the comments from the Lewes Board of Public Works relating to the potential negative effects on the water recharge area along Gills Neck Road as a result of the Cadbury Development Project.

Mr. Lank reported that a letter was received by fax on December 23, 2003 from the Lewes Fire Department, Inc. stating that they had met with representatives of Cadbury Senior Services and discussed the following:

- A minimum roadway width of 18-22 feet with malleable curving and no on-street parking.
- Problems with center islands and pork-chop islands at entrances.
- Streetlighting and uniform building numbering system that can easily be read from a roadway.
- Management and maintenance of the community and response of the staff to minor emergencies to limit the need for the Lewes Fire Department's services and the need for an appropriate fixed annual funding donation with cost of operations increases over the future of the community.

The letter stated that the Lewes Fire Department has no objection to the proposed community providing the items in the letter are met.

Mr. Lank reported that at the December 18th Public Hearing, Mr. Lowder Mitchell, farm owner of Zwaanendael Farm, an adjoining land owner, expressed concerns about trespassing, traffic, water, drainage, and the detrimental effect that roads and buildings will have on their farming operations. They requested that, if the application is approved, that the applicant be required to provide fencing and a berm. Mr. Lank further reported that Cadbury Senior Services, dated December 30th, stating that Cadbury will employ proper engineering techniques including a berm along the shared property line to ensure that runoff does not occur onto the farmland and that they will place some type of physical barrier (fencing or natural growth) to prevent foot traffic across the farmlands.

Mr. Lank reported that on January 7, 2004 he received a letter dated November 28, 2003 from Joseph DeMul of South Bethany in support of the application. Another letter was received on January 12, 2004 from Hazell Smith of Gills Neck Road expressing concerns similar to Lowder Mitchell's

about trespassing and commenting on the impact that Bay Breeze Development has had on her farming operation.

Mr. Dukes submitted five letters that he has received in support of the application. The letters were made a part of the record.

It was noted that the Planning and Zoning Commission can require fencing and a berm as part of site plan approval.

Mr. Lank distributed a copy of the Exhibit Booklet, which was provided by the Applicant.

The County Council found that James Fuqua, Attorney; Victor Amey of Cadbury Senior Services; Ed Kelly of New Life Management Development, Darin Lockwood and John Barwick of Meridian Consulting Engineers; and Jeff Bross and Steve Smailor of Duffield Associates were present on behalf of the application. Mr. Fuqua stated that the applicant's presentation would consist of a review of the plan, addressing the issue raised by the Lewes Board of Public Works, and presenting information about who Cadbury is and what their philosophy is.

Mr. Fuqua stated that the application is for a change of zone of application for MR-RPC zoning for a mixed residential use development; that the property is located on the north side of Gills Neck Road; that the site is located in the Environmentally Sensitive Developing Area and immediately adjacent to the Town of Lewes; that two interconnecting developments are proposed to be developed on the site; that Cadbury is designed as an inter-generational community rather than a separate stand-alone continuing care facility; that the development is designed into two sections, one for a continuing care facility (Parcel A containing 33 acres) and one for single family homes (Parcel B containing 62.2 acres) which will be a non-age restricted community; that Parcel A will contain 48 single family and duplex cottages, 84 apartment units located in two buildings and a health care center with 80 assisted living and skilled nursing rooms; that Parcel B will contain 105 multi-family units and 80 single family lots; that units at the continuing care facility will not be sold and are to remain owned by Cadbury; that Sussex County's Land Use Plan states that Sussex County has an aging population and that the Sussex County median age is 41.1 years and growing older; that Sussex County's Land Use Plan states that "the demographics and trends show the effect of the inward migration on the age of the population in the County"; that the percentage of residents over the age of 65 is 18.5 compared to 11.6 in New Castle County and 11.7 in Kent County; that older residents have some special needs; that the availability of medical services is very important to them as are other public services such as libraries and public transportation; and that village centers that can provide convenient access to these services and lessen

transportation distances should be encouraged and permitted in the developing areas.

Mr. Fuqua stated that while the residential community will not be age-restricted, it will be offered access to the Cadbury activities and amenities and the plan of the development is to provide activities to bring the two communities together. He noted that the residential community would have a recreational complex containing a swimming pool, a clubhouse, and walking paths.

(A comprehensive review of Mr. Fuqua's comments is included in the Planning and Zoning Commission's Public Hearing summary.)

Mr. Fuqua referred to the letter from the Office of State Planning Coordination, which expressed some concerns from the Department of Agriculture as a result of the Mitchell Farm. He noted that the Mitchell Farm is in the Agricultural Preservation Area and the law requires deed disclosures regarding agricultural use. Mr. Fuqua stated that Cadbury will meet all disclosure requirements. He stated that the plan does not show any buildings located within 50 feet of the boundary and a 30 foot landscaped buffer will be provided as part of the 50-foot setback area.

Mr. Fuqua referred to the concerns expressed about drainage from the Cadbury site onto the Mitchell Farm. He noted that the stormwater system will be designed to contain water on the Cadbury site and in addition, a berm will be located along the Mitchell boundary and some type of a physical barrier would be placed along the rear of the property to deter trespassing.

Mr. Fuqua stated that in response to concerns expressed by the Lewes Board of Public Works, the applicant contacted Duffield Associates (a geoscientist firm). A report was prepared by Duffield Associates evaluating groundwater recharge for the proposed Cadbury of Lewes Development.

Jeff Bross of Duffield Associates stated that the site does overlie a recharge area and concurred with the concerns raised by the Lewes Board of Public Works. He stated that they conducted a study and did a hydrologic and groundwater model, which is widely used by their firm and accepted by the regulatory agencies. He stated that the model shows that the proposed plan will have some potential impact on groundwater recharge. Mr. Bross clarified two points: (1) the recharge area that underlies this site is not connected to Lewes' well-head protection area and (2) the recharge area is down-gradient. Accordingly, Duffield Associates developed a plan to provide augmented recharge. Cadbury Senior Services is prepared to commit to this plan. Mr. Bross explained that augmented recharge is the capture of rooftop run-off water which is then recharged into the ground.

Mr. Bross stated that the groundwater would be better off after development by this augmented recharge. He noted that this is an accepted practice by regulatory agencies. (Duffield Associates' report entitled "Evaluation of Groundwater Recharge for the Proposed Cadbury at Lewes Development" was distributed to Council.)

Mr. Cole requested that DNREC be given the opportunity to comment on the Report submitted by Duffield Associates.

Mr. Fuqua referred to the letter from the Office of State Planning, dated December 18, 2004, which refers to the Department of Agriculture's concerns about Mr. Lowder Mitchell's farm. He noted that the letter also states that "the State has no objections to the rezoning of this parcel and we encourage the development because of its proximity to the City of Lewes".

Mr. Fuqua submitted proposed conditions and proposed findings of fact to be considered by the County Council.

Public comments were heard.

Comments made in support of the application referred to Cadbury's strong track record reflecting the organizations' values and high standards; the growing need in Sussex County for senior care/assisted living; and the fact that the proposed use is more desirable than another subdivision.

Comments were made expressing opposition to and concerns about the application referred to encroachment on farmland; the potential problem with trespassing on adjacent properties; that traffic and transportation infrastructure must be considered; that traffic will be impacted; that student traffic and ferry traffic in the area is already a bad situation; that Gills Neck Road cannot support intense development; that there are no bike lanes, shoulders or lights on Gills Neck Road; that the developer must be able to upgrade this road as a condition of approval; that well head protection and water supply must be considered; that the area is a critical recharge area; the threat to agriculture if water flow and drainage are altered; that the adjoining property is in the State's Farm Preservation Program; that there is a need for senior housing, but the proposed location is not appropriate; that this application is really two applications, a single family proposal and a continued care facility, and should be considered separately; and that 10 percent of the assisted living units should be affordable housing and fees based on income.

A large number of people were present in support of the application.

The Public Hearing was closed.

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to defer action on Change of No. 1528 filed on behalf of Cadbury Senior Services, Inc.; to leave the record open until the close of business on February 10, 2004 for written comments from DNREC on the Report submitted by Duffield Associates; and to leave the record open for an additional week, until the close of business on February 17, 2004, for written remarks to comments received from DNREC referencing the Report.

Motion Adopted: 5 Yea.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

Mr. Griffin referred to the Public Hearing on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTO DETAILING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 20,095 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1516) filed on behalf of Michael and Heather Kirby.

The County Council found that there were still no parties present on behalf of the application.

The Public Hearing was closed.

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTO DETAILING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN

**SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 20,095 SQUARE FEET,
MORE OR LESS” (Conditional Use No. 1516) filed on behalf of Michael and Heather
Kirby.**

Motion Adopted: 5 Nay.

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

A Motion was made by Mr. Jones, seconded by Mr. Rogers, to give \$200.00 (\$100.00 each from Mr. Jones’ and Mr. Rogers’ Councilmanic Accounts) to the Delaware Music School for their rebuilding efforts following a fire at their Milford facility.

Motion Adopted: 5 Yea.

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

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$750.00 (\$250.00 from Mr. Phillips’ Youth Activity Grant Account and \$500.00 from Mr. Dukes’ Youth Activity Grant Account) to the Laurel Little League for improvement projects.

Motion Adopted: 5 Yea.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$100.00 from Mr. Phillips' Youth Activity Grant Account to Mid-Coast All-Star Cheerleaders for operating expenses.

Motion Adopted: 5 Yea.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$250.00 from Mr. Phillips' Councilmanic Account to the Millsboro Hut for their building expansion fundraiser.

Motion Adopted: 5 Yea.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

A Motion was made by Mr. Jones, seconded by Mr. Rogers, to give \$500.00 (\$100.00 from each Youth Activity Grant Account) to the Sussex Community Swim Team for pool rental and the purchase of swim equipment.

Motion Adopted: 5 Yea.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$200.00 (\$100.00 each from Mr. Dukes' and Mr. Phillips Youth Activity Grant Accounts) to Delmarva Heat Softball Team for operating expenses.

Motion Adopted: 5 Yea.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

A Motion was made by Mr. Jones, seconded by Mr. Rogers, to give \$250.00 from Mr. Jones' Councilmanic Account to the Bridgeville Community Action Agency for the Christmas Food Basket Give Away.

Motion Adopted: 5 Yea.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give \$500.00 (\$100.00 from each Councilmanic Account) to the Sussex Academy of Arts & Science Sports Booster Association for operating expenses for the sports program.

Motion Adopted: 5 Yea.

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

Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

**A Motion was made by Mr. Rogers, seconded by Mr. Jones, to adjourn at
10:20 p.m. Motion Adopted by Voice Vote.**

Respectfully submitted,

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