



Sussex County Council Agendas & Minutes

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 14, 2006

Call to Order The regular meeting of the Sussex County Council was held Tuesday, February 14, 2006 at 6:30 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

Request For Withdrawal Mr. Stickels advised that a letter dated February 14, 2006 was received from Susie Hudson, Floyd Gallo and JoAnn Gallo requesting permission to withdraw their application for Conditional Use No. 1636.

M 127 06 Accept Withdrawal of C/U Application A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to accept and approve the request for the withdrawal of Conditional Use No. 1636.

Motion Adopted: 4 Yea, 1 Absent.

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

M 128 06 Amend and Approve Agenda A Motion was made by Mr. Jones, seconded by Mr. Dukes, to amend the Agenda by deleting "399 Sandbar Village Wastewater Agreement"; by deleting "Sewer Line Renovation, Phase III – Bid Award"; by deleting the Public Hearing on Conditional Use No. 1636 filed on behalf of Susie Hudson; and to approve the Agenda, as amended.

Motion Adopted: 4 Yea, 1 Absent.

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

Mr. Rogers, Yea

M 129 06 **A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to approve the**
Approve **minutes dated January 31, 2006.**
Minutes

Motion Adopted: 4 Yea, 1 Absent.

M 129 06 **Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Absent;**
(continued) **Mr. Dukes, Yea; Mr. Jones, Yea;**
 Mr. Rogers, Yea

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

GARY L. JAYNE, MAYOR, TOWN OF SOUTH BETHANY,
DELAWARE.

RE: Letter in appreciation of \$5,000 Local Law Enforcement Grant.

Barking **Mr. Phillips reported that he has had several constituents contact him**
Dog **regarding barking dogs and he asked the Council if they had a problem if**
Complaint **he worked with the staff on drafting an ordinance that would address**
 barking dog complaints. The other Councilmembers expressed concern
 that an ordinance cannot be adopted to address every complaint received;
 that this would be similar to a noise ordinance, which is hard to enforce;
 and that it is a civil matter to be pursued in Court with a Disturbing the
 Peace complaint.

Mr. Griffin advised that there is an entire Chapter in State Law that refers
to dogs; however, it does not address barking dogs nor does it create any
form of redress for someone who is disturbed by barking dogs. Mr. Griffin
stated that he is not sure the County is sufficiently staffed to enforce such an
ordinance; that many of the complaints would be at night; that it would
require a subjective opinion as to whether the barking is truly creating a
nuisance; and that it is probably best if the County avoids becoming
involved. Mr. Stickels noted that it is in the Governor's budget to turn
"animal control" over to the counties and that the County is going to have
to incorporate 50 percent of the cost in this year's budget.

Mr. Stickels stated that he would ask the Constable's Office to contact the
other two counties to see how they handle the problem.

Mr. Phillips stated that, unless there is an objection by the Council, he plans
to look into the problem and the drafting of an ordinance. He pledged to
minimize staff's time on the project.

Wastewater **Mr. Stickels presented a wastewater agreement for the Council's**
Agreement **consideration.**

M 130 06
Execute
Agreements/
Colonial
East
Park

A Motion was made by Mr. Phillips, seconded by Mr. Jones, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 538, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Colonial East LTD, for wastewater facilities to be constructed in Colonial East Park, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

M 130 06
(continued)

Motion Adopted: 4 Yea, 1 Absent.

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

Adminis-
trator's
Report

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

1. **Delaware State Housing Authority HOME Contract #03-04**

I am pleased to inform the Council that I have been notified by the Delaware State Housing Authority that they have completed review of the Conditional Closeout Agreement for Sussex County HOME Contract #03-04, and they are pleased to notify the Council that the audit has been approved and there are no discrepancies. I would like to compliment Mr. William Lecates, Director of Community Development and Housing, and his staff for their outstanding work.

2. **Beneficial Acceptance**

The Engineering Department granted Beneficial Acceptance on January 31, 2006, to the Peninsula Parcel G – Conservancy, Sussex County Project No. 81-04, Agreement No. 388. The project is located on the south side of Peninsula Esplanade in the Long Neck Sanitary Sewer District, consisting of 153 condominiums and townhouse units. Included with this report is a fact sheet on the project.

3. **Library Training Schedule**

The new library automation program will soon be activated. The Delaware Division of Libraries is planning to have the system operational by the end of March. Library staff members have been learning the system through on-line training. At least two employees from each library have been attending training provided by the vendor.

During February and March, staff from the Delaware Division of Libraries will be providing on-site training in the libraries. To allow staff to benefit from this training, County libraries will close for one day each. During that

time, two trainers will provide a full day of training for the staff. This will be hands-on training using the library computers. This training will prepare the staff for using the system to circulate library materials. Training on other segments of the system will come later.

The schedule of closings is as follows:

Adminis-
trator's
Report
(continued)

March 1 – Greenwood Library
March 16 – South Coastal Library
March 17 – Milton Library

4. Winter Recess

The Sussex County Council will take a winter recess on Tuesday, February 21, 2006. The next regularly scheduled Council meeting will be at 10:00 a.m. on Tuesday, February 28, 2006, in the Council Chambers.

Draft
Ordinance/
General
Obligation
Bonds
Issuance/
Millville
Area
Expansion
of the
BBSSD

Mr. Baker presented a draft ordinance entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$16,000,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE CONSTRUCTION AND EQUIPPING OF THE MILLVILLE AREA EXPANSION OF THE BETHANY BEACH SANITARY SEWER DISTRICT AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH". Mr. Baker explained that the draft ordinance would authorize the issuance of up to \$16,000,000 of Sussex County General Obligation Bonds, without regard to any original issue discount, in order to finance a portion of the costs for the design, construction and equipping of the wastewater collection, treatment and transmission facilities for the Millville Area Expansion of the Bethany Beach Sanitary Sewer District. The estimated cost for the project is \$34.5 million; \$13.5 million in funding will be provided by developers, which will cover pump stations and transmission and collection lines to be built in the area. The County has negotiated with the State and USDA for a combination of grant and loan funds for the project. In addition, a \$500,000 grant was approved in the County's Fiscal 2006 Budget. A \$2 million grant from the USDA and a \$2.5 million grant from the State of Delaware have been given tentative approval. Also, the USDA has indicated that they would loan the County \$8 million at 4 1/2 percent for 40 years and the State has indicated that they would loan the County \$8 million at 1 1/2 percent for 30 years through the State Revolving Fund Loan Program.

Introduction
of Proposed
Ordinance

Mr. Jones introduced the Proposed Ordinance entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$16,000,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY FOR THE CONSTRUCTION AND EQUIPPING OF THE MILLVILLE AREA EXPANSION OF THE BETHANY BEACH SANITARY SEWER

DISTRICT AND AUTHORIZING ALL NECESSARY ACTION IN CONNECTION THEREWITH". The Proposed Ordinance will be advertised for Public Hearing.

Mr. Stickels conveyed a message to the Councilmembers from Councilman Cole that he would like to be given the opportunity to give input on the "Old Business" items listed on the agenda prior to a vote taking place.

**Old
Business/
Proposed
Ordinance
Relating to
Appeals**

The County Council discussed the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE VIII RELATING TO APPEALS".

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on November 3, 2005 at which time they deferred action. On November 17, 2005, the Commission recommended approval of the proposed ordinance, subject to the following revisions:

1. Section "A" should be amended to only allow appeals of a preliminary plat by deleting the reference to "final" plats.
2. Section "A.2" through "A.4." should be deleted, eliminating appeals to the Planning and Zoning Commission. All appeals should be to County Council.
3. In Section "B", the proposed amendment should be revised to establish a form that should be used for all notices of appeal.
4. In Section "D" and "E", references to appeals to the Planning and Zoning Commission should be deleted.
5. Original Section "F", referring to the fees for appeals to the Commission, should be deleted. Re-lettered Section "F" referring to fees for appeals to County Council should remain.
6. Re-lettered Section "G" should be revised to reflect that the amended appeal procedure shall apply to any preliminary plat approved after the adoption of the amendment.
7. New Section "H" should be added to allow written requests to the Commission for reconsideration of conditions imposed by the Commission.

The County Council held a Public Hearing on November 8, 2005 at which time action was deferred pending the receipt of a recommendation from the Planning and Zoning Commission.

It was noted that the ordinance amendment would eliminate the ability to have an appeal hearing on a subdivision appeal before both the Commission and the Council; it would include the standard of review to be applied on an appeal, require the appealing party to pay for the preparation of a hearing transcript and pay an appeal fee; and it would allow an appeal to be filed from either the approval or disapproval of a plat as required by 9 Del. C. §6811. (The current appeal process only allows an appeal to be filed by an applicant (developer) from the denial of a plat.) The proposal requires that

an appeal to the Commission's decision be made to the Council within thirty days.

The County Attorney advised that by approving the proposed ordinance amendment, the Council would be complying with the provisions of State Law, which states that "there will be a right of appeal from the approval or disapproval".

**Old
Business/
Proposed
Ordinance
Relating
to Appeals
(continued)**

Mr. Phillips referred to the amount of time proposed for the submittal of a hearing transcript, stating that 45 days is too long. He asked if there was a consensus of the Council to agree and suggested that the proposal should require that a transcript be filed as part of an appeal application.

Mr. Griffin responded that the process of hiring a court reporter to listen to the tape(s) and create a typed transcript can not be done quickly. Further, State Law states that there is a 30 day period to file an appeal and a person may wait until the end of the appeal period to file. He noted that, if they wait, they would need at least 45 days to obtain and file a transcript. Mr. Griffin stated a realistic schedule would be necessary to make the proposal workable.

Mr. Phillips responded that, if someone wishes to appeal, "they should take some responsibility and get started early".

Mr. Phillips referred to the poor quality of the recordation that is created by the Chamber's audio and recording system and he questioned if a fair hearing could be held based on a transcript that has areas of inaudibility.

Mr. Griffin responded that if there is not sufficient record to review to determine if the hearing before the Commission was a fair hearing, one of the options would be for the Council to direct the Commission to hold a new hearing (per Section 2(A) of the Proposed Ordinance).

Mr. Phillips recommended that the 45 days to file a transcript be changed to 15 days.

Mr. Griffin responded that the 45 days should not be reduced to any amount of time less than 30 days.

Mr. Lank, Director of Planning and Zoning, noted that the Proposed Ordinance does not incorporate a specified time whereby the Council must take action.

It was the consensus of the Council that the following would apply to the ordinance amendment: 30 days to appeal; 30 days to submit a transcript; and 30 days for the Council to make a decision, and that if the Council fails to render a decision within 30 days, it would be deemed that the action taken by the Commission is upheld and the appeal denied.

Mr. Phillips also suggested amending the Proposed Ordinance [Page 3(G)] to specify that the ordinance amendment shall apply to any Preliminary Plat applied for after the date of adoption of the amendment. He stated that anything in the “pipeline” should not be affected. He noted that this would be a grandfathering, which has generally been the policy of the Council.

(continued) Mr. Phillips stated that he would like to defer action to allow time to obtain additional information.

M 131 06
Defer
Action
on the
Proposed
Ordinance
Relating
to Appeals

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to defer action on the Proposed Ordinance “AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE VIII RELATING TO APPEALS”.

Motion Failed: 2 Yea, 2 Nay, 1 Absent.

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

Agenda
Item

Mr. Rogers directed that the Proposed Ordinance be placed back on the Agenda on February 28, 2006.

Old
Business/
Proposed
Ordinance
Relating
Shared
Parking

The County Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY WHICH CHANGES THE EXISTING LANGUAGE CONCERNING JOINT USE AND OFF SITE FACILITIES AND INSERTS NEW LANGUAGE TO PERMIT THE SHARING OF REQUIRED PARKING SERVING MULTIPLE USES WITHIN THE SAME PROJECT AND UNDER THE SAME OWNERSHIP”.

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on November 17, 2005 at which time they recommended that the amendment be approved with the following revisions: Section 115-165 (2) B. should reference “occupants” not “tenants” and Section 115-165 (3) should reference “County” Attorney, not “City” Attorney.

The County Council held a Public Hearing on the Proposed Ordinance on December 13, 2005 at which time they recommended that action be deferred.

Mr. Jones noted that comments made during the Public Hearing were considered; that some suggestions were incorporated into the Proposed Ordinance; and that the County Attorney reviewed the proposed changes and deemed that they were appropriate since the concept of the ordinance

amendment was not altered.

Mr. Kautz distributed a copy of the Proposed Ordinance with amendments made as a result of the comments received at the Public Hearing; however, he noted that the amended version did not include comments presented by Kevin Burdette and his reference to a maximum distance of 600 feet.

It was the consensus of the Council to amend the Proposed Ordinance as follows:

**Old
Business/
Proposed
Ordinance
Relating
Shared
Parking
(continued)**

- **Changing the title of the ordinance to the extent of changing “...UNDER A SHARED PARKING AGREEMENT” to “...UNDER THE SAME OWNERSHIP”**
- **Incorporate the following in Section 2 B - “maximum distance from the farthest parking space (or in the case of a parking garage, the pedestrian entrance to the garage) of 600 feet to the public entrances for a lighted, semi-weather proofed covered walkway leading to the public entrances for commercial uses and with a maximum distance of 600 feet (or in the case of a parking garage, the pedestrian entrance to the garage) to the residential entrances that are being considered in the shared uses...”**
- **Section 2 B refers to “The Planning Commission” and it should refer to the “The Planning and Zoning Commission”.**
- **Section 2 B (2) shall state that the shared parking study shall be signed and sealed by a Delaware Licensed Professional Engineer in a form acceptable to the Planning Director.**
- **To Section 2 B (2) (a) add the words “most current” in reference to the Urban Land Institute’s shared parking study methodology.**
- **Add Section 2 B (2) (f) stating that “Be reviewed and approved by the Planning Director and the Planning and Zoning Commission.”**
- **Amend Section 2 B 3 (c) to read “Include a site plan showing the area of the parking parcel and the open space reserved area which would provide for future parking and any required Storm Water Management facilities.**
- **Amend Section 2 B 4 to remain consistent with the terms “Planning Director and Planning and Zoning Commission” and to insert the words “...to determine that insufficient...”.**
- **The revised format retains the existing language in Chapter 115 Section 115 – 165(A) which requires that the parking has to be on the same site as the building or use.**

**M 132 06
Adopt
Ordinance
No. 1826**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Ordinance No. 1826 entitled “AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY WHICH CHANGES THE EXISTING LANGUAGE CONCERNING JOINT USE AND OFF SITE FACILITIES AND INSERTS NEW LANGUAGE TO PERMIT THE SHARING OF REQUIRED PARKING SERVING MULTIPLE USES WITHIN THE SAME PROJECT AND UNDER THE SAME OWNERSHIP”, as amended.

Motion Adopted: 4 Yea, 1 Absent.

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

(A copy of Ordinance No. 1826 is attached to and made a part of these minutes.)

**Public
Hearing/
Proposed
Ordinance
Relating to
Increase
in Density
and
Incentive
for Open
Space
Preser-
vation**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 SECTION 25 OF THE CODE OF SUSSEX COUNTY ALLOWING FOR AN INCREASE OF DENSITY IN AR-1 DISTRICTS WITHIN COMPREHENSIVE PLAN GROWTH AREAS, PROVIDING FOR SPECIFIC CIRCUMSTANCES, FEES AND/OR CONDITIONS FOR OBTAINING SUCH AN INCREASE IN DENSITY AND PROVIDING AN INCENTIVE FOR THE PRESERVATION OF OPEN SPACE IN SUSSEX COUNTY”.

The ordinance amendment allows an increase in density within planned growth areas and provides for specific circumstances, fees and/or conditions for obtaining such increase in density. The amendment also encourages the preservation of open space and/or active and passive recreation areas by trading additional density for the proffering of funds for the acquisition of open space to the Sussex County Land Trust.

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on January 26, 2006 at which time they deferred action for further consideration. The record was left open for written comments until February 24, 2006. Mr. Kautz, the County’s Land Use Planner, was asked to provide revenue estimates and information on similar programs in other jurisdictions and Mr. Robertson, Assistant County Attorney, was asked to provide a legal opinion addressing legal issues.

(See the minutes of the meeting of the Planning and Zoning Commission dated January 26, 2006 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing and their recommendation of approval. The summary was admitted as part of the Council’s record.

The following correspondence was received in regards to the Proposed Ordinance:

- 1- Joan Deaver, Citizens for a Better Sussex, in opposition to the proposal.**
- 2- Constance Holland, Director, Office of State Planning Coordination, asking that the Council put the proposal on hold until the Council has the opportunity to review incentives offered in upcoming**

legislation.

- 3- Roger Jones, State Director, The Nature Conservancy, expressing support in principle for the proposal.
- 4- Richard Anthony, Delaware Chapter Sierra Club, in opposition to the proposal.
- 5- Mabel Granke, Citizens Action Foundation, requesting that the Council leave the record open.

Public
Hearing/
Proposed
Ordinance
Relating to
Increase
in Density
and
Incentive
for Open
Space
Preser-
vation
(continued)

Mr. Phillips noted that the letter from The Nature Conservancy suggests that there be an annual adjustment and he questioned Mr. Kautz as to whether there was anything in the proposal addressing that issue. Mr. Kautz responded that the issue is covered under the section entitled “Cluster Fee”, Section 3 on Page 2, which states that “The Council will review the contribution levels on an annual basis.” He noted that the amounts would be listed under the “Fees” Section of the Sussex County Code, in Chapter 62, and could be amended by ordinance if deemed appropriate by the Council.

Mr. Phillips clarified that this proposal is not about the exchange of development rights; that it is application-specific. He stated that the State has been trying to pass a TDR Program for ten years. He further clarified that this proposal allows for the increase of density; however, an applicant has to pay for it, and the money would go towards the preservation of land in the County. Further, the money received will only be spent based on the recommendation of the Land Trust and with an approval by the County Council with a 4/5 majority vote.

Public comments were heard.

David Jaeger of Selbyville stated that, while he is happy to hear that the County Council has found a way to fund the preservation of open land in the County, he is concerned about the makeup of those leading the Sussex County Land Trust; that having the Chairman and Vice Chairman positions filled by real estate developers sends a wrong message to the public; that members of the County Administration and County Council should be represented; and that the Delaware Nature Conservancy or the Trust of Public Lands should be represented on the Board of Trustees.

Rosemary Liberton of Seaford stated that the proposal would hurt the moderate/affordable housing initiative since the amount a developer has to pay would be passed on and added to the cost of the lots and; that they wish to develop their property for affordable housing but this proposal would make it impossible for them to do so.

Mr. Phillips responded that the Moderately Priced Housing Program has a specific procedure, which is called a Request for Proposal, and anyone wishing to pursue a Moderately Priced Housing Project does not go through the normal application process.

Public
Hearing/
Proposed
Ordinance
Relating to
Increase
in Density
and
Incentive
for Open
Space
Preser-
vation
(continued)

Dan Kramer of Greenwood questioned if the Land Trust isn't required to come up with a certain amount of funding from developers to match what they receive from the County. He stated that if the Council wants to protect the farmer, the TDR Program is the way to go.

Preston Dyer of Ocean View stated that he supports the proposal; that the benefits would be a positive impact of open space in a project and the flexibility of design; that given the need for open space, Councils needs to consider reducing the lot sizes across the board; that he suggests a minimum lot size of 4,000 square feet; that there should be a flexibility in setbacks; and that there should a "0" lot line setback where there is a shared driveway.

Wendy Baker of Bethany Beach and President and Chief Executive Office of the Sussex Land Trust spoke on behalf of the Board of Trustees in support of the proposal. Ms. Baker's comments are incorporated in the minutes of the Planning and Zoning Commission, dated January 26, 2006. Ms. Baker referred to comments made by Mr. Kramer and she stated that in the initial stages of creating the Land Trust, the County Council had challenged the Land Trust to raise (privately) one-half of what the Council pledged and that, to date, the Council has pledged approximately \$4 million and privately, the Land Trust has raised \$3 million.

Burton Messick of Laurel, President of Sussex County Farm Bureau, stated that the Bureau supports the proposal; that by increasing density in the growth areas where growth is targeted, it will preserve farmland and keep farms from being developed for a longer period of time; that the State plans to spend money for infrastructure where growth is targeted; that the program is voluntary; that some of the funds that go to the Land Trust can be used to buy farmland preservation rights; that there is no evidence that TDR legislation will be passed; and that the Bureau urges the Council to approve the proposal before more farmland and open space is lost.

Dennis Forney, member of the Sussex County Land Trust, spoke as a private citizen. He agreed with Councilman Phillips that there is no reason to be giving away density when we have the ability to raise funds and create a tremendous asset of legacy for generations to come; that the proposal is proper because it encourages density in the development zones; it is consistent with the State's desire to have density in development zones; it is consistent with the County's plans for sewer at 4 units per acre; it leverages the purchase of open space; and he encouraged the Council to approve the proposal and not wait for a TDR Program since TDR Programs across the country have a very poor record, since they are so complex

The Public Hearing was closed.

Mr. Lank advised that he would submit a report to the Council on the Commission's action on the Proposed Ordinance, after which the matter

would be placed on the Council's Agenda.

M 133 06
Defer Action
on the
Proposed
Ordinance/
Increased
Density
M 133 06
(continued)

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to defer action and to leave the record open on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 SECTION 25 OF THE CODE OF SUSSEX COUNTY ALLOWING FOR AN INCREASE OF DENSITY IN AR-1 DISTRICTS WITHIN COMPREHENSIVE PLAN GROWTH AREAS, PROVIDING FOR SPECIFIC CIRCUMSTANCES, FEES AND/OR CONDITIONS FOR OBTAINING SUCH AN INCREASE IN DENSITY AND PROVIDING AN INCENTIVE FOR THE PRESERVATION OF OPEN SPACE IN SUSSEX COUNTY".

Motion Adopted: 4 Yea, 1 Absent.

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

Public
Hearing
(C/U
No. 1635)

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 LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.89 ACRES, MORE OR LESS" (Conditional Use No. 1635) filed on behalf of Thomas N. and Marian L. Rossi.

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on January 26, 2006 at which time they recommended that the application be approved with six conditions.

(See the minutes of the meeting of the Planning and Zoning Commission dated January 26, 2006 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

The Council found that Marian Rossi was present on behalf of the application. She stated that they are requesting permission to continue their excavation and landscaping business that they have been operating on the site for the last five years; that there are no retail activities involved; that they do not have any employees; that they previously had a business located in Georgetown, which has been closed; that they do have a small amount of ornamental stone and rock stored on the site; that they propose to construct a 900 square foot garage to store equipment and personal vehicles; that they were advised by a County Inspector that they needed to apply for a home occupancy permit; that on January 10, 2003 they wrote to Mr. Lank for such a permit and received a response that it did not apply to them; that in March 2005, they were visited again by the County Inspector, advising them that they needed to apply for a zoning change.

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

**M 134 06
Adopt
Ordinance
No. 1825
(C/U
No. 1635)**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Ordinance No. 1825 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.89 ACRES, MORE OR LESS” (Conditional Use No. 1635) filed on behalf of Thomas N. and Marian L. Rossi, with the following conditions:

**M 134 06
Adopt
Ordinance
No. 1825
(C/U
No. 1635)
(continued)**

- 1- The current fence, located on the east side of the property, shall be maintained and will continue to serve as a buffer to the adjoining property.**
- 2- There will be no sign on the premises.**
- 3- Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.**
- 4- The hours of operation for the business on this site shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Saturday. There will be no Sunday hours.**
- 5- There will be no non-relative employees.**
- 6- The site plan shall be subject to approval of the Planning and Zoning Commission.**

Motion Adopted: 4 Yea, 1 Absent.

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

**Old
Business/
Proposed
Ordinance
Relating
to Off-
Street
Parking
and
Compact
Car
Parking**

The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO REDUCE THE SIZE OF AN OFF-STREET PARKING SPACE AND TO ALLOW A REDUCTION OF SIZE FOR COMPACT CARS UNDER CERTAIN CIRCUMSTANCES”.

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on November 17, 2005 at which time they recommended that the ordinance amendment be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated November 17, 2005 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing and their recommendation of approval. The summary was admitted as part of the Council’s record.

The County Council held a Public Hearing on the Proposed Ordinance on

December 13, 2005 at which time action was deferred.

Mr. Kautz distributed a revised copy of the Proposed Ordinance dated February 9, 2006, which incorporated revisions in accordance with comments made by the Council during the Public Hearing. He noted that the Council made two specific recommendations: (1) referencing the parking space requirements be referred to in terms of square foot area with a minimum and maximum width and length versus fixed dimensions and (2) directing that any authorized area savings be used for landscaping.

**Old
Business
(continued)**

Mr. Kautz noted that the Proposed Ordinance reflects a 30 percent savings for compact cars and that the section referencing savings from reducing the total number of required spaces anticipates adoption of the Proposed Ordinance that was introduced on February 7th relating to the number of off-street parking spaces required for multiple-family dwellings and townhouses, which allows for a reduction of 15% for every space over fifty (50) and a reduction of 20% for every space over two hundred (200).

**M 135 06
Authorize
Amendment
to Proposed
Ordinance
Relating to
Parking**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to authorize an amendment to the Proposed Ordinance that “A maximum of 20 (reduced from 30) percent of the required Off-Street Parking Spaces may have an area of eight by seventeen (8 x 17) feet for compact cars...”

Motion Adopted: 4 Yea, 1 Absent.

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

**Old
Business/
Discussion
(continued)**

Mr. Dukes expressed concern about the difficulty that drivers of large vehicles experience in accessing a 9 foot parking space at a 90 degree turn. He stated that if it were on a parallel or on an angle, it would be okay.

Mr. Kautz noted that there could be two solutions to that concern: (1) on 90 degree parking, the aisle width be wider than on angle parking and (2) double lines.

The Council discussed amending the ordinance amendment to require a double line for a 9-foot space and that for a 10-foot space or greater, it would not be required,

Mr. Lank noted that if the ordinance is passed to say that diagonal spaces can be 9 x 18 and the size of the perpendicular spaces is not changed, it will remain at 10 x 20.

A Motion was made by Mr. Phillips to reduce the 90-degree vertical/perpendicular parking to 9 x 18 (minimum). Mr. Phillips withdrew his Motion.

Mr. Dukes stated that he would not support 9 x 18 perpendicular parking at

a 90-degree angle.

It was the consensus of the Council that the 10 x 20 perpendicular parking would remain in the ordinance amendment; however, an option would be made available for 9 x 18 diagonal parking.

- M 136 06
Defer
Action
M 136 06
Defer
Action on
Proposed
Ordinance
Relating to
Parking
(continued)**
- A Motion was made by Mr. Dukes, seconded by Mr. Jones, to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO REDUCE THE SIZE OF AN OFF-STREET PARKING SPACE AND TO ALLOW A REDUCTION OF SIZE FOR COMPACT CARS UNDER CERTAIN CIRCUMSTANCES” to allow time for Mr. Kautz to incorporate amendments to the Proposed Ordinance for presentation at the February 28th Council meeting.**
- Motion Adopted: 4 Yea, 1 Absent.**
- Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Absent;
Mr. Dukes, Yea; Mr. Jones, Yea;
Mr. Rogers, Yea**
- Requests**
- Mr. Stickels presented grant requests for the Council’s consideration.**
- M 137 06
Council-
manic
Grant**
- A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$500.00 (\$250.00 each from Mr. Phillips’ and Mr. Cole’s Councilmanic Grant Accounts) to the Indian River Volleyball Boosters for the purchase of equipment that will be used at The Southern Delaware School of Arts in Selbyville.**
- Motion Adopted: 4 Yea, 1 Absent.**
- Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Absent;
Mr. Dukes, Yea; Mr. Jones, Yea;
Mr. Rogers, Yea**
- M 138 06
Community
Improve-
ment Fund
Grant**
- A Motion was made by Mr. Dukes, seconded by Mr. Jones, to give \$10,000 from Mr. Dukes’ Community Improvement Fund to the Nanticoke Senior Center, Inc. for the construction of a new facility.**
- Motion Adopted: 4 Yea, 1 Absent.**
- Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Absent;
Mr. Dukes, Yea; Mr. Jones, Yea;
Mr. Rogers, Yea**
- M 139 06
Council-
manic
Grant**
- A Motion was made by Mr. Jones, seconded by Mr. Dukes, to give \$500.00 (\$250.00 each from Mr. Rogers’ and Mr. Jones’ Councilmanic Accounts) to the Milford Memorial Hospital Auxiliary for the Annual Hospital Fair.**

Motion Adopted: 4 Yea, 1 Absent.

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

M 140 06 Y/A Grant A Motion was made by Mr. Jones, seconded by Mr. Dukes, to give \$200.00 from Mr. Jones' Youth Activity Grant Account to the Delaware Stingers Field Hockey to sponsor the 2006 Field Hockey Goal-A-Thon.

M 140 06 (continued) Motion Adopted: 4 Yea, 1 Absent.

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

M 141 06 Youth Activity Grant A Motion was made by Mr. Jones, seconded by Mr. Dukes, to give \$750.00 from Mr. Jones' Youth Activity Grant Account to the Georgetown Little League for the purchase of equipment.

Motion Adopted: 4 Yea, 1 Absent.

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

Introduction of Proposed Ordinance Mr. Dukes introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A REGIONAL WATER DISTRIBUTION FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY CONTAINING 0.18 ACRE, MORE OR LESS" (Conditional Use No. 1677) filed on behalf of Tidewater Utilities, Inc. The Proposed Ordinance will be advertised for Public Hearing.

Additional Business/ Public Comment Dan Kramer referred to the Proposed Ordinance relating to appeals and the cost of an appeal application (\$500.00) and transcript preparation (\$500.00). He stated that, at that cost, no one would appeal something unless they are sure they are going to win.

Mr. Kramer also told the Council that (1) if draft ordinances were written correctly, there would not have to be so much debate by the Council and (2) the draft ordinances are not being written in the proper legal form.

M 142 06 Adjourn A Motion was made by Mr. Jones, seconded by Mr. Phillips, to adjourn at 10:20 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

Robin A. Griffith
Clerk of the Council