



## *Sussex County Council Agendas & Minutes*

### **SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 12, 2005**

#### **Call to Order**

The regular meeting of the Sussex County Council was held Tuesday, April 12, 2005 at 6:30 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Lynn J. Rogers</b>	<b>Vice President</b>
<b>George B. Cole</b>	<b>Member</b>
<b>Dale R. Dukes</b>	<b>Member</b>
<b>Vance Phillips</b>	<b>Member</b>
<b>Robert L. Stickels</b>	<b>County Administrator</b>
<b>David Baker</b>	<b>Finance Director</b>
<b>James D. Griffin</b>	<b>County Attorney</b>

#### **M 228 05 Approve Agenda**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to amend the Agenda by changing the time of the discussion regarding "Group Hospital Renewal Recommendation" to immediately follow "Reading of Correspondence"; by changing "Introduction" of a Proposed Ordinance relating to Open Space to "For Discussion Purposes Only"; to rearrange the order of the Public Hearings scheduled at 7:45 p.m., as follows: Conditional Use No. 1599, Change of Zone No. 1566, Change of Zone No. 1567, Conditional Use No. 1601; and to approve the Agenda, as amended.

**Motion Adopted: 5 Yea.**

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

#### **M 229 05 Approve Minutes**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the minutes of April 5, 2005.

**Motion Adopted: 5 Yea.**

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

#### **Corre- spondence**

Mr. Griffin read the following correspondence:

**BERNICE M. EDWARDS AND BRENDA WHITEHURST, FIRST STATE COMMUNITY ACTION AGENCY, GEORGETOWN, DELAWARE.**

**RE: Letter in appreciation of grant funding for the “Screening for Life Colon Cancer Awareness Night” health initiative.**

**Corre-  
spondence  
(continued)**

**EMMA AND FRANCIS GUNNING, MILFORD, DELAWARE.**

**RE: Letter in appreciation of the improvements made to her home which were made possible through the County’s Community Development Office.**

**CONGRESSMAN MICHAEL N. CASTLE, CONGRESS OF THE UNITED STATES, HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.**

**RE: Letter in response to the County’s concerns about the Community Development Block Grant (CDBG) program. During the debate on the FY 06 Budget Resolution, the House of Representatives increased funding for regional development programs, including CDBG, by \$1.1 billion.**

**LIDA WELLS, MILFORD HOSPITAL, MILFORD DELAWARE.**

**RE: Letter in appreciation of grant funding for the Milford Hospital Fair.**

**Group  
Hospital  
Renewal  
Recommen-  
dation**

**Mr. Baker, Finance Director; Mr. Cordrey, Personnel Director; and Mr. David Smith, President of Integra Administrative Group (the County’s group hospital administrator), reviewed Sussex County’s Plan of Benefits and discussed recommended health insurance plan changes to the County’s Group Hospital Program.**

**Mr. Baker reported that this year, the health care costs paid by the County’s group hospital self-fund are up 12 1/2 percent compared to the previous year, consistent with the national trend.**

**Mr. Baker quoted a report from Segal that stated that “double-digit trend rates are expected in 2005 for all categories of coverage for employees and retirees under age 65 except dental coverage and that medical premiums are expected to increase 13% in 2005 compared to a 14% increase in 2004. Drug card costs are projected to increase 15%.**

**Mr. Baker reported that Integra requested proposals for quotes from five different insurance carriers for the County’s reinsurance and that they received quotes from two carriers with various options. The County’s current reinsurance carrier is United Healthcare. Quotes were received from United Healthcare and Zurich Life Insurance Company.**

**Mr. Baker reported that the amount of money the County has paid its reinsurance company this year is approximately \$400,000 less than the amount they paid out in claims for the County. Further, over the past 45 months, the County has paid the insurance company \$1.4 million and the insurance company has paid out \$1.8 million in claim costs, a \$407,000 loss for the insurance company.**

**Group  
Hospital  
Renewal  
Recommendation  
(continued)**

Mr. Baker stated that Integra is recommending that the County switch to Zurich Health Insurance Company for its reinsurance. Mr. Smith did an analysis based on the County's history of claims and he feels it is more likely that the option with the higher deductible of \$150,000 (versus the current \$85,000) would be less costly to the County. The fixed costs of the plan would decrease from \$696,782 to \$543,438; however the total annual cost would increase to \$6,470,418, based on the current level of claims. The maximum annual cost would be \$8.4 million.

Mr. Baker presented the following information and recommendations for the Group Hospital Plan for the year beginning May 1, 2005 through April 30, 2006:

<u>Current Reinsurance Carrier</u> United Healthcare	<u>Recommended Reinsurance Carrier</u> Zurich Life
<u>Current Prescription Card Company</u> Advance PCS	<u>Recommended Prescription Card Company</u> Pharmicare
<u>Current Specific Deductible</u> \$85,000	<u>Recommended Specific Deductible</u> \$150,000
<u>Current Aggregate Specific Deductible</u> \$215,000	<u>Recommended Aggregate Specific Deductible</u> \$100,000
<u>Current Fixed Costs</u> \$696,782	<u>Fixed Costs w/recommendation</u> \$543,438
<u>Current Annual Expected Cost</u> \$5,700,392 with 8.19% expected increase (\$6,167,220)	<u>Proposed Annual Expected Cost</u> \$6,470,418 with 4.92% expected increase
<u>Current Maximum Annual Cost</u> \$7,847,640	<u>Maximum w/recommendation</u> \$8,412,745
<u>Current Plan Administrator</u> Integra Administrative Group	<u>Recommended Plan Administrator</u> Integra Administrative Group

Mr. Baker reviewed information on the County's current Plan of Benefits, recommended changes to the Plan of Benefits, and anticipated savings. The following changes were discussed:

1. Changes to co-pay amounts, i.e. office visits - \$5.00 increase, etc. (increases of \$5.00 - \$25.00).
2. Co-insurance changes (employees would pay 10% of total charges).
3. Change in the employee contribution amount. Increase the amount by \$21.67, including employees (self).
4. Prescription card provider change from Advance PCS to Pharmicare. There would be no additional cost to employees. Another co-pay tier

would be added; tiers would be \$7.00 (generic), \$15.00, and \$20.00.

Mr. Baker recommended that Changes #1 and #4 be implemented. Change #1 would provide an anticipated saving of \$57,984; Change #4 would provide an anticipated savings of \$80,208.

**Recommendation  
(continued)**

Mr. Smith recommended the addition of the Health Advocate Service; a new service that helps employees resolve health care issues, i.e. approval for medial procedures and equipment, pre-certification, etc. This service helps employees handle problems they may be having in getting the level of service they need and approval for those services.

**M 230 05  
Authorize  
Employee  
Health  
Plan for  
5/1/05 –  
4/30/06**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, that the Sussex County Council authorizes the following for the Employee Health Plan for the year May 1, 2005 to April 30, 2006:

- (1) the continuance of Integra Administrative Group as the County's Group Hospital Administrator;
- (2) the approval of Zurich Life Insurance Company as the provider of the Group Hospital Reinsurance and Pharmacare as the prescription card provider;
- (3) the approval of the Group Hospital Reinsurance Deductible at \$150,000 and aggregate specific deductible of \$100,000;
- (4) the addition of the Health Advocate Service; and
- (5) maintenance of the Group Hospital Program at current benefit levels with changes to co-pay amounts, as explained.

**Motion Adopted: 5 Yea.**

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

**M 231 05  
Adopt  
Procla-  
mation/  
National  
Library  
Week**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt the Proclamation "PROCLAIMING THE WEEK OF APRIL 10 THROUGH 16, 2005 AS NATIONAL LIBRARY WEEK".

**Motion Adopted: 5 Yea.**

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

**Interpre-  
tation of  
Condition  
of Approval/  
Ordinance  
No. 1538/**

Mr. Fuqua, Attorney for Ocean Atlantic Associates, V. L.L.C., reported that Paynters Purchase/Paynters Mill, a MR-RPC, was approved by the County Council on April 30, 2002. This application was approved as Ordinance No. 1538 (Change of Zone No. 1461) and was filed on behalf of Ocean Atlantic Associates, V, L.L.C. At the time of the approval, there was a 1.5 acre parcel that was approved as part of the RPC for neighborhood

Ocean  
Atlantic  
Associates/  
Paynters  
Purchase

Interpre-  
tation of  
Condition  
of Approval/  
Ordinance  
No. 1538/  
Ocean  
Atlantic  
Associates/  
Paynters  
Purchase  
(continued)

business use. The approval contained the condition (#2) that the B-1 area “Shall be retail sales related only, with no sales of alcoholic beverages.” Mr. Fuqua stated that the developer of the RPC plans to lease space to a restaurant, which would provide sales of alcoholic beverages as part of its normal restaurant operation. The developer has stated that there would be no “off premise” sales associated with a liquor store. Mr. Fuqua reported that a restaurant on this site has been under consideration by the developer since the early planning stages of the RPC and they were under the impression that only a liquor store would be prohibited. He noted that in reading the conditions, it would appear that a much broader interpretation is possible. He further noted that a restaurant is a permitted use in B-1 zoning. Mr. Fuqua asked for Council’s interpretation of the condition and stated that he is hopeful that the Council will be of the opinion that the service of alcoholic beverages as part of a restaurant with no off-premise sales is permitted.

The County Council discussed their interpretation of the condition. Mr. Rogers stated that he believes the Council’s intent was that “there would be no retail liquor sales (liquor/package store)” and that there was no discussion of prohibiting a restaurant. Mr. Jones agreed with Mr. Rogers.

It was noted that the Alcoholic Beverage Commission would have final approval on the sale of alcoholic beverages in the restaurant.

M 232 05  
Amend  
and  
Clarify  
Condition  
No. 2/  
Ordinance  
No. 1538

A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to amend and clarify Condition # 2 attached to Ordinance No. 1538 (Change of Zone No. 1461) filed on behalf of Ocean Atlantic Associates, V, L.L.C. to read “The B-1 neighborhood business area shall not exceed 1.5 acres and shall be retail sales related only, which may include a restaurant.

Motion Adopted: 3 Yea, 1 Abstention, 1 Absent.

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

Adminis-  
trator’s  
Report

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

(1) Public Workshops

The Delaware Department of Transportation (DelDOT) will be conducting two Public Workshops:

- The first workshop will be held on Monday, April 25, 2005, to solicit public comment regarding preliminary recommendations of the Bethany Beach Transportation Plan. The workshop will be held from 4:00 to 7:00 p.m. at the South Coastal Library, 43 Kent Avenue, Bethany Beach.

**Adminis-  
trator's  
Report  
(continued)**

The Town of Bethany and the Delaware Department of Transportation are developing a transportation plan to improve both motorized and non-motorized circulation within the Town. The objective of the plan is to identify transportation system improvements that will improve safety and circulation for residents and visitors. Preliminary concepts have been developed through a Working Group comprised of Bethany Beach residents, Town officials, and DelDOT staff.

- The second workshop will be held at the Roxana Fire Hall on Monday, May 9, 2005. DelDOT will be soliciting public comments regarding improvements on SR26 between 4:00 and 7:00 p.m.

This project, called the SR26 Mainline Improvements, currently includes widening of SR26 to improve an 11-foot travel lane and a five-foot paved shoulder in each direction, rehabilitating and adding curb and sidewalks from Whites Creek to the Assawoman Canal, identifying driveway entrances, providing left turn lanes on SR26 at major intersections and other strategic locations, realigning the intersection of SR26 and Clarksville and SR26 and Central Avenue, and installing a new signal on SR26 at West Avenue.

**(2) Sussex County Council Prayer Breakfast**

The 28<sup>th</sup> Annual Sussex County Council Prayer Breakfast will be held on Monday, May 16, 2005, at 7:30 a.m. at the CHEER Community Center on Sand Hill Road in Georgetown. This year's guests will be Paul and Susie Luchsinger of Psalms Ministries. Susie Luchsinger is the sister of Reba McEntire. Tickets are \$12.00 per person and are available in the County Council Office.

**Housing  
Preservation  
Grant  
Resolution**

Mr. LeCates, Director of Community Development and Housing, discussed a pre-application to the United States Department of Agriculture, Rural Housing Services, for a Housing Preservation Grant to assist ten very low and two low income homeowner occupants in the preservation of their homes. The primary objective of the HPG Program is the development of viable communities, including decent housing and a comfortable living environment, principally for persons of low and very low income.

Mr. Lecates reported that the following projects would be included in the pre-application:

	<u>Target Areas</u>	
	<u>Sussex</u>	<u>Kent</u>
Housing Rehabilitation Grants	\$20,000	\$20,000

**Administration**

**\$ 5,000      \$ 5,000**

**Mr. Lecates reported that the notice of approval should be received in June, after which time an advertisement will announce the availability of funds and acceptance of applications.**

**M 233 05  
Adopt  
Resolution  
No.  
R 013 05**

**A Motion was made by Mr. Dukes seconded by Mr. Phillips, to Adopt Resolution No. R 013 05 entitled “ENDORISING PROJECT TO BE SUBMITTED TO THE UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL HOUSING SERVICES, FOR FUNDING AND AUTHORIZING ROBERT L. STICKELS, COUNTY ADMINISTRATOR, TO SUBMIT PRE-APPLICATION”.**

**Motion Adopted:      5 Yea.**

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

**Discussion  
on a  
Draft  
Ordinance  
Relating  
to Open  
Space**

**Mr. Lank, Director of Planning and Zoning; Mr. Kautz, Land Use Planner; and the County Council discussed the current version of the Draft Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY TO REQUIRE THE PROVISION OF OPEN SPACE IN NEW DEVELOPMENTS”. Mr. Kautz noted that public comments on the Draft Ordinance were recently received and have not yet been reviewed. Mr. Kautz explained that the current version adds the following definition of “open space”: “*”Uncovered areas for public enjoyment consisting of such things as green areas, gardens, plazas, walks, pathways, promenades, arcades, lawns, fountains, decorative plantings, passive or active recreational areas, golf courses and uncovered areas used for agriculture or forestry. Such space does not include tidal wetlands, stormwater management facilities, areas used for water supply and wastewater treatment, public or private rights of way, parking or maneuvering areas for vehicles, parking lot islands, or space on any individual recorded residential or commercial lots.”***

**The Council debated the contents of the open space definition and decided that, with the number of concerns expressed, the proposed ordinance should be put on the agenda on a day when there is more time to discuss it thoroughly.**

**Lochwood  
Proposed  
Street-  
lighting  
District**

**Patricia Deptula, Assistant Director, Public Works Division, presented the final cost estimate for the Lochwood Proposed Streetlighting District. Lochwood Subdivision is located on Dorman Road, northwest of Angola. The subdivision consists of 161 improved lots; there are 225 parcels in the proposed district. The Lochwood Property Owners Association currently pays for 15 existing colonial streetlights within the subdivision, one area streetlight at the intersection of Dorman Road and Route 24 and a metered lighting service at their entrance-way.**

<b>Lochwood Proposed Street- lighting District (continued)</b>	<p>Mrs. Deptula advised that the Engineering Department received a request from the Lochwood Association to initiate the process of forming a streetlighting district in their subdivision. The Association asked that the proposed Streetlighting District boundaries include all but the final section of the development, which is currently under construction. At an informal public meeting with the Association, it was voted on to accept the proposal, to include the streetlight located at Route 24 and the Dorman Road intersection.</p> <p>Mrs. Deptula reported that the estimated annual assessment per improvement is \$11.57.</p>
<b>M 234 05 Approve Estimated Billing Rate/ Lochwood Proposed Street- Lighting District</b>	<p>A Motion was made by Mr. Dukes, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Council approves an estimated annual billing rate of \$11.57 per residential or commercial improvement within the Lochwood Proposed Streetlighting District, which shall be adjusted each year thereafter, based upon the number of assessable units and fuel costs.</p> <p><b>Motion Adopted: 5 Yea.</b></p> <p><b>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Yea</b></p>
<b>M 235 05 Adopt Resolution No. R 014 05 Establishing Election for Lochwood Street- lighting District</b>	<p>A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt Resolution No. R 014 05 entitled “A RESOLUTION ESTABLISHING THE DATE, TIME, PLACE, ABSENTEE BALLOT PROVISION AND JUDGE FOR AN ELECTION TO BE HELD TO CONSIDER THE QUESTION OF ESTABLISHING THE PROPOSED LOCHWOOD STREETLIGHTING DISTRICT”.</p> <p><b>Motion Adopted: 5 Yea.</b></p> <p><b>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Yea</b></p> <p>The Lochwood Streetlighting District election will be scheduled for May 6, 2005 from 3:00 p.m. – 7:00 p.m. at the home of Mary and William R. Slawter, Sr., Lochwood Subdivision, 2 Lakeshore Drive, Lewes.</p>
<b>Public Hearing (C/U No. 1599)</b>	<p>At 7:51 p.m., a Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A CONTRACTOR’S EQUIPMENT STORAGE BUILDING AND YARD TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.67 ACRES, MORE OR</p>



**LESS” (Conditional Use No. 1599) filed on behalf of Oneida Justice.**

**The Planning and Zoning Commission held a Public Hearing on this application on March 10, 2005 at which time they recommended that the application be approved with four conditions.**

**Public  
Hearing  
(C/U  
No. 1599)**

**(See the minutes of the Planning and Zoning Commission dated March 10, 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. The summary was admitted as part of the County Council’s record.**

**Mr. Lank reported that one additional comment has been received since the Commission’s Public Hearing. The letter, which is from the Sussex County Engineering Department, states that the site is located in the Miller Creek Sanitary Sewer District; that wastewater capacity is available; and that Ordinance 38 construction will not be required.**

**The Council found that Oneida Justice was present with her son, Michael Justice, and her brother, Daniel Magee. They stated that Mr. Justice is in the paving and contracting business; that the business has expanded; that he needs more space for storing equipment, trucks, and pavers; and that there had been some thought concerning renting the property to other contractors in the future if Mr. Justice decided to get out of the business.**

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

**M 236 05  
Adopt  
Ordinance  
No. 1768  
(C/U  
No. 1599)**

**A Motion was made by Mr. Cole, seconded by Mr. Dukes, to Adopt Ordinance No. 1768 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A CONTRACTOR’S EQUIPMENT STORAGE BUILDING AND YARD TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.67 ACRES, MORE OR LESS” (Conditional Use No. 1599) filed on behalf of Oneida Justice, with the following conditions:**

- 1. There shall be no rentals of any buildings to outside contractors on this Conditional Use site.**
- 2. The storage yard shall be fenced with chain link type fencing.**
- 3. All security lighting shall be downward illuminated so that they will not impact neighboring properties.**
- 4. The site plan shall be subject to review and approval by the Planning and Zoning Commission.**

**Motion Adopted: 5 Yea.**

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

**Public  
Hearing  
(C/Z  
No. 1566)**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 18.76 ACRES, MORE OR LESS” (Change of Zone No. 1566) filed on behalf of Barbara Chevallier Bailey.**

**The Planning and Zoning Commission held a Public Hearing on this application on March 10, 2005 at which time they recommended that the application be denied for the lack of a record since no one appeared on behalf of the application.**

**(See the minutes of the Planning and Zoning Commission dated March 10, 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. The summary was admitted as part of the County Council’s record.**

**The Council found that no one was present on behalf of the application.**

**There was a consensus of the Council to defer action in case the applicant appeared.**

**Public  
Hearing  
(C/Z  
No. 1567)**

**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 C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.61 ACRES, MORE OR LESS” (Change of Zone No. 1567) filed on behalf of Edward and Darlene Gartside.**

**The Planning and Zoning Commission held a Public Hearing on this application on March 10, 2005 at which time they recommended that the application be approved.**

**(See the minutes of the Planning and Zoning Commission dated March 10, 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. The summary was admitted as part of the County Council's record.**

**Public  
Hearing  
(C/Z  
No. 1567)  
(continued)**

**The Council found that no one was present on behalf of the application.**

**There was a consensus of the Council to defer this application to the end of the public hearings in case the Applicant shows up. (It was noted that this application was originally scheduled as the last Public Hearing on the Agenda.)**

**M 237 05  
Recess**

**A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to recess for five minutes for the purpose of making phone calls to Barbara Chevallier Bailey and Edward and Darlene Gartside. Motion Adopted by Voice Vote.**

**Reconvene**

**Mr. Jones called the Council back into session.**

**Mr. Stickels reported that he was unsuccessful in his efforts to contact the applicants.**

**Reopen  
Public  
Hearing  
(C/Z  
No. 1566)**

**The Council reopened the Public Hearing on Change of Zone No. 1566, the application of Barbara Chevallier Bailey.**

**The Council found that no one was present on behalf of the application.**

**There were no public comments; however, it was noted that there were three people present with questions concerning the application.**

**The Public Hearing was closed.**

**M 238 05  
Adopt  
Proposed  
Ordinance  
(C/Z  
No. 1566)  
DENIED**

**A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 18.76 ACRES, MORE OR LESS" (Change of Zone No. 1566) filed on behalf of Barbara Chevallier Bailey.**

**Motion Denied: 5 Nay.**

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

**Reason  
for Denial**

**The County Council denied this application for the lack of a record since no one appeared on behalf of the application.**

**Applicant Notification/ Public Hearings**      **Mr. Lank, Director of Planning and Zoning, reported that, in the public hearing process, the staff mails to the applicant a copy of both notices of public hearing (Commission and Council) and a cover letter explaining that their attendance at the public hearings would be necessary.**

**Possible Conflict of Interest**      **Mr. Dukes stated that he would not be participating in the Public Hearing on Conditional Use No. 1601 due to a possible conflict of interest. Mr. Dukes left the meeting.**

**Public Hearing C/U No. 1601**      **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 WHOLESALE BUILDING SALES AND STORAGE FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 23.10 ACRES, MORE OR LESS” (Conditional Use No. 1601) filed on behalf of Pierce Hardy Limited Partnership.**

**The Planning and Zoning Commission held a Public Hearing on this application on March 10, 2005 at which time they recommended that the application be denied based on the record and for the following reasons:**

- 1. It does not promote the convenience and welfare of the residents.**
- 2. To grant the expansion would be to grant an expansion to an already annoying and potentially dangerous traffic situation.**
- 3. It is not in character with other businesses in the area.**

**(See the minutes of the Planning and Zoning Commission dated March 10, 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. The summary was admitted as part of the County Council’s record.**

**Mr. Lank reported that the Commission received correspondence in opposition to this application from Senator George Bunting,, Representative Gerald Hocker, and Harry Melson.**

**Mr. Lank distributed the following for the Council’s review: a packet of correspondence received, photos submitted by the applicant, a hard copy of the Applicant’s power point presentation, an Exhibit Booklet, a booklet on 84 Lumber, a Sound Level Assessment Report, an Acoustics and Air Quality Report, aerial infrared maps, and a revised site plan reducing the square area of the application.**

**Mr. Lank reviewed additional comments that have been received since the Public Hearing before the Commission from the Office of State Planning Coordination (relating to the revised site plan and how it addresses con-**

**Public  
Hearing  
C/U  
No. 1601  
(continued)**

**cerns), the Delaware Department of Transportation (no objection to the revised site plan as it relates to the entrance location), the Sussex County Engineering Department (the site is not located in or adjacent to a County Sanitary Sewer District), the Bethany Fenwick Island Chamber of Commerce (letter in support), Harvey Melson (letter stating that he is no longer in opposition to the proposed expansion), Brenda Bove (email in opposition), and Richard and Lorraine Smith (letter in opposition)**

**Mr. Lank reported on letters submitted to the County Council. Each County Council member received copies of all the letters for review. Letters were received from Shirley Price, Senator George Bunting, Representative Gerald Hocker, Ronald Kurtz Jr., Richard and Lorraine Smith, Nancy Beauchamp, and Brenda Bove.**

**All the documents were made a part of the record.**

**The Council found that James Fuqua, Attorney, was present representing the applicant, Pierce Hardy Limited Partnership, which is the land owning component of 84 Lumber Company. Mr. Fuqua introduced a few of the Company's representatives in attendance: Joe Hardy, Founder and CEO of 84 Lumber; Jim Zaunick, Professional Engineer for 84 Lumber; and Bob Bossard, 84 Lumber Store Manager in Clarkesville.**

**Mr. Fuqua stated that the application is for the expansion of the existing 84 Lumber facility; that contractors are their major source of business; that one building proposed is a 10,000 square foot building which will contain 6,150 square feet of retail space, 1,550 square feet of storage, and 2,300 square feet of office space; that there would be three additional storage buildings which would have a total of 24,800 square feet of storage; that the conditional use site contains 5.81 acres and has approximately 300 feet of road frontage on Route 26; that there will be no significant sewer or water impact; that the facility will not be used for a distribution center; that no milling or fabrication takes place on the site; that this is a company that contributes to the community; and that the Office of State Planning Coordination does not object to the application.**

**Mr. Fuqua stated that he believes the main basis for the Commission's recommendation of denial was that the proposal would aggravate a bad traffic situation. Mr. Fuqua responded to this information by stating that he thinks it is contrary to the facts that were presented at the Public Hearing and that the proposal will alleviate and resolve an existing traffic problem, not aggravate it.**

Mr. Fuqua noted that the Commission made several other comments that the applicant has listened to and considerable revisions have been made to the site plan to address the concern.

Public  
Hearing  
C/U  
No. 1601  
(continued)

**Concern:** Stormwater management pond will be attractive nuisance to children.

**Solution:** Move pond back 120 feet from Route 26 and shrink size and enclose with fence.

**Concern:** Stormwater management pond will breed mosquitoes.

**Solution:** Aerate water; maintain depth of pond; vegetation management; larvicide spraying; and stock larvivorous fishes.

**Concern:** Shared entrance conflicts with funeral home.

**Solution:** Permanently close shared entrance; renovate adjacent building; and open new entrance from Route 26. The existing entrance will be landscaped and fenced.

**Concern:** Truck traffic on Route 26.

**Solution:** Construct new entrance; 200 foot deceleration and turning lane; accepted by DelDOT; will meet requirements for future improvements to Route 26.

**Concern:** Noise of trucks on site, forklifts and moving pallets.

**Solution:** Restrict after-hours loading, unloading and forklift operations except for inventory (two times a year) and Spring visit; move truck parking to between buildings; and install double rowed tree buffer and sound absorption/barrier. Hours for loading and unloading trucks would be 7:00 a.m. to 7:00 p.m. Monday – Friday, 8:00 a.m. – 5:00 p.m. on Saturday; and 9:00 a.m. – 4:00 p.m. on Sunday.

**Concern:** Truck parking along Route 26.

**Solution:** Create on-site truck parking area; 500 feet from Route 26; sound absorption material on building and fence.

**Concern:** Off-roader access to rear parcel and truck noise on road access to rear parcel.

**Solution:** Eliminate road access to rear parcel.

**Concern:** Litter

**Solution:** Continue regularly scheduled clean-up.

**Concern:** Development of potential remaining acreage.

**Solution:** Donate 70+ acres to Sussex County Land Trust or place land in a conservation easement (value of \$1 million) thereby ensuring the neighbors that there will be no future development on the site.

**Concern:** Bad fit for cottage industries area.

**Solution:** 84 Lumber does not compete with home-based cottage industry

businesses. Surrounding businesses include a car wash, grocery store, and beer distributor. New plan creates aesthetically pleasing location that blends in with the environment. Buildings will be redesigned with cedar color exterior and four foot split-block wainscot base.

Public  
Hearing  
C/U

No. 1601  
(continued)

Mr. Fuqua noted that the proposals would apply to the entire facility.

Mr. Fuqua submitted proposed conditions and findings of fact for the Council's consideration.

Public comments were heard in support of the application from Paul Martin, Jim Sanderson, Doug Stevens, Mark Veasey, and Dan Kramer. They stated that the proposal will improve the traffic situation; that 84 Lumber is an existing commercial business that provides a service that is needed by area contractors; that 84 Lumber is a supporter of and contributor to Habitat for Humanity; and that if a man owns a piece of land, he ought to be able to do what he wants on it. Approximately 50 people in attendance indicated their support of the application.

Public comments were heard in opposition to the application from Norman Barnett, Attorney, representing the opposition; Brooke Kirts, Susan Ryan, Carl Gootee, Pat Hammond, Lois Dolby, Cheryl Hammond and Keith Parsell. They stated that since 84 Lumber opened in 1995, the company has tripled the activity and number of delivery trucks and doubled the number of employees on the site; that the neighbors are opposed to the expansion; that the neighbors are concerned about noise, that tractor trailer engines run at all hours; that the area is not suitable for the use proposed; that the area is primarily AR with Mom and Pop stores; that the expansion will generate more business, more traffic, more trucks, and more noise for 7 days a week; that the neighbors are concerned that the expansion will be closer to neighboring properties than the existing store site; that Route 26 is planned for expansion and widening that may impact the existing store site; that the noise on the site is not only trucks, but includes the unloading and loading of materials onto 84 Lumber trucks late into the evening and as late as 11:00 p.m. and prior to the store opening in the morning; that the 84 Lumber store sites in Selbyville or Georgetown may be better choices for expansion; that alarms frequently go off at night; that noise abatement efforts will not help the noise problem; that the County will not be able to enforce conditions placed on a conditional use; that the company has made promises before regarding litter, noise, trash, etc. and that no attempt has been made to remedy any of the problems and concerns; that in the last ten years, nothing has been done about the noise problem; that they can't address existing issues and they won't address new issues; that 84 Lumber doesn't do anything to help the neighbors; that the company has a poor track record with the neighbors; that the safety of the neighborhood children is a concern; that the Council needs to look at the impact this proposal will have on the entire area; that businesses should only be expanded in areas that can support the traffic; and that 84 Lumber staged a traffic back-up to take pictures to use the issue of traffic problems to get leverage for the County Council's approval; that the "staged" traffic back-

up was a dangerous and inconvenient maneuver; and that the proposal will have a negative impact on the community.

Public  
Hearing  
C/U  
No. 1601  
(continued)

Mr. Parsell referred to the existing entrance that will no longer be used by 84 Lumber and submitted the question of “what entrance will they use for construction”; he also questioned whether or not DelDOT would terminate the access of 84 Lumber via the Funeral Home’s entrance; and he questioned their thinking concerning maintaining the water depth in the stormwater pond since then the water will have no where to go if it rains.

Mr. Barnett submitted a current petition with 168 signatures in opposition to the application.

The Public Hearing was closed.

M 239 05  
Defer Action  
on C/U  
No. 1601

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Conditional Use No. 1601, an application of Pierce Hardy Limited Partnership to allow time for the Council to study the testimony heard and the information submitted during the Public Hearing.

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

Reopen  
Public  
Hearing  
(C/Z  
No. 1567)

The Council reopened the Public Hearing 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 C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.61 ACRES, MORE OR LESS” (Change of Zone No. 1567) filed on behalf of Edward and Darlene Gartside.

The Council found that Edward and Darlene Gartside were present. They stated that there are no new buildings proposed; that they want to open an apparel/gift shop in the existing garage on the property; and that they only plan to use half of the garage for the shop. There were no public comments and the Public Hearing was closed.

M 240 05  
Adopt  
Ordinance  
No. 1769  
(C/Z  
No. 1567)

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Ordinance No. 1769 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.61 ACRES, MORE OR LESS” (Change of Zone No. 1567) filed on behalf of Edward and Darlene Gartside.



**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**

**Requests Mr. Stickels presented grant requests for the Council's consideration.**

**M 241 05 Youth Activity Grant** A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to give \$1,000.00 from Mr. Rogers' Youth Activity Grant Account to the Eastern Sussex Athletic Association for the promotion of youth sports in Sussex County at the Hudson Field Complex.

**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.**

**M 242 05 Councilmanic Grant** A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$500.00 from Mr. Rogers' Councilmanic Account to the Sussex Academy of Arts & Sciences for the Odyssey of the Mind Team's participation in the World Finals in Boulder, Colorado.

**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**

**M 243 05 Councilmanic Grant** A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to give \$500.00 from Mr. Rogers' Councilmanic Account to the Milton Elementary School for the Odyssey of the Mind Team's participation in the World Finals in Boulder, Colorado.

**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**

**M 244 05 Youth Activity Grant** A Motion was made by Mr. Rogers, seconded by Mr. Cole, to give \$500.00 from Mr. Rogers' Youth Activity Grant Account to the Milton Little League for operating expenses for the athletic program.

**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**

**M 245 05  
Adjourn**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to adjourn at 11:25 p.m. Motion Adopted by Voice Vote.**

**Respectfully submitted,**

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