



*Sussex County Council  
Agendas & Minutes*

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 7, 2005**

**Call to Order** The regular meeting of the Sussex County Council was held Tuesday, June 7, 2005 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

**M 340 05** A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to amend the Agenda by deleting "Insurance Recommendation for 7/1/05 – 6/30/08", 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 341 05** A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the minutes of May 24, 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:**

**BOARD OF DIRECTORS, GOOD SAMARITAN AID ORGANIZATION.  
RE: Letter in appreciation of grant.**

Corre-  
spondence  
(continued)

Legislative  
Update

**FRANK RASICAUSKAS, KIWANIS INTERNATIONAL.**  
**RE: Letter thanking Councilman Dukes for his attendance at their recent meeting.**

**JEAN STEELE, THE BETHANY BEACH 4TH OF JULY PARADE COMMITTEE, BETHANY BEACH, DELAWARE.**

**RE: Letter in appreciation of grant.**

**RICK MICKOWSKI, DELAWARE ENVIROTHON, DOVER, DELAWARE.**

**RE: Letter in appreciation of grant.**

**Mr. Stickels updated the Council on legislatives issues that are presently before the 143rd General Assembly:**

**Senate Bill No. 19 – AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SCHOOL CONSTRUCTION.**

This Bill prohibits towns, counties, or other municipalities from assessing impact fees and other one time fees against district school construction projects. The monies to pay these impact fees come directly from the State and the local taxpayers. This Bill will not prohibit subdivisions from charging reasonable utility fees based on usage.

**Status: House & Community Affairs Committee.**

**House Bill No. 102 – AN ACT TO AMEND TITLES 9 AND 17 OF THE DELAWARE CODE RELATING TO DESIGN AND CONSTRUCTION STANDARDS FOR CERTAIN ROADS AND STREETS IN SUSSEX COUNTY.**

This Act requires subdivision roads in Sussex County to be submitted under the current Planning & Zoning approval process designed to State standards, whether or not those roads are intended to be dedicated to public use or not. Currently, roads must be designed to County standards. The differences are not significant, if designed and constructed to that standard from the beginning. However, if built to County standards first, then later dedicated to public use, they must meet the State standards, imposing serious hardships on the adjacent homeowners to improve the roads to those State standards before dedication to public use can occur. Kent and New Castle counties have already adopted the State's standards.

**Status: Out of Committee.**

**House Bill No. 143 – AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO SUSSEX COUNTY GOVERNMENT AND ADMINISTRATION.**

**This Bill establishes two new Sussex County Council seats (a 6th and 7th**

Councilmanic District) by District to be filled in 2008 and requires redistricting by Sussex County Council in 2007. The first term for District 6 would be two years; the first term for District 7 would be four years. Thereafter, there would be two categories: Districts 1, 2, 3 and 7 would run together for four year terms and Districts 4, 5 and 6 would run together for four year terms. The existing Council would set up the boundaries.

**Legislative  
Update  
(continued)**

**Status: Senate Executive Committee.**

**House Bill No. 169 – AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO PLANNING AND ZONING.**

This Bill increases the number of members from five (5) to seven (7) on the Sussex County Planning and Zoning Commission.

**Status: Out of Committee.**

**House Bill No. 170 – AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO SUSSEX COUNTY COUNCILMANIC DISTRICTS.**

This Act increases the size of Sussex County Council from five members to 7 members. A 6th and 7th Councilmanic District would be added and would be at-large districts comprising all of Sussex County. The elections to fill the Councilmanic seats of Districts 6 and 7 would be at the general election in 2006.

**Status: Out of Committee.**

Mr. Stickels stated that if he does not get direction from the Council on House Bill 143 and 170, he will not comment on them at the General Assembly.

**Legislation Relating to the Register of Wills**

Mr. Stickels reported that legislation is being proposed, but lacking a sponsor, to make some changes in the Register of Wills: (1) to change the name to Registrar of Wills and (2) a change to the small estates affidavits waiting period.

This Bill was proposed by Kent County.

**Legislation Relating to Wastewater Management and Sprawl Prevention**

Mr. Stickels reported that this legislation is being discussed and the Office of State Planning Coordination has stated that it will be introduced. The draft is still being amended.

This legislation prohibits on-site community wastewater treatment and disposal systems and public or private sewer service in areas not designated

for growth via any local certified comprehensive plan or the Delaware Strategies for State Policies and Spending.

**Status:** There are no sponsors and it has not yet been introduced. The legislation is supported by the Secretary of Agriculture and the Office of State Planning Coordination.

**Legislative  
Update  
(continued)**

**Legislation Relating to Recycling and Trash Districts**

Mr. Stickels reported that the State has set a goal of 30 percent recycling and they want the counties to create recycling and trash districts. A tipping fee (\$3.00 per ton) is to be established which would help pay for the program. The State would pay the County for the administration of the Program. Mr. Stickels explained that landowners would petition the County and a Public Hearing would be held – this would have to be done by Ordinance.

Mr. Stickels advised Council that the legislators have asked for the Council's position on this legislation. Mr. Cole and Mr. Rogers stated their opinion that the County should not become involved in the trash business and that the marketplace should take care of trash in Sussex County. Mr. Dukes, Mr. Jones, and Mr. Phillips stated their opinion that they are not opposed to the legislation, since it is enabling legislation.

**Surface Water Task Force Committee**

Mr. Stickels reported that legislation has been drafted establishing a task force on surface water management to address the State's chronic flooding and drainage problems and to develop a comprehensive strategy to address drainage and stormwater management issues.

**Status:** It does not appear that the legislation will pass during this General Assembly session.

**Legislation Relating to Transfer of Development Rights**

Mr. Stickels reported that the Office of State Planning Coordination is saying that this legislation will go forward this session.

Mr. Phillips asked Mr. Stickels to communicate to the municipalities that the term "TDR" has a stigma that is really not going to allow it to be considered. Mr. Phillips stated that TDR's have merit and he suggested that it should be called "Open Space Trade".

**Wastewater  
Agreements**

Mr. Stickels presented wastewater agreements for the Council's consideration.

**M 342 05** A Motion was made by Mr. Rogers, seconded by Mr. Dukes, based upon the

Execute recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 377, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Rebay, LLC, for wastewater facilities to be constructed in Canal Point, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

**M 342 05** (continued) **Motion Adopted:** **5 Yea.**  
**Vote by Roll Call:** **Mr. Phillips, Yea; Mr. Cole, Yea;**  
**Mr. Dukes, Yea; Mr. Rogers, Yea;**  
**Mr. Jones, Yea**

**M 343 05 Execute Agreements/ Rebay, LLC/ Canal Point – Section II** A Motion was made by Mr. Rogers, seconded by Mr. Dukes, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 377-1 / Section II, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Rebay, LLC, for wastewater facilities to be constructed in Canal Point, located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.

**Motion Adopted:** **5 Yea.**

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

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

1. **Postcard Notification**

## 1. Postcard Notification

Attached please find an example of a postcard that has been developed for notifying Sussex County licensed plumbers and Sussex County licensed waste haulers that their licenses have expired. The picture on the postcard was generated from a digital photograph. The information on the back of the card is generated from the database, which is already being keyed and maintained by the Planning and Permits Division. Printing of the postcards will be handled completely in-house at the Planning and Permits Division as well.

**Postcards will be sent out on a regular basis to remind plumbers and waste haulers of outstanding license requirements and to notify them annually that their licenses will expire. The postage for the postcard will be 23¢ as opposed to the current rate of 37¢ paid for each first class postage letter. Additionally, there will be savings on stationery and envelopes.**

Jayne Dickerson and the staff of the IT Division are to be complimented for developing this postcard. Currently, the Planning

**Administrator's  
Report  
(continued)**

**Insurance  
Proposals  
for  
7/1/05 –  
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and Zoning Department is looking at developing a similar program.

**2. Town of Dewey Beach 2004 Annual Drinking Water Quality Report**

I am pleased to inform the Council that the drinking water provided by the County to the residents of the Town of Dewey Beach has completed an annual water quality review. The drinking water that is delivered to each property meets or exceeds all Federal and State requirements. Included with this report is a copy of the annual review.

**3. County Council Meeting**

The next regularly scheduled County Council meeting will be on Tuesday, June 14, 2005, at 6:30 p.m. A public hearing on the FY 2006 Budget will take place at 6:45 p.m. The public is encouraged to attend the proposed budget public hearing.

Mr. Baker discussed the results of the County's Request for Insurance Proposals for the period July 1, 2005 through June 30, 2008. On May 25th, bids were opened and proposals were received, as follows:

- 1) L & W Insurance – Airport Liability only.
- 2) Pratt Insurance – all required policies, except for Crime and Airport Liability.
- 3) Marsh USA, Inc. – all required policies, except for Workers Compensation.

Mr. Baker noted that again, no proposals were received for Ocean Outfall liability. He also noted that one bid was received one-half hour after the deadline and was returned.

Mr. Baker advised that the County's Insurance Consultant, Insurance Buyers Council (IBC), has requested additional information from the companies submitting bids. The proposal will be evaluated by IBC and a recommendation will be made at a future Council meeting.

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO ADOPT CHAPTER 27 OF THE CODE OF SUSSEX COUNTY TO CREATE A POST EMPLOYMENT BENEFIT PLAN TO PAY OTHER THAN PENSION BENEFITS TO RETIRED COUNTY EMPLOYEES AND TO AUTHORIZE COUNCIL TO IMPLEMENT AND FUND THE PLAN".

Mr. Baker explained that the Council has previously approved funding in the amount of \$2,386,561 to the Pensioner Benefit Fund to pay other post employment benefits to employees who are receiving pensions. These

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(continued)**

benefits include such items as payment of health insurance premiums, and vision and dental care benefits. Approximately 86 former County employees are receiving some form of other post employment benefits at the present time. The purpose of this Ordinance is to formally codify the present policy of the County under which these benefits are being paid and to create a formal plan as a basis for the payment of such benefits now and in the future. The Proposed Ordinance would authorize the establishment of a trust account for the purpose of funding the County's pensioner benefits.

Mr. Baker reported that, per the County's Actuaries (Aon Consulting), the County's liability for pensioner benefits as of January 1, 2002 was approximately \$19.5 million. The recommended annual contribution is \$2,627,243.

Mr. Baker explained that, during June 2004, the Governmental Accounting Standards Board (GASB) issued Statement 45 entitled "Accounting and Financial Reporting by Employers for Postemployment Benefits", which requires the County to record a liability annually. Statement 45 will be required in 2008.

Mr. Baker reported that the County has begun funding this long-term liability; however, at this time, the fund is \$19.5 million under-funded. Mr. Baker clarified that the Pension Fund itself is only \$1.9 million under-funded; the Pension Fund will be fully funded upon the adoption of the Fiscal Year 2006 Budget.

Mr. Baker reviewed the contents of the Proposed Ordinance, including Benefits, Eligibility, Arbitration, and Funding. Mr. Baker provided information regarding the current policy:

**A. Pensioner Who Began Employment Before July 1, 2001**

1. To receive benefits, former employee must be receiving a pension payment.
2. County to pay 100 percent of benefits if former employee receives a pension immediately upon leaving County employment.
3. If former employee (who was employed on July 1, 2001), does not receive a pension immediately upon leaving employment, but receives a pension later, then he or she would qualify under B for benefits.

**B. New Pensioners**

1. To receive benefits, former employee must be receiving a pension payment.
2. County to pay pensioner benefits as per below.
  - Former employee with less than 15 years of

- employment – 0 percent.
- Former employee with 15 to 25 years of employment – 50 percent.
- Former employee with 25 or greater years of employment – 100 percent.

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Fund  
(continued)**

Public comments were heard. Dan Kramer referenced the \$2.3 million of approved funding and questioned whether the benefits come out of that fund.

There were no additional comments.

Mr. Dukes stated that he was not ready to vote on the Proposed Ordinance and that he would like more time to obtain additional information and to consider the information presented. Mr. Dukes questioned the under-funding of the pension benefits account. He stated that he thought that when he was voting for the pension fund contribution, he was voting to fund pensions as well as pension benefits.

**M 344 05  
Defer  
Action/  
Proposed  
Ordinance/  
Benefit  
Fund**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to close the Public Hearing and to defer action.

**Motion Adopted: 5 Yea.**

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

**Requests**

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

**M 345 05  
Youth  
Activity  
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give \$2,000.00 from Mr. Phillips' Youth Activity Grant Account to the Dagsboro Boys & Girls Club for educational games and supplies.

**Motion Adopted: 5 Yea.**

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

**M 346 05  
Council-  
manic  
Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to give \$400.00 (\$200.00 each from Mr. Jones' and Mr. Dukes' Councilmanic Accounts) to the Greenwood Spring Festival for operating expenses.

**Motion Adopted: 5 Yea.**

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

**Mr. Dukes, Yea; Mr. Rogers, Yea;  
Mr. Jones, Yea**

<b>Request Tabled</b>	<b>The grant request from the Family Outreach Multipurpose Community Center, Inc. was tabled.</b>
<b>M 347 05 Grant M 347 05 (continued)</b>	<b>A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to give \$500.00 from Mr. Dukes' Councilmanic Account to the National Youth Leadership Forum for Jennifer Nizolek's attendance at the 2005 Forum.</b>
	<b>Motion Adopted: 5 Yea.</b>
	<b>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</b>
<b>M 348 05 Council- manic Grant</b>	<b>A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to give \$250.00 from Mr. Rogers' Councilmanic Account to Friends of Prime Hook, NWR for a community oriented educational activity, the second program in the <i>Vandegrift Memorial Series</i>.</b>
	<b>Motion Adopted: 5 Yea.</b>
	<b>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</b>
<b>Manu- factured Housing Rental Assistance Programs</b>	<b>Councilman Phillips asked Ruth Briggs King, Executive Director of the First State Manufactured Housing Association of Delaware, to address the Council regarding the Rental Assistance Programs. This program provides monthly rental subsidies to qualified manufactured home residents located in land lease communities. The program is designed to provide rental assistance for qualified manufactured home owners. The program is a completely privately funded and supported program that is administered by the land lease community in which the manufactured home owner resides. Since the Program is voluntary, it may not be available in all manufactured home communities. Ms. King reported that several community owners throughout Delaware have pledged their support and committed over 8,000 land-leased lots to this new program, including the following communities in Sussex County: Pot Nets and Baywood, Colonial East LLP, Atlantic Realty Management, Strine K-4 Management/Investors Realty.</b>
<b>M 349 05 Recess</b>	<b>At 11:15 a.m., a Motion was made by Mr. Rogers, seconded by Mr. Dukes, to recess until 1:30 p.m. Motion Adopted by Voice Vote.</b>
<b>Reconvene</b>	<b>At 1:37 p.m., Mr. Jones called the Council back into session.</b>
<b>Public Hearing</b>	<b>A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF</b>

C/Z  
No. 1575

**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 38,702 SQUARE FEET, MORE OR LESS" (Change of Zone No. 1575) filed on behalf of Edward J. Chiasson.**

Public  
Hearing  
C/Z  
No. 1575  
(continued)

The Planning and Zoning Commission held a Public Hearing on this application on May 12, 2005 at which time they recommended that the application be denied as submitted and suggested that the County Council should waive the application fee if the applicant chooses to withdraw this application and apply for a Conditional Use. If the applicant does apply for a Conditional Use, the applicant should be scheduled for public hearing for the earliest available date.

(See the minutes of the Planning and Zoning Commission dated May 12, 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 denial. The summary was admitted as part of the County Council's record.

The Council found that Edward Chiasson was present with Tim Willard, Attorney. They stated that Mr. Chiasson has owned the property for approximately thirty years; that during those years, he has seen development surround him; that there are commercial uses adjacent to the property; that conditional uses exist across Route 54; that a very large water tower is located on the adjacent property; that across the street is the Americana Bayside commercial district; that he has a large dwelling on the premises and that he may convert the dwelling into a pro shop, a nautical shop, a gift shop, or a restaurant; that he is not sure how he wants to develop the property but he wants options to consider; that he currently builds replica lighthouses at another location down the street; and that DelDOT did not require a Traffic Impact Study.

Mr. Stickels questioned how the concern can be addressed that the applicant is speculating on this property. Mr. Willard responded that they think the property should be rezoned C-1 since C-1 zoning is all around it.

Councilman Cole commented that all of the uses mentioned by the applicant are B-1 types of businesses and C-1 zoning permits so many other uses. Mr. Cole also noted that the Americana Bayside "commercial district" is actually zoned B-1.

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

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action on Change of Zone No. 1575, an application of Edward J. Chiasson, for two weeks to allow the Attorney to consult with his Client.

<b>Defer Action on C/Z No. 1575</b>	<b>Motion Adopted:</b> <b>3 Yea, 2 Nay.</b>
<b>Public Hearing C/Z No. 1576</b>	<b>Vote by Roll Call:</b> <b>Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Nay; Mr. Rogers, Yea; Mr. Jones, Nay</b>

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 RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 826.84 ACRES, MORE OR LESS" (Change of Zone No. 1576) filed on behalf of Reynolds Pond, L.L.C.

The Planning and Zoning Commission held a Public Hearing on this application on May 12, 2005 at which time they decided to leave the record open for receipt of comments from PLUS and then for 15 days after receipt of the PLUS comments for any additional written comments.

(See the minutes of the Planning and Zoning Commission dated May 12, 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. The summary was admitted as part of the County Council's record.

Mr. Lank provided the Council with a copy the site plan, an alternative plot showing the elimination of the golf course, an aerial photograph of the area, and a copy of an exhibit booklet.

Mr. Lank reported that, since May 12th, twenty letters have been received in support of the application and two letters in opposition of the application. Copies of the correspondence were distributed to the Council.

Mr. Lank reported that a letter was received from the Town of Milton dated June 29, 2004 which was sent to the Office of State Planning Coordination. The letter referenced the Town's concerns in regards to this development and their opposition to the application.

The Council found that Glen Urquhart, a principal of Reynolds Pond, LLC; James Fuqua, Attorney; Ross Harris and Gary Couples of ECI; Ed Launey of Environmental Resources, Inc.; Derrick Kennedy of Orth-Rodgers & Associates, and Gerald Esposito of Tidewater Utilities, Inc. were present on behalf of the application.

Mr. Fuqua referenced the Planning and Zoning Commission's decision to defer action and stated that the application did have to go back to a re-

review by PLUS in May. He noted that the Office of State Planning Coordination expects the PLUS Response Letter to be mailed out this week.

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Hearing  
C/Z  
No. 1576  
(continued)

Mr. Fuqua stated that the application is for a Residential Planned Community consisting of 1,592 units; that the land is owned by the Isaacs Family Limited Partnership; that the original application, which was filed in June of 2004 proposed to have 1790 residential units; that as a result of the PLUS review comments, a revised plan was submitted; that they now propose 1,592 units of which there would be 1,311 single-family dwellings and 281 townhouses, 220 assisted living units, 159,000 square feet of retail space and 7,100 feet of office space; that there would be community facilities including a 20,000 square foot multi-purpose community hall, a 6,000 square foot library, and extensive recreational facilities.

Mr. Fuqua pointed out that the gross density permitted in an AR zone on a 836 acre parcel would be 1820 residential units; under the Agricultural Residential Cluster Ordinance, this AR parcel with central sewer would be permitted to have 1672 residential units and would only have to be submitted to the Planning and Zoning Commission for compliance with the Subdivision Ordinance. Under the density calculations of the RPC Ordinance for an AR-RPC, 1,595 residential units would be permitted. Mr. Fuqua stated that the application is for 1,592 units, which is less than the gross permitted density; less than the permitted density in an AR Cluster Subdivision; and a little less than the AR-RPC permitted density. Mr. Fuqua noted that the application is in compliance with the under-lying existing AR zoning and that the project has a density of 1.9 units per acre.

Mr. Fuqua emphasized that the current existing law in Sussex County regarding land use not only defines what uses are permitted but establishes what rights the property owner currently has in regards to the use of his land. Mr. Fuqua explained that the reason he brought this up is due to a “storm brewing” over what Sussex County’s zoning ordinance and Comprehensive Plan permits in Sussex County and what the Office of State Planning Coordination and the Livable Delaware agenda envision for Sussex County. Mr. Fuqua stated that this application must be considered on what the law permits today and action by the Commission and the Council must be based on existing law. Mr. Fuqua distributed copies of Applicable Laws including County Ordinances and State Statutes regarding land use.

Mr. Fuqua stated that the application is for a RPC project where residents can live, shop, and recreate without having to leave the site; a community with less traffic and a higher quality of life; that it would be a community of numerous social and recreational opportunities and housing types; that they have received commitment letters for all necessary utility infrastructure; that no wetland areas will be encroached upon and no

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(continued)

**Federal wetlands are required for this development; that the project will not create any additional impact on traffic; that the site is close to the Town of Milton and the City of Milford; that the project has been designed to be environmentally sensitive; that a Traffic Impact Study was prepared by Orth Rodgers and submitted to and reviewed by DelDOT; that the applicant will create all improvements required by DelDOT; that the project does have the design components supported by Randall Arendt, a nationally renowned consultant; and that deed restrictions will reflect no use of Reynolds Pond of any kind.**

**Mr. Fuqua addressed the letter from the Office of State Planning Coordination, which raised three main concerns and objections to the proposed development:**

- 1) **DNREC raised concerns about the potential environmental impact of the development.**

**Response:** The development plan for Isaacs Glen addresses those issues; the development has been designed to be environmentally sensitive and to have minimal environmental impact. The majority of the site has already been cleared and has been used for agricultural purposes. Mr. Fuqua stated that the site design provides appropriate buffers from the wetland areas, 50 percent open space and it preserves extensive forested areas.

- 2) **The State Planning Office does not support this proposal because, in their opinion, the proposal is inconsistent with the Strategies for State Policies and Spending, the Sussex County Land Use Plan, and the goals of Livable Delaware.**

**Response:** The applicant respectfully disagrees with their analysis. The development of Isaacs Glen is not expecting or requesting a State contribution for infrastructure; water and sewer infrastructure will be constructed by the developer and operated by a private company. Any road improvements required by DelDOT will be paid for by the developer. The revised density is not inconsistent with the Land Use Plan; the plan was revised to conform to a lower density, the density currently permitted for the property, since it is already zoned AR. Mr. Fuqua stated that there is a fundamental inconsistency in what the State wants and what the County's law permits. The State calls most of the AR zoned lands in Sussex County "Level 4 Areas" and Level 4 Areas are an area where the State's goal is to restrict the land use to agricultural purposes. Sussex County permits 2 units per acre in AR zoning; the State is basically demanding no development in Level 4 AR Areas. Mr. Fuqua referred to Title 9, Section 6902 of the Delaware Code which gives Sussex County zoning authority. The law states that "the county government may, in accordance with the conditions and

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(continued)

procedures specified in this subchapter regulate the location, height, bulk and size of buildings and other structures, the percentage of lot which may be occupied, the size of yards, courts and other open spaces, the density and distribution of population, the location and uses of buildings and structures....” Mr. Fuqua also referred to Title 9, Section 6951 known as the Quality of Life Act of 1988, which requires the counties and municipalities to prepare comprehensive plans, which must be certified by the State. Comprehensive Plans were given the force of law and development must be in conformity with those plans. Mr. Fuqua reiterated that, it is clear that Sussex County makes the final decision on zoning matters, not the State and not the State Planning Office.

- 3) The State has made a significant investment in preserving agricultural lands in this area and the State wants the Isaacs' land to be preserved as farmland. The Delaware Department of Agriculture stated, in opposition to the project, that there has been agricultural preservation activity in this area and “the preservation activity demonstrates the neighborhood's strong agricultural and preservation ethic and preference”.

**Response:** The Isaacs property is private property and the owner of private property can use their property in any legitimate way permitted by law. The neighborhood's ethic and preference does not control how another neighbor uses his private property. Mr. Fuqua noted that this project would be using farmland and this development will be contributing \$500.00 per settlement to the Sussex County Land Trust, resulting in a large amount of money being contributed during the period of build-out.

Mr. Fuqua and Mr. Harris referred to the additional PLUS meeting with the Office of State Planning in May, and as a result of comments received at that meeting relating to Open Space and the rural character of the area, an alternative design was developed. The alternative design deletes the golf course from the plan, which gives the development a more rural character, it increases the buffers, it preserves approximately 95 percent of the forested area, it increases the amount of open space, and the Shawnee Golf Course could serve the development.

At this point in the Public Hearing, Mr. Griffin called for a show of hands of those present to indicate if they were in support of or in opposition to the application. It was noted that approximately 50 people were present in support and 12 people were present in opposition.

Mr. Harris reviewed the revised site plan. He stated that the number of units were not changed; the golf course was removed and open space added; a number of man-made lakes were added; green space, lakes and

ponds were increased; 98 percent of the lots are 100 feet from the street lines; there are no lots in the wetlands or flood plains; a sub-station is provided for emergency services; an underpass could be provided on Route 30 for pedestrians; the Town of Milton's future growth area comes out to within one mile of the area; the Inland Bays setbacks are being maintained; and endangered species will not be disturbed.

Mr. Harris distributed a letter of support from Randall Arendt.

Public  
Hearing  
C/Z  
No. 1576  
(continued)

Mr. Fuqua distributed proposed conditions and findings of fact.

Public comments were heard in support of the application from Hugh Rowan, Ed Fitchett, Jim Baxter, Tom Harold, Dr. Andrew Riddle, and Richard Page. They stated that the Isaacs have worked this farm for years and they have the right to sell the land; that State agencies should not be allowed to inhibit their right to sell this farm to whom they choose; that the Isaacs Glen Project is a very rational community; that it is well planned; it is a neighborhood community concept which provides convenient shopping and doctors offices and connects well integrated neighborhoods with great landscaping and areas for recreation; that there is a lot more openness than in the usual developments; that farmers should not be forced to keep farming when they do not want to do so by denying them zoning which is their only practical exit strategy; that the golf course is a good idea; that the revised plan is a good one as well; that ideally, Beiderman Road should be closed; and that open space is not owned by farmers, farm land is owned by farmers.

Public comments were heard in opposition to the application from Alan Chorman, Harry Isaacs, John Green, Mabel Granke, Charles Adams, and Jeff Wells. They stated that this project will create a new town; that a new town is not needed when there are two existing towns in close proximity; that the area will not be able to be serviced with aerial spraying if this project is approved; that this project will bring crime and pollution to the area; that Route 30 will be impacted and it does not need additional traffic since there are already more complaints on Route 30 than any other road in eastern Sussex County; that retention ponds will not hold the amount of water generated by this project; that the application is in direct conflict with the State Strategies and counter to the goals of Livable Delaware; that it is inconsistent with the County Comprehensive Plan; that there are environmental concerns; that the development will bring approximately 3,500–5,500 people and 4,000-4,500 vehicles to the area; that approximately 50 percent of this property is bound by water; that all of the water empties into State-owned Waples Pond and then into the Prime Hook National Wildlife Refuge; that the development would be out of character with the area; that the State and County should get together to purchase the property.

Letters in opposition to the application were received from Francis Herbert, Garret VanBurke and Michael Tyler. These letters were made a part of the record.

**The Public Hearing was closed.**

**M 351 05  
Defer Action  
C/Z 1576  
M 351 05  
(continued)**

**A Motion was made by Mr. Rogers, seconded by Mr. Cole, to defer action on Change of Zone No. 1576, filed on behalf of Reynolds Pond, L.L.C., and to leave the record open for 21 days beyond the time the Council receives the final PLUS comments and the recommendation from the Planning and Zoning Commission for written comments on the information received.**

**Motion Adopted: 5 Yea.**

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

**A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to adjourn at 4:28 p.m. Motion Adopted by Voice Vote.**

**M 352 05  
Adjourn**

**Respectfully submitted,**

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