



## *Sussex County Council Agendas & Minutes*

### **SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 8, 2004**

#### **Call to Order**

The regular meeting of the Sussex County Council was held Tuesday, June 8, 2004, at 6:30 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Dale R. Dukes</b>	<b>President</b>
<b>Finley B. Jones, Jr.</b>	<b>Vice President</b>
<b>Lynn J. Rogers</b>	<b>Member</b>
<b>George B. Cole</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 343 04 Approve Agenda**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to amend the Agenda of June 8, 2004 by deleting "Michael Izzo, County Engineer, Bay View and Sea Country Estates, Sussex County Project No. 03-04, Bid Award" and to approve the Agenda, as amended.

**Motion Adopted: 5 Yea.**

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

#### **M 344 04 Approve Minutes**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the minutes of May 18, 2004.

**Motion Adopted: 5 Yea.**

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

#### **Corre- spondence**

Mr. Griffin read the following correspondence:

**SUSSEX COUNTY S.A.L.T. COUNCIL, SELBYVILLE, DELAWARE.  
RE: Letter in appreciation of grant.**

**BAY COLONY PROPERTY OWNERS ASSOCIATION, DAGSBORO, DELAWARE.**

**RE: Letter commending the entire staff that is responsible for the maintenance and service of their sewage system within the Bay Colony subdivision.**

**Corre-  
spondence  
(continued)**

**MARGARET GRANGER, BLADES, DELAWARE.**

**RE: Letter thanking the County Council for its continued funding of the Community Development Block Grants Program. The letter also specifically commends Mike Jones and Wayne Warren.**

Bernice Edwards and Thea Becton from First State Community Action Agency were present to submit a \$100,000 funding request for two communities who are not currently in the Strong Communities Network, Greentop in Lincoln and Polly Branch in Selbyville. The funding would be used for community development and capacity building efforts in these communities. Ms. Becton stated that in 1994, the Strong Communities Initiative was enacted as a Statewide effort to work with low-income pocket of poverty communities in Kent and Sussex Counties. She stated that although these two communities have the same qualifying criteria established for inclusion in Strong Communities in 1994, they were not included. Ms. Becton reported that, in spite of their continual efforts to get the Strong Communities designation for these communities, they have been unsuccessful in doing so. She stated that numerous attempts have been made to contact the Governor's office for expansion of the Strong Communities initiative and no response has been received. Ms. Edwards noted that the funding requested is for direct services and not for administrative costs and that the \$100,000 would be divided equally between the two communities.

The County Council informed Ms. Edwards and Ms. Becton that their request would be considered during the Public Hearing on the Fiscal 2005 Budget. Ms. Edwards and Ms. Becton were encouraged to attend the meeting.

**Proposed  
Ordinance  
to  
Implement  
House Bill  
No. 172**

**Mr. Dukes introduced the Proposed Ordinance entitled "AN ORDINANCE TO IMPLEMENT HOUSE BILL NO. 172 PASSED BY THE DELAWARE GENERAL ASSEMBLY IN SESSION 2003 AND WHICH REQUIRES THE ADOPTION OF COUNTY ORDINANCE TO ADDRESS THE DUTY OF INDIVIDUALS AND ARTIFICIAL ENTITIES TO ERECT AND MAINTAIN SIGNAGE ON PARKING SPACES AND ZONES FOR THE USE OF PERSONS WITH DISABILITIES". The Proposed Ordinance will be advertised for Public Hearing.**

**Adminis-  
trator's  
Report**

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

- 1. Delaware Department of Transportation Public Workshops**

Adminis-  
trator's  
Report  
(continued)

The Delaware Department of Transportation (DelDOT) will be conducting Public Workshops to update and seek comments from the public on the progress of the US 113 North/South Study. A workshop is scheduled for Wednesday, June 9, 2004, at the Carlisle Fire Company, Banquet Hall, 615 Northwest Front Street, Milford, Delaware, from 4:00 to 7:00 p.m. A meeting will also take place in the Georgetown area on Monday, June 14, 2004, at Delaware Technical & Community College, Room 344 A/B and the Theatre, Arts and Science Center, from 4:00 to 7:00 p.m. A brief presentation will be made at each workshop at 4:15 p.m. and repeated at 5:15 p.m. and 6:15 p.m.

The purpose of the workshops is to present the information developed to date. DelDOT is seeking public comment on this information. Comments and suggestions provided at the workshops will be used by DelDOT in developing and evaluating preliminary improvement alternatives for US 113.

2. Beneficial Acceptance

The Sussex County Engineering Department gave Beneficial Acceptance to Avon Park, Phase I, on May 18, 2004. Avon Park, Phase I, is located on Windmill Lane, Ocean View, Delaware. The project is part of the South Bethany Sanitary Sewer District and consists of 46 single-family duplexes. Included with this report is a fact sheet on the project.

3. United States Postal Service

The United States Postal Service is accepting proposals for suitable land to construct a new post office in Lincoln, Delaware. The site should be located in the Lincoln, Delaware, postal service area with 31,250 net useable square feet. The proposed site size excludes additional areas needed for setback, septic, or other special requirements. The property should be properly zoned or capable of being rezoned for use as a postal site. Included with this report is a fact sheet and contact information.

4. Airport Land Acquisition

As part of the airport expansion, 8.8 acres has been acquired by the County located on the south side of Park Avenue, as shown on County Tax Map 1-35-20.00-51.01; \$125,000 was paid for the acquisition from Mr. and Mrs. Christopher J. Parziale. This is the first acquisition that is necessary to allow for the 1,000-foot extension to the main runway at the Sussex County Industrial Airpark. This acquisition will be eligible for reimbursement of Federal and State funding.

<b>Proposed Renewal of Agree- ment with DTCC</b>	<b>Robert Stuart, Deputy Director, Sussex County EMS, discussed the renewal of an agreement between Delaware Technical &amp; Community College (DTCC) and Sussex County Emergency Medical Services. Mr. Stuart reported that in May of 2003, Sussex County EMS entered into an agreement with the paramedic training program at DTCC to provide an opportunity for their students to fulfill a part of their field internship requirement with Sussex County EMS. Mr. Stuart proposed that the agreement be renewed for an additional year. He noted that the three students currently being sponsored by Sussex County EMS would participate in the program, along with 17 other students. The agreement addresses the educational and operational responsibilities of all parties, as well as liability issues, and provides for oversight by Sussex County EMS Training and Administration personnel.</b>
<b>Proposed Renewal of Agree- ment with DTCC</b>	
<b>M 345 04 Approve Renewal of Agree- ment with DTCC</b>	<b>A Motion was made by Mr. Rogers, seconded by Mr. Phillips, that the Sussex County Council approves the Statement of Agreement between Delaware Technical &amp; Community College and Sussex County Emergency Medical Services for the period from May 15, 2004 through May 14, 2005.</b>  <b>Motion Adopted: 5 Yea.</b>  <b>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Yea</b>
<b>Sussex County Airport T-Hangar Extension Project/ Change Order</b>	<b>Derek Sapp, Project Engineer, presented Change Order No. 3 to the Sussex County Airport T-Hangar Extension Project. He reported that the change order is a result of differing site conditions: unsuitable materials under the water main and pump room, 500' of conduit and wiring required by Conectiv, hand-dig column pier footing over live electrical line, and run 1" waterline across site and install additional hose bib. Mr. Sapp reported that the requested change order is in the amount of \$12,265.41 and is necessary due to time constraints.</b>
<b>M 346 04 Approve Change Order/ Sussex County Airport T-Hangar Extension Project</b>	<b>A Motion was made by Mr. Rogers, seconded by Mr. Jones, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves Change Order No. 3 for Project No. 99-22, Sussex County Airport T-Hangar Extension, to increase the original contract amount by \$12,265.41, from \$283,830.07 to \$296,095.48.</b>  <b>Motion Adopted: 5 Yea.</b>  <b>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Yea</b>
<b>Old Business/ C/U</b>	<b>The County Council discussed the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR WELLS AND</b>

**No. 1520**            **A CONTROL BUILDING FOR A PUBLIC UTILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 4.676 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1520) filed on behalf of Tidewater Utilities, Inc.**

**Old Business/ C/U No. 1520 (continued)**            **The Planning and Zoning Commission held a Public Hearing on this application on January 22, 2004 at which time they deferred action. On February 12, 2004 they recommended that the application be approved with conditions.**

**The County Council held a Public Hearing on this application on February 10, 2004 at which time they deferred action.**

**M 347 04 Adopt Ordinance No. 1694 (C/U No. 1520)**            **A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to Adopt Ordinance No. 1694 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR WELLS AND A CONTROL BUILDING FOR A PUBLIC UTILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 4.676 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1520) filed on behalf of Tidewater Utilities, Inc., with the following conditions:**

- 1. The driveway serving the wells and control building shall be paved.**
- 2. Landscaping shall be provided.**
- 3. There shall not be any elevated water towers constructed on the site.**
- 4. The site plan shall be subject to the approval of 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**

**Old Business (C/U No. 1524)**            **The County Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 23.52 ACRES, MORE OR LESS”(Conditional Use No. 1524) filed on behalf of Rehoboth Beach Associates, LLC.**

**The Planning and Zoning Commission held a Public Hearing on this application on March 3, 2004 at which time they deferred action. On March 25, 2004 they recommended that the application be approved with**

conditions.

The County Council held a Public Hearing on this application on March 16, 2004 at which time they deferred action.

Mr. Dukes stated that he was not present during the Public Hearing on March 16, 2004; however, he has listened to the taped proceedings of the Public Hearing and therefore, he would be participating in the vote.

Old  
Business  
(C/U  
No. 1524)  
(continued)

Mr. Cole referred to Condition No. 1 recommended by the Planning and Zoning Commission, which states that “The maximum number of residential units shall not exceed 140 condominiums within 70 duplex buildings.” Mr. Cole stated that the project site is 23.5 acres and for this reason he thinks that only 94 condominiums within 47 duplex buildings should be permitted. Mr. Cole noted that this would follow the assumption of the Engineering Department of 4 units to the acre.

M 348 04  
Motion  
Died

A Motion was made by Mr. Cole that the first condition should be that “The maximum number of residential units shall not exceed 94 condominiums within 47 duplex buildings.” The Motion died for the lack of a Second.

M 349 04  
Adopt  
Ordinance  
No. 1695  
(C/U  
No. 1524)

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to Adopt Ordinance No. 1695 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 23.52 ACRES, MORE OR LESS” (Conditional Use No. 1524) filed on behalf of Rehoboth Beach Associates, LLC., with the following conditions:

1. The maximum number of residential units shall not exceed 140 condominiums within 70 duplex buildings.
2. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT requirements, as may be amended.
3. Recreational facilities, e.g. swimming pool, community building, trails, etc., shall be constructed and open to use simultaneously with the construction and occupancy of the residential community.
4. The development shall be served as part of the Sussex County West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.
5. The development shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations and approvals, including DNREC, the State Fire Marshal and the Public Service Commission.
6. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.
7. The interior street design shall be in accordance with or exceed Sussex

County street design requirements.

8. There shall be sidewalks on both sides of the streets and street lighting. These shall be shown as part of the site plan review.
9. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
10. Landscape and lawn maintenance shall be the responsibility of the Condominium Association. Best Management Practices shall be utilized to minimize any environmental impact.
11. Construction, site work, grading and deliveries of construction materials, landscaping materials, and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.

**M 349 04**  
**(continued)**

**Motion Adopted: 4 Yea, 1 Nay**

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

**Old**  
**Business**  
**(C/Z**  
**No. 1527)**

The County Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 104.32 ACRES, MORE OR LESS” (Change of Zone No. 1527) filed on behalf of Bay Forest, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on December 11, 2003 at which time they deferred action. On January 8, 2004 they recommended that the application be approved with conditions.

The County Council held a Public Hearing on the application on January 6, 2004 at which time they deferred action.

**M 350 04**  
**Adopt**  
**Proposed**  
**Ordinance**  
**(C/Z**  
**No. 1527)**  
  
**(Denied)**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 104.32 ACRES, MORE OR LESS” (Change of Zone No. 1527) filed on behalf of Bay Forest, LLC, with the conditions proposed by the Planning and Zoning Commission.

**Motion Denied: 5 Nay.**

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

**Old  
Business**

The County Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 22,497 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1532) filed on behalf of E. F. and Martha Quillen.

**Old  
Business  
(C/Z  
No. 1532)**

The Planning and Zoning Commission held a Public Hearing on this application on April 15, 2004 at which time they recommended approval.

The County Council held a Public Hearing on this application on May 4, 2004 at which time they deferred action.

**M 351 04  
Adopt  
Proposed  
Ordinance  
(C/Z  
No. 1532)  
  
(denied)**

A Motion was made by Mr. Rogers, seconded by Mr. Jones, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 22,497 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1532) filed on behalf of E. F. and Martha Quillen.

**Motion Denied:** 4 Nay, 1 Yea.

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

**Old  
Business  
(C/Z  
No. 1533)**

The County Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 83.74 ACRES, MORE OR LESS” (Change of Zone No. 1533) filed on behalf of Hailey/Ribera Development, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on March 25, 2004 at which time they deferred action. On April 15, 2004 they recommended that the application be approved with conditions.



The County Council held a Public Hearing on this application on April 6, 2004 at which time they deferred action.

**M 352 04**  
**Adopt**  
**Ordinance**  
**No. 1696**  
**M 352 04**  
**Adopt**  
**Ordinance**  
**No. 1696**  
**(C/Z**  
**No. 1533)**  
**(continued)**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to Adopt Ordinance No. 1696 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 83.74 ACRES, MORE OR LESS” (Change of Zone No. 1533) filed on behalf of Hailey/Ribera Development, LLC, with conditions:

1. The maximum number of lots shall not exceed 144. These shall all be single family detached homes.
2. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT’s determination.
3. Recreational facilities and amenities shall be constructed and open to use by residents of the development within two years of the issuance of the first building permit. These amenities shall include a swimming pool, community center, sidewalks, streetlighting (including streetlights at all intersections), gazebos and landscaping.
4. The development shall be served by a private on-site central sewer system as defined by Sussex County Ordinance, designed in accordance with Sussex County Engineering Department (Ordinance No. 38) specifications and regulations so that it can be connected and tied into the County’s sewer system as the system expands. The system shall also be constructed in conformity with all DNREC regulations.
5. The RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
6. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements. Best Management Practices shall be utilized with regard to the construction and maintenance of these features. Stormwater Management areas shall be relocated to areas that are not adjacent to any Briarwood lots.
7. Site plan reviews for the development shall be subject to the approval of the Planning and Zoning Commission.
8. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications.
9. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.
10. Construction, site work, grading, and deliveries of construction materials, landscape materials, and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday.

- M 352 04**  
**Adopt**  
**Ordinance**  
**No. 1696**  
**(C/Z**  
**No. 1533)**  
**(continued)**
11. State and Federal wetlands shall be maintained as non-disturbance areas, except for disturbance authorized by a valid Federal or State permit. There shall be no construction in any wetlands without a valid permit.
12. No individual boat docks, piers, boardwalks or boat launching facilities for motorized boats shall be permitted.
13. The propane tanks shall be relocated for the current location as shown on the preliminary site plan to an interior location in the vicinity of the pool and community center and away from the boundary of this site and the adjacent Briarwood properties. In addition, the propane tanks shall be screened from view by landscaping.
- Motion Adopted: 5 Yea.**
- Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;**  
**Mr. Rogers, Yea; Mr. Jones, Yea;**  
**Mr. Dukes, Yea**
- Grant**  
**Requests**
- Mr. Stickels presented grant requests for the County Council's consideration.
- M 353 04**  
**Council-**  
**manic**  
**Grant**
- A Motion was made by Mr. Cole, seconded by Mr. Jones, to give \$1,000.00 (\$200.00 from each Councilmanic Account) to the Sussex Academy of Arts & Sciences PTO for new computers.
- Motion Adopted: 5 Yea.**
- Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;**  
**Mr. Rogers, Yea; Mr. Jones, Yea;**  
**Mr. Dukes, Yea**
- M 354 04**  
**Youth**  
**Activity**  
**Grant**
- A Motion was made by Mr. Jones, seconded by Mr. Cole, to give \$300.00 (\$100.00 each from Mr. Jones', Mr. Phillips', and Mr. Dukes' Youth Activity Grant Accounts) to the Delaware Storm U10 Travel Team for tournament expenses.
- Motion Adopted: 5 Yea.**
- Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea;**  
**Mr. Rogers, Yea; Mr. Jones, Yea;**  
**Mr. Dukes, Yea**
- Recess**
- At 8:00 p.m., Mr. Dukes declared a short recess.
- Reconvene**
- At 8:07 p.m., Mr. Dukes called the County Council back into session.
- Public**  
**Hearing**  
**(C/U**
- 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 FAMILY

**No. 1571) PRACTICE MEDICAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 2.162 ACRES, MORE OR LESS” (Conditional Use No. 1571) filed on behalf of Mid-Atlantic Property Ventures, LLC.**

**Public Hearing (C/U No. 1571)** The Planning and Zoning Commission held a Public Hearing on this application on May 13, 2004 at which time they recommended that the application be approved with conditions.

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

Mr. Lank reported that 252 letters have been received in support of the application.

The County Council found that Dr. Craig Bahtiarian, Dr. Jeff Heckert, Dr. Mark Sorti, Roxanne Sorti, Dr. Bryan Prigg, Lydia Prigg, and Jim Yori, Attorney, were present on behalf of the application.

Mr. Yori presented a booklet of information to the County Councilmen.

Mr. Yori stated that the doctors are planning a family practice medical office; that the area has a mixture of uses; that the site is between an art studio and the entrance to a residential subdivision; that the homeowners of the residential subdivision support the application; that the owner of the art studio supports the application; that in 2002, an application was filed for a conditional use for the same site that included more and larger buildings, a larger parking lot, more doctors, and a pad for an MRI mobile unit; that the application received a lot of opposition; that this application proposes a smaller building; 3 to 5 doctors; no MRI mobile unit, and no on-site microscopic lab work; that an earthen berm with landscaping will be placed around the perimeter of the property; that they propose 58 parking spaces in accordance with County requirements; that on-site water and septic are proposed; that there is a need for a family medical practice in the area; that the maximum hours of operation would be from 8:00 a.m. to 8:00 p.m. weekdays and 9:00 a.m. to 11:00 a.m. on Saturdays; and that there will be no Sunday hours.

(See the minutes of the Planning and Zoning Commission dated May 13, 2004 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Dukes expressed his opinion that dirt berms are unsightly and he questioned the applicant as to whether they really want a dirt berm and not just landscaping.

Mr. Cole stated that he would like to see any dumpsters placed near the medical building instead of at the rear of the property.

Public comments were heard in support of the application. Debra Appleby stated that the doctors seem willing to work with any issue that may come up; that she does not want a 5 foot berm; and that Route 24 is a busy road and she would like to see a turn lane added. Diana Riley asked the County Council to approve the application since the doctors do need a new and larger office building with additional parking.

Public  
Hearing  
(C/U  
No. 1571)  
(continued)

There were no comments in opposition to the application.

Mr. Rogers advised that an improvement project has been approved by the Legislature for Route 24 from Route One west to the Love Creek Bridge.

The Public Hearing was closed.

M 355 04  
Adopt  
Ordinance  
No. 1697  
(C/U  
No. 1571)

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Ordinance No. 1697 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FAMILY PRACTICE MEDICAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 2.162 ACRES, MORE OR LESS” (Conditional Use No. 1571) filed on behalf of Mid-Atlantic Property Ventures, LLC, with the following conditions:

1. The site plan shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all agency approvals.
2. Appropriate landscape screening with shrubbery and bushes will be planted/constructed along the three sides that border residential properties and shall be subject to the review of the Planning and Zoning Commission.
3. Lighting for the parking lot and the property in general will be “down” lights mounted on poles or lighting pointing away from adjacent properties so that the lighting will not affect (or will have a minimum affect) on adjacent properties.
4. The physicians’ office hours will be from 9:00 a.m. until 8:00 p.m. Monday through Friday. Saturday office hours will be from 9:00 a.m. until 11:00 a.m. The office will be closed on Sundays. There may be emergency office hours anytime.
5. Required parking will be provided and handicapped parking will be marked.
6. The building, stormwater management, parking, well and septic, shall all be located in such a way that, in the event that Route 24 is widened, the impact on the subject property will be minimal.
7. A sixty-five foot (65') wide strip of land along the front of the property running parallel with Route 24 will be kept available in the event the

State of Delaware (DelDOT) elects to widen Route 24.

8. There shall be one sign on the property no larger than 4-feet high and 8-feet long designating the doctors' office.
9. The design element will be consistent with the presentation made by the applicant.
10. The dumpster shall be located to the interior side of the driveway near the building and away from neighboring properties.

**M 355 04**  
**(continued)**

**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/U  
No. 1539)**

**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 RECYCLING AND STORAGE FACILITY FOR RECYCLING CONCRETE, BLACKTOP, AND SOILS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 4.45 ACRES, MORE OR LESS" (Conditional Use No. 1539) filed on behalf of Russell Banks.**

**The Planning and Zoning Commission held a Public Hearing on this application on May 13, 2004 at which time they deferred action.**

**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.**

**(See the minutes of the Planning and Zoning Commission dated May 13, 2004 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)**

**Mr. Lank advised the County Council that the applicant was given a Violation Notice in April 2002 for the activities performed on the site.**

**Mr. Lank reported that letters and petitions containing over 500 signatures have been received in opposition to the application.**

**Mr. Lank reported that several letters and petitions have been received in opposition to the application since the Public Hearing before the Planning and Zoning Commission. Letters were received from The Greens at Indian River, Cripple Creek Golf and Country Club, Bay Colony Property Owners Association, Mallard Creek Homeowners Association, Gander Wood Civic Association, Fairway Villas, Representative Gerald Hocker, and Senator George Bunting.**

**The County Council found that Allen Davis, Attorney, was present with the applicant, Russell Banks. Also present was Cap Justice, who operates a**

**topsoil business on the site.**

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(C/U  
No. 1539)  
(continued)**

**Mr. Davis pointed out that there was an error on the site plan and that the proposed location for the top soil stockpiles will be located to the rear of the site and that the stockpiles of processed material will be located in the center of the site. Mr. Davis stated that this error was noted at the Public Hearing before the Planning and Zoning Commission.**

**Mr. Davis stated that the site is located on Irons Lane, which is near Holts Landing State Park; that the approximate size of the parcel is 25 acres; that the conditional use will only address the approximate 4.5 acres closest to the road; that the Applicant used this site to store materials that he received as a part of the Millville/Ocean View Sanitary Sewer District expansion project; that he planned on using the waste materials for the purpose of storing and crushing them for road projects; that he stored them on this parcel not knowing that he was in violation; that he was issued a citation last year and put in an application for a conditional use; that his project is not intended to be a long-term, on-going operation; that the request is being modified from the one presented to the Commission because Mr. Cap Justice was not available at that Hearing to indicate the length of time he expects to use the site; that the applicant plans to crush concrete and blacktop and haul it off of the site; that Bunting and Murray Construction will do the crushing operations and then the applicant would transport the material off of the site; that Bunting and Murray has stated that the crushing operation will be a 120 day process; that no additional material will be brought onto the site to be crushed; that at the Planning and Zoning Commission's Public Hearing, it was stated that the top soil operation would be an on-going operation; however, Mr. Justice has stated that it would only be a two-year operation since he plans to retire at that time and will no longer use the site; that the applicant acknowledges that the crushing operation will be noisy and dusty; that once the material has been crushed, it will be moved to the center of the site until it is transported off of the site; that the applicant anticipates it to take one year to crush and remove all the materials; that removing the material without crushing them will increase truck traffic to the site; and that the applicant wants to rectify the violation and he wants to clean up the property.**

**Mr. Davis read a letter into the record from Bunting & Murray Construction Corporation dated June 7, 2004 which states that crushing operations, once started after receiving all necessary permits, will be ongoing for a period of 90 – 120 days. The letter further states that Mr. Banks anticipates this work to be completed within one year of the start of the crushing operations. In addition, they recommended that the crushing operations be performed during the winter season instead of during the dry, dusty summer months and during the tourist season.**

**Mr. Davis reported that DelDOT has stated that there will be no impact from this property being used under the proposed conditional use. They estimate 14 vehicles per hour peak under the existing zoning and the same number under the proposed conditional use. Mr. Davis also noted that the**

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(continued)

Office of State Planning Coordination stated that “if the conditional use approval being sought is for the grinding of existing material at the site, the State would have no objection providing it was clear that no additional material could be added to the site; the conditional use should have a defined end date, and the County should follow up every six months to insure that this clean up is taking place on schedule”. Mr. Davis stated that his client would welcome these conditions.

Mr. Davis noted that the three people most effected by the proposed operations came to the Public Hearing before the Planning and Zoning Commission and voiced support of the clean-up and the crushing operations since it would be a benefit to everyone to allow the Applicant to recycle and clear the site.

Mr. Davis stated that the opposition has legitimate concerns; however, those concerns can be addressed by the steps the applicant is willing to take. He also noted that the site would have remediation efforts necessary to avoid run-off and the applicant will comply with those requirements.

Public comments were heard in opposition to the application. Statements were made that the applicant continues to receive material on the site; that dumping on the site has continued for the last three years; that the operation causes increased traffic, noise, dust, and groundwater pollution; that the big concern is safety on the roads due to the number of trucks on the narrow roads in the area; that they want the stored materials removed immediately without them being crushed; that they cannot understand how this violation is allowed to continue; that the storage and crushing of the materials will create environmental issues; that commercial activities will negatively impact all surrounding property values; that water supply could be jeopardized by contaminants leaching into the soil; that the State has already decreed that the area is environmentally sensitive; that the proposed use is unacceptable with existing and planned residential land use in the area; that the dust and odorous air borne contaminants will negatively impact all residents in the area; that the use would impact the residents’ wishes to preserve and maintain the rural atmosphere of the area; that the commercial activity is not conducive or in harmony with the growing suburban environment; and that they request the denial of the application on behalf of the citizens living in the area.

Mr. Davis requested that the record remain open to give him time to submit proposed conditions.

M 356 04  
Close  
Public  
Hearing  
and Defer  
Action/  
Leave  
Record

A Motion was made by Jones, seconded by Mr. Cole, to close the Public Hearing and to defer action on Conditional Use No. 1539, an application of Russell Banks, and further, to leave the record open until the close of business on June 16, 2004 to allow the applicant to submit proposed conditions and thereafter, to leave the record open until the close of business on June 23, 2004 to allow the opposition to respond, in writing, to the proposed conditions submitted by the applicant.

<b>Open (C/U No. 1539)</b>	<b>Motion Adopted: 5 Yea.</b>  <b>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Rogers, Yea; Mr. Jones, Yea; Mr. Dukes, Yea</b>
<b>Recess Reconvene</b>	<b>At 9:50 p.m., Mr. Dukes declared a short recess.</b> <b>At 9:57 p.m., Mr. Dukes called the County Council back into session.</b>
<b>Public Hearing (C/U No. 1540)</b>	<b>A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (3 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 11,850 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1540) filed on behalf of James R. Gibson.</b>  <b>The Planning and Zoning Commission held a Public Hearing on this application on May 13, 2004 at which time they deferred action.</b>  <b>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.</b>  <b>Mr. Lank reported that as of May 13, 2004, 13 letters in support of the application were received.</b>  <b>(See the minutes of the Planning and Zoning Commission dated May 13, 2004 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)</b>  <b>Mr. Lank reported that prior to this Public Hearing, 35 additional letters in support of the application have been received.</b>  <b>Mr. Lank reported that the total number of letters in opposition to the project was 29.</b>  <b>Mr. Dukes reported that he has 65 letters in support and two in opposition.</b>  <b>It was noted that there are possible duplications in the letters since they were being sent to various people. Mr. Lank will review the letters for duplications.</b>  <b>The County Council found that James and Jane Gibson were present with Steven Spence, Attorney, and Roger Gross of Merestone Consultants, Inc. Mr. Spence distributed a packet of information including a site plan and tax parcels in the area.</b>



Mr. Spence noted that the applicants have been distressed about the amount of press that this application has received, which seems to have managed to mischaracterize the application.

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(C/U  
No. 1540)  
(continued)

They stated that the application is for a 3-story 3-unit condominium building on the site; that the parcel is currently vacant; that the area is relatively densely populated around Lake Comegys; that the area is primarily multi-family through which Pine Lane runs; that they will be proposing that the structure take up a smaller land area based on comments received at the Public Hearing before the Planning and Zoning Commission; that adequate space is available for parking; that access to the site is from Pine Lane; that in the last couple of years, multi-family uses have been approved on three sites with access to Pine Lane; that the Lake Comegys Townhouses exist immediately adjacent to the site; that all setback requirements will be met; that the Applicant could build a single family dwelling on the parcel 42 feet tall without a public hearing; that there will be no encroachment of the wetlands; that the character of the area around the Lake is single family and multi-family; that the Applicant proposes an upscale condominium building with off street parking and garages; that the Applicant plans on preserving the large oak tree on the site and proposes to set back further from the shoreline of the Lake by removing 12 feet of the proposed structure on the rear; that the Lake is healthy with an excellent fish population; that a home was located on the site for 30 years with no impact on the Lake; that the structure will be less than 38 feet in height; that the structure will not change the character of the area; that they plan to build the townhomes with a maximum of 3,200 feet of living space (9,600 total); that each unit will not have more than three levels of living space; that they are not planning to build to the water's edge; that the rear yard setback from Lake Comegys will be 94 feet from the front property line which extends along Pine Lane; that no vegetation will be removed from the property within the rear yard setback area (with the exception of noxious plants); that they are not depriving anyone of views that they had in the past; that townhomes will not impact the lake differently than a single family home; and that they kept an open dialogue with their neighbors regarding their plans. (Jane Gibson submitted a letter into the record expressing her thoughts and concerns regarding the application. She read the letter in its entirety.)

Public comments were heard in support of the application. Comments referred to the Gibson's donation of the house and some of its contents to First State Community Action Agency; that single family homes with 1 to 3 floors exist in the area; that townhomes with 1 to 4 floors exist in the area; that a bed and breakfast is located in the area; and that the proposal would have no negative impacts to the area.

Public comments were heard in opposition to the application. Mr. David Weidman, Attorney, spoke on behalf of the Lake Comegys Townhome Association. He stated that there is a profit motive behind the Gibson's application; that the applicant's intent is to sell the property to Bancroft

**Public  
Hearing  
(C/U  
No. 1540)  
(continued)**

Construction Company; that a non-profit agency used Federal, State and County funds to demolish the single-family home on the property; that the property is being developed to be flipped; that the site is the only site on Lake Comegys where 3 units are proposed on 1/3 acre; that 38 feet is taller than the neighboring homes which are 20 feet tall; not the use is not a proposal of a public or semi-public nature; that the Gibson's have not provided truthful information; that neighboring properties will suffer; that this proposal will be built into the public right-of-way around Lake Comegys; that the community is mostly single family homes; and that the proposal will only serve to maximize the Applicant's personal profit and is not essential and desirable for the general convenience and welfare of the community. He also stated that the application should not be approved because a statutorily-dedicated 50-foot public right-of-way encircles Lake Comegys and lies on top of the Applicant's parcel; that while the right-of-way was never improved, it still exists of record today, and that the Applicant's property is encumbered by this right-of-way.

Additional comments from the public were heard in opposition to the project and referred to run-off that will occur into Lake Comegys; that the rear setback is 10 feet in one particular spot; that the proposal will alter the beauty of Lake Comegys; that the proposal will create additional congestion on the road; that existing townhouses at Lake Comegys are 18 feet high; that they were never invited to see the plans; that the structure will be enormous; that adjacent property owners will lose their privacy; that the proposal will reduce property values in the area; that Mr. Gibson has not tried to negotiate; that there will be great harm to Lake Comegys; and that approving the proposal will set a destructive precedent for future development around the Lake.

The Public Hearing was closed.

**M 357 04  
Defer  
Action  
(C/U  
No. 1540)**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to defer action on Conditional Use No. 1540 filed on behalf of James R. Gibson.

**Motion Adopted:     5 Yea.**

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

**M 358 04  
Adjourn**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to adjourn at 11:50 p.m. Motion Adopted by Voice Vote.

**Respectfully submitted,**

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