



## *Sussex County Council Agendas & Minutes*

### **SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 10, 2004**

**Call to Order**            The regular meeting of the Sussex County Council was held Tuesday, August 10, 2004, at 7:15 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 476 04**            A Motion was made by Mr. Phillips, seconded by Mr. Jones, to approve the  
**Approve**            Agenda of August 10, 2004  
**Agenda**

**Motion Adopted:     5 Yea.**

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

**M 477 04**            A Motion was made by Mr. Jones, seconded by Mr. Phillips, to approve the  
**Approve**            minutes of August 3, 2004.  
**Minutes**

**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:**

**JAMES L. FORD, III, MAYOR, CITY OF LEWES, LEWES,  
DELAWARE.**

**RE: Meeting between the County Council, Mayor Ford, and Councilman**

Becker to discuss concerns regarding the rapid growth in both Sussex County and Lewes.

**Beach  
Replenish-  
ment  
Funding**

The County Council discussed a request from the Sussex County Association of Towns and the Association of Coastal Towns that the County Council provide funding to contract the services of a lobbyist. The lobbyist would work to assure that beach replenishment funds are restored to the present Federal Budget and allocated in future budgets.

**Beach  
Replenish-  
ment  
Funding  
(continued)**

Mr. Stickels reported that a question has arisen since the County Council's discussion of this issue on August 3, 2004 as to whether or not SCAT or ACT could receive the funding. It was noted that SCAT and ACT are unincorporated and non-profit associations. He also noted that the County couldn't enter into a contract agreement in excess of \$50,000 without following a formal bid process. Mr. Stickels noted that grant funding could be allocated to one of the towns and the selected town could act as fiscal agent of the funds.

Mr. Stickels and Vice Mayor Bob Parsons, Town of Bethany Beach, discussed Marlowe & Company's proposal to represent SCAT and ACT in Washington on behalf of Sussex County's beach nourishment projects. A copy of the proposal was distributed to the County Council members. The proposed agreement, if approved, would begin on August 15th and end on December 31st. The cost would be \$5,850 per month or \$26,325 for the remainder of the year (four months plus one half of one month). Fees would be invoiced in monthly installments, but will not include out-of-pocket expenses and out-of-town travel. The fees for calendar year 2005 will remain at \$5,850 per month, totaling \$70,200 for the year.

Mr. Stickels reported that he has spoken with Delaware's congressional representatives to get some background about the success of lobbying. One office said that their time is very valuable and they seldom have time to meet with lawyers to talk on special issues; however, they said they would meet with constituents and elected officials. They also said that a coalition currently exists; that it is doing a lobbying effort; that they feel that the coalition would exist with or without Delaware; and that Delaware benefits from the work that the coalition does.

Mr. Stickels commented on the difficulty that the Army Corps of Engineers is experiencing in obtaining easements for beach replenishment projects.

Mr. Parsons referred to the question raised on August 3rd regarding what the towns are going to contribute. He stated that they would pick up the out-of-pocket expenses and out-of-town travel costs of Marlowe & Company.

Mr. Parsons told Council that Jim Reed of Senator Carper's office, who works with beach replenishment issues, said that "there is no doubt about it, we already get information from Marlowe and Company and we use it...if there is anybody in Washington that knows about that, it seems like

**Marlowe and Company has a monopoly on that niche in the lobbying area.”**

**Mr. Parsons told Council that a staff member of Congressional Castle’s office said “he (Mr. Marlowe) is known as the go-to guy in Washington on beach renourishment issues”.**

**Beach  
Replenish-  
ment  
Funding  
(continued)**

**Mr. Dukes stated that the congressional staff he has spoken with are taking a neutral position and that they question whether any more funding would be received as a result of hiring a lobbyist.**

**Mr. Parsons emphasized that it was not his intention to imply that the staff of any of the congressional delegation could not do a good job lobbying for beach replenishment funding; he explained that his thoughts were that if they had help, it would free up some of their time for other efforts.**

**Mr. Cole commented that the funding for the lobbyist should be approved and provided through the County’s Economic Development Stimulus Program since the beach replenishment issue is connected to tourism and economic development.**

**M 478 04  
Adopt  
Proposed  
Resolution  
to Provide  
Grant for  
Beach  
Replenish-  
ment  
Funding  
(DENIED)**

**A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt the Proposed Resolution entitled “RESOLUTION TO ISSUE A GRANT IN THE AMOUNT OF \$96,525 TO THE ASSOCIATION OF COASTAL TOWNS AND/OR THE SUSSEX COUNTY ASSOCIATION OF TOWNS TO ASSIST THE MEMBERS OF THOSE ORGANIZATIONS IN THEIR ATTEMPTS TO OBTAIN FEDERAL FUNDING AND ASSISTANCE TO REPLENISH AND PRESERVE THE COASTAL BEACHES IN THEIR COMMUNITIES, CONTINGENT ON THE APPROVAL OF THE SUSSEX COUNTY FINANCE DIRECTOR AND LEGAL COUNSEL”.**

**Motion Denied:        3 Nay, 2 Yea.**

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

**Adminis-  
trator’s  
Report**

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

**1.        Sussex County Advisory Committee for the Aging and Adults with Physical Disabilities Meetings**

**The Sussex County Advisory Committee for the Aging and Adults with Physical Disabilities will be meeting on Monday, August 16, 2004, at 10:00 a.m. at the CHEER Community Center located at 20520 Sand Hill Road, Georgetown, Delaware. This month’s guest speaker is Mr. Frank Calio, Commissioner of Elections. This Committee meeting is open to the media, as well as the general**

public.

The Committee has also scheduled a special meeting on Monday, August 23, 2004, at 10:00 a.m. at the Laurel Senior Center, 113 North Central Avenue, Laurel, Delaware. The special meeting was scheduled by the Chairman of the Committee to allow those who are not able to hear Mr. Calio on the 16th to be able to attend the special meeting on the 23rd.

It should be noted that minutes of the Committee meetings are available on the Internet at [www.sussexcountye.gov](http://www.sussexcountye.gov).

Adminis-  
trator's  
Report  
(continued)

**2. Beneficial Acceptance**

The Sussex County Engineering Department has granted Beneficial Acceptance for the following projects:

- (a) Paynter's Mill, Phases II and III, Agreement No. 237, was granted Beneficial Acceptance on July 27, 2004. This project is located at the southwest intersection of Route 88 and Route 1 consisting of 56 single-family homes and townhouses in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.
- (b) Paynter's Mill, Phase 4, Agreement No. 237-1, was granted Beneficial Acceptance on July 27, 2004. This project is located at the southwest intersection of Route 88 and Route 1 consisting of 17 single-family lots in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District.
- (c) Southampton Addition, Agreement No. 312, was granted Beneficial Acceptance on July 28, 2004. This project is located at the intersection of County Road 368 and County Route 362 consisting of three buildings of 21 townhouses in the Bethany Beach Sanitary Sewer District.
- (d) The Refuge at Dirickson Creek, Phase II, Agreement No. 365, was granted Beneficial Acceptance on August 2, 2004. This project is located on Route 54 west of Shady Park consisting of 37 single-family dwelling units in the Fenwick Island Sanitary Sewer District.

A fact sheet for each project is included with this report.

**3. Gumboro Communication Tower**

I am pleased to inform the Council that construction of the Gumboro communication tower has been completed. This project consisted of construction of the tower and installation of the radio transmitter, antenna, and feed lines. Testing has been completed and programming

of the necessary radios at the consoles in the Emergency Operations Dispatch Center. This tower will be beneficial in broadcasting emergency communications in the areas that occasionally have had problems in the past. The 9-1-1 Center will be able to dispatch the Delmar Fire Station (Station 74) and Gumboro Fire Station (Station 79) off of this tower. Landscaping and fencing will be completed by the end of this month.

Adminis-  
trator's  
Report  
(continued)

This project was started by the late Andy Coleman and was completed by Emergency Operations Center communications staff consisting of Chip Larson, Danny McBroom and Butch Peters, with oversight provided by Joseph L. Thomas, Director of Emergency Operations, and Derek A. Sapp, Project Engineer.

#### 4. Sussex County Property Tax Bills

The Sussex County Treasury Division has completed the processing of 137,862 property tax bills. These bills total \$65,513,266. The Tax Division is responsible for the billing and collection of school taxes and Sussex Conservation District ditch taxes, as well as County taxes. The \$65.5 Million is allocated as follows:

|  |                            |
|--|----------------------------|
| Schools                                    | \$54,326,633               |
| County                                     | 8,161,305                  |
| County Sewer and Water Assessments         | 2,659,682                  |
| Streetlights                               | 39,110                     |
| Tax Ditches (Sussex Conservation District) | <u>326,536</u>             |
| <b>TOTAL</b>                               | <b><u>\$65,513,266</u></b> |

I would like to thank the employees of the Sussex County Treasury Division and Data Processing Administration. These two departments worked closely to assure that the bills were accurately calculated, allowing for the 25 percent tax credit for the General Fund Operations portion of the County's property tax. This credit returns approximately \$2.5 Million back to the taxpayers of our County.

Once again, I would like to thank those employees who worked on this project and have included their names with this report.

#### 5. Public Safety Groundbreaking Ceremony

A groundbreaking ceremony will take place at the former Visitors Center in Bridgeville on Route 13 on Wednesday, August 11, 2004, at 2:00 p.m. The Center is being converted into a public safety complex to house the Delaware State Police and Sussex County paramedic unit. The County Council has provided \$1.1 Million of the \$3.3 Million project.

**6. Thomas A. Stevenson**

**It is with sadness that I inform the Council of the passing of Thomas A. Stevenson on Sunday, August 8, 2004. Tom was employed with the County since May 1999 as a Mechanic with the Sussex County Engineering Department.**

**Report  
(continued) Services will be held at 2:00 p.m. on Thursday, August 12, 2004, at Short's Funeral Home, 609 East Market Street, Georgetown, where friends may call two hours earlier.**

**Press  
Conference/  
Congress-  
man  
Castle Mr. Stickels reported that Congressman Michael Castle will hold a press conference on August 11, 2004 at 11:00 a.m. in the Sussex County Council Chambers to discuss the beginning steps of intelligence reform. He will also comment on President Bush's nomination of Congressman Porter Goss as Director of the Central Intelligence Agency.**

**Requests Mr. Stickels presented requests for grant funding.**

**M 479 04 A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$500.00 Council-  
manic from Mr. Dukes' Councilmanic Account to the City of Seaford Department Grant of Parks and Recreation for their football program.**

**Motion Adopted: 5 Yea.**

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

**M 480 04 A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$500.00 Council-  
manic (\$300.00 from Mr. Phillips' Councilmanic Account and \$200.00 from Mr. Grant Jones' Councilmanic Account) to the Intervet Men's Softball Team (USSSA Mens Softball League) 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**

**M 481 04 A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give Youth  
Activity \$1,000.00 (\$200.00 from each Youth Activity Grant Account) to the Grant Delaware District III Big League Softball 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**

**Introduction of Proposed Ordinance**     **Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MEDICAL OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 14,999 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1592) filed on behalf of Atlantic Eye Care. The Proposed Ordinance will be advertised for Public Hearing.**

**(continued)**

**Introduction of Proposed Ordinance**     **Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROPANE, KEROSENE, AND DIESEL FUEL STORAGE AND TRANSFER FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 9.03 ACRES, MORE OR LESS” (Conditional Use No. 1593) filed on behalf of Wilson Baker, Inc. The Proposed Ordinance will be advertised for Public Hearing.**

**Introduction of Proposed Ordinance**     **Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE (SALES CENTER) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 1.08 ACRES, MORE OR LESS” (Conditional Use No. 1594) filed on behalf of R. Craig Hudson. The Proposed Ordinance will be advertised for Public Hearing.**

**Introduction of Proposed Ordinance**     **Mr. Rogers introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR DOCTORS OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 14,999 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1595) filed on behalf of Surya Puja, L.L.C. The Proposed Ordinance will be advertised for Public Hearing.**

**Introduction of Proposed Ordinance**     **Mr. Jones introduced 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 Proposed Ordinance will be advertised for Public Hearing.**

**Old**     **The County Council discussed the Proposed Ordinance entitled “AN**

**Business  
(C/U  
No. 1529)**      **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTOMOTIVE REPAIRS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.54 ACRES, MORE OR LESS” (Conditional Use No. 1529) filed on behalf of Bart and Brenda Donaway.**

**Old  
Business  
(C/U  
No. 1529)**      **The Planning and Zoning Commission held a Public Hearing on this application on March 11, 2004 at which time they deferred action. On April 15th, the Commission recommended that the application be denied.**

**(continued)**      **The County Council held a Public Hearing on this application on March 30th at which time they deferred action.**

**Mr. Dukes announced that he was not in attendance during the Public Hearing on March 30th and for this reason, he would not be participating in the discussion or the vote.**

**Mr. Dukes passed the gavel to Mr. Jones.**

**Mr. Lank, Director of Planning and Zoning, reviewed the record of the Planning and Zoning Commission. Mr. Lank read possible conditions and findings of fact, which were prepared by staff. Mr. Stickels suggested an additional condition that “The applicant shall show evidence that a commercial entrance permit shall have been obtained from DelDOT.”**

**M 482 04  
Adopt  
Proposed  
Ordinance  
(C/U  
No. 1529)  
(DENIED)**      **A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTOMOTIVE REPAIRS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.54 ACRES, MORE OR LESS” (Conditional Use No. 1529) filed on behalf of Bart and Brenda Donaway, with the following conditions:**

- 1. One sign, not exceeding 32 square feet per side or facing, may be permitted.**
- 2. All vehicles shall be parked in parking areas depicted on the site plan or within the building.**
- 3. No outside storage of materials shall be permitted unless within an approved impound. The impound shall be constructed so as to screen any activities within the impound from view of neighboring properties or public roads.**
- 4. Business hours shall be limited to the hours of 7:30 a.m. to 9:00 p.m. Monday through Saturday with no Sunday hours.**
- 5. There shall be no repair activities performed outside of the building.**
- 6. All waste products shall be handled by a licensed waste handler.**
- 7. Any security lighting shall be downward illuminated and shall be**



screened so that they do not shine onto neighboring properties or impact travelling motorists.

8. The site plan shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all appropriate agency approvals.
9. The applicant shall show evidence that a commercial entrance permit shall have been obtained from DelDOT.

**M 482 04**  
**(continued)**

**Motion Denied: 4 Nay, 1 Not Voting.**

**Vote by Roll Call: Mr. Phillips, Nay; Mr. Cole, Nay;  
Mr. Rogers, Nay; Mr. Jones, Nay;  
Mr. Dukes, Not Voting.**

**Reasons  
for  
Denial**

**The County Council voted to deny Conditional Use No. 1529 since the application is out of character with the adjacent and surrounding properties and since the application does not promote the health, safety, convenience and general welfare of the neighborhood or community.**

**Mr. Jones passed the gavel to Mr. Dukes.**

**Old  
Business  
(C/U  
No. 1537)**

**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 A COMPUTER REPAIR AND TRAINING FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.033 ACRES, MORE OR LESS” (Conditional Use No. 1537) filed on behalf of Jeff Springfield Computer Services.**

**The Planning and Zoning Commission held a Public Hearing on this application on May 6, 2004 at which time they deferred action. On May 27th, the Commission recommended that the application be approved with conditions.**

**The County Council held a Public Hearing on this application on May 25th at which time they deferred action.**

**Mr. Lank reviewed the record of the Planning and Zoning Commission.**

**M 483 04**  
**Adopt**  
**Ordinance**  
**No. 1712**  
**(C/U**  
**No. 1537)**

**A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Ordinance No. 1712 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMPUTER REPAIR AND TRAINING FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.033 ACRES, MORE OR LESS” (Conditional Use No. 1537) filed on behalf of Jeff Springfield Computer Services, with the following conditions:**

**M 483 04  
(continued)**

1. The facility shall be used for dropped-off computer repair work only. There shall be no computer training on this property.
2. There shall be no wholesale or retail sales of computers or computer equipment from this property.
3. There shall be no employees other than the President and office manager for this use.
4. The hours of operation shall be 10:00 a.m. through 5:30 p.m. Monday through Saturday. All drop-offs of computer equipment shall occur during these hours of operation.
5. The existing lighted signs shall be permitted.
6. There shall be no outside storage or dumping of computer equipment.
7. As stated by the Applicant, this Conditional Use shall be temporary only and shall expire 5 years from the date of County Council approval (if granted) for this Application. After 5 years, the Applicant shall be required to reapply to continue the use.

**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. 1530)**

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 A TRASH DISPOSAL BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.94 ACRES, MORE OR LESS” (Conditional Use No. 1530) filed on behalf of Moor Disposal Service, Inc.

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

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

Mr. Lank reviewed the record of the Planning and Zoning Commission.

Mr. Lank reminded the County Council that the applicant requested an amendment to the condition recommended by the Commission relating to fencing along Route 24. The applicant asked that the fence be installed starting at the building line and not along Route 24, so as not to obstruct the view of traffic.

**M 484 04  
Adopt**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Ordinance No. 1713 entitled “AN ORDINANCE TO GRANT A

**Ordinance No. 1713 (C/U No. 1530)**      **CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TRASH DISPOSAL BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.94 ACRES, MORE OR LESS” (Conditional Use No. 1530) filed on behalf of Moor Disposal Service, Inc., with the following conditions:**

- M 484 04 (continued)**
- 1. On-site water and septic shall be provided.**
  - 2. The hours of operation for the trucking operation shall be from 6:00 a.m. until 4:00 p.m., Monday through Saturday. Office hours shall be from 8:30 a.m. until 5:00 p.m., Monday through Saturday.**
  - 3. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring properties.**
  - 4. The site plan shall be subject to the review and approval of the Planning and Zoning Commission.**
  - 5. There shall be no cleaning of portable toilets on-site.**
  - 6. All trash loads shall be hauled to the State Landfill or similar destination. No trash or other debris shall be dumped or stored on-site.**
  - 7. An unlighted sign shall be permitted on-site, not to exceed 32 square feet in size.**
  - 8. All portable toilets and dumpsters on-site shall be stored in a location that is screened from view of Route 24 and neighboring and adjacent properties.**
  - 9. A vinyl clad fence screening the parking area and buildings shall be installed starting at the rear of the proposed office building and enclosing that portion of the property behind the building.**
  - 10. A thirty-foot vegetative buffer shall be established around the entire perimeter of the property. No existing trees within the buffer shall be disturbed.**
  - 11. No parking shall be permitted within five feet of the property line.**

**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. 1544)**      **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 A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 12,591 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1544) filed on behalf of Sara Tammany and Carole Levitsky.**

**The Planning and Zoning Commission held a Public Hearing on this application on July 22, 2004 at which time they recommended that the**

**application be approved.**

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

**Public  
Hearing  
(C/Z  
No. 1544)  
(continued)**

**(See the minutes of the Planning and Zoning Commission dated July 22, 2004 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)**

**Mr. Lank reported that no comments were received on this application from the Office of State Planning Coordination.**

**Mr. Lank reported that the site plan submitted by the applicant at the Public Hearing before the Planning and Zoning Commission would have to be substantially changed because parking cannot be permitted as proposed since it would all back out directly onto Hebron Road.**

**The County Council found that Steve White, one of the four partners of First State Appraisal, was present on behalf of the application. He stated that all of their business is done by fax or phone; that there will be minimum traffic related to the business; that they propose to construct a two-story Cape Cod office building; that no signage is proposed with the exception of a small sign on the door; that the change of zone is compatible with the area since all the properties along Route One are zoned commercial and all the properties on the south side of Hebron Road are zoned commercial; and the lots along the same side of Hebron Road are zoned residential but have a commercial use, most of which are warehouses and non-profit organizations (one is an abandoned building).**

**Mr. Cole questioned whether the applicant could have applied for a conditional use. Mr. Lank responded that at the time the application was filed, there was not an appropriate mechanism in place for a conditional use in a GR District. He noted that since that time, the Ordinance has been changed to allow for that type of application.**

**Public comments were heard.**

**Joan Deaver stated that she cares about the West Rehoboth community; that the people in the area have suffered from commercial zoning; and that she does not want to see the people forced out.**

**Mike Tyler stated that he would prefer the application to be approved on a conditional use basis since it would prevent types of businesses, which would have a negative impact on the community.**

**The Public Hearing was closed.**

The County Council considered requesting the applicant to file a new application for a conditional use permit since there were concerns about the variety of uses that would be allowed under the C-1 zoning classification. Councilmembers acknowledged that the applicant has waited many months for his current application to go through the Public Hearing process; however, in an effort to satisfy the applicant and the opposition, they felt that a conditional use permit would be of lesser impact to the area.

**M 485 04**  
**Adopt**  
**Proposed**  
**Ordinance**  
**(C/Z**  
**No. 1544)**  
**(DENIED)**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 12,591 SQUARE FEET, MORE OR LESS” (Change of Zone No. 1544) filed on behalf of Sara Tammany and Carole Levitsky.

**Motion Denied:        5 Nay.**

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

**M 486 04**  
**Waive**  
**Fee for**  
**Conditional**  
**Use Appli-**  
**cation**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to waive the fees for a conditional use application to be filed on behalf of Sara Tammany and Carole Levitsky and to instruct staff to expedite the public hearing process for the new application.

**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/**  
**Proposed**  
**Ordinance**  
**Relating to**  
**B-1 and**  
**C-1**  
**Districts**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY TO AMEND THE PROVISIONS RELATING TO RESIDENTIAL USES IN NEWLY ZONED B-1 AND C-1 COMMERCIAL ZONING DISTRICTS BY LIMITING SUCH USES TO 4 DWELLING UNITS PER ACRE, TO REQUIRE A PUBLIC HEARING FOR THE EXPANSION OF LARGE SCALE USES, AND MAKE OTHER TECHNICAL CHANGES TO ARTICLE X, B-1 NEIGHBORHOOD BUSINESS DISTRICT AND ARTICLE XI, C-1 GENERAL COMMERCIAL DISTRICT”.

The Planning and Zoning Commission held a Public Hearing on this application on July 22, 2004 at which time they recommended that the application be approved with the provision that Section 6, D(3) (“A public

hearing shall be conducted prior to the approval of the expansion of the total floor area of any existing non-residential structure by 25% or more.”) be deleted. It was noted that the public hearing referred to in this section would be held before the Board of Adjustment. Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing. The summary, including the recommendation and the findings were admitted as part of the County Council’s record.

**Public  
Hearing  
(continued)**

(See the minutes of the Planning and Zoning Commission dated July 22, 2004 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Mr. Lank explained that the proposed ordinance limits residential uses in new B-1 and C-1 commercial zoning districts to 4 dwelling units per acre, provides for a public hearing when an existing non-residential large-scale use expands by more than 25% of total floor area, and makes other technical changes to Articles X and XI.

Public comments were heard.

Dan Kramer questioned who would pay for the cross easements and interconnections, which would be required to be provided to adjoining sites for vehicular and pedestrian traffic. Mr. Kramer also questioned if the proposed ordinance would apply to the 25% floor area expansion of any structure. (It was noted that the proposed ordinance would only apply to large-scale uses.)

Preston Dyer stated that the proposal for the expansion of the 25% of existing space would be inconsistent with the stated intention of the Comprehensive Land Use Plan; that the Land Use Plan states “it is the intention of the Land Use Plan to retain the existing zoning districts as shown on the official zoning map for Sussex County; that the integrity of the existing C-1 zoning district should be maintained; that there would be difficulty in the definition of what is the square footage; that there would be difficulty in ascertaining what constitutes a “big box”; that there is a question as to what is precipitating the focus on 75,000 square feet; that he sees no reason to require a public hearing to expand projects by 25%; that the permitted number of multi-family dwellings within a commercial zone should be zero; that residential uses should be taken out of a newly zoned district as a permitted use; and that a conditional use application should be required which would allow for restrictions (site plan, density, amount of time the property could sit vacant and not be developed) which would give the public the opportunity to know what would occur on the property.

Rich Collins of the Positive Growth Alliance stated that rentals of multi-family units are slowing down and that the market will correct the use; that they agree with getting more certainty in a commercial zone by reducing the number of residential units; and that the wording in the proposed ordinance should allow for the conditional use process.

Michael Tyler of the Citizens Coalition stated that he agrees with Preston Dyer; that the Coalition has a concern about expanding residential uses in a commercial area; that no residential use should be permitted in the C-1 Commercial District; and that to be effective the proposed ordinance should be applied to all commercial land and grandfathering should not be allowed. Mr. Tyler submitted a letter, which was made a part of the record.

**Public  
Hearing  
(continued)**

Joan Deaver stated that a public hearing should be required for 25% expansions; that the County Council and the public should retain control and oversight over what is going on; and that many issues need to be considered when a 25% expansion is proposed (traffic, water quality and quantity, etc.)

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

**M 487 04  
Adopt  
Proposed  
Ordinance  
Relating to  
B-1 and  
C-1  
Districts  
(DENIED)**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY TO AMEND THE PROVISIONS RELATING TO RESIDENTIAL USES IN NEWLY ZONED B-1 AND C-1 COMMERCIAL ZONING DISTRICTS BY LIMITING SUCH USES TO 4 DWELLING UNITS PER ACRE, TO REQUIRE A PUBLIC HEARING FOR THE EXPANSION OF LARGE SCALE USES, AND MAKE OTHER TECHNICAL CHANGES TO ARTICLE X, B-1 NEIGHBORHOOD BUSINESS DISTRICT AND ARTICLE XI, C-1 GENERAL COMMERCIAL DISTRICT”.

**Motion Denied:** 5 Nay.

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

**Reasons  
for Denial**

Mr. Phillips stated that changes that need to be made to the proposed ordinance cannot be made due to possible legal ramifications; that a grandfathering provision should be included; that the erosion of equity is not fair; and that the number of permitted multi-family dwellings in the commercial zone should be zero.

Mr. Cole stated that a grandfathering clause would be wrong; that it would create two types of commercial land; and that it is not an issue of equity.

Mr. Rogers stated that the public has the right to the public hearing process; that a conditional use would be site plan specific with conditions attached to the approval; and that limiting the commercial number is in direct conflict with the Comprehensive Land Use Plan.

Mr. Jones stated that more safeguards are needed than the proposed ordinance provides and that a conditional use approval would more

**adequately address density.**

**Mr. Dukes stated that taking the residential reference out and requiring a conditional use application would be more site specific and the public would know exactly what the plans are for a particular site.**

**Draft  
Ordinance  
M 488 04  
Recess**

**It was the consensus of the Council to discuss the drafting of another ordinance. The issue will be placed on the August 17<sup>th</sup> agenda.  
At 10:10 p.m., a Motion was made by Mr. Cole, seconded by Mr. Rogers, to recess for a few minutes. Motion Adopted by Voice Vote.**

**Reconvene**

**At 10:15 p.m., Mr. Dukes called the Council back into session.**

**Public  
Hearing/  
Proposed  
Ordinance  
Relating  
to  
Subdivisions**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED “SUBDIVISION OF LAND” TO ALLOW FOR THE STAFF APPROVAL OF MAJOR SUBDIVISIONS CONTAINING 50 OR FEWER LOTS AND FOR THE REVISION OF THE FEE SCHEDULE”.**

**The Planning and Zoning Commission held a Public Hearing on this application on July 22, 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 July 22, 2004 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)**

**Mr. Lank reviewed the proposed ordinance and highlighted the major changes. The proposed ordinance: (1) contains a revised definition for a major subdivision and a new definition for a major subdivision with staff approval, (2) adds an additional fee of \$10.00 per lot for any subdivision containing more than 50 lots, and (3) outlines criteria whereby the Director of Planning and Zoning can determine that a proposed subdivision is eligible for staff approval on behalf of the Planning and Zoning Commission.**

**Mr. Lank reported that New Castle and Kent Counties were contacted to find out the number of lots that they would approve across the counter and if public hearings were required for minor subdivisions. In Kent County, a minor subdivision (strip lots or lots on a private street) could be approved with a maximum of five lots (four lots plus the residual property); anything else would require a public hearing. New Castle County will only allow five minor lots with no streets (strip lots).**

**Mr. Dukes stated that the proposed ordinance was drafted in an attempt to**



eliminate some of the public hearings heard by the Planning and Zoning Commission so as to shorten the public hearing process, which is taking 10 to 12 months.

Public  
Hearing/  
Proposed  
Ordinance  
Relating  
to  
Subdivisions  
(continued)

Mr. Griffin noted that, in accordance with the proposed ordinance, even if the Director of Planning and Zoning approves a preliminary plat, the Commission and members of the public could ask for a public hearing. Mr. Lank noted that this could possibly make the process longer. In response to being asked how many lots he would be comfortable approving without a public hearing, Mr. Lank responded that he would not be comfortable with more than ten.

Public comments were heard.

Wolfgang von Baumgart of the Independent Party of Delaware stated that they support safeguarding constitutional rights and encourage greater public participation in government; that removing public input from any public process is detrimental to “the very essence of our constitutional republic”; that it raises freedom of speech and equal protection under the law issues; that the proposed ordinance is unconstitutional; that the problem is expansive growth management; that the Independent Party is willing to work with the County to analyze the problem and to find solutions; and that they suggest the establishment of an independent planning and zoning process review commission consisting of a cross-representation of the Sussex County community at-large.

Frances Herbert stated that development is out of control and that she thinks developments with 50 or fewer lots should not be approved without a public hearing being held.

Rita Morris stated that she opposes the proposed ordinance and that she believes it takes away “freedom of speech” and the public’s right to oppose a development.

Irene Murray stated that the County Council ignores Shaping Delaware’s Future legislation and the LUPA process; that the proposed ordinance takes away the voice of the people and their ability to access information; and that she doesn’t understand why the County Council is turning to staff to make decisions behind closed doors.

Alan Miller, a member of Green Delaware, stated that they advocate public participation in government; that the people should have a larger voice in government and special interest groups should have a smaller voice; that they have no enthusiasm for any measures that reduce public participation in government; and that the proposed ordinance does not address how advertisements and notices would be handled.

John Flaherty, a lobbyist for Common Cause of Delaware, urged the County Council to retain its current public hearing process.

**Mary Anne McGouregal, Secretary of Common Cause of Delaware, urged the County Council to rethink the proposed ordinance; that it could be drafted with more clarity; and that there are some inconsistencies in the legislation.**

**Public  
Hearing/  
Proposed  
Ordinance  
Relating  
to  
Subdivisions  
(continued)**

**Rich Collins of the Positive Growth Alliance stated that he noticed that none of the Council members have spoke in support of the proposed ordinance as written and that “is a good thing”; that there are some definite problems in regards to public hearings and public access; that there is one benefit to the proposed ordinance – trying to help expedite the process for the public; and that the County Council should continue to consider options to expedite the public hearing process.**

**Preston Dyer stated that the proposed ordinance does have public benefit; that he appreciates the County Council’s concern about the amount of time the public hearing process takes; that he believes the volatility of the project and the location of the project are more important than the number of lots; and that he would recommend the following:**

- Have the proposal come before and be evaluated by the Planning and Zoning Department’s staff.**
- Staff could give a conceptual approval after which time the staff could advertise the finding and make public notice.**
- The applicant could make application for their letter of no objection from DelDOT, which takes at least 3 months if not more.**
- If the application is contested, a public hearing could be scheduled.**

**Mr. Dyer stated that this would provide an opportunity for uncontested subdivisions.**

**Henry Gloviak, Board Member of the Citizens Coalition, Inc., stated that the proposed ordinance weakens an already weak land use plan; that the cumulative impact of the possible approvals would be devastating; that it would further accentuate sprawl; that it would be contrary to Livable Delaware; and that more democracy is needed and not less.**

**Mr. Jones questioned Rodney Wyatt of DNREC in regards to the number of lots they approve over the counter.**

**He responded that they do site evaluations for minor subdivisions on anything larger than four lots and that they require a Subdivision Feasibility Report to be prepared which is a soils analysis of the entire subdivision. The information is submitted to County staff.**

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

**It was noted that as of this date, the Planning and Zoning Commission has not made a recommendation.**

**M 489 04  
Defer  
Action on  
the  
Proposed  
Ordinance  
Relating  
to  
Subdivisions**

**A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED “SUBDIVISION OF LAND” TO ALLOW FOR THE STAFF APPROVAL OF MAJOR SUBDIVISIONS CONTAINING 50 OR FEWER LOTS AND FOR THE REVISION OF THE FEE SCHEDULE”.**

**Motion Adopted: 5 Yea.**

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

**M 490 04  
Adjourn**

**A Motion was made by Mr. Cole, seconded by Mr. Phillips, to adjourn at 11:00 p.m. Motion Adopted by Voice Vote.**

**Respectfully submitted,**

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