



## *Sussex County Council Agendas & Minutes*

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 27, 2005**

**Call to  
Order**

The regular meeting of the Sussex County Council was held Tuesday, September 27, 2005 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

**M 523 05  
Approve  
Agenda**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to amend the Agenda by deleting "Introduction of Proposed Ordinance Relating to Parking" and "Introduction of a Proposed Ordinance Relating to the Width of Entrances; and to approve the Agenda, as amended.

**Motion Adopted: 5 Yea.**

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

**M 524 05  
Approve  
Minutes**

A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to approve the minutes of September 20, 2005.

**Motion Adopted: 5 Yea.**

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

**Corre-  
spondence**

Mr. Griffin read the following correspondence:

**THE LEUKEMIA & LYMPHOMA SOCIETY, DELAWARE CHAPTER,**

**WILMINGTON, DELAWARE.**

**RE: Letter in appreciation of Council's donation.**

**BOY SCOUTS OF AMERICA, WILMINGTON, DELAWARE.**

**RE: Letter in appreciation of Council's donation.**

**Corre-  
spondence  
(continued)**

**CHRIS JESTICE, LAUREL, DELAWARE.**

**RE: Letter in appreciation of Council's support of the Delaware State Fair  
Jr. Livestock Auction.**

**PATRICIA ANDERSON.**

**RE: Letter in appreciation of the repairs made to her home.**

**CHANDLER ELMORE, GEORGETOWN, DELAWARE.**

**RE: Letter urging the Council to support the building of the new  
Georgetown Public Library.**

**SCOTT COULBOURN, PARKS AND RECREATION, CITY OF  
SEAFORD, DELAWARE.**

**RE: Letter in appreciation of Council's donation.**

**PRIMEROS PASOS, GEORGETOWN, DELAWARE.**

**RE: Letter thanking the Council for their contribution to the Primeros  
Pasos Early Care and Education Project.**

**FIRST STATE ANTIQUE TRACTOR CLUB, SEAFORD, DELAWARE.**

**RE: Letter in appreciation of Council's contribution to their Annual Show.**

**Advisory  
Committee/  
Vacancy**

**Mr. Stickels announced that a vacancy exists on the Advisory Committee  
for Handicapped & Aging Citizens of Sussex County due to the death of  
Byron Cooper.**

**M 525 05  
Appoint-  
ment to  
Advisory  
Committee**

**A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to appoint  
Ruth Biedman to the Advisory Committee for Handicapped & Aging  
Citizens of Sussex County for a term of two years. (Mr. Jones'  
appointment).**

**Motion Adopted: 5 Yea.**

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

**Surplus  
Property/  
Park  
Avenue**

**Mr. Stickels presented a request that the County Council declare as surplus  
property a house recently purchased by the County to accommodate the  
Sussex County Airport – Park Avenue Relocation Project. The house,  
which was owned by Edward A. Wilson, is located on the corner of Arrow**

- Relocation Project**      **Safety Road and South Bedford Street, Tax Map & Parcel No. 1-35 20.00 41.00. Mr. Stickels proposed that the dwelling, attached deck, and detached outbuilding be awarded to Habitat for Humanity, who will move the house off of the property at no cost to the County.**
- M 526 05 Surplus Property**      **A Motion was made by Mr. Rogers, seconded by Mr. Dukes, that the Sussex County Council declares Parcel 1-35 20.00 41.00 as surplus property and directs the ranch dwelling, deck and outbuilding, which is situated on the parcel, to be donated to Habitat for Humanity.**
- M 526 05 Surplus Property/ Donation to Habitat for Humanity**      **Motion Adopted:      5 Yea.**
- Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;**  
   **Mr. Dukes, Yea; Mr. Rogers, Yea;**  
   **Mr. Jones, Yea**
- Agreements**      **Mr. Stickels presented wastewater agreements for the Council’s approval.**
- M 527 05 Execute Wastewater Agreements/ PEN, LLC**      **A Motion was made by Mr. Phillips, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 361-1, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and PEN, L.L.C., for wastewater facilities to be constructed in The Reserves at Lewes Landing (Phase 2), located in the Inland Bays Regional Sanitary Sewer District.**
- Motion Adopted:      5 Yea.**
- Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;**  
   **Mr. Dukes, Yea; Mr. Rogers, Yea;**  
   **Mr. Jones, Yea**
- M 528 05 Execute Wastewater Agreement/ PEN, LLC**      **A Motion was made by Mr. Dukes, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 361-2, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Pen, LLC, for wastewater facilities to be constructed in The Reserves at Lewes Landing (Phase 3), located in the Inland Bays Regional Sanitary Sewer District.**
- Motion Adopted:      5 Yea.**
- Vote by Roll Call:      Mr. Phillips, Yea; Mr. Cole, Yea;**  
   **Mr. Dukes, Yea; Mr. Rogers, Yea;**  
   **Mr. Jones, Yea**
- Revenue Sharing for Local**      **Mr. Stickels presented funding requests from local police departments which were made through the County’s new program – Revenue Sharing for Local Law Enforcement. (In the Fiscal Year 2006 Budget, the County**

**Law  
Enforce-  
ment/  
Grant  
Requests**

**Council allocated \$25,000 for each local police department to help with capital purchases.)**

**The requests were as follows:**

- |           |             |  |
|-----------|-------------|--|
| • Seaford | \$ 5,078.00 | Police package/equipment for new car bought with first request |
| • Lewes   | \$ 7,545.00 | Security Equipment & Installation                              |
| • Fenwick | \$ 1,726.08 | Laptops for Police Cars  |
| • Milton  | \$25,000.00 | Police Car with Police Package                                 |
| • Bethany | \$25,000.00 | 2006 Dodge Charger with Police Package                         |

**Revenue  
Sharing  
for Local  
Law  
Enforce-  
ment/  
Grant  
Requests  
(continued)**

**M 529 05  
Approve  
Local Law  
Enforce-  
ment  
Grants**

**A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to approve the Local Law Enforcement grants, as presented.**

**Motion Adopted: 5 Yea.**

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

**Lease  
Agreement/  
Michael &  
Ethan  
Rhodes/  
Financial  
Documents**

**Mr. Masten, Director of Economic Development, reported that on November 1, 2004 the County leased Lot 21 in the Sussex County Industrial Park to Michael D. Rhodes and Ethan M. Rhodes. They are now borrowing money from Artisans' Bank to construct a building on that lot and their lender is requiring certain documents to be executed by County Council as a condition of granting that loan. The documents are identical to other documents the County has signed in connection with loans to other tenants in the Industrial Air Park. The documents to be executed are a Landlord Subordination and Waiver, a Collateral Assignment of Lease, and a Landlord Estoppel Certificate. Mr. Griffin has reviewed the documents and has signed off on the documents as being approved as to form.**

**M 530 05  
Authorize  
Execution  
of Financial  
Documents/  
Michael &  
Ethan  
Rhodes**

**A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to authorize the President of the Sussex County Council to sign the Landlord Subordination and Waiver document, the Collateral Assignment of Lease document, and the Landlord Estoppel Certificate document for Michael D. Rhodes and Ethan M. Rhodes, who are now leasing Lot 21 at the Sussex County Industrial Park, to obtain financing through Artisans Bank to construct buildings and improvements on land at the Sussex County Industrial Park.**

**Motion Adopted: 5 Yea.**

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

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

**Mr. Stickels presented the following Administrator's Report:**

**1. Beneficial Acceptance**

**The Engineering Department granted Beneficial Acceptance on September 7, 2005, for Ocean Air in the Miller Creek Sanitary Sewer District. The developer is Caldera Properties. The project is located on County Road 368, Beaver Dam Road, consisting of 43 single-family lots. A fact sheet on the project is included with this report.**

**2. Wings & Wheels Show**

**An automobile and car show will take place on Saturday, October 1, 2005, at the Sussex County Airport, Georgetown, Delaware, starting at 8:00 a.m. There will be antique airplanes, automobiles, food, and entertainment. Admission to the show is free. Activities will take place from 8:00 a.m. to 3:00 p.m. For more information, call 855-2355 or 854-9010.**

**Millville  
Expansion  
of the  
BBSSD/  
WR&A  
Contract/  
Escrow  
Agreement  
Amendment**

**Mr. Archut, Assistant County Engineer, discussed Amendment No. 1 to an existing Escrow Agreement with a developer in the North Millville area. Included in that Amendment is a request to also approve an Amendment to the Contract with Whitman, Requardt and Associates' (WR&A) existing contract with Sussex County to perform the work associated with the Escrow Agreement. Mr. Archut noted that this is part of the County's ongoing efforts to install infrastructure in the North Millville area by getting developers to fund regional infrastructure. The WR&A Contract Amendment will be funded entirely by the developer. The County Council approved the original Escrow Agreement and WR&A Contract Amendment to cover the design of the facilities on March 1, 2005. The Escrow Agreement is with Bay Forest, LLC, the developer. In addition, another developer will be building future infrastructure and they will also be involved in the Escrow Agreement. Mr. Archut reported that the design for the facilities is nearing completion. The Escrow Agreement and Contract Amendment with WR&A is for the inspection and contract administration of installing the pipeline. The cost of the contract is \$172,992.00; the funds will be fronted by the developer.**

**M 531 05  
Execute  
Amendment  
to Escrow**

**A Motion was made by Mr. Dukes, seconded by Mr. Phillips, based upon the recommendation of the County Engineering Department, that the Sussex County Council authorizes its President to execute Amendment No. 1 to the Escrow Agreement for MPS No. 2 and its contract with**

**Agreement  
and  
Contract  
with WR&A**

**Whitman, Requardt and Associates, LLP, for Construction Administration and Resident Project Representation for County Road 349 Gravity Sewer, subject to the receipt of the required funds from the developer(s).**

**Motion Adopted: 5 Yea.**

**M 531 05  
(continued)**

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

**Old  
Business/  
C/U  
No. 1614**

**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 WELDING AND FABRICATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 41,915 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1614) filed on behalf of Beau Marr.**

**The Planning and Zoning Commission held a Public Hearing on this application on July 14, 2005 at which time they deferred action. On August 11, 2005 the Commission discussed the application and recommended that the application be approved with twelve (12) conditions.**

**The County Council held a Public Hearing on this application on August 2, 2005 at which time they deferred action.**

**M 532 05  
Adopt  
Ordinance  
No. 1793  
(C/U  
No. 1614)**

**A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to Adopt Ordinance No. 1793 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR WELDING AND FABRICATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 41,915 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1614) filed on behalf of Beau Marr, with the following conditions:**

- 1. A maximum of four (4) customer boats shall be stored on site at any given time. They shall be stored in a fenced-in area adjacent to the proposed shop.**
- 2. A maximum of four (4) employees including the two (2) owners shall be permitted working on the premises.**
- 3. Hours of operation shall be 7:00 a.m. to 6:00 p.m. Monday through Saturday, with no Sunday hours.**
- 4. There shall be only one sign with directional lighting, not to exceed 32 square feet per side or facing, on the property, advertising the business.**
- 5. All manufacturing shall be conducted inside the shop. No repair/manufacturing work will be performed outside.**

**M 532 05  
(continued)**

- 6. No outdoor storage of materials shall be permitted.**
- 7. All security lights on the shop shall be directional lighting so that they do not shine on neighboring properties.**
- 8. There shall not be any plumbing within the shop or additional wells or septic on the property**
- 9. There shall be no backing out onto Route 30 by delivery vehicles or customers with boat trailers.**
- 10. No boats for sale shall be displayed or stored on the premises.**
- 11. The only fabrication allowed in the shop shall be for boats. No other fabrication of any kind will be permitted without a modification of the Conditional Use.**
- 12. The site plan shall be subject to approval of the Planning and Zoning Commission.**

**Motion Adopted: 5 Yea.**

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

**Old  
Business/  
C/Z  
No. 1576**

**The 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 CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 826.84 ACRES, MORE OR LESS” (Change of Zone No. 1576) filed on behalf of Reynolds Pond, L.L.C.**

**The Planning and Zoning Commission held a Public Hearing on this application on May 12, 2005 at which time they deferred action. On July 28, 2005 the Commission discussed the application and recommended that the application be denied for the following reasons:**

- 1. The proposed project does not meet the purpose of the Zoning Ordinance, since it does not promote the orderly growth of the County because the project is not in a Development District as established by the 2002 Sussex County Comprehensive Plan Update.**
- 2. The proposed project is not in compliance with the 2002 Sussex County Comprehensive Plan Update, as follows:**
  - a. It does not represent growth in an area where public infrastructure and services are available.**
  - b. The location of the proposed development is in an area where farmland preservation exists through Agricultural Preservation Districts, and one of the goals of the Plan Update is to reduce pressure for development in agricultural areas and to promote the preservation of farmland.**
  - c. The project is in a Low Density Area according to the Plan**

Old  
Business/  
C/Z  
No. 1576  
(continued)

- Update. In that area, appropriate housing types are limited to single family detached homes or manufactured homes, not townhouses or assisted living facilities.
- d. The proposed MR zoning is not one of the applicable zoning districts for the Low Density Area.
  - e. The proposal is not consistent with the purpose of the Low Density Area, which is designed to protect agricultural lands while allowing low density single family residential housing and commercial uses that are normally compatible with residential uses. Townhouses, 158,874 square feet of retail space and an assisted living facility all with a project of this size are not consistent with this.
  - f. The Low Density Area also seeks to prevent untimely scattering of dense urban uses such as what is proposed. Instead, the Plan directs these types of uses to areas planned for efficient extension of public services. Public services are not planned to be extended to this area.
3. The PLUS process does not transfer zoning authority from the County to the State, and the County makes the final decision on this application. But, the Commission must still consider the comments from the PLUS process, which is part of the record. These comments include the following:
- a. The proposed project is located in an Investment Level 4 area according to the Strategies for State Policies and Spending. Because the project is outside of an area where the State and local governments have planned for growth, the State opposes the proposal.
  - b. The State estimates that the project would bring more than 4,000 new residents to the area, and the State has no plans to invest in infrastructure upgrades or additional services such as schools, police and transportation in the area.
  - c. The State Department of Agriculture opposes the project because it is contrary to Liveable Delaware and would act as a catalyst for other residential and commercial development in the area. Within 3 miles of the site, 5,681 acres of agricultural lands have been preserved at a cost of 7.3 million dollars to taxpayers, and farmers have donated land to preservation with about the same value.
  - d. DNREC has stated that the proposed development will have negative impacts on the streams and waterbodies adjoining the project and downstream from it.
  - e. The Office of State Planning Coordination is opposed to the project and is generally concerned that the project is out of character with the surrounding area.
4. The project is in an area that has not developed with similar projects or residential density. There are no other developments in the area that are similar in size or character to what has been proposed.
5. The proposed project surrounds Route 30, Hummingbird Road and Beideman Road. Route 30 is a truck route and all three roads are



Old  
Business/  
C/Z  
No. 1576  
(continued)

used regularly by large farm equipment. The project, with 1,592 residential units and commercial and office space and its proposal to alter Hummingbird Road and Beidman Road, is inconsistent with the existing traffic and agricultural use of these roads. The project would also lead to increased congestion on the adjacent and surrounding roads.

6. Although the purpose of the RPC designation is to allow large-scale development as a means to create superior living environments and design ingenuity, the proposed RPC must still be in an area that is suitable for it. The proposed RPC, with 1,592 residential units, 158,874 square feet of retail space, 71,800 square feet of office space, a 6,000 square foot library and 220 assisted living units, is not suitable or compatible with the area.
7. The project would include many townhouse units and an assisted living facility, which would be inconsistent with the current zoning of this property and the character, zoning and uses of the surrounding properties.
8. MR zoning is designed to provide for medium-density residential development in area which are or which are expected to become generally urban in character. This area, surrounded by lands used for agricultural purposes and including Agricultural Preservation Districts, is not urban and is not expected to become urban in character. Therefore, a change in zone to MR is not appropriate for the land.

The County Council held a Public Hearing on this application on August 2, 2005 at which time action was deferred.

Mr. Lank, Director of Planning and Zoning, distributed and read the Proposed Findings of Fact, which were previously provided by the Applicant.

Mr. Phillips questioned that the Planning and Zoning Commission denied the Application as a MR-RPC. Mr. Lank responded that in the presentation before the Council, the Applicant's Attorney stated that they did not need MR zoning; that the design was based on AR zoning; and that the application was for an MR-RPC, but the density calculations are compatible with an AR-RPC.

It was noted that the argument is that the application was for a MR-RPC.

Mr. Griffin referred to Delaware Code, Title 9, Section 7002-M, which refers to State Law and ordinances that Council may adopt and what Council must consider. The wording states that "after the Public Hearing, County Government may adopt the ordinance with or without amendments, or reject it, but if it is amended as to any matter of substance which is not embraced within the title of the ordinance, County Government will not adopt it until the ordinance or its amended sections have been subjected to all the procedures here and before required in the

Old  
Business/  
C/Z  
No. 1576  
(continued)

case of a newly introduced ordinance”. Mr. Griffin explained that this means that after a public hearing, if the Council adopts something other than what is in the title, and it is a matter of substance, it would have to go back through the hearing process. Mr. Griffin noted that in response to that, Mr. Fuqua, Attorney for the Applicant, argued that Section 115-124 of the Zoning Ordinance allows them to request an amendment and because of the concurrent application consideration, the Council would have the authority to deny the request for the change of zone from AR-1 to MR, but approve the RPC. At the Commission’s meeting, Mr. Robertson, Assistant County Attorney, advised the Commission that Mr. Fuqua’s argument would only be true if there had been separate applications in separate proposed ordinances.

Mr. Phillips clarified that his question is whether there is anything in the application that would disqualify it as an AR-RPC and that the answer to that question is “no, there is not”. He further stated that the fact that it may or may not get passed as an AR- or MR-RPC is inconsequential, because through the RPC process, binding terms would be established as to what they can and cannot do. Mr. Phillips noted that there has been a reduction in certain elements that make the application less of an impact than a “full-blown, get everything you can get” MR-RPC.

Mr. Lank noted that the applicant deleted the golf course element of the project prior to the Public Hearing before the Council.

Mr. Lank read the list of proposed conditions provided by the Applicant, as follows:

1. The maximum number of residential units shall not exceed 1,592.
2. Residential building permits shall not exceed 300 per year.
3. The commercial use within the RPC shall not exceed 159,874 square feet of retail and 71,834 square feet of office space plus 220 assisted living units.
4. Site plan review by the Planning and Zoning Commission shall be required for each phase of development.
5. An underground gas storage facility for service to this project only shall be permitted subject to approval by the Office of the State Fire Marshal and other agencies with jurisdiction and subject to site plan approval by the Commission. The facility shall be no less than 50’ from adjacent properties.
6. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include curbs, sidewalks, and street lighting.
7. All entrances, intersections, roadway improvements and multi-modal facilities required by DelDOT shall be completed by the applicant as required by DelDOT.
8. The core recreation area consisting of the multi-use village hall, clubhouse, swimming pool complex, tennis courts and sports fields shall be constructed and open to use by residents within the

following unit occupancy chart commencing with the issuance of the first residential building permit.

	1st Pool	150 units
	Tennis Courts	200 units
	Pool Complex	300 units
	Community Clubhouse	300 units
	Sports Fields	450 units
	Multi-use Village Hall	500 units
	Trails/Paths/Sidewalks	As phases are completed

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Business/  
C/Z  
No. 1576  
(continued)

9. The RPC shall be served by a publicly-regulated, on-site central sewer system as defined by the Sussex County Zoning Ordinance, designed in accordance with Sussex County Engineering Department (Ordinance 38) specifications and in conformity with all DNREC regulations. The operation of the central sewer system shall be subject to the Delaware Public Service Commission and all applicable State and County regulations.
10. The RPC shall be served by a publicly-regulated, central water system providing drinking water and fire protection as required by applicable regulations.
11. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements. The applicant, its successors and assigns shall operate the stormwater management facilities and the golf course utilizing Best Management Practices (BMPS) to provide groundwater recharge.
12. State wetlands shall not be included in individual lots. State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal and State permits.
13. No individual boat docks or boat launching facilities for motorized boats shall be permitted.
14. The Applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of the streets, roads, buffers, stormwater management facilities, and other common areas.
15. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.
16. The applicant will provide agricultural buffers and notices in accordance with applicable State and County requirements.

The Council discussed the commercial element of the project, which included 159,874 square feet of retail and 71,834 square feet of office space plus 220 assisted living units. The Council considered phasing-in the commercial element and reducing the amount of commercial permitted.

M 533 05  
Add  
Condition  
(C/Z

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to include the following additional condition: "There shall be no use of Reynolds Pond by the Applicant, their successors and assigns."

**No. 1576) Motion Failed: 2 Yea, 2 Nay, 1 Abstention.**

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

**M 534 05 A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to include the  
Add following additional condition: “There shall be a minimum buffer of 100  
Condition feet from the property line along Reynolds Pond.” (Condition No. 17)  
(C/Z**

**No. 1576) Motion Adopted: 5 Yea.**

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

**M 535 05 A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to amend  
Amend Condition No. 3 by reducing the commercial use to 125,000 square feet of  
Condition retail and 50,000 square feet of office space.  
(C/Z**

**No. 1576 Motion Denied: 3 Nay, 2 Yea.**

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

**M 536 05 A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to withdraw  
Motion the 159,874 square feet of commercial and the 71,834 square feet of office  
Withdrawn space from the application (Change of Zone No. 1576).**

**Mr. Dukes and Mr. Phillips withdrew their Motions.**

**M 537 05 A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to amend  
Amend Condition No 3, as follows: “There shall be no commercial activity in this  
Condition project except for the 220 assisted living units.”  
No. 3**

**(C/Z Motion Adopted: 5 Yea.**

**No. 1576)**

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

**M 538 05 A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to Adopt the  
Adopt Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE  
Proposed COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN  
Ordinance AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC  
(C/Z MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL**

**No. 1576) PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 826.84 ACRES, MORE OR LESS” (Change of Zone No. 1576) filed on behalf of Reynolds Pond, L.L.C., with the following conditions:**

**M 538 05  
Adopt  
Proposed  
Ordinance  
(C/Z  
No. 1576)  
(continued)**

1. The maximum number of residential units shall not exceed 1,592.
2. Residential building permits shall not exceed 300 per year.
3. There shall be no commercial activity in this project except for the 220 assisted living units.”
4. Site plan review by the Planning and Zoning Commission shall be required for each phase of development.
5. An underground gas storage facility for service to this project only shall be permitted subject to approval by the Office of the State Fire Marshal and other agencies with jurisdiction and subject to site plan approval by the Commission. The facility shall be no less than 50’ from adjacent properties.
6. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Street design shall include curbs, sidewalks, and street lighting.
7. All entrances, intersections, roadway improvements and multi-modal facilities required by DelDOT shall be completed by the applicant as required by DelDOT.
8. The core recreation area consisting of the multi-use village hall, clubhouse, swimming pool complex, tennis courts and sports fields shall be constructed and open to use by residents within the following unit occupancy chart commencing with the issuance of the first residential building permit.

1st Pool	150 units
Tennis Courts	200 units
Pool Complex	300 units
Community Clubhouse	300 units
Sports Fields	450 units
Multi-use Village Hall	500 units
Trails/Paths/Sidewalks	As phases are completed

9. The RPC shall be served by a publicly-regulated, on-site central sewer system as defined by the Sussex County Zoning Ordinance, designed in accordance with Sussex County Engineering Department (Ordinance 38) specifications and in conformity with all DNREC regulations. The operation of the central sewer system shall be subject to the Delaware Public Service Commission and all applicable State and County regulations.
10. The RPC shall be served by a publicly-regulated, central water system providing drinking water and fire protection as required by applicable regulations.
11. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County

**M 538 05**  
**Adopt**  
**Proposed**  
**Ordinance**  
**(C/Z**  
**No. 1576)**  
**(continued)**

requirements. The applicant, its successors and assigns shall operate the stormwater management facilities and the golf course utilizing Best Management Practices (BMPS) to provide groundwater recharge.

12. State wetlands shall not be included in individual lots. State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal and State permits.
13. No individual boat docks or boat launching facilities for motorized boats shall be permitted.
14. The Applicant shall cause to be formed a homeowners' association to be responsible for the maintenance of the streets, roads, buffers, stormwater management facilities, and other common areas.
15. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.
16. The applicant will provide agricultural buffers and notices in accordance with applicable State and County requirements.
17. There shall be a minimum buffer of 100 feet from the property line along Reynolds Pond.

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

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

**Findings**  
**of Fact**  
**(C/Z**  
**No. 1576)**

**The Council found that the proposed change of zone was not appropriate legislative action based on the following findings of fact:**

1. The proposed change of zone is from AR-1 to MR-RPC Medium Density Residential-Residential Planned Community for 826.84 acres lying at the intersection of County Road 277 and State Route 30, and southwest of Road 212 in Cedar Creek Hundred, Sussex County, Delaware.
2. The applicant proposed 1,596 residential units, 145,517 square feet of retail space, 54,700 square feet of office space and 220 assisted living units.
3. The land in question is located in a low density area on the 2002 Comprehensive Plan Update and does not lie within a development district.
4. Council found that the Town of Milton submitted a letter to the Office of State Planning Coordination on June 24, 2004 indicating that the proposed project is located in a Level 4 investment area as shown on the State Spending Strategies Map which is not an area where the State proposes to spend money for the infrastructure necessary to support a residential and commercial development of the type and size proposed by the applicant.

**Findings  
of Fact  
(C/Z  
No. 1576)  
(continued)**

5. Council found that the Town of Milton indicated that approval of this development would encourage sprawl away from the Town's center where municipal services can be provided and does not comply with the County's Comprehensive Plan for growth and is not within the Town of Milton's future growth area and does not comply with the objectives of the Livable Delaware Plan.
6. Council found that the application was opposed by the Office of State Planning Coordination, DelDOT and DNREC.
7. Council found that the commercial development of the type proposed by the applicant is not appropriate for an area designated as a low density area on the County's Comprehensive Plan Update, even with the removal of the proposed golf course and library.
8. Council found that the Citizens Coalition and individual residents of the area appeared in opposition to the proposed development primarily because of the inclusion of the proposed commercial and assisted living units as not being suitable or compatible with the area.
9. Council found that the RPC did not meet the purposes of the Zoning Ordinance because the proposed project is not in an area where development is directed under the 2002 Comprehensive Plan Update.
10. Council found that the proposed project is not in close proximity to existing commercial and services areas and that fire and police protection are not readily available to a project of the size and scope proposed by the applicant.
11. Council found that the character of the surrounding area is primarily single family detached residential and agricultural and that it would not be appropriate to allow the non-residential, multi-family and commercial uses proposed by the applicant.
12. Council found that it would not be appropriate to allow the applicant to amend its application to delete its request for a change of zone without having the applicant begin the entire zoning process again under a new application.
13. Council found that the approval of this application would not promote health, safety, morals and general welfare of the residents of the County.
14. The proposed project is not in compliance with the 2002 Sussex County Comprehensive Plan Update, as follows:
  - A. It does not represent growth in an area where public

**infrastructure and services are available.**

**Findings  
of Fact  
(C/Z  
No. 1576)  
(continued)**

- B. The location of the proposed development is in an area where farmland preservation exists through Agricultural Preservation Districts, and one of the goals of the Plan Update is to reduce pressure for development in agricultural areas and to promote the preservation of farmland.**
  - C. The project is in a Low Density Area according to the Plan Update. In that Area, appropriate housing types are limited to single family detached homes or manufactured homes, not townhouses or assisted living facilities.**
  - D. The proposed MR zoning is not one of the applicable zoning districts for the Low Density Area.**
  - E. The proposal is not consistent with the purpose of the Low Density Area, which is designed to protect agricultural lands while allowing low density single family residential housing and commercial uses that are normally compatible with residential uses. Townhouses, 145,517 square feet of retail space and an assisted living facility all within a project of this size are not consistent with this.**
  - F. The Low Density Area also seeks to prevent untimely scattering of dense urban uses such as what is proposed. Instead, the Plan directs these types of uses to areas planned for efficient extension of public services. Public services are not planned to be extended to this area.**
- 15. The P.L.U.S. process does not transfer zoning authority from the County to the State, and the County makes the final decision on this application. But, the Council must still consider the comments from the P.L.U.S. process, which is part of the record. These comments include the following:**
- A. The proposed project is located in an Investment Level 4 area according to the Strategies for State Policies and Spending. Because the project is outside of an area where the State and local governments have planned for growth, the State opposes the proposal.**
  - B. The State estimates that the project would bring more than 4,000 new residents to the area, and the State has no plans to invest in infrastructure upgrades or additional services such as schools, police and transportation in the area.**
  - C. The State Department of Agriculture opposes the project because it is contrary to Livable Delaware and would act as a**



**Findings  
of Fact  
(C/Z  
No. 1576)  
(continued)**

**catalyst for other residential and commercial development in the area. Within 3 miles of the site, 5,681 acres of agricultural lands have been preserved at a cost of 7.3 million dollars to taxpayers, and farmers have donated land to preservation with about the same value.**

- D. DNREC has stated that the proposed development will have negative impacts on the streams and waterbodies adjoining the project and downstream from it.**
- E. The Office of State Planning Coordination is opposed to the project and is generally concerned that the project is out of character with the surrounding area.**

- 16. The project is in an area that has not developed with similar projects or residential density. There are no other developments in the area that are similar in size or character to what has been proposed.**
- 17. The proposed project surrounds Route 30, Hummingbird Road and Beideman Road. Route 30 is a Truck Route and all three roads are used regularly by large farm equipment. The project, with 1,596 residential units and commercial and office space and its proposal to alter Hummingbird Road and Beideman Road, is inconsistent with the existing traffic and agricultural use of these roads. The project would also lead to increased congestion on the adjacent and surrounding roads.**
- 18. Although the purpose of the RPC designation is to allow large-scale development as a means to create superior living environments and design ingenuity, the proposed RPC must still be in an area that is suitable for it. The proposed RPC, with 1,596 residential units, 145,517 square feet of retail space, 54,700 square feet of office space, and 220 assisted living units, is not suitable or compatible with the area.**
- 19. The project would include many townhouse units and an assisted living facility, which would be inconsistent with the current zoning of this property and the character, zoning and uses of the surrounding properties.**
- 20. MR zoning is designed to provide for medium-density residential development in areas which are or which are expected to become generally urban in character. This area, surrounded by lands used for agricultural purposes and including Agricultural Preservation Districts, is not urban and is not expected to become urban in character. Therefore, a change in zone to MR is not appropriate for the land.**
- 21. The findings and recommendation of the Planning and Zoning**

**Commission are made a part of the record for these findings.**

<b>Discussion/ Applicant's Right to Reapply</b>	<p><b>Mr. Dukes asked if the Applicant could come back and apply for an AR-1 Cluster Subdivision.</b></p> <p><b>In response to questions from the Council, Mr. Lank stated that, typically, once they apply, it would take 10-12 months to go through the process.</b></p>
<b>Discussion (continued)</b>	<p><b>Mr. Phillips questioned if there was a consensus of the Council to allow the Applicant to come back and apply for an AR-1 Cluster Subdivision and for the Planning and Zoning Department to expedite the application.</b></p>
<b>M 539 05 Expedite New AR-1 Cluster Application</b>	<p><b>A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to expedite an AR-1 Cluster Subdivision Application filed on behalf of Reynolds Pond, L.L.C.</b></p> <p><b>Motion Adopted: 3 Yea, 2 Nay.</b></p> <p><b>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Nay; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Nay</b></p>
<b>Requests</b>	<p><b>Mr. Stickels presented grant requests for the Council's consideration.</b></p>
<b>M 540 05 Council- manic Grant</b>	<p><b>A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to give \$150.00 from Mr. Rogers' Councilmanic Account to Dry Dock, Inc. for the Annual Golf Benefit.</b></p> <p><b>Motion Adopted: 5 Yea.</b></p> <p><b>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</b></p>
<b>M 541 05 Council- manic Grant</b>	<p><b>A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$100.00 from Mr. Jones' Councilmanic Account to the American Red Cross for the Georgetown Elementary School Hurricane Katrina Change Drive.</b></p> <p><b>Motion Adopted: 5 Yea.</b></p> <p><b>Vote by Roll Call: Mr. Phillips, Yea; Mr. Cole, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</b></p>
<b>Introduction of Proposed Ordinance</b>	<p><b>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 ROOFING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND</b></p>

**LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.21 ACRES, MORE OR LESS” (Conditional Use No. 1643) filed on behalf of Lloyd Saunders. The Proposed Ordinance will be advertised for Public Hearing.**

**Introduction of Proposed Ordinance Introduction (continued)** Mr. Rogers 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 DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 3.52 ACRES, MORE OR LESS” (Change of Zone No. 1592) filed on behalf of J & Y Parker Family, L.P. The Proposed Ordinance will be advertised for Public Hearing.

**M 542 05 Adjourn** A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to adjourn at 12:25 p.m. Motion Adopted by Voice Vote.

**Respectfully submitted,**

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