



## *Sussex County Council Agendas & Minutes*

### **SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 16, 2004**

#### **Call to Order**

The regular meeting of the Sussex County Council was held Tuesday, November 16, 2004, at 10:00 a.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>George B. Cole</b>	<b>Member</b>
<b>Lynn J. Rogers</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 651 04 Approve Agenda**

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to amend the Agenda by deleting "Approval of Minutes" 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**

#### **Corre- spondence**

**Mr. Griffin read the following correspondence:**

**TIL PURNELL, LEAGUE OF WOMEN VOTERS OF SUSSEX COUNTY, MILLSBORO, DELAWARE.**

**RE: Letter in appreciation of funding for the publication "They Represent You".**

**MARY ANNE FLEETWOOD, SAFE HAVEN ANIMAL SANCTUARY, NASSAU, DELAWARE.**

**RE: Letter in appreciation of Community Investment Grant.**

**DANIEL GRIFFITH, STATE HISTORIC PRESERVATION OFFICER,**

**DOVER, DELAWARE.**

**RE: Letter informing the Council that the Fort Miles Historic District was listed on the National Register of Historic Places.**

**December 28th Council Meeting**      **Mr. Stickels reported that a quorum of Councilmembers may not be present at the December 28th Council meeting, and for this reason, asked Council to consider canceling the meeting.**

**M 652 04 Cancel December 28th Council Meeting**      **A Motion was made by Mr. Rogers, seconded by Mr. Jones, to cancel the December 28, 2004 Council meeting.**

**Motion Adopted:      5 Yea.**

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

**Clear Up Deferred Applications**      **Mr. Dukes announced that he would like to have all deferred zoning applications and proposed ordinances cleared up prior to the end of the year.**

**Wastewater Agreements**      **Mr. Stickels reviewed agreements wastewater facilities to be constructed in Fox Woods, located in the Ocean View Sanitary Sewer District.**

**M 653 04 Execute Wastewater Agreements/ Fox Wood**      **A Motion was made by Mr. Jones, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department for Sussex County Project No. 81-04, Agreement No, 352, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Rand-I Development, LLC, for wastewater facilities to be constructed in Fox Wood, located in the Ocean View Sanitary Sewer District.**

**Motion Adopted:      5 Yea.**

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

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

**1.      Holiday Schedule**

**Sussex County government offices will be closed Thursday, November 25, and Friday, November 26, 2004, to allow employees to observe the Thanksgiving Day holiday.**

**The County Council will not meet on Tuesday, November 23, 2004. The next regularly scheduled Council meeting will be at 10:00 a.m. in the Council Chambers on Tuesday, November 30, 2004.**

Adminis-  
trator's  
Report  
(continued)

2. **Plan Review Seminar**

The Sussex County Engineering Department will be conducting a seminar on the new review process being used for sewer, water, and road plans and specifications. The seminar will take place at 9:00 a.m. on Friday, November 19, 2004, at the West Complex on North DuPont Highway, Georgetown, Delaware. All engineering and surveying firms are encouraged to send a representative.

Those wishing to attend should contact the Engineering Department at 855-7718 by the close of business on Wednesday, November 17, 2004. Included with this report is a copy of the agenda.

3. **Public Hearing**

The Delaware Department of Transportation (DelDOT) will be conducting a Public Hearing for the abandonment and vacation of a portion of Sussex County Road 494A, Cobb's Creek Road, near Laurel, Delaware, on Wednesday, November 24, 2004, at 10:30 a.m. at the DelDOT Administration Building in Georgetown, Delaware. The proposed road abandonment begins at the intersection of Delaware Route 24 and Sussex County Road 494A, and proceeds in a northerly direction a distance of approximately 7,464 ± feet, to the intersection of County Road 494A and East State Street.

I have notified Planning and Zoning, Engineering, and the Emergency Operations Center of this proposed closing. Unless there are objections, I will not attend the hearing on Wednesday, November 24, 2004. A copy of the notice is included with this report.

4. **Beneficial Acceptance**

The Sussex County Engineering Department granted Beneficial Acceptance on October 29, 2004, to Swann Cove, Phase I, Agreement No. 301. This project is located at the intersection of Route 54 and Road 381 in the Fenwick Island Sanitary Sewer District, consisting of 60 single-family lots. Included with this report is a fact sheet on the project.

5. **22<sup>nd</sup> Annual Caroling on The Circle**

Caroling on The Circle will take place on Monday, December 6, 2004, at 6:30 p.m. in front of the County Administrative Office Building on The Circle in Georgetown, Delaware. In the event of rain, the program will be held at the Georgetown Fire Hall. The goal of Caroling on The Circle is to raise nonperishable food items to be distributed throughout the food banks in Sussex County.

**Items can be brought to the County Administrative Office Building, 24 hours a day. Anyone needing assistance in transporting food may call 855-7840.**

**Caroling on The Circle is an excellent opportunity for Sussex Countians to help Sussex Countians by stocking food pantries throughout the County. Following Caroling on The Circle, a reception will be held at the Georgetown Fire Hall.**

**Election  
Scholar-  
ship  
Contest  
Results**

**Mr. Sparpaglione presented the results of the Sussex County Election Year Scholarship Contest, as follows:**

**First Place – Katelyn Phillips, Delmarva Christian High School  
Second Place – Shane Jensen, Cape Henlopen High School  
Third Place - Lauren Mason, Epworth Christian School  
Fourth Place - Marybeth Betts – Cape Henlopen High School  
Fifth Place – Adam Beauregard, Cape Henlopen High School  
Sixth Place – Shane Miller, Sussex Central Middle School**

**Mr. Sparpaglione reported that there were 330 successful entries of which only one person had 22 correct votes.**

**The County will be presenting one \$200 scholarship and five \$100 scholarships. (The County Attorney’s office will be donating \$200.00 to the contest.) Scholarship funds are paid directly to the college where the winners will attend.**

**The winners of the contest will be invited to attend the December 14th County Council meeting to receive recognition for their accomplishment**

**Grant  
Request**

**Mrs. Webb, Director of Accounting, presented a Human Service Grant request from the Laurel Lions Club.**

**M 654 04  
Human  
Service  
Grant**

**A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$1,000 from Human Service Grants to the Laurel Lions Club.**

**Motion Adopted: 5 Yea.**

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

**EMS  
Suburban  
Bid  
Award**

**Mr. Shade, Purchasing Agent, reviewed bid results for two Chevrolet Suburbans for the Paramedic Department. Six vendors submitted bids, as follows:**

<b>Townsend Chevrolet</b>	<b>\$31,297.00 each</b>
<b>I.G. Burton</b>	<b>\$31,531.00 each</b>
<b>Hertrich Fleet Services</b>	<b>\$32,449.00 each</b>
<b>Willis Chevrolet</b>	<b>\$32,636.00 each</b>

<b>First State Chevrolet</b>	<b>\$38,137.00 each</b>
<b>Plaza Ford/Motors Fleet</b>	<b>\$38,999.00 each</b>

The EMS staff reviewed the bids and recommended that the bid be awarded to Townsend Chevrolet.

**M 655 04**  
**Award**  
**Bid/EMS**  
**Suburbans**

A Motion was made by Mr. Cole, seconded by Mr. Jones, that the Sussex County Council accepts the bid of Townsend Chevrolet in the amount of \$31,297.00 per unit for the purchase of two (2) Chevrolet Suburbans for use by the Paramedic Department.

**Motion Adopted: 5 Yea.**

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

**Suburban**  
**Conversion**  
**Bid**  
**Award**

Mr. Shade, Purchasing Agent, reviewed bid results for the custom refurbishing of two (2) Chevrolet Suburbans for use as paramedic vehicles. Four vendors submitted bids, as follows:

<b>J&amp;J Emergency Vehicles</b>	<b>\$21,495.00 each</b>
<b>FESCO</b>	<b>\$23,895.00 each</b>
<b>Swab Wagon Company</b>	<b>\$25,415.00 each</b>
<b>Odyssey Automotive</b>	<b>\$27,834.00 each</b>

The EMS staff reviewed the bids and recommended that the bid be awarded to J&J Emergency Vehicles.

**M 656 04**  
**Award**  
**Bid/**  
**Suburban**

A Motion was made by Mr. Cole, seconded by Mr. Jones, that the Sussex County Council accepts the bid of J&J Emergency Vehicles in the amount of \$21,495.00 per unit for two (2) Suburban Paramedic unit conversions.

**Conversion**

**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/Z**  
**No. 1556**

The County Council considered the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL F LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 26.76 ACRES, MORE OR LESS” (Change of Zone No. 1546) filed on behalf of 3

**Seasons, L.L.C.**

**Mr. Rogers did not participate in the discussion.**

**Old  
Business  
(continued)**

**The Planning and Zoning Commission held a Public Hearing on this application on August 12, 2004 at which time they deferred action pending receipt of additional written comments. On August 26, 2004 the Commission reviewed additional information received and again deferred action. On September 9, 2004, the Commission recommended that the application be approved.**

**The County Council held a Public Hearing on this application on August 31, 2004 at which time they deferred action and allowed additional comments for a period of one week, until the close of business on September 7, 2004.**

**It was noted that the original application was for 158 units and the applicant submitted a revised site plan for 118, eliminating 40 multi-family units from the proposal. The applicant has proposed that the 118 units will include 8 single-family dwellings, 30 townhouses, and 80 duplex units.**

**It was further noted that the Planning and Zoning Commission recommended thirteen (13) conditions and that the first condition states that "The final site plan shall be limited to single-family detached units on separate lots. No multi-family units shall be allowed within the RPC. The maximum number of lots shall be 118."**

**M 657 04  
Adopt  
Proposed  
Ordinance  
(C/U  
No. 1546)**

**A Motion was made by Mr. Cole 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 HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL F LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 26.76 ACRES, MORE OR LESS" (Change of Zone No. 1546) filed on behalf of 3 Seasons, L.L.C. with the 13 conditions recommended by the Planning and Zoning Commission and with an additional condition that "Addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department".**

**The Motion Died for the lack of a second.**

**M 658 04  
Adopt  
Ordinance  
No. 1726  
(C/Z  
No. 1546)**

**A Motion was made by Mr. Jones, seconded by Mr. Phillips, to Adopt Ordinance No. 1726 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL F LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX**

**COUNTY, CONTAINING 26.76 ACRES, MORE OR LESS” (Change of Zone No. 1546) filed on behalf of 3 Seasons, L.L.C, with the following conditions:**

**M 658 04  
Adopt  
Ordinance  
No. 1726  
(C/Z  
No. 1546)  
(continued)**

- 1. The maximum number of dwelling units shall be limited to 118, of which at least 8 shall be single family dwellings, 30 townhouse units, and 80 duplex units. The Applicant may increase the number of single family lots but may not increase the number of townhouses or duplex units.**
- 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, including a swimming pool, bathhouse and community center shall be constructed and open to use by residents of the development within two years of the issuance of the first building permit.**
- 4. The development shall be served as part of an existing or extended Sussex County Sanitary Sewer District in accordance with the Sussex County Engineering Department’s specifications and regulations.**
- 5. The development 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.**
- 7. Site plan review shall be subject to 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, landscaping 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.**
- 11. No structure shall exceed 42 feet in height.**
- 12. A system of street lighting shall be provided by the Applicant and the location shall be shown on the final site plan.**
- 13. There shall be sidewalks on at least one side of each street within the development.**
- 14. Addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**

**Motion Adopted: 3 Yea, 1 Nay, 1 Absent.**

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

**(Mr. Rogers was not present during the discussion and the vote.)**

<b>Airport Beacon/ Bid Award</b>	<b>Mr. Sapp, Project Engineer, reviewed bid results for the Design and Install Airport Rotating Beacon Project at the Airport. Only one bid was received. The bid was from Carr &amp; Duff, Inc. of Huntingdon, Pennsylvania, in the lump sum amount of \$58,944.00. The Engineer's Estimate was \$75,000.00. Mr. Sapp reported that 90 percent of the amount will be paid by the FAA and 5 percent will be paid by the State. The County will have to cover 5 percent of the amount. Mr. Sapp also reported that this project was one of two items included in a FAA Grant for \$281,000.00. The remaining funds of the grant will be diverted to the Hangar Taxilane Project.</b>
<b>Airport Beacon (continued)</b>	

<b>M 659 04 Award Bid/ Airport Beacon</b>	<b>A Motion was made by Mr. Rogers, seconded by Mr. Jones, that based upon the recommendation of the Sussex County Engineering Department and Delta Airport Consultants, that the Sussex County Council awards Project No. 04-12, Design and Install Airport Rotating Beacon, to the lowest responsive bidder, Carr &amp; Duff, Inc. of Huntingdon Valley, Pennsylvania, in the amount of \$68,944.00, pending approval from the FAA and DelDOT.</b>
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**Motion Adopted: 5 Yea.**

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

<b>Wolfe Neck Treatment Plant</b>	<b>Ms. Cooper, Project Engineer, reviewed the Balancing Change Order and the awarding of Substantial Completion for the Wolfe Neck Treatment Plant Erosion Repair Project. She reported that the net change order amount is a credit amount of \$3,282.20.</b>
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<b>M 660 04 Wolfe Neck Treatment Plant/ Substantial Completion and Balancing Change Order</b>	<b>A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Engineering Department, that Sussex County Council grant Substantial Completion, effective November 9, 2004, to JJID, Inc. for Sussex County Project No. 03-05, Wolfe Neck Treatment Plant Erosion Repair Project, and further, that Balancing Change Order No. 1 be approved in the credit amount of \$3,282.20, thereby decreasing the total contract amount from \$348,500.00 to \$345,217.80 and that final payment be made and any held retainage be released in accordance with the terms and conditions of the contract documents.</b>
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**Motion Adopted: 5 Yea.**

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

<b>West</b>	<b>Ms. Cooper, Project Engineer, reviewed the Balancing Change Order and</b>
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- Complex Building**            the awarding of Substantial Completion for the West Complex Parking Lot Overlay Project. She reported that the net change order amount is a credit amount of \$5,534.32.
- M 661 04**            A Motion was made by Mr. Jones, seconded by Mr. Rogers, based upon  
**West**            the recommendation of the Sussex County Engineering Department, that  
**Complex**            Sussex County Council grant “Substantial Completion”, effective October  
11, 2004, to Jerry’s Inc., for Sussex County Project No. 02-05, West  
**M 661 04**            Complex Parking Lot Overlay, and further, that Balancing Change Order  
**West**            No. 1 be approved in the credit amount of \$5,534.32 to \$49,139.98, and that  
**Complex**            final payment be made and any held retainage be released in accordance  
**Parking**            with the terms and conditions of the contract documents.  
**Lot**  
**Overlay/**            Motion Adopted:        5 Yea.  
**Substantial**  
**Completion**            Vote by Roll Call:    Mr. Phillips, Yea; Mr. Cole, Yea;  
**(continued)**            Mr. Rogers, Yea; Mr. Jones, Yea;  
                                 Mr. Dukes, Yea
- Requests**            Mr. Stickels presented grant requests for the Council’s consideration.
- M 662 04**            A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give  
**Council-**            \$500.00 (\$250.00 from Mr. Jones’ Councilmanic Account, \$200.00 from  
**manic**            Mr. Dukes’ Councilmanic Account, and \$50.00 from Mr. Phillips’  
**Grant**            Councilmanic Account) to the W.G.M. Outreach Ministries for Home  
Energy Assistance and Weatherization Assistance Programs.  
  
Motion Adopted:        5 Yea.  
  
Vote by Roll Call:    Mr. Phillips, Yea; Mr. Cole, Yea;  
                                 Mr. Rogers, Yea; Mr. Jones, Yea;  
                                 Mr. Dukes, Yea
- M 663 04**            A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give  
**Council-**            \$1,000 (\$200.00 from each Councilmanic Account) to the Delmarva  
**manic**            Christian High School for gymnasium equipment.  
**Grant**  
  
Motion Adopted:        5 Yea.  
  
Vote by Roll Call:    Mr. Phillips, Yea; Mr. Cole, Yea;  
                                 Mr. Rogers, Yea; Mr. Jones, Yea;  
                                 Mr. Dukes, Yea
- M 664 04**            A Motion was made by Mr. Jones, seconded by Mr. Phillips, to give  
**Council-**            \$500.00 from Mr. Jones’ Councilmanic Account to the Georgetown Lions  
**manic**            Club for community work.  
**Grant**  
  
Motion Adopted:        5 Yea.

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

**M 665 04 Councilmanic Grant** A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$500.00 from Mr. Cole's Councilmanic Account to Rehoboth Beach Main Street, Inc. for the Annual Community Unity Dinner.

**M 665 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

**Proposed Ordinance** Mr. Dukes 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 NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 4.74 ACRES, MORE OR LESS" (Change of Zone No. 1573) filed on behalf of Darin Windsor. The Proposed Ordinance will be advertised for Public Hearing.

**Proposed Ordinance** Mr. Dukes introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MULTI-FAMILY DWELLING STRUCTURE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6,000 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1600) filed on behalf of Robert E. Kuhl and Kim C. Kuhl. The Proposed Ordinance will be advertised for Public Hearing.

**Proposed Ordinance** Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WHOLESALE BUILDING MATERIALS SALES AND STORAGE FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 23.10 ACRES, MORE OR LESS" (Conditional Use No. 1601) filed on behalf of Pierce Hardy Limited Partnership. The Proposed Ordinance will be advertised for Public Hearing.

**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 MINI-STORAGE FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.76 ACRES, MORE OR LESS" (Conditional

**Use No. 1602) filed on behalf of Rt. 24 Self Storage, LLC. The Proposed Ordinance will be advertised for Public Hearing.**

**Public Comments**      **Mr. Dan Kramer addressed Council and expressed his opinion that grant money should not be given to the Delmarva Chrisitian High School.**

**Attendance**      **Mr. Dukes announced that he would not be attending the Public Hearings in the afternoon; however, he stated that he would listen to the taped proceedings of the meeting so that he could participate in any decisions that are deferred.**

**Attendance (continued)**

**M 666 04**      **At 11:09 a.m., a Motion was made by Mr. Jones, seconded by Mr. Phillips, to recess until 1:30 p.m. Motion Adopted by Voice Vote.**

**Recess**

**Public Hearing (C/Z No. 1557)**      **A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 64.16 ACRES, MORE OR LESS (Change of Zone No. 1557) filed on behalf of Muddy Neck, L.L.C.**

**The Planning and Zoning Commission held a Public Hearing on this application on October 21, 2004 at which time they deferred action.**

**(See the minutes of the Planning and Zoning Commission dated October 21, 2004 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)**

**Mr. Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing. The summary was admitted as part of the County Council’s record.**

**Mr. Lank distributed a document received from the Office of State Planning Coordination in reference to the PLUS comments that included a letter dated November 15th; a letter of October 21st from Fuqua and York; a letter of October 18th from Davis, Bowen & Friedel; and comments from the Office of State Planning Coordination dated August 16th.**

**Mr. Lank distributed a booklet provided by the Applicant which is the same document submitted to the Commission.**

**Mr. Lank distributed letters of opposition which were referenced in the summary of the Planning and Zoning Commission’s Public Hearing. Also provided was a cover letter and petition from members of the Little Assawoman Bay Conservancy. The petition contained 127 signatures of**

residents from Malcolm Manor, Summerset, Plantation Park Marina, Plantation Park I and II, and the Dickerson Creek area. Also distributed was a letter from the Sussex Conservation District, dated October 19th, referencing the soil types and jurisdictional wetlands that may be on the site.

Public  
Hearing  
(C/Z  
No. 1557)  
(continued)

The Council found that Lauren Alberti was present on behalf of the Applicants with James Fuqua, Attorney for the Applicant and Zac Crouch from Davis, Bowen & Friedel. Their applicant was the same proposal presented to the Planning & Zoning Commission, which is summarized in the Commission's Public Hearing report.

The Applicant stated that they propose to build 138 condominium units consisting of 50 single family units and 88 townhouse designed units; that under the proposed MR-RPC zoning designation, the permitted maximum density would be 203 residential units (gross acreage less State wetlands less roads); that they are requesting 138 units which is significantly less than the maximum that would be permitted; that sewer for the development will be provided as part of the Sussex County Sewer System utilizing the South Coastal Regional Wastewater Facility; that the site is adjacent to the Cedar Neck Expansion Area and it will connect to an existing manhole; that the County Engineering Department has indicated that there is capacity for the project as proposed; that the system design was based on 4 EDUs per acre; that the actual submittal to the Engineering Department was for 150 units and the actual proposal is for 138 units.

In response to comments received from the State through the PLUS Process and DNREC. Mr. Fuqua noted that State agencies sought to minimize the development's potential impact on wetlands and forested areas and requested that the plan be redesigned to be much less intrusive into the natural landscape. The final site plan shows the wetlands area subject to a conservation easement to ensure their protection; including wooded upland and non-wetland areas in these conservation easements; and replacing the single family lots with single family condominium units to allow an open space buffer area to be located between the buildings and the western boundary which borders lands of the State of Delaware. Development was removed from any impact on the wetlands and buildings were removed from that area; also the buildings were pulled back from the property line approximately 70 feet; fencing is going to be provided along the property line from the County Road to the wetland line creating a physical barrier between the State lands and the development; a 50 foot buffer will be provided from the tidal wetlands line; ditches on the property will remain as they are and will be used for stormwater management.

Mr. Fuqua submitted proposed conditions for the Council's consideration should they approve the rezoning.

Mr. Cole questioned the other Councilmen if they have accepted campaign

donations from the applicant. Mr. Stickels stated that this issue needs to be resolved. It was the consensus of the Council that Mr. Griffin provide a legal opinion on whether there is any law prohibiting the Councilmen from taking contributions from people who in the past or future make zoning applications to the Council. Mr. Griffin stated that he would review the campaign laws and provide an opinion.

Public comments were heard.

Public  
Hearing  
(C/Z  
No. 1557)  
(continued)

There were no additional comments in support of the application.

Public comments were heard in opposition to the application. Mr. Fred Kelly stated that he thinks the Council members should look at the area proposed for the project and that if this project is approved, a great area in South Bethany is being sacrificed; that the area should remain a part of the Assawoman Nature Preserve;

Mr. Rob Guno, who works for DNREC, stated that he is not speaking officially for the Department; that he is speaking as the manager of the area; and that this development is close to an actively hunted area on State lands.

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

M 667 04  
Defer  
Action  
(C/Z\  
No. 1557)

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to defer action on Change of No. 1557, an application of Muddy Neck, L.L.C.

Motion Adopted: 4 Yea, 1 Absent.

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

Public  
Hearing  
(C/Z  
No. 1556  
and C/U  
No. 1568)

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.67 ACRES, MORE OR LESS" (Change of Zone No. 1556) filed on behalf of Douglas W. Brockway and the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BOAT REPAIR AND ACCESSORY INSTALLATION BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.67 ACRES, MORE OR LESS" (Conditional Use No. 1568) filed on behalf of Douglas W. Brockway.

There was a consensus of the County Council and Mr. Brockway that a

**joint public hearing be held for Change of Zone No. 1556 and Conditional Use No. 1568.**

**The Planning and Zoning Commission held a Public Hearing on these applications on October 21, 2004 at which time they deferred action.**

**(See the minutes of the Planning and Zoning Commission dated October 21, 2004 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)**

**Public  
Hearing  
(C/Z  
No. 1556  
and C/U  
No. 1568)  
(continued)**

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

**Mr. Lank distributed copies of a survey of the property showing the existing house and the boat repair garage; the survey also notes the private road.**

**Mr. Lank reported that the Commission had concerns, based on the opposition's testimony, as to whether or not Mr. Brockway has the legal right to use the road. This is being researched by Vince Robertson, Assistant County Attorney.**

**Mr. Lank reported that Mr. Brockway's access to his garage on his personal residence is from Road 288 and that access to the metal building to the rear of the property where he does the boat repairs is off of the private road, Penny Lane.**

**Mr. Lank reported that there is litigation pending between Mr. Brockway and the other lot owners as to the legal use of the private road in question.**

**Mr. Brockway stated that he bought the property back in 1998; that his deed states that he has the right to use all the easements and right-of-ways; that he relocated his business to this lot in 1998; that the business is the installation of t-tops, rod holders, etc. on boats; that he proposes that the business would be open 9:00 a.m. to 4:00 p.m. Monday through Friday with occasional hours on Saturday and no hours on Sunday; and that a maximum of five boats would be on the property at one time.**

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

**M 668 04  
Defer  
Action  
(C/Z  
No. 1556  
and C/U  
No. 1568)**

**A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Change of Zone No. 1556 and Conditional Use No. 1568 filed on behalf of Douglas Brockway and to leave the record open for the opinion of the Vincent Robinson, Assistant County Attorney, regarding the use of Penny Lane; upon receipt of the opinion from the County Attorney, the record will remain open for thirty days for the applicant to respond to Mr. Vincent's opinion.**

**Motion Adopted: 4 Yea, 1 Absent.**

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

**M 669 04 A Motion was made by Mr. Cole, seconded by Mr. Phillips, to adjourn at  
Adjourn 3:00 p.m. Motion Adopted by Voice Vote.**

**Respectively submitted,**

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