



## *Sussex County Council Agendas & Minutes*

### **SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 29, 2005**

#### **Call to Order**

The regular meeting of the Sussex County Council was held Tuesday, November 29, 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 631 05 Approve Agenda**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to approve the Agenda of November 29, 2005, as posted.

**Motion Adopted: 5 Yea.**

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

#### **M 632 05 Approve Minutes**

A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to approve the minutes of November 8, 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:

**LAUREL HISTORICAL SOCIETY, LAUREL, DELAWARE.  
RE: Letter in appreciation of \$5,000 grant.**

**SEAFORD HISTORICAL SOCIETY, SEAFORD, DELAWARE.**

**RE: Letter in appreciation of \$5,000 grant.**

**KENT SUSSEX INDUSTRIES, INC., MILFORD, DELAWARE.**

**RE: Letter in appreciation of \$5,000 grant.**

**EASTER SEALS, NEW CASTLE, DELAWARE.**

**RE: Letter in appreciation of \$250,000 grant.**

**Corre-  
spondence  
(continued)**

**SUSSEX CENTRAL HIGH SCHOOL, MUSIC DEPARTMENT,  
GEORGETOWN, DELAWARE.**

**RE: Letter in appreciation of the Council's financial support of the  
Tournament of Bands.**

**DAVID MITCHELL, STATE OF DELAWARE, ENHANCED 9-1-1  
EMERGENCY SERVICES BOARD, DOVER, DELAWARE.**

**RE: Letter commending Matt Laick and his staff on the progress of the  
addressing project in Sussex County, on Matt Laick's vast knowledge and  
experience in GIS, and on Council's adoption of the Addressing Ordinance.**

**M 633 05  
Appoint-  
ment to  
Planning  
& Zoning  
Commission**

**A Motion was made by Mr. Rogers, seconded by Mr. Dukes, to appoint  
Irwin G. Burton, III to the Planning and Zoning Commission to complete  
the term of John L. Allen, until June 2008.**

**Motion Adopted: 5 Yea.**

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

**Discussion/  
Introduction  
of a  
Proposed  
Ordinance  
Relating to  
Cluster  
Develop-  
ment**

**Mr. Stickels presented a draft ordinance entitled "AN ORDINANCE TO  
AMEND CHAPTER 115 SECTION 25 OF THE CODE OF SUSSEX  
COUNTY, TO ADD A REQUIREMENT THAT ALL AR-1 CLUSTER  
DEVELOPMENTS BE LOCATED WITHIN A DEVELOPMENT  
DISTRICT AS SHOWN ON THE ADOPTED COMPREHENSIVE PLAN  
FOR SUSSEX COUNTY".**

**Mr. Stickels stated that, at the November 8th Council meeting, there was a  
discussion on amending the existing cluster ordinance, which would allow  
for clustering in a low density area (AR-1 District). At that time, Mr. Cole  
expressed concern that cluster developments should be limited to the  
Development District. Mr. Phillips stated that he would like to see the  
ordinance stay as it is. Mr. Jones expressed that he did not have a problem  
with allowing clustering in an AR-1 District, but he suggested a reduction of  
25 percent.**

**Mr. Stickels explained that Council has three options regarding the draft  
ordinance:**

- 1- Accepting Section 3 would restrict cluster development to the Development District.
- 2- Defeating the draft ordinance would result in the current ordinance remaining in place.
- 3- Adopting Sections 1 and 2 of the draft ordinance would allow clustering in an AR-1 District with a 25 percent reduction.

**Discussion/  
Introduction  
of a  
Proposed  
Ordinance  
Relating to  
Cluster  
Develop-  
ment  
(continued)**

Mr. Stickels noted that, if introduced, Public Hearings would be held on the Proposed Ordinance by the Planning and Zoning Commission on January 12, 2006 and the Sussex County Council on January 17, 2006.

Mr. Phillips stated that he had asked the County's Land Use Planner, Richard Kautz, to draft an ordinance to allow clustering of four units per acre in the Development District as opposed to the two units per acre. He stated that this would fulfill the goal of the State in encouraging growth in the Development District through an incentive-based program. Mr. Phillips stated that he is opposed to taking away the opportunity for two units per acre based on the gross density. He also stated that he believes the existing cluster ordinance is fulfilling its goal of preserving open space.

Mr. Griffin stated that the draft ordinance proposed by Mr. Phillips was not included on the Agenda nor posted for the required time period of one week. Mr. Griffin advised that, for that reason, the matter should be placed on a future agenda for discussion and introduction.

Mr. Phillips questioned if the draft ordinance that was placed on the Agenda and properly posted could be amended by a majority vote of the Council. Mr. Griffin responded that it would be premature to begin amending an introduced ordinance before a Public Hearing.

**Introduction  
of Proposed  
Ordinance**

Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 SECTION 25 OF THE CODE OF SUSSEX COUNTY, TO ADD A REQUIREMENT THAT ALL AR-1 CLUSTER DEVELOPMENTS BE LOCATED WITHIN A DEVELOPMENT DISTRICT AS SHOWN ON THE ADOPTED COMPREHENSIVE PLAN FOR SUSSEX COUNTY". The Proposed Ordinance will be advertised for Public Hearing.

**Proposed  
Resolution  
Relating to  
Applications  
for Sub-  
division Plan  
Approval**

Mr. Stickels presented for consideration a Proposed Resolution entitled "A RESOLUTION DIRECTING THE PLANNING AND ZONING OFFICE AND THE PLANNING AND ZONING COMMISSION NOT TO ACCEPT FURTHER APPLICATIONS FOR PRELIMINARY SUBDIVISION PLAN APPROVAL UNDER COUNTY ORDINANCE 1709, APPEARING IN THE COUNTY ORDINANCES IN SECTION 115-25, COMMONLY REFERRED TO AS THE "CLUSTER ORDINANCE".

**Motion to**

Mr. Phillips made a Motion to advertise a Public Hearing on the Proposed

**Advertise Resolution.**

**Discussion on Proposed Resolution**      **Mr. Griffin stated that it is not the procedure of the Council to hold Public Hearings on Proposed Resolutions.**

**Mr. Phillips stated that he believes it is important to make the public aware of significant action taken by Council and to give the public the opportunity to speak.**

**Discussion (continued)**      **Mr. Stickels provided the following information:**

- 1. Currently there are 58 subdivision applications pending. Twenty-eight (28) are for clustering in an AR District.**
- 2. There are 42 subdivision applications waiting to be scheduled; twenty-nine (29) are for clustering in an AR District.**
- 3. From FY '03 to FY'04, the Planning and Zoning Commission approved 23 cluster subdivisions in an AR District.**
- 4. Title 9 Delaware Code §7001(d) states that the powers of the Government of Sussex County shall be executed as provided by Ordinance or Resolution of the Government of Sussex County.**
- 5. The Proposed Resolution has met the legal advertising time requirement. The Proposed Resolution directs the Planning and Zoning Department and the Planning and Zoning Commission not to accept further applications for preliminary subdivision plan approvals under County Ordinance No. 1709 pursuant to the County's Ordinance in Section 115-25 commonly referred to as the Cluster Ordinance, for a period not to exceed 120 days.**
- 6. If the Resolution did not have a time limit then the directive would have a permanent effect and this would have required an Ordinance.**
- 7. Any applicant can apply for permitted change of zones in an AR District other than clustering such as AR-RPC, MR-RPC, GR, C-1, or a conditional use.**
- 8. The Planning and Zoning Commission will hold a Public Hearing on a Proposed Ordinance to amend Chapter 115 Section 25 of the Code of Sussex County to add a requirement that all AR-1 Cluster Developments be located within a Development District on Thursday, January 12, 2006 and the County Council will hold a public hearing on the Proposed Ordinance on Tuesday, January 17, 2006.**
- 9. Upon adoption of the Proposed Ordinance by the County Council, the Resolution will terminate.**

**Mr. Dukes stated that he would support the Resolution if the Cluster Development Ordinance is put on the fast track and action taken within 45 days. Mr. Stickels noted that this would depend on the Planning and Zoning Commission taking action on January 12, 2006, the date of the Public Hearing. Mr. Jones agreed to speak to the President of the Commission and convey to them the necessity of making a decision on January 12th.**

**Motion**

- Died**                      **Mr. Phillips’ Motion died for the lack of a Second.**
- M 634 05**                      **A Motion was made by Mr. Dukes, seconded by Mr. Cole, to Adopt the**  
**Adopt**                      **Resolution entitled “A RESOLUTION DIRECTING THE PLANNING**  
**Resolution**                      **AND ZONING OFFICE AND PLANNING AND ZONING COMMISSION**  
   **NOT TO ACCEPT FURTHER APPLICATIONS FOR PRELIMINARY**  
   **SUBDIVISION PLAN APPROVAL UNDER COUNTY ORDINANCE NO.**  
   **1709, APPEARING IN THE COUNTY ORDINANCES IN SECTION 115-**  
   **25, COMMONLY REFERRED TO AS THE “CLUSTER ORDINANCE”.**
- M 634 05**                      **Motion Adopted:        4 Yea, 1 Nay.**  
**(continued)**
- Vote by Roll Call:     Mr. Phillips, Nay; Mr. Cole, Yea;**  
   **Mr. Dukes, Yea; Mr. Rogers, Yea;**  
   **Mr. Jones, Yea**
- Airport**                      **Mr. Izzo, County Engineer, presented a proposal for the County to**  
**Land**                      **purchase land owned by Barbara VanSciver. The acquisition of this parcel**  
**Acquisition**                      **of land is key to the County’s Park Avenue Realignment Project, which is**  
   **necessary in order to pursue the expansion of Runway 422 at the Sussex**  
   **County Airport. Mr. Izzo noted that a Contract of Sale has been negotiated**  
   **and agreed to by both parties.**
- M 635 05**                      **A Motion was made by Mr. Rogers, seconded by Mr. Phillips, based upon**  
**Approve**                      **the recommendation of the Sussex County Engineering Department that the**  
**Purchase**                      **Sussex County Council approves the purchase of Parcel 1-35-20-40 to**  
**of Land**                      **accommodate the Park Avenue Realignment in accordance with the**  
   **Contract of Sale executed with Mrs. Barbara A. VanSciver.**
- Motion Adopted:        5 Yea.**
- Vote by Roll Call:     Mr. Phillips, Yea; Mr. Cole, Yea;**  
   **Mr. Dukes, Yea; Mr. Rogers, Yea;**  
   **Mr. Jones, Yea**
- Adminis-**                      **Mr. Stickels read the following information in his Administrator’s Report:**  
**trator’s**  
**Report**
1.        **Caroling on The Circle**
- The Sussex County Council will be sponsoring the 24<sup>th</sup> annual**  
   **Caroling on The Circle on Monday, December 5, 2005. This event**  
   **also marks the County’s annual food drive. This year’s festivities**  
   **will begin at 6:30 p.m. in front of the Sussex County Courthouse**  
   **with Spanish caroling by the Youth Catholic Choir, ‘Flor y Canto.’**  
   **Traditional caroling will follow at 7:00 p.m. with the local recording**  
   **group ‘Tapestry.’ The trio will perform selections from their latest**  
   **CD release *Snow on Snow on Snow*. Following Caroling on The**  
   **Circle, cookies and hot chocolate will be served at the Georgetown**  
   **Fire Hall, and there will even be a visit from Santa Claus.**

Adminis-  
trator's  
Report  
(continued)

Everyone is invited to attend. Participants are asked to bring with them canned goods and other nonperishable food items for donation to local food pantries and churches. Anyone who cannot attend but still wishes to contribute can drop off canned goods seven days a week, 24 hours a day, at the County Administrative Office Building located on The Circle.

In the event of rain, festivities will be moved inside to the Georgetown Fire Hall on South Bedford Street.

I realize that people in Sussex County have been donating since last September's major hurricanes, but please keep in mind that there are those in Sussex who still need assistance.

2. Christmas Festivities and Parades for 2005

For Council's convenience, included with this report is a list of activities that will take place during the holiday season.

3. Community Development and Housing Public Hearing and Meeting Dates

Included with this report is a list of 15 public hearings and meetings that will be conducted by the County's Community Development and Housing Division. Council members may choose to attend the hearings that are held in their jurisdiction.

4. Beneficial Acceptance

The Sussex County Engineering Department gave Beneficial Acceptance to the following projects:

- Swann Cove, Phase II, Agreement No. 503, was granted approval on November 14, 2005. The developer is Swann Cove, L.L.C., and the project is located at the intersection of Route 54 and Road 381 in the Fenwick Island Sanitary Sewer District, consisting of 41 single-family lots.
- Kensington Park, Agreement No. 354, was granted approval on November 21, 2005. The developer is Gulfstream Development Corporation, and the project is located east of the intersection of County Road 368 and County Road 362 in the South Bethany Sanitary Sewer District, consisting of seven groups of townhouses and 12 single-family lots.
- The Preserve at Irons Landing, Agreement No. 348, was granted approval on November 21, 2005. The developer is Ruggiero Development Group, and the project is located on Irons Lane and/or County Road 348 in the Holts Landing Sanitary Sewer District, consisting of 75 single-family lots.

|  |   |
|--|---|
| <b>Proposed Changes &amp; Rates/<br/>Bayview Estates &amp; Sea Country Estates SSD</b>                 | <b>Mr. Baker presented a budget and sewer service rates for the Bay View Estates Sanitary Sewer District and Sea Country Estates Sanitary Sewer District. He reported that construction on these districts will be complete by January 1, 2006. It is recommended that the proposed budget and rates be effective on that date. Bay View Estates and Sea Country Estates are both subdivisions which will be served by the South Coastal Regional Wastewater Facility. Referendums were previously approved for both districts at higher levels of charges than what is being proposed.</b> |
| <b>Proposed Changes &amp; Rates/<br/>Bayview Estates &amp; Sea Country Estates SSD<br/>(continued)</b> | <b>The proposed front foot assessment for Bay View Estates is \$7.58 and \$5.03 for Sea Country Estates. Mr. Baker noted that the Sea Country Estates assessment is lower than expected due to the fact that a developer contributed a major pump station.</b><br><b>Mr. Baker noted that the proposal does not include service for the Maryland portion of Bay View Estates.</b><br><b>Mr. Baker discussed two draft ordinances: a budget amendment and an ordinance establishing the annual rates and charges.</b>  |
| <b>Introduction of Proposed Ordinance</b>  | <b>Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE ESTABLISHING ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR COLLECTION AND TRANSMISSION AND/OR TREATMENT FOR BAY VIEW ESTATES AND SEA COUNTRY ESTATES SANITARY SEWER DISTRICTS”.</b>  |
| <b>Introduction of Proposed Ordinance</b>  | <b>Mr. Cole introduced the Proposed Ordinance entitled “AN ORDINANCE AMENDING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2006 TO INCORPORATE PROJECTED REVENUES AND EXPENDITURES FROM THE BAYVIEW ESTATES AND SEA COUNTRY ESTATES SANITARY SEWER DISTRICTS”.</b><br><br><b>The Assessment Rolls and the Proposed Ordinances will be advertised for Public Hearings in January.</b>   |
| <b>Airport Rotating Beacon Project</b>   | <b>Mr. Hickin, Project Engineer, presented Change Order No. 1 to the Airport Rotating Beacon Project. He reported that the beacon was installed and operational on November 2nd. On November 3<sup>rd</sup>, complaints were received that the light was too bright. Engineers have investigated the beacon and concur that it is much brighter than the one that was replaced. The engineers and the light manufacturer recommended a low beam cut off which would prevent the light from going below two degrees above the horizon, which would correct the problem.</b>                  |
| <b>M 636 05<br/>Approve Change Order for Airport</b>   | <b>A Motion was made by Mr. Rogers, seconded by Mr. Dukes, based upon the recommendation of the Engineering Consultants, Delta Airport Consultants, Inc. and the County Engineering Department, that Change Order No. 1 for Sussex County Project No. 04-12, Design and Install Airport Rotating Beacon, with Carr &amp; Duff, Inc. be approved in the</b>  |

**Rotating  
Beacon  
Project**

**amount of \$4,136.00, which increases the contract total to \$73,080.00.**

**Motion Adopted: 5 Yea.**

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

**Public  
Hearing/  
C/U  
No. 1642**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (30 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 4.51 ACRES, MORE OR LESS” (Conditional Use No. 1642) filed on behalf of Sunrise Ventures, L.L.C.**

**The Planning and Zoning Commission held a Public Hearing on this application on November 3, 2005 at which time they recommended that the application be approved with the following conditions:**

- 1. Any security lighting shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring residential properties. The lights shall be downward illuminated.**
- 2. The maximum number of residential units shall not exceed 30.**
- 3. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT’s determination.**
- 4. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements.**
- 5. Construction, site work, grading and deliveries of construction materials, etc., to the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Saturday.**
- 6. The site plan shall be subject to review and approval by the Planning and Zoning Commission.**
- 7. Addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated November 3, 2005 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)**

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

**Mr. Lank reported that additional correspondence was received after the**



**date of the Public Hearing before the Commission:**

**Public  
Hearing/  
C/U  
No. 1642  
(continued)**

- Letter from the County Engineering Department dated November 14, 2005 stating that wastewater capacity is not available for the project; there is inadequate capacity in several downstream collector lines; a recent pump station evaluation that identified a needed upgrade of Pump Station WR-184 has not been completed; Pump Stations WR-201 and WR-202 and their force mains are a concern and require additional evaluation by the developer (Sunrise Ventures) to identify needed upgrades (at the minimum the developer must perform pump tests at those stations); the Engineering Department opposes this conditional use because of the overall detriment to the system and at the Wolf Neck Treatment Plant; the proposed project is not in harmony with planning study assumptions for sewer service for the area; capacity will be available for up to 4 units per acre (18 units) but the Engineering Department will not approve issuance of building permits until after the upgrade of Pump Station WR-184 is completed; a project of 18 or fewer units will not require the developer to perform evaluations and upgrades at Stations WR-201 and WR-202; approval of projects at densities greater than design assumptions (4 units/acre) has a negative impact on sewer system capacity; and they recommend against exceeding 4.0 EDUS per acre.
- Letter from the Sussex Conservation District regarding soil types, farmland rating, etc. No storm flood hazard areas or tax ditches are affected; off- and on-site drainage improvements will be necessary; there may be regulated wetlands on the site; and the applicant will have to secure necessary permits from the Army Corps of Engineers.
- Letter from Mabel Granke on behalf of the Citizens Action Foundation, dated November 28, 2005, in support of the many concerns of the residents of the residential development known as Bay Harbor: insufficient notification of the actual owners in Bay Harbor to procure necessary information and the opportunity to make informed comment; the proposed site has not been properly tested to determine the presence of toxic materials from former use(s) of the site; the area is in a flood zone and drainage and stormwater management design is of critical importance. The Citizens Action Foundation believes that the conditional use is inappropriate and urges the Council to, at a minimum, defer action to allow concerned neighbors to further comment. They also recommend that the number of units be reduced and particular attention be given to the environmental factors – drainage, stormwater management design and wetlands.
- Letter from several members of the Bay Harbor Homeowners Association urging the Council to deny or delay action on the application and stating that the Association opposes the application for the following reasons: insufficient notification of the application to the neighboring property owners; the adverse impact the project would have on the already congested intersections of Bay Vista Road and Oyster House Road with Coastal Highway/Route 1; the adverse impact of the project on the County's sewer system, the neighborhood's

**environment, and the already problematic poor water drainage in the neighborhood.**

**The letters were admitted into the record of the Public Hearing.**

**The Council found that John Sergovic, Attorney; Shannon Carmean, Attorney, and Jessica Nichols, Engineer from Meridian Architects and Engineers, were present on behalf of the application.**

**Public  
Hearing/  
C/U  
No. 1642  
(continued)**

**Mr. Sergovic stated that on March 22, 2005, this matter was before the Council as Change of Zone No. 1558 for HR rezoning filed on behalf of Rehoboth Canal Ventures, LLC, at which time the Council recommended denial with a vote of 3 Nay and 2 Yea. Mr. Sergovic stated that, at that time, Mr. Cole expressed concern about the density, sewer capacity, and the Council's lack of control under a change of zone approval, since conditions cannot be attached to a change of zone and he stated that the application would be more appropriate as a conditional use.**

**Mr. Sergovic advised the Council that there is a letter of opposition from Jayant Goyle in the file relating to some assumed access to the lands of the Army Corps of Engineers. He noted that you cannot get access to that land without an effective lease and there is no lease of record. The Chancery Court stipulated that the order was entered into and Mr. Goyle is provided with access through Blue Point Villas to Oyster Road Ext. (Route One Ext.) He noted that he may have an easement to the Army Corps of Engineers' lands but that is all he has had and that he has been provided access through Blue Point Villas.**

**Shannon Carmean stated that the applicant wishes to construct a residential multi-family development and related site improvements; that the original application sought 30 dwelling units consisting of 15 duplexes; that the conditional use request is for 30 dwelling units in the form of townhomes; that by constructing townhomes instead of duplexes, the developer would be able to provide more green open-space and that the townhomes would be more compatible with neighboring uses – Blue Point Villas (condominiums), Oyster Bay Villas (townhomes), and Bay Harbor; that the surrounding area is a multi-family community and therefore the proposed development of townhomes would be consistent with the neighborhood; that the land along the canal was previously used for material storage by the City of Rehoboth prior to the purchase and clean-up by the applicant; that a portion of the land was used and operated as an auto repair shop and as an appliance dumping site; that there is an abandoned oyster house on the property which has been frequented by vandals and trespassers; that the proposed development would rehabilitate lands that have been allowed to deteriorate; that the proposed development would enhance and improve the community by restoring the area and providing more housing; that there would be no adverse impact on the neighborhood; that there would be no adverse impact on traffic as stated by DelDOT; and that the site is located within a Developing District.**

Public  
Hearing/  
C/U  
No. 1642  
(continued)

Jessica Nichols stated that the proposed density is 6.65 dwelling units per acre; that three parking spaces are proposed per unit, two of which would be located under the unit; that the amenities proposed include a playground, beach area, pool and pool house, wet pond and fountains, and walking paths; that 2.6 acres of the Army Corps' lands were obtained by the owners of the property for recreational use for Blue Point, Phases I and II; that the adjacent property densities are: Blue Point, Phase I is 12 units per acre, Oyster Bay Villa is 8.2 units per acre; and Bay Harbor is 4 units per acre; that the sewer capacity analysis was performed and showed that Pump Station WR 184 is under capacity and would be under capacity if all of the area was developed at the current zoning; that the pumps have not been brought up to Ordinance 38 standards; that at the request of the Engineering Department, construction improvement plans have been completed and submitted and are under review at this time; that they have not yet received comments back from the Engineering Department on the construction improvements plans; and that a lease has been negotiated with the Army Corps of Engineers and is being reviewed by the developer for the use of a portion of the Corps' land (part of the Canal right-of-way) for recreational purposes.

Mr. Cole stated that the property is not contiguously surrounded by multi-family uses.

Mr. Cole stated that he received comments from property owners abutting the site regarding the layout of the road around the perimeter of the proposed project since the proposal includes a five foot distance between the rear yard of single-family improved parcels and the roadway. In response, Ms. Nichols stated that a landscaping buffer/screen would be provided and/or the layout could be reconfigured. She also stated that the area would be grassed and landscaped; that there is a small 10 foot gravel road back to a one-half acre DNREC-leased storage area; that there are existing gazebos, a dock, bulk-head and pier; that it is proposed that the residents of the development as well as the public would use the area for recreational purposes; and that they would provide public access to the area, which is a requirement incorporated in the lease.

Mr. Sergovic stated that the developer expects to be required to (and would agree to) making any sewer upgrades that are required as a condition of approval.

Mr. Cole stated that it is his viewpoint that the Engineering Department is concerned not only with the capacity issue, but the overall potential detriment to the sewer system.

Mr. Izzo, County Engineer, stated that there are concerns of going out on the Route One corridor to make upgrades and that there would be some detriment to the public. Mr. Izzo noted that the applicant has responded, in their presentation, to comments made by the Engineering Department a

year ago and that they have not received any new plans.

Ms. Nichols responded that the original letter received from the Engineering Department in regards to sewer capacity, which was the issue before the Council one year ago, contained five to seven specific issues that needed to be addressed. Ms Nichols stated that they subcontracted with an engineering firm to prepare the plans and an electrical firm to upgrade the station and that those plans were submitted to the Engineering Department at least two months ago.

Public  
Hearing/  
C/U  
No. 1642  
(continued)

Ms. Nichols advised that they have not received the recent letter from the Engineering Department, which was previously referred to by Mr. Lank (dated November 14, 2005 and received by the Planning and Zoning Department on November 23, 2005).

Mr. Griffin stated that the memo from the Engineering Department, dated November 14, 2005 and received by the Planning and Zoning Department on November 23, 2005 was made a part of the record. In addition, the litigation history of the lawsuit filed in Chancery Court by Jayant Goyle against Rehoboth Canal Ventures, LLC, in which the last item indicates that the lawsuit has been resolved and action dismissed by stipulation and order, was also admitted as part of the record of the Public Hearing.

Mr. Izzo stated that the Engineering Department would like the opportunity to update their comments to include what has changed within the last year including the status of Blue Point Villas, Phases I and II.

Mr. Dukes stated that he had a potential conflict with the Rehoboth Canal Ventures, LLC application when it came before Council. He noted however, that since that time, one of the principals (Ronnie Moore) has withdrawn his interest in the project. Mr. Dukes stated that for this reason, he no longer has a conflict of interest with the application.

Mr. Sergovic noted that the construction firm for the project is owned by DiSabatino.

Mr. Cole referred to his earlier comments regarding the perimeter road and its negative effect on the adjoining property owners. He stated that he would like to see the service road and parking lot brought into the interior of the project and that the Applicant should submit a redesigned plan of the road and the parking area to minimize the impact on the adjoining property owners.

Mr. Griffin cautioned that discussions with adjoining property owners that did not appear at the Public Hearings and make their views known are not a proper basis for a decision.

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

M 637 05

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, to defer action

**Defer  
Action on  
C/U  
No. 1642**      on Conditional Use No. 1642 filed on behalf of Sunrise Ventures, L.L.C. and to leave the record open until the close of business on December 6, 2005 for additional comments from the Engineering Department and thereafter, to leave the record open until December 13, 2005 for the applicant to comment on the Engineering Department's newly submitted comments.

**Motion Adopted:**      5 Yea.

**M 637 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. 1621**      The Council discussed the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 40,702 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1621) filed on behalf of Gregory and Patricia White.

The Planning and Zoning Commission held a Public Hearing on this application on September 22, 2005 at which time they recommended that the application be denied, based on the following reasons:

1. The applicants have not satisfied the County Code's requirements for such a conditional use, including the full protection of surrounding properties, that it is of a public or semi-public character, or that it benefits the general convenience and welfare of County residents.
2. The application is not consistent with the character of the surrounding property. There are no other multi-family structures similar to the Applicant's proposal in this area, and the area is not predominantly a townhouse or multi-family community.
3. The applicant has proposed "clustering" four detached dwellings on a 40,702 square foot lot as a condominium. In a MR District, any single family dwelling not connected to a central sewer system as defined in the Zoning Code must have a lot area of 3/4 of an acre. It appears that the applicant has classified these detached dwellings as multi-family dwellings solely to avoid the lot area requirements for single-family dwellings found in the Zoning Ordinance.
4. If approve, the project would concentrate density in an area that is not already densely developed, and it does not utilize any existing infrastructure. The project would not be served by central water or sewer. Also, this project does not provide or preserve open space.

The County Council held a Public Hearing on this application on October 18, 2005 at which time action was deferred to allow time for possible

conditions of approval to be drafted for the Council's consideration. On November 7, 2005, Mr. Lank, Director of Planning and Zoning, submitted a memo to the Council outlining the following proposed conditions of approval:

Old  
Business/  
C/U  
No. 1621  
(continued)

1. There shall be no more than four single family detached units.
2. There shall be at least three parking spaces per unit and each unit shall have a two-car garage.
3. All units shall be connected to central water and central sewer within 180 days of the date when the utility connections become available.
4. A Homeowners Association shall be established to maintain all common elements, i.e. driveways and parking lots, stormwater management features, landscaping, etc.
5. All existing hedges along property lines shall be retained. A six-foot high stockade fence and additional landscaping shall be installed along lands of St. Georges Church to screen the adjoining cemetery.
6. The stormwater management facility shall meet or exceed all State and County regulations.
7. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.
8. Naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.

Mr. Cole questioned how the application came in as multi-family when the proposal is for detached homes. Mr. Lank explained that the application is for a multi-family (detached) use on one parcel. He further explained that a condominium-type sale is proposed.

It was noted that the title of the Proposed Ordinance refers to six units and that the Applicant is proposing four units. For this reason, if the application is approved, the title would have to be amended.

M 638 05  
Adopt  
Proposed  
Ordinance  
(C/U  
No. 1621)  
DENIED

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (4 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 40,702 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1621) filed on behalf of Gregory and Patricia White, as amended.

Motion Denied: 3 Nay, 1 Yea, 1 Abstention.

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

The majority of the Council voted to deny the application based on the recommendation and findings of the Planning and Zoning Commission.

**Wolfe Neck Treatment Plant**

**Julie Cooper, Project Engineer, presented bid results for the Wolfe Neck Treatment Plant – Lagoon 3 Modifications Project:**

| <b>Wolfe Neck Treatment Plant- Lagoon 3 Modifications/ Bid Results (continued)</b> | <b><u>Bidder</u></b>                 | <b><u>Bid Amount</u></b> |
|--|--------------------------------------|--------------------------|
|  | Environmental Quality Resources, LLC | \$340,357.45             |
|  | JJID, Inc.                           | \$353,895.00             |
|  | Lazy B. Construction                 | \$291,670.00             |
|  | Mike Davidson Excavating             | \$461,730.00             |

Ms. Cooper explained that the project is for the upgrade of one of the aerated lagoons to a storage lagoon.

**M 639 05 Award Bid/ Wolfe Neck Treatment Plant/ Lagoon 3 Modifications**

A Motion was made by Mr. Dukes, seconded by Mr. Rogers, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project No. 05-05, Wolfe Neck Treatment Plant Lagoon 3 Modifications be awarded to Lazy B Construction Corporation of Middletown, Delaware, at the bid amount of \$291,670.00.

**Motion Adopted: 5 Yea.**

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

**Requests**

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

**M 640 05 Councilmanic Grant**

A Motion was made by Mr. Dukes, seconded by Mr. Cole, to give \$300.00 from Mr. Dukes' Councilmanic Account to The Town of Blades for the Kids' Christmas Craft Bazaar.

**Motion Adopted: 5 Yea.**

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

**M 641 05**

A Motion was made by Mr. Phillips, seconded by Mr. Dukes, to give

**Council-  
manic  
Grant**

**\$500.00 from Mr. Phillips' Councilmanic Account to the Selbyville – Indian River Lions Club for community service projects.**

**Motion Adopted: 5 Yea.**

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

**TABLED**

**The grant request from the Delaware Diamonds was tabled.**

**M 642 05  
Adjourn**

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

**Respectfully submitted,**

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