



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 28, 2010

Call to Order A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 28, 2010, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Vance Phillips	President
Michael H. Vincent	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Samuel R. Wilson, Jr.	Councilman
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Deputy Administrator
J. Everett Moore	County Attorney

The Invocation and Pledge of Allegiance were led by Mr. Phillips.

Mr. Phillips called the meeting to order.

M 506 10 Amend and Approve Agenda A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to amend the Agenda by deleting “Request for Extension of Conditional Use No. 1705 filed on behalf of The Commonwealth Group” and by deleting “Land Acquisition” under “Executive Session”; and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea

Minutes The minutes of September 14, 2010 were approved by consent.

DTCC Mr. Baker presented a Delaware Technical & Community College (DTCC)

Lease Proposal **Lease Proposal.** The lease is for a lot at the County’s Industrial Airpark, located directly across from the existing DTCC facility. The total lot requested is approximately nine-tenths of one acre. The purpose of DTCC’s request for a Lease is to expand their training program to include aircraft engines and power plants. Mr. Baker reported that DTCC would be responsible for building a power plant technology program building on this lot; the County’s sole responsibility would be to provide the land. This would be a rent free agreement for a term of 30 years; however, if approved, the Lease may be extended based on mutual agreement.

DTCC Lease Proposal (continued) **Dr. Ileana Smith** commented on DTCC’s existing airframe mechanics program located at the Industrial Airpark and she noted that 15 students graduated in Phase 1 of the program. Phase 2 of the program would allow students to work on the engines of the aircraft. Dr. Smith noted that DTCC hopes that this program will continue to develop a workforce for a growing market share of jobs in aviation maintenance. She stated that the College is committed to working with the County on economic development strategies.

M 507 10 Approve Lease with DTCC **A Motion** was made by Mr. Cole, seconded by Mr. Vincent, that the Sussex County Council approves a Lease with Delaware Technical & Community College for approximately nine-tenths of one acre at the County Industrial Airpark.

Motion Adopted: **5 Yeas.**

Vote by Roll Call: **Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea**

U of D Agriculture Extension Program **On behalf of the College of Agriculture and Natural Resources, the University of Delaware, and the Carvel Research and Education Center, Dr. Mark Isaacs** thanked the Council for its continued support. Dr. Isaacs gave an overview of how they use the funding allocated by the County: poultry diagnostic and research efforts in the Lasher Laboratories, field crop research, extension safety programs, and the overall extension program (in Georgetown). The Council presented a check in the amount of \$69,049.00 to Dr. Isaacs.

Draft Economic Development Incentive Options **Mr. Baker** reviewed a draft of ideas for economic development incentives for discussion purposes. The purpose of the proposal is to provide some assistance for businesses expanding or moving to Sussex County. Ideas include (1) temporary abatement on County property tax for new commercial, industrial and agricultural improvements and (2) building permit and building code fees could be reduced for commercial, industrial or agricultural projects on a temporary basis.

Mr. Cole stated that the concept is a good one; however, it needs refining and he recommended that minimum standards, thresholds (for example,

creation of jobs), and definitions should be included in the proposal. Mr. Cole stated that the proposal is too open ended and would allow incentives for projects such as mini-storage, chicken houses, etc. He noted that the proposal should be about growing the economy in the County and that property tax incentives are not enough. A suggestion was made to accelerate applications to streamline the process.

Mr. Phillips suggested that, possibly, the Council could look into creating an Agricultural Industrial zoning classification.

**Appeal
Filed by
Diamond
State
Community
Land
Trust on
Subdivision
Application
No. 2010-3**

The Council considered an appeal filed by Diamond State Community Land Trust on the Sussex County Planning and Zoning Commission's decision to deny Subdivision Application No. 2010-3.

Mr. Moore advised that subdivision appeals are totally based on the record and that no new evidence or testimony would be allowed. Attorneys speaking on the Appeal have been advised of this restriction.

Mr. Moore reported that in accordance with Sussex County Code § 99-39B(2), "The council shall review the record of the hearing before the Commission and shall make a determination as to whether the Commission's decision was the result of an orderly and logical review of the evidence and involved the proper interpretation and application of the chapter. If the Council finds that the Commission misapplied or misinterpreted the applicable sections of this chapter or that its findings were not the result of an orderly and logical review of the evidence and the applicable provisions of this chapter," the Council has the following options:

1. Order a new hearing.

The Council may send the matter back to the Commission for further review and consideration and, if the Council deems it necessary, direct the Commission to hold a new hearing, specifying the time period within which the hearing shall be held and directing the Commission to issue a written decision containing findings and conclusions following the rehearing.

2. Reverse the decision.

If it finds that the Commission made an error in its interpretation of the applicable sections of Chapter 99 or if the Commission's findings and conclusions were not the result of an orderly and logical review of the evidence and the applicable provisions of Chapter 99, the Council may reverse a decision of the Commission.

In summary, Mr. Moore stated that this is not a public hearing; that there will be no new evidence or testimony; and that the Council may not substitute its own decision. The Council has the option of finding that the Commission's decision is supported by the evidence and the law or finding

that the Commission's decision is not supported by the evidence and the law and thereby, reversing the decision or ordering a new hearing.

On July 14, 2010, the Planning and Zoning Commission denied the application for the 50 lot cluster subdivision based on the record and for the following reasons:

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Diamond
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Community
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(continued)

1. The Applicant has offered the project as moderately priced housing although not specifically within the County's moderately priced housing ordinance. Had it been part of that ordinance, it would most certainly have failed since the County Council's intent was to establish such subdivisions in areas in which spending on infrastructure is likely.
2. The property is located in an Investment Level Area 4 which is unlikely to benefit from future mass transportation opportunities that are needed to compliment moderately priced housing, such expenditures are generally limited to Areas 1 and 2.
3. The application is inconsistent with the transportation element of the County's Comprehensive Development Plan.
4. The application was also offered as a "cluster" development. Under Section 115-25(F)(3)(d) of the Sussex County Code, such a subdivision must lie within a Town Center, a Developing Area, or an Environmentally Sensitive Developing Area.
5. The cost of the project, estimated at \$10 million, also suggests that this is really not an example of moderately priced housing at all.
6. The landowner has previously sold larger road front lots upon which houses in the 3,000 – 5,000 square foot range have been built. Those homes, as well as a number of others in the area, create an inconsistency which leads to a conclusion that the subdivision will have an adverse affect on property values under Section 99-9C(12) of the Code.

James Fuqua, Attorney representing Diamond State Community Land Trust, stated that the Commission's decision to deny the application is fatally flawed and requires the Council's intervention. Mr. Fuqua explained that Section 99-39(D) provides that the Commission's decision shall be upheld unless the Appellant can demonstrate that (1) the Commission made an error in its interpretation of the applicable sections of the subdivision ordinance and/or that the Commission's findings or conclusions were not the result of an orderly and logical review of the ordinance and the applicable sections of the subdivision ordinance.

Mr. Fuqua referenced the six reasons that were the Commission's basis for denial and Mr. Fuqua offered the following responses to each of the six reasons:

1. It is irrelevant how the proposed application would have been treated under the MPHU Ordinance since the application was not submitted under that Ordinance. While this application was a

subdivision application which was intended to provide affordable housing to qualified county residents in compliance with the goals and policies of the Housing Element of the 2008 Sussex County Comprehensive Plan Update, it was entitled to be reviewed under the same requirements as all other subdivision applications. The Commission's first reason for denial of the application relied on a standard which was not applicable to the pending application and is illogical.

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2. The County cannot use the State Strategies Plan as a Land Use Plan or as a Zoning Ordinance. The land comprising the application is zoned AR-1 under the Zoning Ordinance and the AR-1 District in the Comprehensive Plan specifically recognizes that single family lots are permitted in the Low Density Area. Historically, there have been subdivisions approved by the Commission and the County that were located in the Level 4 Area. The Commission's second reason for denial is wrong and relied on a standard that was not applicable and disregarded the provisions of the Zoning Ordinance and the 2008 Comprehensive Plan which permits single family homes on individual lots.
3. There are no specifics as to how this application is inconsistent with the transportation plan and it is impossible to refute a reason that isn't explained. The 2008 Comprehensive Plan contains a Mobility Element which is assumed to be the transportation element, referred to by the Commission. There is no inconsistency apparent from any of the language in the document. The Commission's third reason for denial is no reason at all and is an illogical, unfounded conclusion which must be disregarded.
4. The Commission is saying that a cluster subdivision is not permitted in a Low Density Area. The 2008 Comprehensive Plan states that the cluster option permitted in Low Density Areas should continue to permit the overall site densities up to two units per acre with significant open space and public sewer. Therefore, the most recent Comprehensive Plan recognizes that cluster developments are permitted in a Low Density Area. Additionally Section 115-25(A-B) of the Zoning Ordinance specifically authorizes the cluster development option in AR-1 areas. The Commission's stated reason is an error of law and it is an incorrect interpretation of the Zoning Ordinance and the Subdivision Ordinance. For this reason alone, the Commission's decision to deny must be overturned. Mr. Fuqua noted that the wording of the AR-1 section of the Zoning Ordinance is very confusing and may have flaws in its language which may need correction. Mr. Fuqua suggested that the Council refer this matter to the County's Legal Counsel for review and comment.
5. This is a subdivision application and not a MPHU application. The Commission's statement is illogical and confuses the cost of development (estimated at \$10 million) with the goal of providing moderately priced housing to County residents. The project cost included land acquisition, engineering, infrastructure planning and

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construction, and home construction among other expenses. The cost of those expenditures is irrelevant to the review of a subdivision application by the Commission. Likewise, the Commission is not judging whether the subdivision is moderately priced housing, but whether the subdivision complies with the applicable Land Use Ordinances. The Commission's fifth reason for denial relied on an irrelevant subjective determination which was not applicable to the pending application and is illogical.

6. This is flawed reasoning and in effect would result in no new residential developments in any area that is smaller in size or less expensive in cost than the largest or most expensive home located in that area. This would restrict housing opportunities for the majority of Sussex County residents. Such a policy would be contrary to the stated goals of the housing section of the Comprehensive Plan. Such an approach would be a discriminatory housing policy restricting housing opportunities for the majority of Sussex County residents. The Commission concluded that since the homes in the proposed subdivision may not be similar in size to some existing homes in the area, such a difference equates to an adverse affect on property values, and such a determination is illogical.

Mr. Fuqua concluded by stating that they have overwhelmingly met their burden of establishing that the Commission's six reasons consist of errors in the interpretation of the law and that the Commission's findings and conclusions were not the result of an orderly and logical review of the evidence and the applicable sections of the law.

Rick Berl, Assistant County Attorney, advised the Council that there were certain specific reasons that were identified by the Planning and Zoning Commission in its findings and its Motion to deny. Mr. Berl suggested that those are not the only things to which the Council is limited for a review of the record. There may be other record evidence to support the underlying decision of the Commission; the Council is free to look at all of those reasons. Mr. Berl advised that the Council cannot substitute its judgment for the Commission's. Mr. Berl suggested that the Commission's decision is based on the location where the subdivision was proposed. Mr. Berl raised the question as to why Diamond State Community Land Trust did not create a MPHU subdivision and he stated that the answer is because the subdivision would have to be in a Town Center or Developing Area and would have to fulfill the obligations that go along with the MPHU Ordinance. Mr. Berl stated that the Level 4 designation means that the State has no plans for infrastructure improvements in this area and specifically, has no plans for any mass transportation improvements; this is significant in terms of the location of the property. In regards to the Mobility Element/Transportation Plan, walking is the primary method of transportation in Sussex County and the proposed subdivision is 6 1/2 miles from the Town of Laurel, the nearest municipality. The Mobility Element states that many people including students, the elderly, persons with disabilities, and those with low incomes, have limited access to cars and find

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traffic difficult. Therefore, it was found that this was the wrong location for a subdivision. Mr. Berl stated that he agrees with Mr. Fuqua regarding the cluster subdivision references in the Code and that it is a difficult section to interpret. He stated, however, that he does not believe this does any damage to the Commission's underlying decision. The Commission made the observation that the subdivision would have an adverse impact on area property values. The record reflects that homes to be built would range from \$115,000 to \$150,000 and houses in the immediate vicinity were constructed at a significantly greater cost. Additionally, it was determined that there are limits in terms of resale value associated with the 99 year leases that would be handed out to homeowners and it was questioned what incentive the homeowners would have to make basic improvements. Mr. Berl referenced the actual purpose of the Subdivision Ordinance which includes the requirement to insure that subdivisions will be conveniently and properly located. Mr. Berl stated that the Council created a mechanism (MPHU Ordinance) to advance the goal of providing moderately priced housing in the County and this applicant has taken that good will and tried to appeal to the County's interest but avoided the obligations and the requirements that go with it. He stated that the fundamental requirement is that the subdivisions need to be closer to Town Centers, infrastructure and amenities.

Mr. Fuqua rebutted and he questioned the accusation that the Land Trust is abusing good will. He stated that the Land Trust is all about good will; they are a non-profit corporation whose goal is to provide affordable housing. He stated that the Zoning Ordinance and the Comprehensive Plan states that in a low density area, single family homes are permitted and developments are permitted. Mr. Fuqua stated that Mr. Berl is still trying to hold this application to the MPHU Ordinance standards and the application was not filed as a MPHU application. He stated that there is an underlying feeling that people who will live in the moderately priced houses are not wanted in this area; this is not good will. He stated that they will get around and drive by getting in their automobiles like everyone does. Mr. Fuqua referenced Mr. Berl's comment that there are more reasons for denial than the stated reasons and he stated that the comment is ridiculous and that the reasons stated by the Commission are the reasons.

Mike Smith, an Attorney that spoke in opposition to the application during the Public Hearing before the Commission, stated that he spoke as a homeowner and that he did not speak on behalf of a group of people. Therefore, he advised that he did not wish to speak on this date and that the record is clear.

The Council discussed the Appeal.

M 508 10
Order
New
Public

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to order a new Public Hearing before the Planning and Zoning Commission on the subdivision application of Diamond State Community Land Trust.

Hearing on Subdivision Application (Denied) **Motion Denied:** **3 Nays, 2 Yeas.**
Vote by Roll Call: **Mrs. Deaver, Yea; Mr. Wilson, Nay;**
Mr. Cole, Yea; Mr. Vincent, Nay;
Mr. Phillips, Nay

M 509 10 **A Motion was made by Mr. Cole, seconded by Mr. Vincent, to defer action**
Defer **on the subdivision application of Diamond State Community Land Trust.**
Action
on **Motion Adopted:** **5 Yeas.**
Appeal/ **Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Wilson, Yea;**
Diamond **Mr. Cole, Yea; Mr. Vincent, Yea;**
State **Mr. Phillips, Yea**
CLT

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

1. Wings & Wheels 2010

As per the attached information, the Wings & Wheels 2010 Fall Festival will be held on Saturday, October 2, from 10:00 a.m. to 4:00 p.m. at the Sussex County Airport in Georgetown. Last year approximately 4,000 people attended this event. This year’s event will profile World War II veterans and their stories, as well as a car show with an estimated 250 registrations. We wish to thank the Georgetown Chamber of Commerce and the many volunteers and sponsors who are assisting with this program.

2. Sussex County Records Management Center Open House

On Tuesday, October 5, 2010, the Sussex County Council will host an open house and tour of the Records Management Center located at the former Sussex County Emergency Operations Center, 21303 Airport Road, adjacent to the Industrial Airpark. Mr. C. Daniel Parsons will provide a tour of the facility to show the progress that has been made in providing a productive records management service for Sussex County government offices.

3. Property Taxes – Due Date September 30, 2010

This is a reminder that Sussex County property taxes are due Thursday, September 30, 2010. Payments received after September 30 are subject to a 1.5 percent per month penalty. Payments sent by mail must be postmarked no later than September 30. Taxes can be

paid by mail, on-line, or in person. The County’s Tax Office is open from 8:30 a.m. to 4:30 p.m. and can be reached at 302-855-7760. Attached is a copy of a news release regarding the property tax deadline.

[Attachments to the Administrator’s Report are not attachments to the minutes.]

Fund Balance Reporting Fund Balance Reporting (continued)

Mrs. Webb reported that, in February 2009, the Governmental Accounting Standards Board (GASB) issued Statement No. 54, Fund Balance Reporting, requiring the County to report its fund balance differently, which affects the County Council in future actions. The fund balance is included in the financial statements and is created by excess revenues over expenditures over time; it is an accumulation of net income or loss. Mrs. Webb stated that it is an indication of an organization’s fiscal health.

Mrs. Webb presented an overview of the new GASB standards affecting fund balance reporting: it enhances the usefulness of the fund balance information presented in financial statements by providing clearer fund balance classifications and definitions. The new rule establishes fund balance classifications based on the extent to which a government is bound by constraints imposed. This will be effective for financial statements beginning after June 15, 2010, which will affect the June 30, 2011 Fiscal Year. The fund balance should be reported in classifications that comprise a hierarchy based primarily on the extent to which the government is bound to honor constraints on the specific purposes for which amounts in those funds can be spent. There are five main categories: restricted, committed, assigned, non-spendable and unassigned.

Mr. Baker noted that the fund balance and its categorization is reviewed each year during the audit. He further noted that the County’s Undesignated Fund Balance will now be called the Unassigned Fund Balance.

Local Law Enforcement Grant Requests

Mr. Godwin presented the following Local Law Enforcement Grant requests:

Lewes	\$20,000	Police Vehicle
Rehoboth Beach	\$ 3,050	Chairs, paper shredder, office supplies, TV & DVD player

M 510 10 Approve Local Law Enforcement Grants

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to approve the Local Law Enforcement Grants to the City of Lewes and the City of Rehoboth Beach, as presented.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea;

**Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Yea**

**Assessor
Certifi-
cation
Standards**

Eddy Parker, Director of Assessments, reported that, in 1993 and 1994, he served as the Sussex County representative on the Assessment Practice Review Committee. This Statewide committee formed for the purpose of studying the need and projected cost of a State-wide property reassessment. The Committee met over a period of several months and developed a comprehensive report for submission to the State Legislature and the Governor. The report included a nationally accepted reassessment process with cost projections for each County. Also included in the report was a process for certifying all assessors in Delaware and the establishment of a regulatory agency within State government to oversee the entire process. One objective of this endeavor was to bring uniformity in the assessment process for school taxes throughout the State. One part of the comprehensive report was to require training and certification for all assessors. Mr. Parker reported that the proposal was dropped without any action by the State with the exception of one element, the certification of assessors. The State Legislature passed a Bill placing the licensing of all municipal and County assessors under the jurisdiction of the Delaware Council of Real Estate Appraisers. This Council was given five years to adopt standards for the licensing of assessors in Delaware and this five year time period will soon expire. Once the standards are adopted, the County has a three-year period to become licensed and certified with the State. The Delaware Council of Real Estate Appraisers was formed to regulate the independent single fee appraisal industry; there is a clear distinction between the duties of an independent real estate appraiser and a tax assessor.

**Assessor
Certifi-
cation
Standards
(continued)**

Mr. Parker stated that the problem is that the County is obligated by State law to continue to do assessments using the method established in 1974. The educational courses required for this certification are not relevant to what Sussex County does. In addition, assessors will be required to take 28 hours of classroom work every two years. Mr. Parker stated that this would be a waste of time and tax dollars to have employees trained in methods of assessment that they cannot utilize in their jobs.

Mr. Parker recommended that the Council pursue legislation to put this matter on hold until there is a reassessment.

**M 511 10
Pursue
Legislation/
Licensing
and Cer-
tification
of County
Assessors**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, that the Sussex County Council pursue legislation for an amendment to the State statutes regarding the licensing and certification of county assessors.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Yea**

**Old
Business/
C/U
No. 1832**

Under Old Business, the Council considered Conditional Use No. 1832 filed on behalf of Hazzard Auto Repair.

The Planning and Zoning Commission held a Public Hearing on this application on June 10, 2010 at which time action was deferred. On June 24, 2010, the Commission deferred action again. On July 14, 2010, the Commission recommended that the application be denied based on the following reasons:

**Old
Business/
C/U
No. 1832
(continued)**

- **The Applicant has not demonstrated that there is a public need for the proposed use. There are numerous auto storage and repair businesses in more appropriate commercial zones and the Applicant itself already operates such a facility in Lewes.**
- **The Application is inconsistent with the character of the surrounding properties, which are by and large agricultural and residential.**
- **The subject property is zoned AR-1 Agricultural Residential. The purpose of this District is to protect agricultural land from objectionable, hazardous and unsightly uses. The property in its current state is cluttered and in general disrepair, and there is little reason to believe that the appearance of the property will change if the Conditional Use is granted.**
- **Approval of the Application would lead to increased activity in the immediate area, which would also be incompatible with current uses. It is also noteworthy that the State does not anticipate further infrastructure improvements in the area.**
- **The proposed use is not of a public or semi-public character, and is not essential for the general convenience and welfare of the community.**

The County Council held a Public Hearing on this application on June 29, 2010 at which time action was deferred.

Lawrence Lank, Director of Planning and Zoning, noted that the Council makes Motions in the affirmative and for that purpose, he read proposed conditions submitted by the Applicant which were included in their Exhibit Booklet.

**M 512 10
Adopt
Proposed
Ordinance/
C/U
No. 1832/
Denied**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR GENERAL RESIDENTIAL DISTRICT FOR AN AUTO REPAIR SHOP AND CONTRACTORS’ STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.404 ACRES, MORE OR LESS” (Conditional Use No. 1832) filed on behalf of Hazzard Auto Repair.

Motion Denied: 3 Nays, 2 Yeas.

**Vote by Roll Call: Mrs. Deaver, Nay; Mr. Wilson, Yea;
Mr. Cole, Nay; Mr. Vincent, Nay;
Mr. Phillips, Yea**

**Old
Business**

Under Old Business, the Council considered Conditional Use No. 1840 filed on behalf of Juliane Olber and William N. Hein.

**Old
Business/
C/U
No. 1840
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on July 8, 2010 at which time they deferred action. On August 12, 2010, the Commission recommended denial based on the following reasons:

- **Mr. Johnson does not believe that the Application is consistent with the character of the surrounding property, which is entirely agricultural or residential.**
- **The purpose of this Application would allow business use on an otherwise residential property. While there are some other very limited business uses along Route 24, those are oriented more to the Beebe Medical Campus and Route One or the area around the Love Creek Bridge. There are no similar uses between the intersections of Plantation Road and Mulberry Knoll Road.**
- **Although the Applicants stated that the intended uses are limited, there are other locations that are currently zoned for business or commercial use that are available and better suited for the intended use.**
- **The Applicants stated that they intend to continue using the existing structure for the Conditional Use. With the configuration of that structure and its proximity to the Route 24 right-of-way, Mr. Johnson does not believe that adequate and safe entrances or exits and parking areas can be provided, particularly in an area of Route 24 that is already congested since this property is near the congested intersection of Route 24 and Plantation Road and that configuration of the property does not permit access in the rear for vehicular parking.**
- **The Application does not promote the health, safety, convenience or general welfare of the neighborhood or the community.**

The County Council held a Public Hearing on this application on July 27, 2010 at which time action was deferred.

Lawrence Lank, Director of Planning and Zoning, stated that, upon Mrs. Deaver's request, he prepared the following suggested findings and conditions of approval for the Council's consideration:

- 1) **The project, with the conditions and stipulations placed upon it, will**

not have an adverse impact on the neighboring properties or community as noted during the public hearing and in the record since there were no parties present in opposition or statements in the record opposing the application.

- 2) Support for the application was found during the public hearing and in the record based on the multiple letters in support of the application by adjacent and nearby neighbors and commendation letters from business and civic service uses in the area.
- 3) This project would appear to be similar to a home occupational use of a property.
- 4) The project, screen printing, embroidery, vinyl signs printing and cutting, trophy labeling, and custom marketing accessories will not generate a significant increase in traffic or noise, since the majority of the work orders are taken by computer, telephone or at trade shows.
- 5) This Conditional Use shall be subject to the following conditions:
 1. In addition to the applicants, there shall be no more than two (2) additional employees working on the premises at any one time.
 2. Business hours shall be from 8:00 a.m. through 6:00 p.m. Monday through Saturday, with the exception of emergency time to complete scheduled projects. There shall be no Sunday hours.
 3. Adequate parking shall be provided to serve the business and the number of parking spaces shall be provided per the requirements of the Zoning Code. Parking may be permitted in the front yard setback since access to the rear of the property is very restricted.
 4. On-premise signage shall be limited to one un-lighted ground sign, not exceeding 16 square feet per side or facing.
 5. All entrance improvements required by DeIDOT shall be completed by the Applicant in accordance with DeIDOT's determination.
 6. There shall be no expansion of the square footage for the business since the site is limited in available parking area.
 7. Any security lighting provided shall be located on the structure and shall be screened so that the lights do not shine on neighboring properties or Route 24.
 8. There shall be no outside storage of display materials on the premises.
 9. Any waste or trash receptacles on the site shall be stored in the rear yard and shall be located out of view of neighboring properties since the site is in a residential area.
 10. The structure shall maintain a residential appearance since it is located in a residential area.
 11. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Old
Business/
C/U
No. 1840
(continued)

M 513 10
Adopt
Ordinance
No. 2147/

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2147 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SCREEN PRINTING,

C/U
No. 1840

EMBROIDERY, VINYL SIGN BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 10,615 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1840) filed on behalf of Juliane Olber and William N. Hein, with the following conditions:

M 513 10
Adopt
Ordinance
No. 2147/
C/U
No. 1840
(continued)

1. In addition to the applicants, there shall be no more than two (2) additional employees working on the premises at any one time.
2. Business hours shall be from 8:00 a.m. through 6:00 p.m. Monday through Saturday, with the exception of emergency time to complete scheduled projects. There shall be no Sunday hours.
3. Adequate parking shall be provided to serve the business and the number of parking spaces shall be provided per the requirements of the Zoning Code. Parking may be permitted in the front yard setback since access to the rear of the property is very restricted.
4. On-premise signage shall be limited to one un-lighted ground sign, not exceeding 16 square feet per side or facing.
5. All entrance improvements required by DeDOT shall be completed by the Applicant in accordance with DeDOT’s determination.
6. There shall be no expansion of the square footage for the business since the site is limited in available parking area.
7. Any security lighting provided shall be located on the structure and shall be screened so that the lights do not shine on neighboring properties or Route 24.
8. There shall be no outside storage of display materials on the premises.
9. Any waste or trash receptacles on the site shall be stored in the rear yard and shall be located out of view of neighboring properties since the site is in a residential area.
10. The structure shall maintain a residential appearance since it is located in a residential area.
11. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Yea**

**Inland
Bays
Regional
Wastewater
Facility**

Bob Jones, Project Engineer, presented Change Order No. 2 for Contract 09-19, Inland Bays Regional Wastewater Facility, Phase I Expansion. Mr. Jones reported that the Change Order consists of one item which is the substitution of the controls system supplier/instrumentation and results in a credit amount of \$172,450.

**M 514 10
Approve
Change
Order/**

A Motion was made by Mr. Vincent, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department and its Consultant, Whitman, Requardt & Associates, LLP, that the Change Order No. 2 for Sussex County Project No. 09-19, Inland Bays Regional

**Inland
Bays
Regional
Wastewater
Facility**

Wastewater Facility, Phase 1 Expansion, be approved, which decreases the contract amount by \$172,450.00 for a new total of \$13,034,862.00, contingent upon the receipt of approval from the funding agencies.

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Absent;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Yea**

**King
Farm
Utility
Service
Agreement**

Gary Tonge, Director of Utility Planning, presented a proposed agreement between Sussex County and Georgetown Airport Center, LLC (GAC) and a proposed amendment to the existing wastewater agreement that exists between Sussex County and the Town of Georgetown. He stated that both agreements relate to utility services at the King Farm Industrial Park.

Mr. Tonge reported that GAC has requested that Sussex County provide sanitary sewer service, water service and water for fire protection service to the King Farm Industrial Park. Sussex County will provide these utilities to a demarcation point. Sussex County will not own any of the facilities within the King Farm Industrial Park; however, all facilities will be built to Sussex County specifications and standards. Sussex County will perform no operations and maintenance activities within the King Farm other than reading water meters. Sussex County has worked with Mr. Baker and Mrs. Webb to establish rates and fees that cover the County's costs. The initial agreement is proposed to be for 2 years.

The existing agreement with the Town of Georgetown governs wastewater treatment and billing for sewer service by Georgetown within the Sussex County Industrial Park. Wastewater is pumped to the Town for treatment. The Town bills the tenants of the Sussex County Industrial Park for sanitary sewer service. The amendment extends the terms of the existing agreement with the Town of Georgetown so that the County can provide sanitary sewer service to the King Farm. The amendment to this Agreement would also grant the additional capacity required by the King Farm (61 EDUs or 13,725 gallons per day). It also states that the County cannot grant a building permit within the King Farm until GAC pays the Impact Fees due to the town.

Mr. Moore stated that the Agreements should be contingent upon approval and execution of the Agreements by the Town of Georgetown. To date, the Town Council has not yet voted on this matter.

**M 515 10
Execute
Public
Works
Agreement/**

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, that the Sussex County Council President is authorized to execute the proposed Public Works Agreement with Georgetown Airport Center, LLC in order to: (1) allow Georgetown Airport Center, LLC to transmit sanitary sewage from the King Farm Industrial Park through the County's sewer lines for

Georgetown Airport Center for King Farm Industrial Park treatment and disposal by the Town of Georgetown; and (2) to provide water and fire protection service to the King Farm Industrial Park, as presented on September 28, 2010.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea

M 516 10 Execute Amendment to Public Works Agreement/ Town of Georgetown/ King Farm Industrial Park A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, that the Sussex County Council President is authorized to execute the proposed Amendment to the existing Public Works Agreement dated April 23, 2008, between Sussex County and the Town of Georgetown in order to provide sanitary sewer capacity sought for the King Farm Industrial Park, as presented on September 28, 2010.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea

Requests Mrs. Webb presented grant requests.

M 517 10 Community Grant A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 from Mr. Cole's Community Grant Account to the Town of Millville for the "Great Pumpkin Festival".

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea

M 518 10 Community Grant A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to give \$500.00 from Mrs. Deaver's Community Grant Account to New Hope Recreation and Development Center for their After-School Program.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea

M 519 10 Community Grant A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give \$500.00 (\$100.00 from each Community Grant Account) to Faith U. M. Women to sponsor Tamia Marie Bonville in The Homeless Walk-A-Thon.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Yea**

M 520 10 Community Grant A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$300.00 (\$200.00 from Mrs. Deaver's Community Grant Account and \$100.00 from Mr. Wilson's Community Grant Account) to Milford Housing Development Corporation (MHDC) for their golf tournament fundraiser for transitional housing in Southern Delaware.

M 520 10 (continued)

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Yea**

Additional Business Under Additional Business, Jo Klinge of Rehoboth questioned if the Council has a map depicting pending/approved subdivisions that have not yet been constructed. Chip Guy, Public Information Officer, was asked to look into the matter.

Under Additional Business, Sandy Spence stated that, on June 10th, a seminar was held on Board of Adjustment law which was sponsored by the University of Delaware's Institute of Public Administration. It was attended by Board of Adjustment members of other counties and numerous municipalities throughout the State; no one from the Sussex County Board of Adjustment attended the seminar. At the seminar, Max Walton, Attorney, stated that variances should be rare exceptions to municipal land use codes. Ms. Spence reported that Mr. Lank has previously quoted that approximately 86± percent of variance requests in Sussex County have been approved by the Board of Adjustment. Mrs. Spence referenced the Workshop held by the County Council with the Board of Adjustment in mid-August and she stated that, since that meeting, the Board is struggling to attempt to be more careful in considering variance requests and rationalize approvals. Ms. Spence stated that she believes the Board is waiting for the Council to provide direction as to how to interpret the County Code to decisions that they make.

M 521 10 Go Into Executive Session At 12:32 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Wilson, to recess the Regular Session and to go into Executive Session for the purpose of discussing personnel and pending/potential litigation. Motion Adopted by Voice Vote.

Executive Session At 12:33 p.m., an Executive Session of the County Council was held in the Caucus Room for the purpose of discussing personnel and pending/potential litigation. The Executive Session concluded at 12:40 p.m.

M 522 10 Reconvene At 12:41 p.m., a Motion was made by Mr. Cole, seconded by Mr. Vincent, to come out of Executive Session and to reconvene the Regular Session. Motion Adopted by Voice Vote.

E. S. Action Mr. Moore reported that no action was necessary on Executive Session items.

M 523 10 Recess At 12:42 p.m., a Motion was made by Mr. Cole, seconded by Mr. Vincent, to recess until 1:30 p.m.

M 524 10 Reconvene A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to reconvene at 1:34 p.m. Motion Adopted by Voice Vote.

**Public Hearing/
C/U
No. 1854** 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 MODEL HOME AND OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 36,028 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1854) filed on behalf of TAPA Homes, LLC.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on September 9, 2010 at which time they recommended approval with the following conditions:

1. The use shall be limited to a model home and attached office space.
2. All entrances shall be subject to DelDOT approval.
3. There shall only be one lighted sign, not to exceed 32 square feet in size per side.
4. The hours of operation shall be limited to 9:00 a.m. through 5:00 p.m. Monday through Friday, and 10:00 a.m. through 4:00 p.m. on Saturdays. As stated by the Applicant, there will be no Sunday hours.
5. Parking shall be governed by the parking requirements set forth in the Zoning Code.
6. If this Conditional Use is approved by the County Council, the approval will become null and void unless construction or use is substantially underway within three (3) years of the date of approval.
7. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

(See the minutes of the meeting of the Planning and Zoning Commission dated September 9, 2010.)

Mr. Lank read a summary of the Commission’s Public Hearing.

Brett Reilly of TAPA Homes, LLC was present on behalf of the application. Mr. Reilly stated that they are proposing a model modular home with attached garage/office for show purposes; that parking will be in the front of the property; and that they do not propose to tear down the trees on the property.

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

**M 525 10
Strike
Condition
4/ C/U
No. 1854**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to strike Condition No. 4 proposed by the Planning and Zoning Commission.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Yea**

**M 526 10
Adopt
Ordinance
No. 2148/
C/U
No. 1854**

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to Adopt Ordinance No. 2148 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MODEL HOME AND OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 36,028 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1854) filed on behalf of TAPA Homes, L.L.C., with the following conditions:

- 1. The use shall be limited to a model home and attached office space.**
- 2. All entrances shall be subject to DelDOT approval.**
- 3. There shall only be one lighted sign, not to exceed 32 square feet in size per side.**
- 4. Parking shall be governed by the parking requirements set forth in the Zoning Code.**
- 5. If this Conditional Use is approved by the County Council, the approval will become null and void unless construction or use is substantially underway within three (3) years of the date of approval.**
- 6. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Yea**

**Public
Hearing
C/U
No. 1855**

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 GENERAL OFFICES AND MEDICAL/PROFESSIONAL OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.40 ACRES, MORE OR LESS” (Conditional Use No. 1855) filed on behalf of Double R Holdings, LLC.

**Public
Hearing
C/U
No. 1855
(continued)**

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on September 9, 2010 at which time they deferred action. On September 23, 2010, the Commission deferred action again.

(See the minutes of the meeting of the Planning and Zoning Commission dated September 9 and 23, 2010.)

Mr. Lank read a summary of the Commission’s Public Hearing.

Mr. Lank distributed an Exhibit Booklet previously provided by the Applicant.

Robert Burton of Double R. Holdings, LLC was present on behalf of the application with James Fuqua, Attorney, and Gary Cuppels of ECI. They stated that they propose professional medical and business offices to be located in three office buildings containing approximately 8,100 square feet each; that the site is located on the west side of Plantation Road (County Road 275); that the application is similar to a Conditional Use application that was presented to the Council in 2004; that the original applicants were Robert Burton and Ross Harris; that Mr. Harris passed away during the process; that in January 2008, Mr. Burton appeared before the Commission and obtained conceptual approval of the site plan; that in August 2009, the Planning and Zoning Department advised Mr. Burton that the Conditional Use was null and void since substantial construction had not taken place; that Mr. Burton then reapplied for this application; that this application is the same application as previously approved in 2008; that the site is flat and mostly cleared; that one entrance/exit is proposed; that DeDOT has approved the entrance design with a multi-modal path; that water is proposed to be provided by Tidewater Utilities; that central sewer will be provided by Sussex County, when available; that an onsite septic system is proposed during the interim; that the septic system design has been approved by DNREC; that adequate space is available on the site for parking; that no parking is proposed along the front of the site; that parking is proposed between the first two buildings and around the third building; that two shallow landscape ponds are proposed between Plantation Road and the buildings; that landscaping buffers are proposed along the rear and both sides of the property; that dumpsters will be screened; that Best Management Practices will be utilized; that parking lot lighting will be downward illuminated; that there will be no parking in

Public
Hearing
C/U
No. 1855
(continued)

front of the buildings; that 66 parking spaces are proposed; that one two-sided lighted sign is proposed; that a 30 foot agricultural buffer is proposed; that the north and south sides of the property will be landscaped; that business hours are proposed to be from 7:00 a.m. to 8:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturdays; that the site is located in the Environmentally Sensitive Developing Area according to the Comprehensive Plan Update; that the site is located in Level 2 and 3 according to the State Strategies; that a PLUS review was not required; that several residential developments are located in the area; that the major changes in the area have been residential single family and multi-family projects; that the use is appropriate at this location due to the close proximity to the Beebe Medical Health Campus on Route 24; that the use is appropriate in a growth area; that the proposed plans are similar to the plans approved in 2008; that the buildings are proposed to maintain a residential appearance; that a traffic study was done by Orth Rodgers and that it is calculated through the Year 2015; and that the traffic study was coordinated with the Woods Cove Project across Plantation Road.

Mr. Fuqua noted that one argument against this application is that that two other professional and medical office uses have been approved in the area. He stated that he believes this is actually the first application that was approved (on Plantation Road) for professional offices by the County in 2004 and had it not been for the untimely death of Ross Harris and the unforeseen complications, this application would have been built and in existence.

It was noted that Mr. Fuqua submitted proposed findings of fact and proposed conditions.

In response to questions regarding the Traffic Impact Study which was performed in 2002 with projections through 2006, Mr. Fuqua stated that the Traffic Impact Study was done as part of the original application. Mr. Cuppels noted that the volume of traffic from the site will not change as a result of the new application and that in October 2009, DelDOT reissued the entrance permit for the project.

There were no public comments in support of the application.

Public comments in opposition to the project were heard from Michael Sweeney, Sandy Spence, Glendan Jackson and Shelly DiLauro. Concerns were expressed about traffic conditions on Plantation Road; that three office complexes will create substantial traffic impact; that if the application is approved, Saturday hours should not be permitted; that traffic has changed since 2002 and therefore, a new Traffic Impact Study needs to be performed; that there are many vacant offices available in the area including at the Beebe Complex on Route 24; that the Board of Adjustment recent approved 44 additional houses for Henlopen Landing on Plantation Road; that there is flooding in the area at times; and that the site is not a proper location for the use.

The Public Hearing was closed.

M 527 10
Leave
Record
Open/
C/U
No. 1855

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to leave the record open on Conditional Use No. 1855 filed on behalf of Double R Holdings, LLC for DelDOT's comments on the 2002 Traffic Impact Study.

Motion Adopted: 3 Yeas, 2 Nays.

M 527 10
(continued)

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Nay;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Nay

M 528 10
Defer
Action on
C/U
No. 1855

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to defer action on Conditional Use No. 1855 filed on behalf of Double R Holdings, LLC.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Yea

Public
Hearing
C/U
No. 1858

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A HELICOPTER LANDING SITE (PRIVATE) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 8.45 ACRES, MORE OR LESS" (Conditional Use No. 1858) filed on behalf of Omar Road, LLC.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on September 9, 2010 at which time they deferred action. On September 23, 2010, the Commission recommended that the application be approved with the following conditions:

- 1. The use shall be for the private personal use of the business occupying the adjacent office/warehouse and shall not be open for general aviation purposes.**
- 2. The use of the helicopter landing pad shall be subject to the applicable requirements of the FAA and any other governmental agency having jurisdiction over its use.**
- 3. No fuel storage or repair facilities for the helicopter shall exist on the site.**
- 4. As stated by the Applicant, any helicopters using this site shall have a capacity of 4 seats or less.**
- 5. As stated by the Applicant, the landing site shall not be lighted.**

6. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

(See the minutes of the meeting of the Planning and Zoning Commission dated September 9 and 23, 2010.)

Mr. Lank read a summary of the Commission's Public Hearing.

Mr. Lank distributed an Exhibit Booklet previously provided by the Applicant.

Public
Hearing
C/U
No. 1858
(continued)

The Council found that Dennis Schrader, Attorney; Jeff Clark of Land Tech, and Roger Boyce, a certified flight instructor, pilot and fire protection consultant, were present on behalf of the application. They stated that Omar, LLC is the owner of the site; that the site is located in the Agricultural Residential District and in a Low Density Area; that the site is not an open field, is not adjacent to a residence, and is surrounded by trees; that the proposed helicopter pad site is located on the previously approved Conditional Use (No. 1679) site which permits office and warehouse uses; that this Conditional Use request is for a landing site for Mr. Herker's private helicopter; that comments from DelDOT are not required; that no delineated wetlands are affected; that the site is well maintained and is a satellite facility for Herker Maintenance Company, which maintains chain store facilities; that the owner needs to travel back and forth to site locations for the maintenance company; that during busy times, the site may be utilized by the helicopter up to 6 times per month; that the current helicopter owned by the Applicant is a "light utility helicopter" with seating for the pilot and two passengers; that the helicopter is used during visual flights only; that the engine is a four cylinder piston engine that sounds similar to a lawn mower; that adequate space is available on the site for landing and taking off; that no fuel will be stored on the site; that no lighting is required for the pad site; that a concrete pad has been built on the site for the purpose of landing the helicopter; and that there are no requirements or approvals from the FAA.

Mr. Schrader referenced the recommended conditions and he requested that the Council consider amending Condition No. 4 recommended by the Commission to read as follows: Any helicopters using this site shall have a capacity of 6 seats or less. He stated that this would allow Mr. Herker to upgrade to a larger helicopter.

Mr. Cole suggested limiting the use to one helicopter, the Applicant's helicopter. He stated that the Applicant should notify the County as to what type of helicopter is in use.

Mr. Schrader noted that the helicopter pad may need to be used for emergency purposes.

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

**M 529 10
Amend
Condition
No. 4/
C/U
No. 1858**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to amend Condition No. 4 to read as follows: “The use is limited to one helicopter owned by the Applicant to use the site with the exception of emergency uses. The Applicant is to inform the Planning and Zoning Department of the type of helicopter in use.”

Motion Adopted: 3 Yeas, 2 Nays.

**M 529 10
(continued)**

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Nay;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Nay**

**M 530 10
Adopt
Ordinance
No. 2149/
C/U
No. 1858**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to Adopt Ordinance No. 2149 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A HELICOPTER LANDING SITE (PRIVATE) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 8.45 ACRES, MORE OR LESS” (Conditional Use No. 1858) filed on behalf of Omar Road, LLC., with the following conditions:

1. The use shall be for the private personal use of the business occupying the adjacent office/warehouse and shall not be open for general aviation purposes.
2. The use of the helicopter landing pad shall be subject to the applicable requirements of the FAA and any other governmental agency having jurisdiction over its use.
3. No fuel storage or repair facilities for the helicopter shall exist on the site.
4. The use is limited to one helicopter owned by the Applicant to use the site with the exception of emergency uses. The Applicant is to inform the Planning and Zoning Department of the type of helicopter in use.
5. As stated by the Applicant, the landing site shall not be lighted.
6. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion Adopted: 3 Yeas, 2 Nays.

**Vote by Roll Call: Mrs. Deaver, Nay; Mr. Wilson, Yea;
Mr. Cole, Yea; Mr. Vincent, Yea;
Mr. Phillips, Nay**

**M 531 10
Adjourn**

At 3:22 p.m., a Motion was made by Mr. Cole, seconded by Mr. Vincent, to adjourn at 3:22 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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