

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 11, 2012

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 11, 2012, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Vance Phillips	Councilman
Todd F. Lawson	County Administrator
Susan M. Webb	Finance Director
David Rutt	Assistant County Attorney

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

Moment of Silence **A Moment of Silence was observed on the 11th anniversary of the 9/11 terrorist attacks in New York City, Washington D.C. and Shanksville, Pennsylvania.**

Call to Order **Mr. Vincent called the meeting to order.**

M 453 12 Amend and Approve Agenda **A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to amend the Agenda by deleting “Job Applicants’ Qualifications”, “Personnel” and “Land Acquisition” under “Executive Session”; and to approve the Agenda, as amended.**

Motion Adopted: 5 Yeas.

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

Minutes **The minutes of August 21, 2012 were approved by consent.**

Employee of the Quarter **The Council recognized Louanne Rogers, Employee of the Third Quarter, an employee in the Engineering – Administration Department who has worked for the County since June 1980.**

Appointments/ Advisory Committee **Mr. Lawson stated that, in the Council packets, information was provided regarding appointments to the Advisory Committee on Aging and Adults with Physical Disabilities for Sussex County. This Committee is an 11-member panel established by the Sussex County Council to be an advocate for programs and policies that benefit older and disabled residents. The Committee’s mission is to increase dialogue, make recommendations to Sussex**

**Appoint-
ments/
Advisory
Committee
for the
Aging and
Adults with
Physical
Disabilities
(continued)**

County Council and to give support, assistance, and advice on significant issues and programs that may affect the lives of the County's senior and disabled communities. The Committee is voluntary and it meets bi-monthly.

Mr. Lawson presented Administration's and Council's recommended appointments to the Committee for a term of two years (7 current members and 4 new members).

Councilman Phillips stated that, in the interest of full disclosure, he has made a recommendation that Scott Phillips be appointed to the Committee and that Scott Phillips is his brother. Councilman Phillips stated that he believes his brother, Scott Phillips, will be an asset to the Committee and to the citizens of the County that the Committee represents. Councilman Phillips commented on Scott Phillips' vast experience (30 years) working for the rights of those with disabilities.

**M 454 12
Approve
Appoint-
ments to
the Advisory
Committee
for the
Aging and
Adults with
Physical
Disabilities**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council approves the following appointments to the Sussex County Advisory Committee on Aging and Adults with Physical Disabilities, effective August 1, 2012 for a term of two years:

Sally Beaumont	District No. 5	Current Member
Ruth Beideman	District No. 2	Current Member
Jamie Magee	District No. 4	New Appointment
James Moseley	District No. 1	Current Member
Penny Orndorff	District No. 4	New Appointment
Scott Phillips	District No. 5	New Appointment
Larry Savage	District No. 3	New Appointment
Francine Shockley	District No. 3	Current Member
Anna Short	District No. 1	Current Member
Fran Smith	District No. 2	Current Member
John Williams	District No. 2	Current Member

Motion Adopted: 5 Yeas.

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

**Draft
DelDOT
2013-2018
CTP
Request**

Mr. Lawson stated that, at the August 21st Council meeting, the Draft of the DelDOT 2013 - 2018 Capital Transportation Program Request was presented for the Council's consideration. As stated on that date, the County's priorities remain: improve the large traffic corridors including the east-west routes which have become increasingly congested and accident prone in recent years as well as the local roads, which continue to have increased use and deterioration.

Mr. Lawson stated that the Draft CTP was amended at the request of Mrs. Deaver to emphasize enhancing bicycle safety which is paramount in light

**Draft
DelDOT
2013-2018
CTP
Request
(continued)**

of recent tragedies involving motorists fatally striking cyclists on SR 1; the County urges DelDOT to take the necessary steps now to make improvements along SR 1 to insure pedestrian and bicycle safety is among its highest priorities.

Additionally, Mr. Lawson noted that a number of public comments have been received which the County will submit for the record with the final version of the CTP.

Mr. Lawson advised that, with the Council's approval, the CTP will be presented in final form to DelDOT at a Public Workshop scheduled on September 13th from 4:00 to 7:00 p.m. at the DelDOT South District Office in Georgetown.

Mrs. Deaver distributed copies of articles reporting different accidents that have occurred on Route 1.

**M 455 12
Approve
DelDOT
2013-2018
CTP
Request**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Council approves the DelDOT 2013 - 2018 Capital Transportation Program Request, as presented for submittal.

Motion Adopted: 5 Yeas.

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

**Adminis-
trator's
Report**

Mr. Lawson read the following information in his Administrator's Report:

1. Advisory Committee on Aging and Adults with Physical Disabilities for Sussex County

Please be advised the Advisory Committee on Aging and Adults with Physical Disabilities for Sussex County will meet September 17, 2012, at the Sussex County West Administrative Complex in Georgetown. A copy of the agenda is attached. The guest speaker at the meeting is Denise L. Weeks-Tappan, Esquire, Planning Supervisor, Delaware Division of Services for Aging and Adults with Physical Disabilities, where she will be speaking on "*The Delaware State Plan on Aging, 2012-2015.*"

2. Sussex County Emergency Operations Center Call Statistics – August

Attached please find the call statistics for the Fire and Ambulance Callboard for August 2012. There were 18,324 total calls handled in the month of August. Of those 9-1-1 calls in August, 78 percent were made from wireless phones.

**Administrator's
Report
(continued)**

3. Projects Receiving Substantial Completion

As you will see from the attached Engineering Department Fact Sheets, Bayville Shores South – Phase 2 and Warrington Creek – Phase 4 (a/k/a Sawgrass) reached Substantial Completion effective August 22 and September 4, 2012, respectively.

4. Delaware Aviation Hall of Fame 2012 Inductees

On September 29th the Delaware Aviation Hall of Fame will hold its 2012 inductee ceremony where Mr. E. Newt Tyndall of Georgetown will be honored. Newt Tyndall flew 25 combat missions during World War II in B-29 bombers as a navigator. Mr. Tyndall was also the lead navigator on the flight of 500 B-29's over the USS Missouri during the Japanese surrender. Members of Council and the public are invited to attend the ceremony which will be held at the University of Delaware's Clayton Hall in Newark. For more information, visit dahf.org.

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

**Proposed
Extension
of Public
Works
Agreement/
Georgetown
Airport
Center**

Susan Webb, Finance Director, presented a proposal to extend a Utility Service Agreement between Georgetown Airport Center LLC and Sussex County. The original Agreement was entered into in 2010 for a term of two years and was for the purpose of the County providing sewer service, water service, and fire protection service to the King Farm Industrial Park. In accordance with the Agreement, Sussex County will provide the services but will not own any of the facilities within the Industrial Park; however, the facilities to be built there in the future are required to be built to Sussex County standards and specifications. The County will not perform any maintenance at the King Farm; however, the County will read the meters. Mrs. Webb reported that when the County entered into this Agreement, the County Engineering and Finance Departments established the rates and fees that cover the County's costs. She reported further that the original term of the Agreement was two years and that both parties wish to extend the Agreement until September 29, 2014. The term of the Extension Agreement shall commence on the date of execution and terminate on September 29, 2014; all other terms and conditions contained in the original Agreement shall remain in force and effect. The Extension Agreement has been reviewed and prepared with the help of the County Attorney.

**M 456 12
Authorize
Extension
of Public
Works
Agreement
(King Farm)**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, that the Sussex County Council authorizes its President to execute the proposed Extension to the existing Public Works Agreement with Georgetown Airport Center LLC in order to continue to allow Georgetown Airport Center LLC to transmit sanitary sewage from the King Farm Industrial Park through the County sewer lines for treatment and disposal by the Town of Georgetown and to continue to provide water and fire protection services to the King Farm

**M 456 12
Extension
of Public
Works
Agreement
King Farm
(continued)**

Industrial Park, as submitted on this date.

Motion Adopted: 5 Yeas.

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

**Old
Business/
C/U
No. 1936**

Under Old Business, the Council considered Conditional Use No. 1936 filed on behalf Chester Townsend IV.

The Planning and Zoning Commission held a Public Hearing on this application on July 26, 2012 at which time action was deferred. On August 9th, the Commission deferred action again. On August 23rd, the Commission recommended that the application be approved with the following conditions:

- A. The use shall be limited to a take-out style seafood vendor. Other than the few picnic tables that currently exist on the site, no additional seating shall be installed for food service. The existing picnic tables shall be shown on the Final Site Plan.**
- B. The use shall be seasonal, operating from April 1 through November 1, with hours of operation as stated by the Applicant of Thursday, Friday and Saturday from 11:00 a.m. to 8:00 p.m.**
- C. There shall only be one lighted sign on the site not to exceed 32 square feet in size. This limitation on the number of signs includes a prohibition against sign cut-outs, pictures, or replicas of various types of seafood, including lobsters, crabs, shrimp, etc. No feather flags or free standing signs of any shape or size shall be permitted. The location of the 32 square foot sign shall be shown on the Final Site Plan for the property.**
- D. The entrance shall be approved by DelDOT and noted and depicted on the Final Site Plan.**
- E. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
- F. No parking in the front yard setback shall be allowed. The designated parking area shall be shown on the Final Site Plan and clearly marked on the site itself.**
- G. This recommendation is contingent upon the Sussex County Board of Adjustment approving the mobile home type structure for a business.**
- H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

The Council held a Public Hearing on this application on August 21, 2012 at which time action was deferred.

M 457 12
Amend
Proposed
Conditions/
C/U
No. 1936

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to amend Condition G, as follows: This recommendation is contingent upon the Sussex County Board of Adjustment approving the mobile home type structure for a business. The application to the Board of Adjustment shall be filed within 30 days of this approval.

Motion Adopted: 5 Yeas.

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

M 458 12
Adopt
Ordinance
No. 2275
(C/U
No. 1936)

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 2275 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FOOD VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.0 ACRES, MORE OR LESS” (Conditional Use No. 1936) filed on behalf of Chester Townsend IV, with the following conditions:

- A. The use shall be limited to a take-out style seafood vendor. Other than the few picnic tables that currently exist on the site, no additional seating shall be installed for food service. The existing picnic tables shall be shown on the Final Site Plan.
- B. The use shall be seasonal, operating from April 1 through November 1, with hours of operation as stated by the Applicant of Thursday, Friday and Saturday from 11:00 a.m. to 8:00 p.m.
- C. There shall only be one lighted sign on the site not to exceed 32 square feet in size. This limitation on the number of signs includes a prohibition against sign cut-outs, pictures, or replicas of various types of seafood, including lobsters, crabs, shrimp, etc. No feather flags or free standing signs of any shape or size shall be permitted. The location of the 32 square foot sign shall be shown on the Final Site Plan for the property.
- D. The entrance shall be approved by DelDOT and noted and depicted on the Final Site Plan.
- E. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
- F. No parking in the front yard setback shall be allowed. The designated parking area shall be shown on the Final Site Plan and clearly marked on the site itself.
- G. This approval is contingent upon the Sussex County Board of Adjustment approving the mobile home type structure for a business. The application to the Board of Adjustment shall be filed within 30 days of this approval.
- H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

**M 458 12
(continued)**

Motion Adopted: 5 Yeas.

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

**Grant
Request**

Mrs. Webb presented a grant request for the Council's consideration.

**M 459 12
Council-
manic
Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to give \$2,000.00 from Mrs. Deaver's Councilmanic Grant Account to the Milton Historical Society for various programs.

Motion Adopted: 5 Yeas.

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

**Introduction
of Proposed
Ordinances**

Mr. Vincent introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A LI-2 LIGHT INDUSTRIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.91 ACRES, MORE OR LESS" (Change of Zone No. 1722) filed on behalf of Robert and Patricia Robinson.

Mrs. Deaver introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PUBLIC SERVICE BUILDING/USE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.35 ACRES, MORE OR LESS" (Conditional Use No. 1947) filed on behalf of CHEER Delaware.

The Proposed Ordinances will be advertised for Public Hearing.

**M 460 12
Recess**

At 10:38 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips, to recess the Regular Session until 11:00 a.m.

Motion Adopted: 5 Yeas.

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

**M 461 12
Reconvene**

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to reconvene at 11:03 a.m.

Motion Adopted: 5 Yeas.

**M 461 12
(continued)**

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

**Public
Hearing/
Proposed
Dozer LLC
Expansion
to the
Miller
Creek
SSD**

A Public Hearing was held to consider the expansion of the Miller Creek Sanitary Sewer District (Dozer LLC Expansion) to include the remaining portion of tax map and parcel 134-19.00-19.00, lands of Dozer LLC. The area to be added adjoins the existing sewer district and is located on the north side of Double Bridges Road, east of the intersection with Parker House Road.

Rob Davis and John Ashman, Engineering Department staff, presented the information.

Public comments were heard.

Harold Dukes, one of the owners of Dozer LLC, reported that, previously, the County approached them regarding a site to build a pump station. Dozer LLC did not charge anything for the pump station site in lieu of including the entire parcel in the sewer district; at that time, a portion of the parcel was inadvertently left out.

In response to questions, Mr. Ashman stated that the Engineering Department does not have any problems with the proposed expansion and that there is sewer capacity available.

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

**M 462 12
Adopt
R 014 12
(Dozer LLC
Expansion)**

A Motion was made by Mr. Cole, seconded by Mr. Phillips to Adopt Resolution No. R 014 12 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE MILLER CREEK SANITARY SEWER DISTRICT (MCSSD) TO INCLUDE THE REMAINING PORTION OF TAX MAP AND PARCEL 134-19.00-19.00, LAND NOW OR FORMERLY OF DOZER, LLC, SITUATED PRIMARILY TO THE NORTH SIDE OF DOUBLE BRIDGES ROAD, SITUATED IN BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE”.

Motion Adopted: 5 Yeas.

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

**M 463 12
Recess/
Go Into
Executive
Session**

At 11:11 a.m., a Motion was made by Mr. Cole, seconded by Mr. Wilson, to recess the Regular Session and to go into Executive Session (for the purpose of discussing pending/potential litigation).

Motion Adopted: 5 Yeas.

**M 463 12
(continued)** **Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Executive Session **At 11:15 a.m., an Executive Session of the Sussex County Council was held in the Council Chambers/Council Caucus Room for the purpose of discussing pending/potential litigation. The Executive Session was recessed at approximately 12:30 p.m. The Executive Session reconvened at 1:41 p.m. and then ended at 1:50 p.m.**

**M 464 12
Reconvene
Regular
Session** **At 1:52 p.m., a Motion was made by Mr. Phillips, seconded by Mr. Wilson, to come out of Executive Session and to reconvene the Regular Session.**

Motion Adopted: **5 Yeas.**

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

**Executive Session
Action** **Mr. Rutt stated that, during Executive Session, the Council considered the suggestion to approve the Consent Decree (in the matter of Mullin v. Sussex County) put forth by Counsel Scott Shannon.**

**M 465 12
Accept
Consent
Decree
(Mullin
Case)** **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to accept the Consent Decree (in the matter of Mullin v. Sussex County).**

Motion Adopted: **3 Yeas, 2 Nays.**

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

Councilwoman Deaver left the room and did not participate in the Public Hearing on Conditional Use No. 1938.

**Public Hearing/
C/U
No. 1938** **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 THERAPIST OFFICE AND RESIDENCE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 22,161 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1938) filed on behalf of Karen Barwick.**

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on August 9, 2012 at which time the Commission recommended that the application be deferred. On August 23, 2012, the Commission deferred action again. On September 6, 2012, the Commission recommended that

**Public
Hearing/
C/U
No. 1938
(continued)**

the application be approved with the following conditions:

- 1. The use shall be limited to small group therapy sessions in addition to the one-on-one therapy sessions permitted as a home occupation.**
- 2. There shall be no more than seven (7) participants in any group therapy session on the premises. The group sessions will also be limited to two (2) group sessions per week.**
- 3. The parking shall be reconfigured to contain only seven (7) spaces, with barriers to prohibit parking on grassy areas. The single parking space nearest the “do not enter” signs shall be eliminated. One additional parking space shall be provided for a handicap space. The Applicant shall also install signage notifying clients that parking on Collins Avenue is prohibited.**
- 4. The Applicant shall post a sign at the Collins Avenue exit identifying the reduced speed on that residential roadway.**
- 5. The Applicant shall contribute a prorata share of all upkeep and maintenance costs of Collins Avenue.**
- 6. There shall also be one lighted sign along Route 24 to identify the practice and the entrance. The sign shall not exceed 32 square feet in size per side, and it shall not be illuminated between the hours of 9:00 p.m. and 6:00 a.m.**
- 7. The hours of operation shall be between 7:00 a.m. and 8:00 p.m. Monday through Saturday.**
- 8. There shall not be any parking in the front yard setback.**
- 9. All entrances and improvements shall comply with all of DelDOT’s requirements.**
- 10. The use shall be served by County Sewer when that service becomes available and shall comply with the requirements of the County Engineering Department regarding any improvements to the system that are required to serve the property.**
- 11. The Applicant shall submit a revised Preliminary Site Plan addressing the conditions of this approval.**
- 12. This approval is linked to the Applicant’s therapy home occupation. As a result, this Conditional Use shall automatically expire in the event the Applicant no longer resides in the property and the home occupation is no longer valid.**
- 13. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

See the minutes of the Planning and Zoning Commission dated August 9, August 23, and September 6, 2012.

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

Mr. Lank distributed a packet of information previously provided by the Applicant.

The Council found that Karen Barwick was present with James Fuqua, Jr., Attorney. They stated that the Conditional Use request is minimal and is

**Public
Hearing/
C/U
No. 1938
(continued)**

compatible with the home occupation that Karen Barwick has on the site; that it is complicated by the fact that it has access to two roads - Route 24 and the subdivision road of Collins Avenue; that Route 24 is a busy road and Collins Avenue is a very quiet street; that DelDOT is placing restrictions on the Route 24 access; that the residents do not want to be inconvenienced by the use of the Collins Avenue access; that they have tried to do everything possible to minimize the impact of the proposed use; that the application site is located just west of the Beebe Medical Campus; that a recent application for a doctor's office was withdrawn at this same location; that the Applicant is a Certified Licensed Therapist; that the site suits the Applicant's need providing her a residence and a location to meet her clients; that there will not be any employees; that one of the limitations on a home occupation is it does not permit group instruction or assembly; that the practice would not be a high intensity use; that the Applicant has purchased the property; that the Applicant anticipates seeing six to seven clients per day; that she typically sees one client at a time; that sessions typically last one hour; that a home occupation approval was granted to the Applicant, with the understanding that she has no employees and that there will be no group activities or assembly; that part of her practice occasionally requires group sessions or workshops with clients, therefore the need for the Conditional Use consideration; that group sessions are not held every day; that they propose a maximum of 10 group sessions per month; that the Planning and Zoning Commission recommended a maximum of two sessions per week and that is acceptable to the Applicant; that the Commission recommended a maximum of 7 people per session; that 10 people in a group session is the minimum for the sessions to be effective and to service the clients; that reducing the number of people per session would have an adverse impact on some of the groups already established; that the suggested conditions of approval reference limitations for group sessions; that DelDOT will limit access to the site from the existing entrance on Route 24; that the entrance shall be for ingress traffic only and all egress movements shall be from the site to Collins Avenue to Plantation Road; that there are no deed restrictions for the street maintenance of Collins Avenue; that suggested conditions of approval provide that the Applicant shall share in the cost of maintenance and repair of Collins Avenue proportionately with other property owners on Collins Avenue; that the Applicant replaced the septic system; that the Applicant is requesting one lighted 32 square foot sign; that this request is a reasonable extension of the home occupation by allowing for group sessions; that the application meets the necessity of the Code for Conditional Uses; that the use will be compatible to the area; that the site is in close proximity to other business uses; that the site is located in a developing area; that adequate space is available on the site for parking; that the hours of operation proposed are from 9:00 a.m. to 8:00 p.m. Monday through Friday and 9:00 a.m. to 3:00 p.m. on Saturday and Sunday; that Sunday hours are important as that is the only convenient day for some people; and that the purpose of the Conditional Use is to permit group sessions as part of the home occupation.

**Public
Hearing/
C/U
No. 1938
(continued)**

Mr. Fuqua asked that any previously submitted proposed conditions submitted on his behalf be disregarded and he distributed the following amended proposed conditions:

- A. The use shall be limited to small group therapy sessions in addition to the one-on-one therapy sessions permitted as a home occupation.**
- B. There shall be no more than ten participants in any group therapy session on the premises and no more than two group therapy sessions shall be held per week.**
- C. Parking spaces shall be provided as shown on the parking exhibit (submitted as an attachment to the amended proposed conditions) with barriers to prohibit parking on the grassy areas. The Applicant shall also install signage notifying clients that parking on Collins Avenue is prohibited.**
- D. The Applicant shall post a sign at the Collins Avenue exit identifying the reduced speed on that residential roadway.**
- E. The Applicant shall contribute a prorata share of all upkeep and maintenance of Collins Avenue.**
- F. There shall also be one lighted sign along Route 24 to identify the practice and the entrance. The sign shall not exceed 32 square feet in size per side, and it shall not be illuminated between the hours of 9:00 p.m. and 6:00 a.m.**
- G. The group sessions shall be held between the hours of 9:00 and 8:00 p.m. Monday through Friday, and 9:00 a.m. and 3:00 p.m. on Saturday and Sunday.**
- H. Clients shall be advised that access to the site shall be from Route 24 but client egress from the site shall be by way of Collins Avenue to Plantation Road. Vehicles exiting the site will be staggered so that no more than two vehicles will exit at a time. No exiting is permitted onto Route 24.**
- I. All entrances and improvements shall comply with all of DelDOT's requirements.**
- J. The use shall be served by County Sewer when that service becomes available and shall comply with the requirements of the County Engineering Department regarding any improvements to the system that are required to serve the property.**
- K. This approval is linked to the Applicant's therapy home occupation. As a result, this Conditional Use shall automatically expire in the event the Applicant no longer resides on the property and the home occupation is no longer valid.**

Mr. Cole expressed concern about the enforcement of the conditions. He also questioned if the Applicant's share of the cost of road maintenance should be greater since she will have more people using the road compared to other residents.

Mr. Vincent questioned the Applicant's proposed conditions by referencing parking in the front of the house. Mr. Fuqua clarified that only the Applicant would park in the front; that there would be no client parking in

**Public
Hearing/
C/U
No. 1938
(continued)**

the front of the property.

Mr. Lank read into the record an email from Rose Imhof in opposition to the application.

Public comments were heard.

There were no public comments in support of the application.

Jesse Imhof, resident of Collins Avenue, spoke in opposition to the application. He stated that Collins Avenue is a narrow unpaved road; that he has been maintaining the road for the last 13 years with area residents helping to pay for maintenance costs; that he questions who will determine the amount each resident will pay for maintenance; that the Applicant will be operating a business and she should pay more; that the road already shows wear from existing traffic; that he is opposed to the business operating seven days a week; that he is opposed to the group session aspect of the application as it will have too great an impact on Collins Avenue; that traffic problems already exist; and that the road is a residential road.

William Blizzard, resident of Collins Avenue, spoke in opposition to the application. He stated that he has no issue with the use of her home as a home occupation; that he is opposed to the proposed use for group sessions; that the group sessions will increase the traffic on Collins Avenue; and that they already deal with traffic problems in the area, especially during the summer months.

The Public Hearing and the public record were closed.

Mr. Cole suggested that the Council defer action to consider the equitable use of Collins Avenue.

**M 466 12
Defer
Action on
C/U
No. 1938**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action on Conditional Use No. 1938 filed on behalf of Karen Barwick.

Motion Adopted: 4 Yeas, 1 Absent.

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

Mrs. Deaver rejoined the meeting.

**Public
Hearing/
C/U
No. 1939**

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 RECEPTION USE, I.E. WEDDINGS, BIRTHDAYS, RETIREMENTS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY,

**Public
Hearing/
C/U
No. 1939
(continued)**

CONTAINING 6.59 ACRES, MORE OR LESS” (Conditional Use No. 1939) filed on behalf of Jacqueline Tyson-Hope.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on August 9, 2012 at which time the Commission recommended that the application be denied.

See the minutes of the Planning and Zoning Commission dated August 9, 2012.

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

The Council found that Joseph Hope was present on behalf of the application and he stated that the intent is to have wedding receptions, anniversary parties and birthday parties approximately 4 times a year; that the road accessing the site is a private road; that one person lives behind his property and that they share in the costs for the road; and that he resides on the site.

Mr. Lank stated that the Bailey’s Landing Subdivision (4 properties) has access across the H&H Brand Farms, Inc.; that the road is 12 foot wide until it gets to the Bailey’s Landing property, then it is a 60 foot wide right-of-way within the subdivision.

Mr. Rutt stated that if someone is granted an easement, under law, that person should not do anything to increase the burden on the easement.

Mr. Lank stated that the existing 12 foot dirt road was established in the Court of Chancery by Civil Action 1658 and that the location of the road was established by survey as of April 7, 2000. Mr. Lank distributed a copy of Civil Action 1658.

Public comments were heard.

There were no public comments in support of the application.

Public comments were heard in opposition to the application.

Dennis Schrader, Attorney, was present in opposition to this application on behalf of Wright Properties, the adjacent landowner. He stated that the application is not typical; that there is no site plan showing parking, other activities, etc.; that there is no indication if there will be rooms for let for people to stay overnight; that he questions what kitchen facilities will be needed; that he questions if liquor service will be a part of the process; that there is no indication of any signage; that the greater concern is that the intention of the Comprehensive Land Use Plan limits uses that are adaptable to the designation given to this site; that the Plan states that this is a low density area that is intended for agricultural activities and single

**Public
Hearing/
C/U
No. 1939
(continued)**

family detached homes; that, at times, businesses are permitted within a low density area but those are businesses that support the needs of agricultural activities or single family homes; that the site is in a Level 4 Area in the State Strategies for Spending Map; that there is no central water system on the site; that there is no central wastewater transmission or treatment facility intended or available in the area; that transportation infrastructure is an issue because there is only a 12 foot road that services the property; that there is a question as to whether this site can be safely used; that no comments have been received from the State Fire Marshal's office, the Health Department, the fire department, DNREC, Soil Conservation, etc.; that in the absence of the site plan and the inadequacy of septic and well, there is a question to be asked as to whether or not this site can be used for the proposed use at all; that the roads are not paved; and that there are no similar activities or commercial uses in the area.

Mr. Schrader distributed copies of the plot plan and copies of an aerial photo of the area.

Lawrence Steele, Attorney, spoke in opposition to the application on behalf of Jeffrey G. Hastings, President of H&H Brand Farms, Inc. He stated that there is in the file, and he asks that it be incorporated into this Public Hearing, a letter from Mr. Hastings, dated August 7, 2012, which indicates the nature of the easement and that he will not allow an expansion of the 12 foot road over his property; that in the file there is also a letter dated August 7, 2012 that he submitted setting forth the position of Mr. Hastings and certain objections; that there are actually 5 lots in Bailey's Landing Subdivision; that in Mr. Hastings' letter he stated that no additional width for this road will be allowed over lands owned by the Corporation and the Corporation will not allow the excess use of this woods road across its lands for the purpose proposed by the Applicant; that the Final Order of the Court of Chancery limiting this to a 12 foot wide road is recorded in the Office of the Recorder of Deeds; that the revised plot from 2007 is a matter of record; that safety issues are raised by the 12 foot road; that once the road leaves the subdivision it is 12 feet wide; that the road is 1,800 feet long; that this roadway does not provide an adequate roadway for anything of the type being requested in this application; and that emergency vehicles will have difficulty accessing this property – the road will not allow a fire truck going in and an ambulance going out at the same time. Mr. Steele referenced litigation in the Court of Chancery and he requested that the case and the final order be made a part of the record.

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

**M 467 12
Approve
C/U No.
1939
(DENIED)**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to approve Conditional Use No. 1939 filed on behalf of Jacqueline Tyson-Hope.

Motion Denied: 5 Nays.

**M 467 12
(continued)**

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

**Public
Hearing/
C/U
No. 1940**

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 PHYSICAL TRAINING STUDIO AND GYM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 33,418.9 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1940) filed on behalf of Phil DePenna.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on August 9, 2012 at which time the Commission deferred action. On August 23, 2012, the Commission recommended that the application be approved with the following conditions:

- A. The use shall be for a physical training studio and gym situated on the first floor of the existing building on the site.**
- B. One lighted sign, not to exceed 32 square feet in size, shall be permitted.**
- C. Parking for clients shall be clearly marked on the site and the location of the parking spaces shall be included on the Final Site Plan.**
- D. All entrances and roadway improvements shall be subject to the requirements of DelDOT.**
- E. 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 Planning and Zoning Commission dated August 9 and 23, 2012.

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

The Council found that Phil DePenna was present and he stated that he is proposing a physical training studio and gym which he will operate with his son; that the facility is approximately 1,225 square feet; that they propose a membership of approximately 50 people; that they will live upstairs above the facility; that they propose the hours of operation to be 8:00 a.m. to 9:00 p.m. seven days per week; that they anticipate 6 or 7 clients in a class at one time; and that they believe the facility will be a benefit to the community.

Mr. DePenna distributed copies of a diagram of what he proposes at the facility.

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

**M 468 12
Adopt
Ordinance
No. 2276
(C/U
No. 1940)**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to Adopt Ordinance No. 2276 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PHYSICAL TRAINING STUDIO AND GYM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 33,418.9 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1940) filed on behalf of Phil DePenna, with the following conditions:

- A. The use shall be for a physical training studio and gym situated on the first floor of the existing building on the site.**
- B. One lighted sign, not to exceed 32 square feet in size, shall be permitted.**
- C. Parking for clients shall be clearly marked on the site and the location of the parking spaces shall be included on the Final Site Plan.**
- D. All entrances and roadway improvements shall be subject to the requirements of DelDOT.**
- E. 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. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**M 469 12
Adjourn**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to adjourn at 3:42 p.m.

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

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