

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 18, 2012

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 18, 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
Everett Moore	County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 470 12
Amend
and
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to amend the Agenda by deleting "Job Applicants' Qualifications, Pending/Potential Litigation, 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 September 11, 2012 were approved by consent.

**Corre-
spondence**

Mr. Moore read the following correspondence:

CHANGING FATES EQUINE RESCUE OF DELAWARE, INC., LAUREL DELAWARE.

RE: Letter in appreciation of donation

**Delaware
Sea Level
Rise Vulner-
ability
Assessment**

Mrs. Deaver read into the record an email she received pertaining to the Delaware Sea Level Rise Vulnerability Assessment that was released the week of September 12, 2012. The Assessment states that there are 41,554 septic systems in Sussex County from 415 to 2,748 stand to be inundated, as do parts of the Wolf Neck Spray Irrigation fields and some 40 to 117 of the 316 public pumping stations. Also of note are a vast number of wells in the coastal zone that stand to be lost. It seems prudent that the Counties should enact zoning restrictions in the coastal zone to prevent more septic systems or other public

- Sea Level (Cont.) Proclamation** or private sewage infrastructure in areas that are vulnerable.
- Proclamation** The Council presented a Proclamation entitled “Constitution Week” to the Daughters of the American Revolution of Milford.
- Decorating Delmarva Presentation** Mark Cathell, Founder of Create 1 Dream Foundation, presented Decorating Delmarva “Holiday Festival of Lights” which will take place on the grounds of the U.S. 13 Dragway and Delaware International Speedway.

The 36 night event will consist of six major parts on a 2 mile drive through an animated holiday festival tour of the North Pole, holiday lights, and community built displays. The tour will conclude in an area recognized as Santa’s Village where guests will be able to park and visit vendor booths. The show will operate every Thursday, Friday, Saturday, and Sunday evening beginning November 15, 2012 through December 23, 2012. On December 25, 2012 the event will reopen and will operate every night through January 5, 2013 with a New Year’s Eve celebration on December 31, 2012.

This event is open to all local schools, charity groups, non-profit clubs and organizations, churches and volunteer fire companies located on the Peninsula. The focus of this event is to create a community atmosphere, as well as a financial vehicle to help support schools and non-profits in the area by allowing all groups in the area an opportunity to utilize the event for fundraising and to create a destination spot for Western Sussex County.

A few ways that organizations can participate:

1. An outdoor contest will be held for high schools, charity groups, non-profit clubs and organizations, that will show off their talents by preparing and building a holiday display to be showcased throughout the event route with \$5,000 being awarded to the winner of each division.
2. Selling advance tickets to the event, at a price of \$15.00 per car load with a \$5.00 donation for each sale going back to each respective organization.
3. Each organization participating will receive a complementary booth space for two nights in the festival area being held in Santa’s Village to participate in additional fundraising for their organization if they so choose. In the festival area guests will be able to park and walk around to visit the many food vendors, arts and crafts vendors, and local businesses.
4. Once hard ticket sales have ended which is the end of October, organizations participating in this event will be able to direct visitors to the decoratingdelmarva.com website to purchase tickets at which time they will be able to select the organization they would like to support to receive the \$5.00 donation for the ticket sale.

In closing, Mr. Cathell, requested that the Council consider supporting this event.

**The Greater
Lewes
Community
Village
Presentation**

Barbara Vaughn, spoke on behalf of the Greater Lewes Community Village and shared the Mission Statement of the Organization.

Mission Statement: The Greater Lewes Community Village is a non-profit organization of residents to provide neighbors 50 and older living in the Lewes area the services, expertise, social interaction, and practical means to remain independently and safely in their homes as they age in place.

The community village concept emerged in 2002, in Beacon Hill, Massachusetts. Since that time over 200 villages have been started, 83 are in full use, with the remainder working hard to offer the services to those over the age of 50. The villages are connected by an organization called Village to Village, which has been an enormous help to the Lewes Village and has helped them to start developing partnerships with Beebe Medical Center, University of Delaware SeaGrant Program and local legal counsel.

Ms. Vaughn shared some numbers on the Lewes demographics:

- 70% of the population are over the age of 50
- 56% of the population are over the age of 60
- 31% of the population are over the age of 70

The Village provides members with up to date information on a wide variety of home service such as transportation, home repair, concierge services, and home health care. As the older population increases in Sussex County, the need for this type of organization will also increase.

Ms. Vaughn, in closing, asked the Council to consider supporting this organization.

**Adminis-
trator's
Report**

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

1. Sussex County Property Taxes Due October 1, 2012

Sussex County reminds property owners that Monday, October 1, 2012, is the deadline to pay annual County property tax bills. Due to the fact that the usual September 30 deadline falls on a Sunday this year, the deadline will be extended to October 1. Payments postmarked after October 1 will be subject to a 1.5 percent penalty. Anyone with questions regarding their tax bill should contact the Treasury Division at 855-7760.

**M 471 12
Adopt
Loan
Resolution
(Johnson's
Corner)**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt a Loan Resolution "AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS JOHNSON'S CORNER SANITARY SEWER DISTRICT" (in the

M 471 12 principle amount of \$2,000,000.00).

Adopt

Loan

Resolution

(continued)

Motion Adopted: 5 Yeas.

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

M 472 12

Adopt

Loan

Resolution

(Millville

Expansion)

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt a Loan Resolution “AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS MILLVILLE SEWER EXPANSION FACILITY” (in the principle amount of \$4,000,000.00).

Motion Adopted: 5 Yeas.

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

M 473 12

Adopt

R 015 12

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to Adopt Resolution No. R 015 12 “TO SUBMIT A REQUEST FOR A REGIONAL WASTEWATER PLANNING GRANT TO THE CLEAN WATER ADVISORY COUNCIL FOR MATCHING FUNDS TO FINANCE A WASTEWATER RATE STUDY FOR SUSSEX COUNTY”.

Motion Adopted: 5 Yeas.

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

Website

Redesign

Request for

Quotes

Tom Glenn, Director of Information Technology, representing the Sussex County Website Redesign Committee, presented the recommendation of the committee based on the responses from the Request for Quotes (RFQ).

The County website, in its current form, was launched in 2008. At the time, it was an update to a previous website design that had been in place since about 2004-2005. The new website is to be optimized for mobile devices, such as smart phones and tablets. The County wants to create a more simplistic, easier to understand interface so that constituents can find the services and information they need quickly and easily.

The committee evaluated four vendors and selected the one that scored the highest in their ranking system. The committee ranked the vendors based on factors such as capacity to perform required services, price, and project methodology.

Website Redesign Request for Quotes (continued) Digital Eye has been selected as the vendor, because the committee believes they have a good, sound project methodology and offer the best overall approach to the project. Digital Eye has been creating and designing websites since 1995.

Funding for this project was approved by Council with its adoption of the FY 2013 Budget back in June.

Council questioned Mr. Glenn about the cost of this project, how far does this upgrade advance the website into the future and what changes will be seen with this upgrade.

In response to the questions, Mr. Glenn stated that the contract price for the project is \$49,800; this includes utilizing the current County website; gathering statistics from the current website to see what the most utilized aspects of the site are; enables the website to interact with the Tyler Systems ERP Software so that the constituents would have more services available to them online; and a new design to make it easier for constituents to navigate.

Mr. Lawson stated that the current website has approximately 4,000 visits a day with almost 60,000 unique page visits; this is a tremendous amount of traffic that runs through the site. One of the goals of this upgrade is to provide better customer service through an internet format, so if someone can conduct business with the County and not have to drive to the Administration Building to do it, both parties will benefit.

M 474 12 Authorize Website Redesign/ Digital Eye, LLC A Motion was made by Mr. Cole, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Website Redesign Committee, that the Sussex County Council hereby authorize the County Administrator, or his designee, to execute a contract in an amount not to exceed \$49,800 with Digital Eye LLC of Wilmington, Delaware for the performance of services related to the Sussex County Website Redesign Project.

Motion Adopted: 5 Yeas.

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

Airport Wetland Mitigation Project/ Change Order Nos. 3 & 4 Juel Gibbons, County Project Manager, presented Change Order Nos. 3 & 4 for Contract No. 11-06 for the Airport Wetland Mitigation Project. These change orders are for string line trimming and mowing, to remove invasive plant species, and herbicide treatment. Change Order No. 3 is in the amount of \$6,980.66 and Change Order No. 4 is in the amount of \$5,790.00. The total for Change Order No. 3 & 4 is \$12,770.66, bringing the total contract price to \$441,808.24.

M 475 12 Approve A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the recommendation of the Sussex County Engineering Department that

Change Order Nos. 3 & 4 for Sussex County Project No. 11-06, Airport Wetland Mitigation Project be approved, which increases the contract amount by \$12,770.66 for a new total of \$441,808.24.

Change Order Nos. 3 & 4/Airport Wetland Mitigation Project
Motion Adopted: 5 Yeas.

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

Old Business (C/U No. 1941)
Under Old Business, the Council discussed Conditional Use No. 1941 filed on behalf of Delaware Electric Cooperative, Inc.

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 approved with the following conditions.

- A. No Storage facilities shall be constructed on the site.**
- B. Lighting on the facility will consist only of perimeter lighting for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- C. One unlighted sign, not to exceed 32 square feet in size, shall be permitted.**
- D. The site shall be secured by fencing. A locked 38 foot wide gate will permit access to the site from East Trap Pond Road, with a “Knox Box” to accommodate emergency access by the local fire company.**
- E. If the solar electric generation facility is non-operational for a period of 12 months, the Delaware Electric Cooperative, Inc. or assigns must return the site to its original state within a 12 month period.**
- F. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

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

The Council discussed the application and the conditions recommended by the Planning and Zoning Commission.

M 476 12 Amend Condition “F”
A Motion was made by Mrs. Deaver, seconded by Mr. Cole to amend Condition “F” (recommended by the Planning and Zoning Commission) to read as follows:

The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission with a landscaping plan to screen the site from neighboring houses.

Motion Adopted: 5 Yeas.

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

**M 476 12
(continued)**

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

**M 477 12
Adopt
Ordinance
No. 2276/
(C/U
No. 1941)**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2276 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ELECTRIC GENERATION FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 40 ACRES, MORE OR LESS” (Conditional Use No. 1941) filed on behalf of Delaware Electric Cooperative, Inc., with the following conditions, as amended:

- A. No Storage facilities shall be constructed on the site.**
- B. Lighting on the facility will consist only of perimeter lighting for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- C. One unlighted sign, not to exceed 32 square feet in size, shall be permitted.**
- D. The site shall be secured by fencing. A locked 38 foot wide gate will permit access to the site from East Trap Pond Road, with a “Knox Box” to accommodate emergency access by the local fire company.**
- E. If the solar electric generation facility is non-operational for a period of 12 months, the Delaware Electric Cooperative, Inc. or assigns must return the site to its original state within a 12 month period.**
- F. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission with a landscaping plan to screen the site from neighboring houses.**

Motion Adopted: 5 Yeas.

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

**Grant
Requests**

Mrs. Webb presented grant requests for the Council’s consideration.

**M 478 12
Council-
manic
Grant**

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to give \$1,000.00 from Mr. Vincent’s Councilmanic Grant Account to the Nanticoke River Arts Council 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**

**M 479 12
Council-**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to give \$750.00 from Mrs. Deaver’s Councilmanic Grant Account to the Historic

manic Lewes Farmers Market for operating expenses.

Grant

(continued) Motion Adopted: 5 Yeas.

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

**M 480 12 A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give
Council- \$1,000.00 from Mr. Cole's Councilmanic Grant Account to the Town of
manic Millville for festival expenses.
Grant**

Motion Adopted: 5 Yeas.

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

**Introduction Mrs. Deaver introduced the Proposed Ordinance entitled "AN
Of Proposed ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN
Ordinance AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR LAND
APPLICATION OF CLASS "B" SANITARY WASTE, NON-SANITARY
FOOD PROCESSING RESIDUALS, AND POTABLE WATER IRON
RESIDUALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND
LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX
COUNTY, CONTAINING 259.08 ACRES, MORE OR LESS" (Conditional
Use No. 1946) filed on behalf of Clean Delaware, LLC.**

The Proposed Ordinance will be advertised for Public Hearing.

**Additional Under Additional Business, Dan Kramer commented on the Decorating
Business Delmarva Presentation given on this date before Council.**

**M 481 12 At 10:51 a.m., a Motion was made by Mr. Cole, seconded by Mr. Phillips to
Go Into recess the Regular Session and to go into Executive Session for the purpose
Executive of discussing issues relating to personnel.
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 At 10:55 a.m., an Executive Session of the Sussex County Council was held
Session in the Caucus Room of the Council Chambers for the purpose of discussing
issues related to personnel. The Executive Session concluded at 11:09 a.m.**

**M 482 12 At 11:13 a.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver,
Reconvene to come out of Executive Session to reconvene the Regular Session.**

- Regular Session (continued)** **Motion Adopted:** **5 Yeas.**
Vote by Roll Call: **Mrs. Deaver, Yea; Mr. Cole, Yea;**
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea
- E/S Action** **No action was required on Executive Session items.**
- M 483 12 Recess** **At 11:14 a.m. a Motion was made by Mr. Wilson, seconded by Mr. Cole to recess until 1:30 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
- M 484 12 Reconvene** **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to reconvene at 1:37 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
- Public Hearing/ C/U No. 1942** **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 STORAGE, MAINTENANCE AND GENERAL OFFICE FOR CONTRACTING /EXCAVATING SERVICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 10.56 ACRES, MORE OR LESS” (Conditional Use No. 1942) filed on behalf of Douglas L. Boozer.**
Shane Abbott, Assistant Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on August 23, 2012 at which time the Commission recommended that the application be deferred. On September 13, 2012, the Commission recommended that the application be approved with the following conditions:
- A. There will only be one unlighted sign on the premises that shall not exceed 32 square feet on each side.**
 - B. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.**
 - C. The hours of operation shall be 6:00 a.m. to 6:00 p.m., Monday through Friday, and 7:00 a.m. to 2:00 p.m. on Saturday.**
 - D. All loading areas, storage areas and trash container areas shall be**

**Public
Hearing/
C/U
No. 1942
(continued)**

screened by the existing wooded vegetation currently located on the site, with a minimum vegetated buffer of at least 50 feet from all property lines. The buffer area shall be shown on the Final Site Plan.

- E. As stated by the Applicant, all repair work shall be performed inside of the building.**
- F. All entrances and roadway improvements required by DelDOT shall be completed by the Developer as required by DelDOT.**
- G. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with all applicable State and County requirements and shall be maintained utilizing best management practices.**
- H. 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 23, and September 13, 2012.

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

Mr. Abbott reported that, following the Commission's Public Hearing, a letter was received from the Sussex Conservation District stating the soil type on the site; that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and maintain vegetation after any construction; that no storm flood hazard area or tax ditch are affected; that it would not be necessary for any off-site drainage improvements but may be necessary for on-site drainage improvements.

The Council found that Mark Davidson of Pennoni Associates, Inc. was present along with the Applicant, Douglas Boozer.

Mr. Davidson provided an Exhibit Packet for consideration.

Mr. Davidson stated that Conditional Use application is in an Agricultural Residential District on 10.56 acres located on Huff Road for Boozer's Excavation Company; that property is located on the south side of Huff Road approximately 2000 feet west of Route 30, approximately 2 ½ miles east of Sand Hill Road; that the site is predominantly wooded and the parcels surrounding the site are predominantly wooded as well; that according to the State Strategies the site is located in a Level 4; that the Applicant has lived along Huff Road for approximately 19 years; that Mr. Davidson owns 23 acres of land directly across from the site which has a Conditional Use to operate his surveying business; that the Applicant is a Licensed Class "A" Percolation Tester, Class "B" Septic Designer, and Class "C" Septic Installer all with DNREC; that the Applicant is a Certified Construction Reviewer with the State of Delaware and is also licensed to construct Stormwater Sediment and Erosion Control in the State of Delaware; that the Applicant has been in business for approximately 12

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C/U
No. 1942
(continued)**

years; that according to the 2007 Comprehensive Plan, the site is located in a Low Density Area; that the Applicant's excavating business performs lot clearing, final grading, excavates footers, foundations, digs basements, underground storage tanks, small demolition jobs, test pits, along with farming on a few farms in the Georgetown area; that currently the Applicant has five (5) employees; the site will provide the Applicant a place to store equipment, perform maintenance on his equipment and office space for employees to meet before heading to the job sites; that the site currently has a DelDOT entrance; that they have proposed a 50 foot wide buffer around the entire property; that a septic system has been approved for the site; that they currently do not have a need for a septic system, so a porta-toilet is going to be utilized; that an existing well is located on the site as permitted by DNREC; that the Applicant is in acceptance of the conditions that were imposed by the Planning & Zoning Commission.

Mr. Davidson added that, along with some of the support letters that were submitted with the application, he feels that the Applicant is an asset to the neighborhood.

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

**M 485 12
Amend
Condition
"E"**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole to amend Condition "E" to read as follows:

As stated by the Applicant, all repair work shall be performed inside of the building and that all maintenance shall be for the Applicant's own use, on his own equipment.

Motion Adopted: 5 Yeas.

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

**M 486 12
Adopt
Ordinance
No. 2277/
(C/U
No. 1942)**

A Motion was made by Mr. Wilson, seconded Mrs. Deaver, to Adopt Ordinance No. 2277 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE, MAINTENANCE AND GENERAL OFFICE FOR CONTRACTING /EXCAVATING SERVICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 10.56 ACRES, MORE OR LESS" (Conditional Use No. 1942) filed on behalf of Douglas L. Boozer, with the following conditions:

- A. There will only be one unlighted sign on the premises that shall not exceed 32 square feet on each side.
- B. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.

**M 486 12
Adopt
Ordinance
No. 2277/
(C/U
No. 1942)
(continued)**

- C. The hours of operation shall be 6:00 a.m. to 6:00 p.m., Monday through Friday, and 7:00 a.m. to 2:00 p.m. on Saturday.**
- D. All loading areas, storage areas and trash container areas shall be screened by the existing wooded vegetation currently located on the site, with a minimum vegetated buffer of at least 50 feet from all property lines. The buffer area shall be shown on the Final Site Plan.**
- E. As stated by the Applicant, all repair work shall be performed inside of the building and that all maintenance shall be for the Applicant's own use, on his own equipment.**
- F. All entrances and roadway improvements required by DelDOT shall be completed by the Developer as required by DelDOT.**
- G. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with all applicable State and County requirements and shall be maintained utilizing best management practices.**
- H. 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. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
C/U
No. 1943**

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 AN AUTOMOTIVE REPAIR SHOP/GARAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.565 ACRES, MORE OR LESS" (Conditional Use No. 1943) filed on behalf of Charles L. Williams.

Shane Abbott, Assistant Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on August 23, 2012 at which time the Commission recommended that the application be deferred. On September 13, 2012, the Commission deferred action again.

See the minutes of the Planning and Zoning Commission dated August 23, and September 13, 2012.

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

Mr. Abbott reported that, following the Commission's Public Hearing, a letter was received from the Sussex Conservation District stating the soil type on the site; that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and

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Hearing/
C/U**

No. 1943

(continued)

maintain vegetation after any construction; that it would not be necessary for any off-site or on-site drainage improvements; that no storm flood hazard area or tax ditch are affected.

The Council found that John Brady, Attorney and Charles Williams, Applicant, were present on behalf of the application. Mr. Brady stated that a few form letters received by the Planning & Zoning Commission and County Council had a lot of misinformation about this application. The letter states that the Applicant was applying for a zoning change which is incorrect; this is an application for a Conditional Use of an existing garage that was built and in compliance with all County Codes over 4 ½ years ago.

Mr. Brady stated that this past spring, the Sussex County Planning & Zoning Department received complaints against the Applicant's garage. At that time Planning & Zoning visited the site and ruled that if the Applicant wanted to use the garage for commercial purposes the Applicant would have to apply for a Conditional Use; that the Applicant's medical condition does not allow him to work; that the Applicant built the garage so that his friends could visit and work on their vehicles in a safe indoor environment; that at the present time there are no restrictions on the amount of vehicles on the property or hours of operation; that if the Conditional Use is granted, the property owners on Martin's Farm Road would benefit because restrictions would be applied to the use.

Mr. Brady addressed a few items that were mentioned before the Planning & Zoning Commission: that there are no abandoned cars on the property; that the garage is fully enclosed; that the doors would remain closed while vehicle maintenance is in operation; that neighbors have stated that no businesses should be on Martin's Farm Road even though 24 houses away there is another Conditional Use that runs a small engine repair shop with similar hours as the Applicant has proposed; that the County Code does not state a size limit as long as the appropriate permits are obtained; that the Applicant is a volunteer Minister at a local church in Oak Orchard; that the Conditional Use would be to allow a mechanic on-site to accept remuneration for services provided at the garage; at the present time the Applicant is allowed to use the garage for these services but under the County Code the Applicant is not allowed to accept any remunerations.

Charles Williams, Applicant, clarified that the building permit for the pole building was obtained in November 2007 and the Certificate of Occupancy was issued in January 2008; that several neighbors are concerned about the character of some of the potential customers and that it might increase crime in the area if the application is approved; that there have been complaints of noise, which isn't even an issue for conditional use; that the signs posted along Martin's Farm Road state "Stop Zoning Change from AR-1 to C-1" which are incorrect; that the pole building is in compliance with the Fire Marshall's office; that several of the area residents that are in opposition of this Conditional Use have brought vehicles, tractors, and other small machinery to the Applicants garage for minor repairs at no cost

**Public
Hearing/
C/U
No. 1943
(continued)**

to them.

Mrs. Deaver questioned if the Applicant was receiving payments for services being provided.

In response to the question, Mr. Brady, stated that in the past there were a couple of monetary transactions for services that transpired, however Planning & Zoning conducted an investigation earlier this year and advised the Applicant that he was not permitted to accept monetary transactions for service unless he had a Conditional Use on the property.

Council discussed the use of the existing driveway which is a recorded easement with a residential entrance and questioned if this application is approved would DelDOT require an upgraded entrance.

Everett Moore, County Attorney, responded that if DelDOT requires the Applicant to make improvements to the existing entrance which would encroach on surrounding property owner's land and was not in the right of way of DelDOT, the neighbor could deny access to his property for the required improvement. At that time, the Applicant would have to institute an action if they so desire.

Public comments were heard.

The Council found that Sam Schlegal, a friend, Steve Scarfo, a nearby neighbor, Joseph Harris, a nearby neighbor, Bruce Hayes, a nearby neighbor, Jim Grimmis, a friend, and Chris Bennett, mechanic, were present in support of the application stating that the Applicant is beneficial to the community with the services he is able to offer; that the Conditional Use would not infringe or take away from the quality of life in the area; that lawnmowers in the area are louder than the activities that take place on the property; that the application would have a minimal impact to the residents on Martin's Farm Road.

There were no additional comments in support of the application.

Seth Thompson, Attorney, representing Margaret Foulke, a nearby neighbor in opposition of the application, stated that this application is not appropriate under the law in terms of granting this Conditional Use. The purpose of a Conditional Use as identified in the County Code should be for public use (character and essential and desirable for the general convenience and welfare); that the County Code references the purpose of a Conditional Use is to look to the importance of the Comprehensive Plan; that in the 2008 County Comprehensive Plan Update, under Future Land Use, it specifically identifies auto repair as a more intense commercial use that should be avoided in low density rural areas; that the Conditional Use needs to be in compliance and in accordance with the approved Comprehensive Plan; that granting this Conditional Use would not be permissible under the Comprehensive Plan; that DelDOT's report states

**Public
Hearing/
C/U
No. 1943
(continued)**

that traffic will increase by at least 40 percent; that Martin’s Farm Road has multiple curves that are not conducive to towing vehicles; that the application does not comply with the County Code and is not in compliance with the Comprehensive Plan.

The Council found that Margaret Foulke, Ronald Walker, Jr., Ronald Walker Sr., Paul Holton, Jr., Louise Capano, Marlene Henry, John & Carol Kane, and George DeFrehn were present and spoke in opposition to this application expressing concerns about the amount of traffic that visits the site on a daily basis; child safety; depreciation of property values; noise; the loss of privacy; the impact on the residential area; abandoned vehicles; and safety concerns along Martin’s Farm Road.

There were no additional comments in opposition of the application.

The Public Hearing was closed and the Public Record will remain open for the Council to review the Site Visit Findings Report requested from Planning and Zoning Staff.

**M 487 12
Defer
Action on/
C/U
No. 1943**

A Motion was made by Mrs. Deaver seconded by Mr. Cole, to defer action on Conditional Use No. 1943 filed on behalf of Charles L. Williams.

Motion Adopted: 5 Yeas.

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

**M 488 12
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to adjourn at 3:50 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,

**Kelly A. Collins
Administrative Secretary**