



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 27, 2010

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 27, 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 235 10 Amend and Approve Agenda

A Motion was made by Mr. Vincent, seconded by Mr. Cole, to amend the Agenda by deleting "Executive Session – Personnel, Pending/Potential Litigation, and Land Acquisition" and "Possible Action on Executive Session Items", 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 April 20, 2010 were approved by consent.

Procla- mation

Mr. Baker read the Proclamation entitled "PROCLAIMING THE MONTH OF MAY AS *COMMUNITY ACTION MONTH*".

DSHA Programs

Anas Ben Addi, Director of the Delaware State Housing Authority, gave an overview of DSHA's funding sources and home ownership programs and he discussed the DSHA's initiative to reach more homeowners in Sussex County.

**Extension
Request/
Common-
wealth
Group
Extension
Request
(continued)**

Mr. Baker presented a request from The Commonwealth Group for an extension to Conditional Use No. 1705 (King Farm/Georgetown Airport Center, LLC). It was noted that the Planning and Zoning Commission has granted two one-year extensions, which is the maximum allowed, and that, if approved, this extension would extend the approval period for one year, until October 2, 2011.

Mr. Cole stated that requests for extensions include the reason for the request.

Mr. Baker stated that staff would contact the Applicant after which the matter will be placed back on the Council's agenda.

**Adminis-
trator's
Report**

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

1. Delaware Solid Waste Authority Report

As per the attached letters from the Delaware Solid Waste Authority, a total of 61,070 pounds of material was collected for recycling at the West Complex parking lot during the months of January through March 2010.

2. Animal Control Activity Reports

Attached are reports for January and February from Delaware Animal Care & Control, with whom we contract for dog control services. As noted on the attachments, this organization responded to 386 service calls during January and 274 calls during February 2010. A total of 26 court cases were handled in Sussex County.

3. Prescription Drug Card Report

As per the attached report, a total of 1,087 prescriptions were filled using the Sussex County/NACo prescription drug discount card during January through March 2010. The March average savings was 29.77 percent, with an average price savings of \$21.59 per prescription. These cards are available free for anyone to use. Please contact Mr. Chip Guy at 854-5000 for assistance.

4. Sussex County Airport Advisory Committee

The Sussex County Airport Advisory Committee will meet on Wednesday, April 28, at the Sussex County Emergency Operations Center at 7:00 p.m. Attached is an agenda for the meeting.

5. Former County Employee – Nina Johnson

It is with great sadness that we inform you that Ms. Nina Johnson

passed away on April 25, 2010. Ms. Johnson worked for the Buildings and Grounds Department from March 11, 1985, until her retirement on August 1, 2008. She worked primarily in the County Administration Building and will be missed by many County employees. We wish to express our condolences to Ms. Johnson's family.

(continued) (Attachments to the Administrator's Report are not attachments to the minutes.)

**Proposed
Resolution/
Recovery
Zone
Facility
Bonds/
Five
Points
Crossing
Project**

Mrs. Webb reviewed a Recovery Zone Facility Bond (RZFB) application submitted by Five Points Crossing, LLC for issuance by the County of RZFBs in a principal amount not to exceed \$7,400,000. The proceeds of the bonds will be used for the construction, furnishing and equipping of a retail center on an approximate 3-acre site and to pay the costs of issuance of the Bonds. The retail center is to include a Walgreens store and a fully developed retail pad site.

Robert Wittig of Five Points Crossing, LLC reported that the application is for the relocation of an existing Walgreens and that the project will result in the creation of approximately 120 construction jobs and approximately 15 new positions at Walgreens. Mr. Wittig noted that they have secured construction financing; that the issuance of the recovery bonds is for permanent financing and for the completion of the project; and that they have banks interested in the bonds. Mr. Wittig also noted that Five Points Crossing, LLC will lease the land and the building to Walgreens.

Mrs. Webb advised that the County's Bond Attorney has determined that the application is an eligible project for a Recovery Zone Facility Bond allocation.

Mr. Baker noted that one condition recommended by the Industrial Revenue Bond Committee is that the approval would be subject to the Applicant providing the County with evidence of a firm commitment from a Bond purchaser by August 1, 2010.

**M 236 10
Adopt
R 014 10**

A Motion was made by Mr. Vincent, seconded by Mr. Cole, to Adopt Resolution No. R 014 10 entitled "A PROJECT RESOLUTION AUTHORIZING ISSUANCE OF UP TO \$7,400,000 RECOVERY ZONE FACILITY BONDS (FIVE POINTS CROSSING, LLC PROJECT) SERIES 2010".

Motion Adopted: 5 Yeas.

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

**Financial
Report**

Mrs. Webb presented the Financial Report for the Third Quarter ending March 31, 2010.

**Legislative
Update**

Mr. Godwin presented the following legislative update:

House Bill No. 65

**Legislative
Update
(continued)**

**“AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE
RELATING TO SUSSEX COUNTY COUNCILMANIC DISTRICTS”.**

Status: Stricken on April 7, 2010.

Senate Bill No. 132

**“AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE
RELATING TO LAND USE”.**

Status: No action since June 10, 2009.

House Bill No. 300

**“AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE
RELATING TO THE FREEDOM OF INFORMATION ACT”**

Status: Senate Executive Committee on March 16, 2010.

House Bill No. 308

**“AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE
RELATING TO CODE ENFORCEMENT CONSTABLES”**

Status: Senate Judiciary Committee on March 16, 2010.

House Bill No. 311

**“AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE
RELATING TO MANUFACTURED HOME COMMUNITIES”**

Status: House Manufactured Housing Committee on January 21, 2010.

Senate Bill No. 167

**“AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE
RELATING TO EXEMPTIONS FROM TAXATION FOR CERTAIN
ORGANIZATIONS”**

Synopsis: This Act exempts from taxation by local government real property owned by Sussex County Habitat for Humanity, Central Delaware Habitat for Humanity and Habitat for Humanity of New Castle County, as long as such property is not held for purposes of investment.

Status: Passed the House on April 20, 2010.

Mr. Moore noted that the period of exemption would be during the time the organizations own the property until it is transferred to the new owner.

**Legislative
Update
(continued)**

House Bill No. 333

“AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO THE ENFORCEMENT OF AN ORDER TO CONNECT TO A SANITARY SEWER”.

Synopsis: This legislation enables the Sussex County government to proceed in either Justice of the Peace Court or the Court of Chancery to compel connection of a property to an existing County Sanitary Sewer District.

Status: House passed on April 20, 2010; not yet assigned to committee in Senate.

House Bill No. 352

“AN ACT TO AMEND TITLE 27 OF THE DELAWARE CODE RELATING TO RELIGIOUS CAMP MEETINGS”

Synopsis: This Act deletes antiquated code provisions requiring churches and religious organizations to obtain a permit from a commission (composed of the Sheriff, County Council President, and Clerk of the Peace of each respective county) to conduct camp meetings and outdoor religious meetings.

Status: House passed on April 22, 2010; not yet assigned to committee in Senate.

House Bill No. 370

“AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO MARRIAGE”

Synopsis: The State Bureau of Vital Statistics discontinued the policy of registering clergy and ministers authorized to solemnize marriages more than a decade ago. Since that time, there has been no way of verifying the legitimacy and entitlement of persons solemnizing marriages under Delaware law. This Bill reestablishes the registration of clergy and ministers and transfers the responsibility for overseeing registration to the Clerks of the Peace of the respective counties. This Bill would require any clergy person or minister wishing to solemnize marriages in this State to register with the Clerk of the Peace of the County they reside or where a marriage ceremony will be performed. Registration will assure couples

Legislative
Update
(continued)

planning to marry select an officiant who is lawfully authorized to solemnize marriages. The Bill also establishes fees for clergy persons and ministers registering on an annual basis, and for those desiring to officiate a specific ceremony on a specific date. The Bill also imposes a civil penalty on any person who performs a marriage ceremony without being lawfully registered.

Status: House Health and Human Development Committee on April 20, 2010. Scheduled for Committee hearing on Wednesday, April 28th, at 3:30 p.m.

Mr. Godwin noted that Sussex County Clerk of the Peace George Parish supports this legislation.

The Council raised questions regarding this legislation and agreed that the County objects to the fee schedule and requests that fees be determined separately by each County.

Senate Bill No. 208

“AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO DANGEROUS DOGS”

Synopsis: This Act includes cats in the list of domestic animals which when attacked might cause a dog to be declared a potentially dangerous dog or if severely injured or killed might cause a dog to be declared a dangerous dog. This attack, serious injury or death must occur on the property of the owner of the domestic animal or while under the immediate control of the owner of the domestic animal.

Status: Out of Committee on April 21, 2010.

Mr. Godwin expressed concern that this will become something that the County will have to address as a part of the dog control legislation.

House Bill No. 194

“AN ACT TO AMEND TITLES 3 AND 29 OF THE DELAWARE CODE RELATING TO THE LICENSING OF VENUES WHICH DID NOT CONDUCT HARNESS RACING DURING 1992 AS VIDEO LOTTERY AGENTS”

Mr. Godwin noted that House Amendment 3 to House Amendment 5 to this Bill, sponsored by Representative Short, allows the Sussex County Council to appoint members to the Sussex County Lottery Redevelopment Committee. The Amendment, as written, calls for 2 members to be appointed by the President of Sussex County Council and 1 member to be appointed by the Vice President of the Sussex County Council.

The Council discussed this Amendment to House Bill No. 194 on April 13th

at which time a Motion was made that “the Sussex County Council supports and recommends the following change to Amendment No. 3 to House Amendment No. 5 to House Bill No. 194: “3 members appointed by the Sussex County Council”.

**Legislative
Update
(continued)**

Mr. Godwin advised Representative Short of the Council’s decision and he reported that Representative Short responded that he is not sure this Amendment will get added and therefore, he does not think it is advisable to amend the Amendment at this time. Representative Short suggested that the Council make the suggested change a matter of policy, if the Bill and the Amendment are passed.

It was the consensus of the Council that appointments should be made as a collective body and Mr. Godwin was instructed to relay this message to the General Assembly.

Mr. Phillips brought up Senate Bill No. 167 for additional discussion and he questioned: (1) what organizations are exempt and (2) what taxes the organizations are exempt from, i.e. transfer taxes, realty transfer taxes, etc.

Mr. Phillips asked staff to research how much money is lost collectively as a result of this exemption.

Mr. Vincent referenced Delaware State Code Title 9 (Counties) which references the appointed members of the Planning and Zoning Commission and the Board of Adjustment, as follows: “The appointed members shall be residents of Sussex County and no more than 2 members shall be appointed for the same representative district”. Mr. Vincent advised that he has asked Mr. Godwin to seek an amendment to State Law to change the word “representative” to “councilmanic”. It was the consensus of the Council to support this amendment.

**Paramedic
Program
Graduates**

Robert Stuart, Director of Emergency Medical Services, introduced the following recent graduates of the Delaware Technical & Community College Paramedic Program: Denise Helfer of Selbyville, Amy Robb of Greenwood, and Rob Luksik of Lewes. Each graduate was presented with a Sussex County Paramedic badge. He stated that, over the past five years, 17 students sponsored by the County have successfully graduated from the program and all are currently serving the County as full-time paramedics. The last three students are scheduled to complete the program in the Summer of 2010. Mr. Stuart expressed hope that the program will be reinstituted sometime in the future.

**Contract
Amend-
ment/
WR&A/
Inland**

Michael Izzo, County Engineer, presented Amendment No. 14 to a Contract with Whitman, Requardt & Associates for the Inland Bays Regional Wastewater Facility, Phase 1 Expansion, Construction Administration and Resident Project Representation. Mr. Izzo explained that the project will expand the capacity of the Inland Bays Regional Wastewater Facility up to

**Bays RWF/
Phase 1
Expansion** **2 million gallons per day and will introduce a higher level of nutrient removal to the process which will place the plant in accordance with Pollution Control Strategies adopted by DNREC in 2008.**

**Contract Amend-
ment/
WR&A/
Inland** **Mr. Izzo stated that Whiting Turner Construction Company was selected as the contractor and that their bid was in the amount of \$13.2 million. Mr. Izzo reported that the Contract Amendment is for the amount of \$934,000.00; this will cover construction, which is scheduled to take 18 months.**

**Bays RWF/
Phase 1
Expansion** **In response to questions raised by Mr. Phillips, Mr. Izzo stated that these projects are routinely time and material projects which are brought in under budget.**

(continued) **Mr. Phillips asked if there is any opportunity for the Engineering Department to look at the cost of this particular aspect of the project. Mr. Izzo responded that there is pressure from the funding agencies to get the contractors working.**

Mr. Baker stated that, once the project is underway, Engineering staff can review the cost of inspection and contract administration as well as the cost to complete the project, after which a proposal can be submitted to the Council to reduce the project through a change order.

**M 237 10
Authorize
Contract Amend-
ment/
WR&A/
Inland** **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council President be authorized to execute Contract Amendment No. 14 to its original Contract with Whitman, Requardt & Associates, LLP for the North Coastal Planning Area for the construction administration and project representation for the Inland Bays Regional Wastewater Facility, Phase 1 Expansion, at a cost not to exceed \$934,042.00.**

**Bays RWF/
Phase 1
Expansion** **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 for the Council's consideration.**

**M 238 10
Community
Grant** **A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to give \$1,250.00 (\$1,000.00 from Mrs. Deaver's Community Grant Account and \$250.00 from Mr. Phillips' Community Grant Account) to the Philadelphia Arms Townhomes for an affordable housing project in Ellendale.**

Motion Adopted: 5 Yeas.

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

Mr. Phillips, Yea

M 239 10 Community Grant **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$750.00 (\$150.00 from each Community Grant Account) to Delaware State Police Troop 4 for the Explorer Program.**

M 239 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**

M 240 10 Community Grant **A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give \$1,000.00 from Mr. Cole's Community Grant Account to Rehoboth Beach Main Street for July 4th fireworks.**

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/ Storm-water Problems **Under Additional Business, Luther Warren of Neptune Road, informed the Council of storm water problems that he is experiencing on his lot due to storm water draining from State property. Mr. Warren was advised to contact his State Senator and Representative. Mr. Baker stated that the County can contact DelDOT and DNREC regarding Mr. Warren's storm water problem.**

Legislation on Website **In regards to the Legislative Update provided by Mr. Godwin, Mr. Phillips asked that the Bills and their synopsis be placed on the County's website for comment.**

M 241 10 Recess **At 11:55 a.m., a Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to recess until 1:30 p.m. Motion Adopted by Voice Vote.**

The Council meeting was recessed.

M 242 10 Reconvene **At 1:38 p.m., a Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to reconvene. Motion Adopted for Voice Vote.**

Public Hearing (C/Z No. 1678) **A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.45 ACRES, MORE OR LESS" (Change of Zone No. 1678) filed on behalf of Byrum Farm, LLC.**

Public
Hearing
(C/Z
No. 1678)
(continued)

The Planning and Zoning Commission held a Public Hearing on this application on April 8, 2010 at which time action was deferred. On April 22, 2010, the Commission recommended that the application be denied based on the lack of a record made at the public hearing. The Commission stated that the Applicant failed to make a record that could justify an approval of this change of zone request and that there was no information about how the application complied with the County's Land Use Plan or how it complies with the purposes and requirements of the CR-1 Commercial Residential District.

(See the minutes of the meeting of the Planning and Zoning Commission dated April 8 and 22, 2010.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing.

James Fuqua, Attorney, was present with Carroll and Diane Brasure, owners of Byrum Farm, LLC. Mr. Fuqua addressed the recommendation of denial of the Planning and Zoning Commission and the reasons for the denial and he stated that there was no opposition in attendance at the Public Hearing before the Commission; that Mr. and Mrs. Brasure own and operate Brasure's Pest Control, which has been in operation in Sussex County over 39 years; that the business office is currently located at Dickerson Road and Route 54; that the existing office is no longer large enough as the business has grown; that they hope to relocate their business office to the 2.45 acre parcel; that they currently own the parcel; that they also own the adjacent 1 acre parcel which was approved for a Conditional Use in 2006 for parking and storage of business vehicles; that the business vehicles and employees' vehicles are kept in the garage; that a rental house is located on the 1 acre parcel; that their daughter's home is located on an adjacent 2-acre lot to the rear of the 2.45 acre parcel; that they propose to build additional vehicle storage buildings on the 2.45 acre site; that a new building will be constructed; that additional storage buildings are proposed; that there will be an onsite well and wastewater system; that no onsite drainage improvements are required per the Sussex Conservation District; that DelDOT did not require a Traffic Impact Study; that DelDOT estimates that the proposed use would generate approximately 159 vehicle trips per day and 22 trips during peak hour; that the traffic impact already exists as a part of the previous Conditional Use approval; that it is difficult for businesses to obtain financing without underlying commercial zoning; that the applicants are seeking a Change of Zone for the purpose of financing the project; and that the proposed zoning is not out of character with the area which consists of a mixture of business uses.

Mr. Fuqua submitted proposed Findings of Fact, which were read by Mr. Moore at the request of Mr. Phillips.

There were no persons present in support of or in opposition to the application.

The Public Hearing was closed.

M 243 10
Adopt
Ordinance
No. 2112
M 243 10
Adopt
Ordinance
No. 2112
(C/Z
No. 1678)
(continued)

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to Adopt Ordinance No. 2112 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.45 ACRES, MORE OR LESS” (Change of Zone No. 1678) filed on behalf of Byrum Farm, LLC.

Motion Adopted: 4 Yeas, 1 Nay.

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

Public
Hearing
(C/U
No. 1820)

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 PROFESSIONAL OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 41,611 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1820) filed on behalf of Rheumatology Consultants of DE, P.A.

The Planning and Zoning Commission held a Public Hearing on this application on April 8, 2010 at which time they recommended that the application be approved with the following conditions:

- 1. The offices shall be limited to professional medical care and other professional services.**
- 2. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring properties.**
- 3. The use shall comply with all DelDOT regulations and requirements. The entrance shall be from Shady Road, as approved by DelDOT.**
- 4. The site shall be served as part of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and all necessary upgrades to service the parcel shall be borne by the Applicant.**
- 5. All parking shall be screened from view with landscaping from any neighboring residential properties.**
- 6. Hours of operation shall be limited to 7:00 a.m. until 8:00 p.m. Monday through Friday and 8:00 a.m. until 5:00 p.m. on Saturdays.**
- 7. Signage shall be limited to one ground sign not to exceed 32 square feet per side with directional lighting.**
- 8. All trash containers shall be placed at the rear of the building and shall be screened from view. The location of the containers shall be shown on the Final Site Plan.**
- 9. The site plan shall be designed to accommodate all necessary parking**

spaces, right-of-ways, setbacks and landscaping.

- 10. The site plan shall be subject to the approval of the Planning and Zoning Commission.**

(See the minutes of the meeting of the Planning and Zoning Commission dated April 8, 2010.)

**Public
Hearing
(C/U**

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing.

**No. 1820)
(continued)**

Mr. Lank distributed an Exhibit Book which was provided by the Applicant.

Mr. Lank read a letter of opposition into the record which was received from Marc Collard.

Tim Willard, Attorney, was present with Dr. Jose Pando. They stated that Dr. Pando has been practicing in Sussex County for over 14 years; that the application is for a Conditional Use for medical and professional offices; that the site was previously approved for professional offices in 2005 as Conditional Use No. 1616; that they did not realize that the original application had expired; that they lease office space along Savannah Road; that a letter was received from the Office of State Planning Coordination exempting them from the PLUS process; that the site is surrounded by commercial/business uses and conditional uses; that DelDOT will be taking additional right-of-way and will be requiring a multi-modal path; that the site is located in the Environmentally Sensitive Developing District which allows for office uses; that the site is located in an Investment Level 2 Area; that adequate space exists on the site for parking; that the building will be built to maintain a residential appearance; that a therapy pool may be built; that two structures current exist on the site and will be demolished; and that they will have to obtain a permit for an entrance on Shady Road.

Mr. Cole referenced Condition No. 3 recommended by the Planning and Zoning Commission and he stated that he would prefer that the condition read as follows: "The use shall comply with all DelDOT regulations and requirements. The entrance shall be from Shady Road, as approved by DelDOT and all right-of-ways shall be dedicated in the Final Site Plan." Mr. Cole also recommended that Condition No. 4 read as follows: "The site shall be served as part of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, shall not exceed capacity allocations as per the Engineering Department, and all necessary upgrades to service the parcel shall be borne by the Applicant."

There were no persons present in support of the application.

Public comments were heard in opposition to the application. Lynne Noll, Edward Mucha, Linda Cangin-Bennett, Marc Collard, Glenden Jackson, and Shelley DiLauro stated that the Applicant's previous application was approved 5 years ago and that the area has changed since that time; that the area is being overdeveloped considering the size of Plantation Road and

**Public
Hearing
(C/U
No. 1820)
(continued)**

Shady Road which are two lane roads with no plans for improvement by DelDOT; that DelDOT should require a Traffic Impact Study; that there are already too many approved projects along Plantation Road which will result in increased traffic; that a business and professional office complex was recently approved on the corner of Plantation Road and Cedar Grove Road; that traffic congestion and flooding are already major concerns on Plantation Road; that additional traffic signals are not desirable but will be needed; that the area is primarily residential; that the issue is the cumulative effect of all the development on the area; that the project will impact the residential character of the area; and that there is an over abundance of office space available in the general area.

Written comments were submitted into the record by Lynne Noll and Edward Mucha.

The Public Hearing was closed.

Mr. Cole recommended that action be deferred for Council to review the cumulative effect of projects already approved in the area.

**M 244 10
Defer
Action on
C/U
No. 1820**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Conditional Use No. 1820 filed on behalf of Rheumatology Consultants of DE, P.A.

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. 1821**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (4 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.98 ACRES, MORE OR LESS” (Conditional Use No. 1821) filed on behalf of John F. Corcoran, et al.

The Planning and Zoning Commission held a Public Hearing on this application on April 8, 2010 at which time they recommended that the application be approved with the following conditions:

1. There shall be no more than four (4) dwelling units located on the property designed as single family condominium units.
2. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT’s determination.
3. The project shall be served by an on-site well approved by DNREC

Public
Hearing/
C/U
No. 1821
(continued)

- and in compliance with all applicable regulations.
4. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements and the project shall utilize Best Management Practices to construct and maintain these features.
 5. The project shall be served by an on-site sewer system approved by DNREC and in compliance with all applicable regulations.
 6. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed landscape design.
 7. Construction, site work, grading, and deliveries of construction materials, landscaping materials and/or fill on, off, or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday.
 8. Maintenance of all landscaping, lawn areas, driveways and recreational amenities shall be the responsibility of a condominium association and Best Management Practices shall be utilized to minimize any environmental impacts.
 9. Any damage to the road caused by the redevelopment of this property shall be promptly repaired at the developer's expense.
 10. Addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 11. 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 April 8, 2010.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing.

Mr. Lank distributed an Exhibit Book which was provided by the Applicant.

John Corcoran and John Inskip were present on behalf of the application with Jim Fuqua, Attorney. Mr. Fuqua stated that they are proposing to develop the site with four units, one of which is the existing dwelling on the site; that the site is located south of Route 24 with frontage along Love Creek and Lotus Lane; that the site is improved with a home and garage, a dock on Love Creek and a man-made lagoon which was created in the 1960s; that approximately one-third of the parcel was delineated as Section 404 wetlands; that the wetland area is located at the rear of the parcel adjacent to Love Creek; that they are proposing to restore and preserve the existing home and to construct three additional two-story cottage style units for a total of 12 units; that they propose a condominium form of ownership; that there will be a new entrance to the site from Lotus Lane; that the existing driveway will be abandoned and replaced with a new relocated drive; that a pathway will connect the units and the driveway to the dock; that amenities are planned, i.e. bath house, swimming pool, and a gazebo area; that buffering will be provided between the improvements and the

**Public
Hearing/
C/U
No. 1821
(continued)**

wetlands; that onsite septic and wells will be utilized; that the County Engineering Department indicated that the site is located in the Goslee Creek Planning Area; that the system design assumption for this parcel is 4 units; that the County understands that an onsite system is proposed and the Applicant understands that, when the County Sewer System is available for this site, the onsite system will have to be abandoned and the site would have to connect to the County Sewer System; that DelDOT did not require a Traffic Impact Study; that there will be minimal traffic impact as a result of this application; that the proposed 4 units would result in a gross density of approximately 1 unit per acre; that the net density would be approximately 1.4 units per acre if wetlands are subtracted; that the use is consistent with the area which is predominantly single-family lots and developments, some small businesses, and the Love Creek Manufactured Home Community; and that stormwater management facilities will comply with the requirements of the Sussex Conservation District and that Best Management Practices will be utilized.

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

**M 245 10
Adopt
Ordinance
No. 2113/
C/U
No. 1821**

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to Adopt Ordinance No. 2113 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (4 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.98 ACRES, MORE OR LESS” (Conditional Use No. 1821) filed on behalf of John F. Corcoran, et al, with the following conditions:

1. There shall be no more than four (4) dwelling units located on the property designed as single family condominium units.
2. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT’s determination.
3. The project shall be served by an on-site well approved by DNREC and in compliance with all applicable regulations.
4. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements and the project shall utilize Best Management Practices to construct and maintain these features.
5. The project shall be served by an on-site sewer system approved by DNREC and in compliance with all applicable regulations.
6. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed landscape design.
7. Construction, site work, grading, and deliveries of construction materials, landscaping materials and/or fill on, off, or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday.
8. Maintenance of all landscaping, lawn areas, driveways and

**M 245 10
Adopt
Ordinance
No. 2113/
C/U
No. 1821
(continued)**

recreational amenities shall be the responsibility of a condominium association and Best Management Practices shall be utilized to minimize any environmental impacts.

9. Any damage to the road caused by the redevelopment of this property shall be promptly repaired at the developer's expense.
10. Addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
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**

**Public
Hearing/
C/U
No. 1822**

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 AUTO REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 36,097 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1822) filed on behalf of Michael P. Mulligan.

The Planning and Zoning Commission held a Public Hearing on this application on April 8, 2010 at which time they deferred action; on April 22, 2010, the Commission recommended that the application be approved with the following conditions:

1. There will not be any outside storage of junked vehicles, automobile parts, equipment, tires, or other materials used to repair cars.
2. No vehicles for sale will be displayed on the premises.
3. The only repair work allowed in the shop will be automobile and light trucks. No motorcycles, commercial vehicles, boats or RVs are permitted.
4. The shop will only be operated between the hours of 8:00 a.m. and 5:00 p.m. Monday through Saturday.
5. There shall only be one lighted sign on the property advertising the business, not to exceed 32 square feet in size on either side.
6. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.
7. All parking areas shall be shown on the Final Site Plan.
8. Oil and other fluids associated with the business must be stored in approved containers and hauled away from the site by licensed handlers.
9. Any dumpsters on the site shall be screened from view of neighboring properties and roads. The location of any dumpster shall be shown on the Final Site Plan.
10. The Final Site Plan shall be subject to approval of the Planning and

Zoning Commission.

(See the minutes of the meeting of the Planning and Zoning Commission dated April 8 and 22, 2010.)

**Public
Hearing/
C/U**

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing.

**No. 1822
(continued)**

Michael Mulligan was present on behalf of his application and he submitted photographs of the site including business and commercial uses in the area and some homes in the area along Old Mill Bridge Road. He stated that he operates Mikes Auto Repair; that he has worked and lived in the area for many years; that he provides auto repair services to a lot of the retired residents in the community; that he is presently located next to the County pump station; that the site was previously used and approved for a seafood restaurant; that he is self-employed and is proposing a small scale garage; that he anticipates working on 3 to 5 vehicles per week in a proposed garage behind his residence; that he does not perform major auto engine repair, only service; that there are many business/commercial uses along Old Mill Bridge Road and therefore, this proposal would be compatible with the area.

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

**M 246 10
Adopt
Ordinance
No. 2114/
C/U
No. 1822**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2114 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTO REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 36,097 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1822) filed on behalf of Michael P. Mulligan, with the following conditions:

- 1. There will not be any outside storage of junked vehicles, automobile parts, equipment, tires, or other materials used to repair cars.**
- 2. No vehicles for sale will be displayed on the premises.**
- 3. The only repair work allowed in the shop will be automobile and light trucks. No motorcycles, commercial vehicles, boats or RVs are permitted.**
- 4. The shop will only be operated between the hours of 8:00 a.m. and 5:00 p.m. Monday through Saturday.**
- 5. There shall only be one lighted sign on the property advertising the business, not to exceed 32 square feet in size on either side.**
- 6. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties.**
- 7. All parking areas shall be shown on the Final Site Plan.**
- 8. Oil and other fluids associated with the business must be stored in approved containers and hauled away from the site by licensed handlers.**

9. Any dumpsters on the site shall be screened from view of neighboring properties and roads. The location of any dumpster shall be shown on the Final Site Plan.
10. The Final Site Plan shall be subject to approval of the Planning and Zoning Commission.

**M 246 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**

**M 247 10
Adjourn**

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to adjourn at 3:35 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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