



# **SUSSEX COUNTY COUNCIL**

## **AGENDAS & MINUTES**

### **SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 19, 2010**

**Call to Order**            A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 19, 2010, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

<b>Vance Phillips</b>	<b>President</b>
<b>Michael H. Vincent</b>	<b>Vice President</b>
<b>George B. Cole</b>	<b>Councilman</b>
<b>Joan R. Deaver</b>	<b>Councilwoman</b>
<b>Samuel R. Wilson, Jr.</b>	<b>Councilman</b>
<b>David Baker</b>	<b>County Administrator</b>
<b>Susan M. Webb</b>	<b>Finance Director</b>
<b>Hal Godwin</b>	<b>Deputy Administrator</b>
<b>David Rutt</b>	<b>Assistant County Attorney</b>

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

**Mr. Phillips called the meeting to order.**

**M 558 10**            A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to amend the  
**Amend**            Agenda by deleting "Public Hearing – Oak Orchard Sanitary Sewer  
**and**                District Expansion No. 2"; by deleting "Executive Session – Personnel,  
**Approve**        Pending/Potential Litigation, and Land Acquisition"; and by deleting  
**Agenda**        "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 October 5, 2010 were approved by consent.

**Corre-**            Mr. Rutt read the following correspondence:  
**spondence**  
**RUTH TURNER, LEWES, DELAWARE.**

**RE: Letter in appreciation of the repairs made to her home which were made possible by the Community Development Office.**

**LOWER SUSSEX POP WARNER, FRANKFORD, DELAWARE.**

**RE: Letter in appreciation of grant.**

**Smoke  
Detectors  
and  
Batteries  
Grant  
Proposal**

Mr. Baker reported that Sussex County fire companies, as well as other fire companies throughout the State, have had a program over the last few years to provide free smoke detectors and/or batteries to residents upon their request and that it has come to the County's attention that the supply of these smoke detectors and batteries have diminished to virtually none. The Sussex County Fire Service has requested assistance to replenish this supply. Mr. Baker presented a proposal to grant a maximum of \$15,000 to the Sussex County Volunteer Firefighters Association to replenish their supply for the public. This funding, although not in the current budget, could be transferred from the Contingency Fund. Mr. Baker noted that the funds could be restricted for Sussex County fire departments.

**M 559 10  
Approve  
Grant to  
Volunteer  
Firefighters  
Association**

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, that the Sussex County Council approves a grant in the amount of \$15,000 to the Sussex County Volunteer Firefighters Association for smoke detectors and batteries to be allocated to Sussex County fire departments.

**Motion Adopted: 5 Yeas.**

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

**Appeal/  
Keith  
Properties,  
Inc./  
Subdivision  
Application  
2009-2**

The Council members considered an appeal filed by Keith Properties, Inc. on the Sussex County Planning and Zoning Commission's decision to deny Subdivision Application No. 2009-2 (Marina Cove Estates).

Mr. Rutt advised that subdivision appeals are totally based on the record and that no new evidence or testimony would be allowed; attorneys speaking on the Appeal were advised of this restriction.

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

Appeal/  
Keith  
Properties,  
Inc./  
Subdivision  
Application  
2009-2  
(continued)

**1. Order a new hearing.**

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

**2. Reverse the decision.**

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

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

On June 24, 2010, the Planning and Zoning Commission held a Public Hearing on the Subdivision Application filed by Keith Properties at which time action was deferred. On July 14, 2010, the Commission recommended that the application be denied based upon the record and for the following reasons:

1. The Commission is not comfortable granting preliminary approval of this subdivision at this time since there are too many unanswered questions that affect it.
2. The application is subject to the County's Amended Buffer Ordinance, but the preliminary site plan does not comply with the requirements of that Ordinance. The Applicants did not formerly request a waiver of the Ordinance requirements at the time they applied for the subdivision. Also, the relief requested by the Applicant appears to be more than just a minor deviation from the buffer requirement.
3. There are significant questions about whether the property has the necessary means of access required by the Subdivision Code. Neighboring and adjacent property owners have appeared in opposition to the subdivision and have stated that there is not sufficient access to the subdivision. The Applicants have not been able to conclusively answer the questions regarding the required method of access, either.
4. The Preliminary Site Plan is based in part upon a proposed exchange of land between an adjacent property owner and the Applicant to establish access. Testimony during the Public Hearing revealed that

such an agreement would not be forthcoming. This leaves unanswered questions as to the actual boundaries of the property, which would have changed if the land swap with the neighbor has occurred.

5. With all of the uncertainty associated with this project, it is impossible to confirm that the project complies with the requirements of the County Subdivision and Zoning Codes.

**Appeal/  
Keith  
Properties,  
Inc./  
Subdivision  
Application  
2009-2  
(continued)**

William Scott, Attorney with Scott and Shuman, was present on behalf of Keith Properties, the Applicant. He stated that Keith Properties applied for a preliminary subdivision plan approval for the Marina Cove Estates Project, an 8 lot subdivision. Mr. Scott stated that they do not believe the Commission's decision in this matter was the result of an orderly and logical review of the evidence nor the proper interpretation and application of the Subdivision Ordinance to this application.

Mr. Scott noted that the transcript of the hearing record before the Planning and Zoning Commission was submitted to the Council. Additionally, Mr. Scott previously submitted a booklet of Exhibits.

Mr. Scott referenced the reasons that were the Planning and Zoning Commission's basis for denial:

1. The applicant failed to formally request a waiver from the requirements of the County's buffer ordinance at the time they applied for the subdivision.
2. There were questions as to whether the necessary access exists to have the subdivision.
3. The subdivision application was based in part on a proposed land exchange with an adjoining landowner that did not come to fruition and thus, they were unsure about the boundaries included in the project.
4. There were too many unanswered questions and too many uncertainties surrounding the project.

Mr. Scott offered the following responses to each of the Commission's reasons for denial:

1. There is not a requirement in the Sussex County Ordinance to request a waiver at the time application is made for a subdivision. Planning and Zoning has the authority to consider whether or not a waiver from certain provisions of the Subdivision Ordinance should be granted in a certain case. The Applicant was aware that the amended landscape buffer ordinance applied to this project and the Applicant contacted the County prior to the Public Hearing process and asked about a waiver. There was a communication by County staff to the Applicant explaining that a waiver from this requirement can be made as part of the Public Hearing process. A request for such waiver was formally submitted by Design

Appeal/  
Keith  
Properties,  
Inc./  
Subdivision  
Application  
2009-2  
(continued)

Consultants Group on the Applicant's behalf two weeks prior to the Public Hearing. At no time did anyone from the County inform the Applicant that there was a requirement that this request for waiver be made at the time of application. At the Public Hearing, the Commission did not consider any of the reasons that the Applicant submitted for why they need the waiver from the requirements of the buffer ordinance; in fact, their reasons were that they were trying to preserve wetlands on one side which would require an intrusion into the landscape buffer on the other side to fit the road for the 8-lot subdivision. The Commission did not consider any of these reasons and based their decision on the fact that the Applicant failed to request the waiver at the time the Application was made and therefore, this is an error of the Commission in interpreting the subdivision ordinance and the error must be corrected.

2. This Finding of the Commission is based on the testimony of adjoining landowners who appeared at the Public Hearing to contest the granting of the preliminary approval for the project. However, each of the adjoining landowners that appeared in opposition to this application testified that 25 feet of right-of-way have been granted on either side of Marina Road by all of the landowners in that area to DelDOT in order to have Marina Road exist. One adjoining landowner in opposition to the application submitted a plat and that landowner's surveyor showed a 50 foot right of way that goes from Marina Road to the entrance of the Applicant's property. The Applicant also presented testimony that the 50 foot right-of-way existed all the way to the project site. The Commission's failure to consider the recorded plat and the evidence and proposed conditions submitted by the Applicant, and to instead base its decision on the biased and undocumented testimony of those in opposition, is not an orderly and logical review of the evidence presented and thus, is grounds for appeal of the Commission's decision.
3. The Preliminary Subdivision Plan submitted by the Applicant as part of its application does not reflect and is not based upon any proposed exchange of land and therefore, it is irrelevant and not a part of this subdivision application. The Commission's failure to carefully review the Applicant's Preliminary Subdivision Plan, as submitted, and to instead base its decision on the allegations made by an adjacent property owner attempting to obstruct the Applicant's proper use of its land, is not an orderly and logical review of the evidence presented and thus is grounds for appeal.
4. The evidence presented and the record produced by the Applicant in this matter clearly establishes that this application meets all of the requirements of the Subdivision Ordinance.

Mr. Scott stated that, based on the evidence provided, they believe the reversal of the Planning and Zoning Commission's decision is warranted.

Vince Robertson, Assistant County Attorney, stated that the Planning and

**Zoning Commission's denial was based on the project's failure to comply with the Code and the unanswered questions regarding the application.**

**Appeal/  
Keith  
Properties,  
Inc./  
Subdivision  
Application  
2009-2  
(continued)**

**Mr. Robertson stated that the project is subject to the amended Buffer Ordinance that requires a 20 foot buffer around the entire perimeter and that the project did not comply with the Ordinance and it was not a minor deviation. There was not a buffer on the plan and there was not 50 feet of access to the property. In accordance with Section 99-7(B) of the Code, all subdivisions are required to have 50 feet of access or frontage. The site plan that was submitted with the application shows a land swap and the land swap was because they did not have 50 feet of frontage. The Applicant stated during their presentation to the Commission that they did not have 50 feet of access and in regards to their proposed conditions of approval, they stated that "the need for us being able to obtain a 2.06 foot variance for the 50-foot requirement to be able to access this property". This is an admission that they did not meet the 50 feet requirement. Mr. Robertson pointed out several admissions of the Applicant during this Public Hearing that they did not meet the 50 feet requirement. Mr. Robertson stated that a lot of conflicting information was presented to the Commission regarding the location of the rights-of-way.**

**Mr. Robertson stated that, with regard to the notice issue, the Planning and Zoning Commission has a policy of advertising if someone requests a waiver. Mr. Robertson stated that the Applicant did not apply for a waiver at the time they submitted the application; that the project was not designed with a 20 foot forested buffer; that they did request a waiver after the application was advertised; and that there is not a buffer anywhere on the project as required by the Code. Ten days prior to the Public Hearing, the plan was revised and the land swap was taken out; however, a buffer was not included. Mr. Robertson reported that there was no majority vote in favor of the waivers; the plan was not designed to meet the requirements of the buffer ordinance; and there was no basis for substantial justice in support of the waiver. Mr. Robertson stated that without a waiver to make the plan compliant, lot lines and roadways would have to be relocated.**

**In regards to the land swap, Mr. Robertson stated the Applicant testified that the application was based upon the assumption of a land swap and that this was the plan that all of the Commissioners had up to the Public Hearing and it was the plan that went through the TAC Review and the plan that was in the file for the public to review up to 14 days before the Public Hearing. The new plan is dated June 15th and the Public Hearing was held on June 24th. There were two different plans and there was uncertainty regarding the plan.**

**In regards to there being too many questions making it impossible to determine if the plan complies with the Code, there was a plan without a buffer, a plan without access, and there was not 50 feet of frontage. Mr. Robertson noted that these are not minor issues, they are fundamental Code problems.**

**Mr. Robertson asked the Council to uphold the decision of the Planning and Zoning Commission to deny the application.**

**Mr. Cole stated that he would not be participating in the vote.**

**M 560 10**      **A Motion was made by Mr. Wilson to defer action on the appeal regarding**  
**Defer on**      **the Subdivision Application of Keith Properties, Inc. The Motion died for**  
**Appeal**      **the lack of a Second.**

**M 561 10**      **A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to uphold**  
**Uphold**      **the decision of the Planning and Zoning Commission to deny Subdivision**  
**P&Z's**      **Application No. 2009-2 (Marina Cove Estates Subdivision) filed by Keith**  
**Decision to**      **Properties, Inc.**  
**Deny**

**Subdivision**      **Motion Adopted:      3 Yeas, 1 Abstention, 1 Absent.**  
**Application**

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

**Mr. Cole was out of the room during the vote.**

**Windmill**      **Mr. Baker advised that, at the October 5th Council meeting, a discussion**  
**Zoning**      **was held regarding windmill zoning regulations. On that date, Paul Driscoll**  
**Regulations**      **of Urban Research and Development Corporation (URDC), the County's**  
**and**      **Land Use Consultant, was in attendance to discuss how the County now**  
**Solar**      **regulates windmills and the effect of State legislation on these regulations.**

**Energy**  
**Systems**      **Mr. Driscoll was in attendance once again on this date to recommend ways**  
**Regulations**      **to revise the County's regulations to comply with recent changes in State**  
      **law and he suggested that the County divide windmills into three categories:**  
      **(1) windmills that are 100 feet or less and that are accessory uses, (2)**  
      **windmills between 100 and 200 feet, and (3) windmills that exceed 200 feet.**  
      **Mr. Driscoll detailed the recommendation made with respect to each of the**  
      **three categories. Mr. Driscoll stated that the last two categories of**  
      **windmills are not subject to State regulations as they are not accessory uses**  
      **to single family homes.**

**The Council discussed Mr. Driscoll's recommendations and questions were**  
**raised regarding minimum lot sizes for windmills, the possibility of**  
**maintain the County's 5 acre requirement, setbacks from adjacent**  
**properties, deed restrictions in private subdivisions, and measurement of**  
**noise levels.**

**Mr. Driscoll reviewed ways to make sure the Code provides for various**  
**types of solar energy systems:**

**Windmill  
Zoning  
Regulations  
and  
Solar  
Energy  
Systems  
Regulations  
(continued)**

- Solar energy collection devices shall be permitted by right in all zoning districts if they are attached to the roof of a building. Such devices may extend a maximum of 10 feet above the height of the building.
- Solar energy collection devices shall be permitted by right in all zoning districts if they are attached to and used to provide power to a sign. Such devices may extend a maximum of 10 feet above the maximum height of the sign.
- Solar energy collection devices that function as an accessory use may be placed in locations other than the roof of a building provided they meet the same requirements as an accessory building.
- Solar energy collection devices may be placed over a vehicle surface parking area without having to meet minimum building setbacks and without being regulated other building coverage, provided they do not exceed 15 feet in total height.
- Solar energy collection devices shall be allowed as principal uses in commercial and industrial zoning districts, provided that if they cover more than five acres of land area, they shall be separated from any adjacent residential lot by a planting strip meeting the requirements of Section 115025.E.(4)(a).
- Any solar energy collection devices shall be completely removed within 12 months after they are no longer used to provide energy.

Mr. Cole questioned if the County's current windmill regulations comply with the State's requirements (with the exception of permitting variances). It was determined that this issue needs to be reviewed by Legal Counsel. Mr. Cole stated that the Council also needs to decide if it wants to protect private deed restrictions. Mr. Cole stated that the Council may wish to lobby the State legislature to see if they are receptive to changing the law to protect private deed restrictions. Mr. Vincent stated that he believes the new State regulations came through DNREC and the Council should work with Secretary O'Mara to see if they are inclined to work with the Council.

It was the consensus of the Council to proceed with the regulations regarding solar energy systems.

**Adminis-  
trator's  
Report**

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

**1. Delaware Department of Natural Resources and Environmental Control Public Meeting – Yard Waste Disposal Ban**

DNREC's Division of Waste and Hazardous Substances will be holding a public meeting on October 20 at the Georgetown Library, 123 West Pine Street, from 6:30 to 8:00 p.m. At the meeting DNREC representatives will explain the ban on the disposal of yard waste.



Adminis-  
trator's  
Report  
(continued)

2. **Delaware Solid Waste Authority Report**

As per the attached letters from the Delaware Solid Waste Authority, a total of 58,725 pounds of recycle material was received at the County 'Recycle Delaware' location near the West Complex in Georgetown. This was received during the period of July through September 2010.

3. **Building Code Class**

The Sussex County Building Code Department will be offering a two-day class on December 2 and 3, 2010, regarding the International Residential Code. An instructor from the International Code Council will be here to teach the class. The class will be open on a limited basis to all County building code inspectors, as well as representatives from the building industries that would like to participate. Anyone interested in participating in this course should contact Andy Wright in the Sussex County Building Code Department at 855-7860.

4. **Substantial Completion**

The Engineering Department granted Substantial Completion to Long Neck Shores - part of Phase 3 - Timbercreek Lane, Agreement No. 820-2, on October 14, 2010. The developer is Dyer, McCrea Ventures, L.L.C., and the project is located on Sussex County Road 299 in the Long Neck Sanitary Sewer District, consisting of 36 single-family and age-restricted dwellings. Included with this report is a fact sheet on the project.

5. **County Pensioner – Walter Stratman**

We regret to inform you that a former County employee, Walter Stratman, passed away on October 9, 2010. Mr. Stratman worked as a Security Guard for the County from July 1, 1977, until his retirement on November 30, 1995. We wish to express our condolences to Mr. Stratman's family and friends.

6. **Sussex County on Facebook and Twitter**

Sussex County is joining other governments, businesses, and organizations in the social media revolution. Earlier this month, the County government launched its official Facebook page, which contains useful information including news releases, meeting notices, photographs, contact information, and more. In just one week of the page going live, Sussex County has picked up approximately 100 followers.

The Facebook page is the County's latest offering on the Internet. We continue to use our Web site as the on-line home for County information, and in February we began using Twitter to inform the media and public about what was happening during the blizzards. The Facebook page address is [www.facebook.com/SussexCountyDE](http://www.facebook.com/SussexCountyDE). The Twitter address is [www.twitter.com/sussexpio](http://www.twitter.com/sussexpio). You can also find links to both pages on the County Web site, [www.sussexcountycle.gov](http://www.sussexcountycle.gov).

Adminis-  
trator's  
Report  
(continued)

**7. Sussex County Election Year Scholarship Contest**

Sussex County reminds students and parents of the Election Year Scholarship Contest. The contest is open to any student, kindergarten through 12<sup>th</sup> grade, who is from the County and attending school. Each participant is asked to predict the outcome of elections here in Sussex County and across Delaware. The student with the most correct guesses will win a \$200 scholarship, while five runners-up will each win a \$100 scholarship.

For more information or to enter, visit [www.sussexcountycle.gov/election](http://www.sussexcountycle.gov/election). All entries must be received by 7:00 a.m. Tuesday, November 2.

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

Local  
Law  
Enforce-  
ment  
Grant  
Requests

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

Bethany Beach	\$20,000	Police Vehicle with Accessories
Greenwood	\$20,000	Police Vehicle
Bridgeville	\$20,000	Police Officer Salaries
Georgetown	\$20,000	Refurbish Police Headquarters

M 562 10  
Approve  
Local  
Law  
Enforce-  
ment  
Grant  
Requests

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to approve the Local Law Enforcement Grants to the Town of Bethany Beach (\$20,000), the Town of Greenwood (\$20,000), the Town of Bridgeville (\$20,000), and the Town of Georgetown (\$20,000).

Motion Adopted: 5 Yeas.

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

Draft  
Policy/

Mr. Godwin presented a draft policy that was designed to provide a formal

<b>Disposition of County Owned Real Property</b>	<p>review procedure for the disposition of real property no longer needed by the County for public purposes.</p> <p>In accordance with the policy, the County Administrator would be advised of any surplus property; the County Administrator would then review the property with all departments to analyze needs throughout County operations to see if any other department has use for the property. If not, the County Administrator could offer the property to another jurisdiction (municipality, the State, or a private entity). If all of these entities do not express any interest in the property, then the Council would decide if the property should be sold at public auction.</p>
<b>Draft Policy/ Disposition of County Owned Real Property (owned)</b>	<p>Mr. Godwin explained that the draft policy includes bidding information.</p> <p>Mr. Godwin noted that one property in Ocean View has been identified as surplus property and if the draft policy is approved, the County can proceed with the disposition of that property.</p>
<b>M 563 10 Approve Policy on the Disposition of County Owned Real Property</b>	<p>A Motion was made by Mr. Cole, seconded by Mr. Vincent, that the Sussex County Council approves the Policy on the Disposition of County Owned Real Property.</p> <p>Motion Adopted:     5 Yeas.</p> <p>Vote by Roll Call:    Mrs. Deaver, Yea; Mr. Wilson, Yea;                                   Mr. Cole, Yea; Mr. Vincent, Yea;                                   Mr. Phillips, Yea</p>
<b>Bid Award Recommendation for Software Procurement Assistance</b>	<p>Gina Jennings, Director of Accounting, requested approval to proceed with the next step of implementing an integrated computer system.</p> <p>On September 22, 2009, the County commenced a project to look at the technology needs to eliminate inefficiencies, improve taxpayer services, provide increased accountability, foster open government, improve internal controls, and reduce the number of separate legacy systems. In June 2010, the needs assessment was completed and the Council authorized the Finance Department to proceed with the process to purchase an integrated software system by issuing a RFP for procurement systems.</p> <p>Mrs. Jennings reported that five responses were received and the proposals were reviewed by a committee made up of six department directors. Out of the five, two companies were interviewed. No bids were received from Delaware companies. Mrs. Jennings reported that the Committee recommended that the bid be awarded to Berry, Dunn, McNeil &amp; Parker (BDMP) in an amount not to exceed \$106,574.00 to provide procurement assistance to the County to purchase the integrated software package.</p>
<b>M 564 10 Award Bid/</b>	<p>A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, that the Sussex County Council authorizes the Finance and Data Processing</p>

**Software  
Procure-  
ment  
Assistance**

**Departments to hire Berry, Dunn, McNeil & Parker (BDMP) to assist in the procurement of a new enterprise resource planning system at a rate of \$175.00 per hour, not to exceed \$106,574.00.**

**Motion Adopted: 5 Yeas.**

**M 564 10  
(continued)**

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

**Appeal/  
Diamond  
State  
CLT**

**The Council discussed the appeal filed by Diamond State Community Land Trust on the Planning and Zoning Commission's decision to deny Subdivision Application No. 2010-3. The Council discussed this matter on September 28, 2010 at which time action was deferred.**

**M 565 10  
Uphold  
P&Z's  
Decision to  
Deny  
Subdivision  
Application  
of Diamond  
State CLT**

**A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to affirm the decision of the Planning and Zoning Commission to deny Subdivision Application No. 2010-3 filed by Diamond State Community Land Trust.**

**Motion Adopted: 4 Yeas, 1 Nay.**

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

**Old  
Business/  
C/U  
No. 1839**

**The Council discussed Conditional Use No. 1839 filed on behalf of R. Joseph Johnson.**

**The Planning and Zoning Commission held a Public Hearing on this application on July 8, 2010 at which time action was deferred. On July 22, 2010, the Commission recommended that the application be denied based upon the record made at the Public Hearing and for the following reasons:**

- 1. The location is in an area along Clay Road that is predominantly residential. All of the lots on either side of the Applicant's property are used for residential properties and it backs up to McNichols's Place Mobile Home Park. While there is a tank farm on an acre of property on the other side of Clay Road, it is surrounded by a large tract owned by the State of Delaware that will be farmed in perpetuity. The other C-1, B-1 and Conditional Uses are oriented to the Westcoats Corner intersection and are not in the immediate vicinity of this property.**
- 2. The use as an electrical contracting business in a steel building will not be compatible with the surrounding residential uses.**
- 3. The use will adversely affect Clay Road, which is very narrow and currently very busy.**

Old  
Business/  
C/U 1839  
(continued)

4. There are other sites that are currently zoned for this type of use that are more appropriate than converting an existing residential property in a residential neighborhood to a business use.
5. A petition was presented containing 16 signatures from residents of Clay Road in opposition to the Application expressing concerns that the property is not compatible with the intent of the Zoning Code; that the property is adjacent to residential uses on both sides and to the rear and lies within 12 contiguous residential properties; that the land across the street is designated for agricultural uses in perpetuity, that the business use is out of character with adjoining uses and would diminish property values; and that the rezoning would set a precedent for future uses in this residential area. The petition also contains objections based upon the lighting, noise and other activities that would be associated with a business use in a residential neighborhood and concerns about traffic that would be created by the use.
6. The purposes in the Zoning Code for granting a Conditional Use are satisfied in this application. This use would not be well adjusted to the environment and would not offer full protection to surrounding properties if granted.

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

M 566 10  
Approve  
Proposed  
Ordinance/  
C/U  
No. 1839/  
DENIED

A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SHOP/OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21,962 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1839) filed on behalf of R. Joseph Johnson.

Motion Denied: 5 Nays.

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

Grant  
Requests

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

Mr. Cole requested that the grant requests from Del-Mar-Va Forest No. 201 and Seaside Jewish Community be tabled.

M 567 10  
Community  
Grant

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$705.00 (\$141.00 from each Community Grant Account) to the Sussex County League of Women Voters for “They Represent You” booklets.

Motion Adopted: 4 Yeas, 1 Nay.

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

**M 568 10**

**Community  
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 (\$100.00 from each Community Grant Account) to the Boy Scouts of America Del-Mar-Va Council for their community campaign fundraiser.

**M 568 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

**Defer**

**Request**

The grant request from the Good Samaritan Aid Organization was deferred as it will be considered a Human Service Grant.

**M 569 10**

**Community  
Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$1,000.00 from Mrs. Deaver's Community Grant Account to the Milton Theatre for the Save the Milton Theatre Campaign.

**Motion Adopted:** 5 Yeas.

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

**M 570 10**

**Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to adjourn at 11:54 a.m. Motion Adopted by Voice Vote.

**Respectfully submitted,**

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