



# SUSSEX COUNTY COUNCIL

## AGENDAS & MINUTES

### SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 7, 2010

**Call to Order**                      A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 7, 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 643 10**                      A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to amend the  
**Amend**                      Agenda by deleting "Land Acquisition" under "Executive Session"; and to  
**and**                              approve the Agenda, as amended.  
**Approve**  
**Agenda**

**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 November 16, 2010 were approved by consent.

**Corre-**                      Mr. Moore read the following correspondence:  
**spondence**

**LEWES AID, LEWES, DELAWARE.**  
**RE: Letter in appreciation of grant.**

**BEEBE MEDICAL FOUNDATION, LEWES, DELAWARE.**

**RE: Letter in appreciation of the Council's support of the 23rd Annual Beebe Ball.**

**AMERICAN DIABETES ASSOCIATION, WILMINGTON, DELAWARE.  
RE: Letter in appreciation of the Council's support of the Sugar Free Weekend Retreat.**

**Election  
Contest  
Results**

Mr. Baker reported on the 2010 Election Year Scholarship Contest. Students ages 18 and younger were eligible to participate in the contest, which serves as a lesson about the democratic process. Participants predicted the winners of the 22 national, state and local races in the November 2nd general election. To break a tie, each entrant was asked to predict the total number of votes the winner of the U.S. Senate race would receive from Sussex County.

One winner and five runners-up were declared, based on their predictions and the tie-breaking question, from a field of nearly 500 participants. The following students were recognized by the County Council:

- Winner Jordyn Tonelli, 12, a seventh-grader at Laurel Middle School.
- First runner-up Madison Hill, 12, a seventh-grader at Delmar Middle School.
- Second runner-up Rebecca Guyer, 17, a senior at Milford High School.
- Third runner-up Easton Ball, 10, a fifth grader at Milton Elementary School.
- Fourth runner-up Kevin Vandeyar, 13, an eighth grader at Laurel Middle School.
- Fifth runner-up Jake Jones, 17, a senior at Sussex Technical High School.

The winner of the contest won a \$200 scholarship and each of the five runners-up won a \$100 scholarship. Funding came from Community Grants, as well as from the law firm of Moore & Rutt.

**Airport  
Runway  
Update**

Mr. Baker reviewed the status of the Sussex County Airport Main Runway Project. The County is currently working on the 500 foot extension. The estimated additional cost to extend the main runway 500 feet is approximately \$9.2 million, which includes \$4.4 million for the runway extension, \$2 million to overlay Runway 4-22 (5,000 feet), \$1,050,000 for wetland mitigation, and \$1,400,000 for land acquisition. Mr. Baker reported that all of these costs are eligible for FAA grant funding; however, FAA estimates funding will not exceed \$5 million per year. The environmental assessment required by the FAA for the 500 foot extension is underway and should be completed by August 2011. Design for the 500 foot extension will begin after August 2011, followed by construction, which

could be complete by Spring 2013.

**Airport  
Runway  
Update  
(continued)**

Mr. Baker reported that the net cost to extend the runway 1,000 feet is approximately \$22.2 million, a cost differential of approximately \$13 million when compared to the 500 foot extension. One of the major differences is the Park Avenue realignment to match up with Arrow Safety Road (estimated cost of \$5.3 million including design). The County has spent, to date, approximately \$3 million for land purchases associated with the extension of the runway (primarily for the 1,000 foot extension). This funding may be eligible for FAA reimbursement in the future if the funds become available.

Mr. Baker stated that the County is currently taking a phased approach. First, complete the 500 foot extension and take advantage of the FAA funding. Thereafter, complete the additional 500 foot extension, which PATS has indicated they will need for Boeing 757 type airplanes. The County is looking at possible funding options so that the 1,000 foot extension can be done in a quicker time frame. The extension will allow additional flights at the airport and may attract additional business to the airport.

No action was required.

**Adminis-  
trator's  
Report**

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

**1. Habitat for Humanity – December 11**

County employees will be participating again to assist Habitat for Humanity with work on two homes in Frankford and Laurel. They will be assisting on Saturday, December 11, 2010. We wish to thank them for their voluntary efforts to help fellow Sussex Countians.

**2. Business Tax Climate in Delaware**

Per the Tax Foundation in Washington, D.C., Delaware again ranks eighth best in the country in terms of business tax climate. We believe that low property taxes, especially evident in our County, are one of the reasons that keep Delaware in the top ten locations for business. Information is available on the website [www.taxfoundation.org](http://www.taxfoundation.org).

**3. James Hickin – Accredited Airport Executive**

We are pleased to announce that Mr. Jim Hickin has been approved as an "Accredited Airport Executive." This recognition of airport executives includes passing an exam and a thorough interview process. It covers aspects of airport management including planning, finance, construction, operations, maintenance, security, environmental, and air service development. We wish to congratulate Mr. Hickin on this achievement reflecting his desire to

improve his skills.

4. **Caroling on The Circle Food Drive**

We are pleased to announce that the Caroling on The Circle program was a success. At this point in time, we have collected 19,303 food items as a result of the food drive associated with this annual program. We will continue to collect food throughout the month of December. We wish to thank all of the participants and volunteers who helped put together the 27<sup>th</sup> Annual Caroling on The Circle program. A press release is attached.

Adminis-  
trator's  
Report  
(continued)

5. **December 10 – Annual Employee Luncheon**

As per the attached News Advisory, County offices will close from 11:00 a.m. to 1:00 p.m. on December 10, 2010, to allow our employees to attend the annual Mildred King Luncheon. County offices will reopen at 1:00 p.m. This temporary closure enables employees to assemble for a holiday luncheon that also includes honoring the Employee of the Year and recognizing employees for their service to the County.

6. **Animal Control Activity Update**

Attached are summary reports from Delaware Animal Care and Control for this fiscal year from July 1 through November 30, 2010. During this five-month time period, 3,162 calls and call follow-ups were handled in Sussex County, per Director Murrey Goldthwaithe. Details are provided to explain the reasons for the calls.

7. **Dog Licenses**

As per the attached brochure, dog licenses are now available for 2011 at the same rate of \$10.00 per dog for spayed/neutered dogs and \$15.00 per dog per year for not spayed/neutered. Licenses can be obtained via the attached application form, by mail, via the County's website, or in person at the Dog Licensing Office in the County Administration Building. The telephone number for information is 855-7830.

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

Mason  
Dixon  
Wood-  
workers

Karson Morrison of the Mason Dixon Woodworkers was in attendance to present a handmade wooden toy to the Sussex County Council in appreciation of the Council's support of their program. The Woodworkers make approximately 1,200 toys each year which are distributed to disadvantaged children by local charities.

<b>Pension Fund Review and Post-Employment Benefit Fund Review and Post-Employment Benefit Fund Review (continued)</b>	<p>Mrs. Webb and Michael Shone of Peirce Park Group, the County's Investment Consultant, presented a review of the County's Pension Fund and Postemployment Benefit Fund. The Pension Fund as of January 10, 2010 was 91.7 percent funded.</p> <p>Mr. Shone complimented the County on having a pension fund that is 91.7 funded. He provided a stock market review and a performance report on the Pension Fund as of September 30, 2010. The total fund return (after fees) was 7.3 percent for the quarter, 8.6 percent for the year, and 5.8 percent per year for the past two years. The actuarial assumption is 8 percent. Out performance was realized by the Vanguard Global Equity fund, Fidelity Low Priced Stock, and the State Pool, with Dupont Capital underperforming for the quarter. Mr. Shone noted that approximately 65 percent of the County's Pension Fund is currently invested in the State's Pool.</p> <p>Mr. Shone noted that the "policy index" represents the County's target of a 60/40 ratio – 60 percent stocks and 40 percent bonds. Of the County's total asset allocation, 12.9 percent (\$5,867,029) were in domestic equities, 20.7 percent (\$9,428,828) were in fixed income, 1.6 percent (\$739,917) were in global equities, and 64.8 percent (\$29,583,413) were in the Delaware Pooled Fund. The County's investment managers and their year-to-date performance were reviewed: Dupont Capital, Fidelity Low Priced Stock, Wilmington Trust Operating Account, Vanguard Global Equity, and the Delaware Pooled Fund. Additional information provided included asset allocation versus target allocations, allocations by manager and by asset, and peer group comparisons.</p>
<b>M 644 10 Approve 2011 Pension Contribution</b>	<p>A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council approves the annual 2011 pension contribution into the Sussex County Council Pension Trust Fund in the amount of \$2,370,522 to be used for monthly reimbursements back to the General Fund and any balance available in that account will be invested in staggered Certificates of Deposit.</p> <p><b>Motion Adopted: 5 Yeas.</b></p> <p><b>Vote by Roll Call:</b> Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea</p>
<b>Review (continued)</b>	<p>Mrs. Webb reviewed the County's Investment Policy Statement, as recommended by the Pension Fund Committee. She stated that the policy follows the 60/40 allocation mix with the target being 60 percent equity or stock and 40 percent being fixed income.</p>
<b>M 645 10 Approve OPEB</b>	<p>A Motion was made by Mr. Cole, seconded by Mr. Vincent, that the Sussex County Council approves and adopts the OPEB (Other Post-Employment Benefits) Fund Investment Policy Statement.</p>

<b>Fund Investment Policy Statement</b>	<b>Motion Adopted: 5 Yeas.</b>  <b>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea</b>
<b>Review (continued)</b>	<p>Mrs. Webb reported that, as of the January 10, 2010 Actuary Report, the OPEB Fund is 71 percent funded. Last year, it was recommended to the Pension Committee to diversify the OPEB Fund as it is 100 percent funded in the State Pool. Mrs. Webb reported that the State OPEB Pool has very high fees and is only 3 percent funded (compared to the County being 71 percent funded). Additionally, Mr. Baker stated that the State Pool had limited oversight and was not being actively managed. Therefore, the Pension Fund Committee decided it was time to review different managers and to get this fund diversified. A Request for Proposals (RFP) was issued seeking investment managers to administer approximately 20 million in funds for the OPEB Fund. Twenty-five (25) responses were received and Peirce Park performed an analysis on the proposals. The investment managers were ranked and the field was narrowed down to two to three investment managers per category to allow diversification. As a result, one large cap value manager, one large cap core manager, one small-mid cap core manager, two global managers, one core/growth global equity manager, and a bond (fixed income) manager were considered and selected. To clarify, Mrs. Webb stated that the six entities recommended to replace the State Pool are: Vanguard Value Index (large cap value), Allianz RCM Disciplined Fund (large cap core), Ridgeworth Small Value (small cap core), Dodge &amp; Cox Global Stock (global value), Harding Loevner Global Equity (global core / growth) and Federated (domestic fixed income managers).</p> <p>Mrs. Webb reported that the Pension Committee did make a recommendation for the fixed income portion of the fund (40 percent). She stated that she would like to defer on this portion until January to consider investment options.</p>
<b>M 646 10 Approve Allocation of the OPEB Fund</b>	<p>A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, that the Sussex County Council approves the allocation of the OPEB Fund, as follows: 9 percent - Vanguard Value Index Fund; 15 percent - Allianz RCM Disciplined Fund; 15 percent - Ridgeworth Small Cap Fund; 8 percent - Dodge &amp; Cox Global Stock Fund; and 13 percent - Harding Loevner Global Equity Fund.</p> <p><b>Motion Adopted: 5 Yeas.</b></p> <p><b>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea</b></p>

**Review (continued)**      **Mrs. Webb reviewed a recommendation for the annual contribution (\$1,396,953.00) to the OPEB Pension Trust Account to be used for reimbursement to the General Fund to pay for health benefits.**

**M 647 10**      **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council approves the annual 2011 OPEB pension contribution of \$1,396,953.00 into the Sussex County Council OPEB Pension Trust Account to be used for monthly reimbursements back to the General Fund and any balance available in that account will be invested in staggered Certificates of Deposit.**

**M 647 10  
Approve  
2011  
OPEB  
Contri-  
bution  
(continued)**

**Motion Adopted:      5 Yeas.**

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

**Review (continued)**      **Mr. Shone complimented the County on the OPEB Fund being 71 percent funded. He stated that Sussex County may be No. 1 in the country in addressing this issue.**

**Mr. Shone commented on the impact of Wilmington Trust Company being bought by M&T Bank. He noted that his firm has had great success with M&T Bank and that he believes the transfer will be seamless.**

**In response to questions raised by Mr. Phillips, Mrs. Webb reported that an error had been made by the State in the County's OPEB Fund. After the close of the reporting period of June 30, 2009, the custodian bank had incorrectly allocated another government's transaction to the County's account, which overstated the fund by \$1,021,105. The State had the custodian reopen the year and post adjusting entries to correct the year-end balances.**

**Wastewater Agreement**      **Mr. Godwin presented a wastewater agreement for the Council's consideration.**

**M 648 10**      **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 902, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Georgetown Airport Center, LLC for wastewater facilities to be constructed in the King Farm Industrial Park, located in the Sussex County Airpark Sanitary Sewer District.**

**Approve  
Wastewater  
Agreement/  
King  
Farm  
Industrial  
Park**

**Motion Adopted:      5 Yeas.**

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

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

**Old  
Business/  
Proposed  
Ordinance/  
C/U 1847  
Old  
Business/  
Proposed  
Ordinance/  
C/U  
No. 1847  
(continued)**

**The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTOMOTIVE METAL FABRICATION / WELDING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 2.06 ACRES, MORE OR LESS” (Conditional Use No. 1847) filed on behalf of Brian D. Butler.**

**The Planning and Zoning Commission held a Public Hearing on this application on July 22, 2010 at which time action was deferred; on August 12, 2010 the Commission recommended that the application be approved with the following conditions:**

- 1. The Final Site Plan shall show all required parking areas.**
- 2. There shall not be any outside storage of junked vehicles, automobile parts, equipment, tires, or other materials used to repair cars or agricultural equipment.**
- 3. No vehicles for sale will be displayed on the premises.**
- 4. The only repair work allowed in the shop will be for automobiles, trucks and farm equipment.**
- 5. The shop will only be operated between the hours of 8:00 a.m. until 5:00 p.m. Monday through Friday, and 8:00 a.m. until noon on Saturday.**
- 6. There may be one lighted sign on the property advertising the business, not to exceed 32 square feet in size on either side.**
- 7. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties or roadways.**
- 8. The Final Site Plan shall specifically show the area that is the subject of the Conditional Use, which that area shall be, at least 3/4 of an acre in size.**
- 9. The area for a dumpster shall be relocated to the rear of the garage building and shall be screened from view. The location of the dumpster shall be shown on the Final Site Plan.**
- 10. All customer vehicles shall be stored inside at night.**
- 11. The Final Site Plan shall be subject to the approval of the Planning and Zoning Commission.**

**The County Council held a Public Hearing on this application on August 10, 2010 at which time action was deferred.**

**It was the consensus of the Council to delete Condition No. 5.**

**M 649 10  
Adopt**

**A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to Adopt Ordinance No. 2164 entitled “AN ORDINANCE TO GRANT A**



**Ordinance No. 2164 (C/U No. 1847)**      **CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AUTOMOTIVE METAL FABRICATION / WELDING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 2.06 ACRES, MORE OR LESS” (Conditional Use No. 1847) filed on behalf of Brian D. Butler, with the following conditions:**

- M 649 10 Adopt Ordinance No. 2164 (C/U No. 1847) (continued)**
1. The Final Site Plan shall show all required parking areas.
  2. There shall not be any outside storage of junked vehicles, automobile parts, equipment, tires, or other materials used to repair cars or agricultural equipment.
  3. No vehicles for sale will be displayed on the premises.
  4. The only repair work allowed in the shop will be for automobiles, trucks and farm equipment.
  5. There may 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 or roadways.
  7. The Final Site Plan shall specifically show the area that is the subject of the Conditional Use, which that area shall be, at least 3/4 of an acre in size.
  8. The area for a dumpster shall be relocated to the rear of the garage building and shall be screened from view. The location of the dumpster shall be shown on the Final Site Plan.
  9. All customer vehicles shall be stored inside at night.
  10. The Final Site Plan shall be subject to the 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**

**Old Business/ Proposed Ordinance/ C/U No. 1855**      **The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR GENERAL OFFICES AND MEDICAL/PROFESSIONAL OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.40 ACRES, MORE OR LESS” (Conditional Use No. 1855) filed on behalf of Double R Holdings, LLC.**

**The Planning and Zoning Commission held a Public Hearing on this application on September 9, 2010 at which time action was deferred. The Commission deferred action again on September 23, 2010. On October 14, 2010, the Commission recommended that the application be approved with**

**the following conditions:**

**Old  
Business/  
Proposed  
Ordinance/  
C/U  
No. 1855  
(continued)**

- 1. The offices shall be limited to professional medical care or other services incidental to such a use. The offices may also be used for professional services such as law offices, accountant offices, engineering offices and similar professions. The project shall not be occupied by general contractors, contractors, retail operations, or other uses inconsistent with the residential nature of the neighboring properties.**
- 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 or Plantation Road.**
- 3. The use shall comply with all DelDOT regulations and requirements.**
- 4. The project shall be connected to the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District as soon as that service is available to the site. In the interim, the project may be served by an on-site sanitary sewer system in accordance with DNREC regulations.**
- 5. The Site Plan shall be designed so that the buildings are configured with a residential appearance. As part of the Site Plan review, front, side and rear elevation plans shall be submitted to the Commission to confirm the residential appearance and character of the buildings.**
- 6. All parking shall be relocated to the rear or the interior of the property and screened from view from Plantation Road and neighboring properties. In addition, there shall be a landscaped buffer area along the northern and southern boundaries of the property.**
- 7. 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.**
- 8. One lighted sign, not to exceed 32 square feet in size per side shall be permitted.**
- 9. The Final Site Plan shall be subject to the approval of the Planning and Zoning Commission.**
- 10. The Conditional Use shall become null and void unless substantially underway within three (3) years of Council's approval.**

**The County Council held a Public Hearing on this application on September 28, 2010 at which time action was deferred and the record was left open for DelDOT's comments on the 2002 Traffic Impact Study.**

**Lawrence Lank, Director of Planning and Zoning, reported that, at the September 28th meeting, objections were made in regards to traffic conditions and traffic along Plantation Road and at the intersections of Plantation Road and Shady Road, Plantation Road and Postal Lane, Plantation Road and Robinsonville Road, and Plantation Road and Cedar Grove Road. The parties stating objections to the application referenced concerns that the original DelDOT comments relating to this application were based on a 2002 Traffic Impact Study and not a more current study. The Council was advised that DelDOT had granted approval of the**

**Old  
Business/  
Proposed  
Ordinance/  
C/U  
No. 1855  
(continued)**

entrance plan for this project in October 2009. The Applicant stated that DelDOT would grant a renewal of the same entrance plan approval if the Conditional Use is approved. The Council questioned if DelDOT felt the Traffic Impact Study provided enough data to warrant issuance of an entrance approval or if it would be necessary that additional traffic studies be required. Mr. Lank stated that, following the Public Hearing, he wrote to Mark Cote, Subdivision Engineer (DelDOT), and asked for a response. On October 27, 2010 Mr. Lank wrote to Mr. Cote again requesting a response. On November 15, 2010, a response was received. Mr. Lank summarized the response - DelDOT's original recommendation is still valid and DelDOT would not anticipate changing the recommendations with the preparation of a new study. Additionally, DelDOT indicated that the original study provides the necessary information for the entrance approval. Mr. Lank noted that, in their recommendation, DelDOT suggested an additional condition of approval that the applicant shall participate in the funding of the Plantation Road projects as set forth in DelDOT's letter of November 15, 2010.

Mr. Cole suggested and the Council discussed the possibility of limiting the Conditional Use to two buildings to lessen the impact on infrastructure.

**M 650 10  
Approve  
Additional  
Condition**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to limit the Conditional Use to two buildings.

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

**[Denied]**

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

**M 651 10  
Approve  
Additional  
Condition**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to approve an additional condition as recommended by DelDOT, as follows: The Applicant shall participate in the funding of Plantation Road projects as set forth in DelDOT's letter of November 15, 2010.

**Motion Adopted:       5 Yeas.**

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

Mr. Lank noted that this additional condition would be added to Condition No. 3, as recommended by the Planning and Zoning Commission.

**M 652 10  
Adopt  
Ordinance  
No. 2165  
(C/U**

A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to Adopt Ordinance No. 2165 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR GENERAL OFFICES AND MEDICAL/PROFESSIONAL OFFICES TO BE LOCATED ON A

**No. 1855) CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.40 ACRES, MORE OR LESS” (Conditional Use No. 1855) filed on behalf of Double R Holdings, LLC, with the following conditions:**

**M 652 10  
Adopt  
Ordinance  
No. 2165  
(C/U  
No. 1855)  
(continued)**

- 1. The offices shall be limited to professional medical care or other services incidental to such a use. The offices may also be used for professional services such as law offices, accountant offices, engineering offices and similar professions. The project shall not be occupied by general contractors, contractors, retail operations, or other uses inconsistent with the residential nature of the neighboring properties.**
- 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 or Plantation Road.**
- 3. The use shall comply with all DelDOT regulations and requirements. The Applicant shall participate in the funding of Plantation Road projects as set forth in DelDOT’s letter of November 15, 2010.**
- 4. The project shall be connected to the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District as soon as that service is available to the site. In the interim, the project may be served by an on-site sanitary sewer system in accordance with DNREC regulations.**
- 5. The Site Plan shall be designed so that the buildings are configured with a residential appearance. As part of the Site Plan review, front, side and rear elevation plans shall be submitted to the Commission to confirm the residential appearance and character of the buildings.**
- 6. All parking shall be relocated to the rear or the interior of the property and screened from view from Plantation Road and neighboring properties. In addition, there shall be a landscaped buffer area along the northern and southern boundaries of the property.**
- 7. 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.**
- 8. One lighted sign, not to exceed 32 square feet in size per side shall be permitted.**
- 9. The Final Site Plan shall be subject to the approval of the Planning and Zoning Commission.**
- 10. The Conditional Use shall become null and void unless substantially underway within three (3) years of Council’s approval.**

**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**

**Old  
Business/**

**The Council discussed the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY**

**Proposed Ordinances Relating to Manufactured Homes**

**AMENDING ARTICLE XXIV § 115-172 G RELATING TO CONDITIONAL USES REGARDING MANUFACTURED HOMES”.**

The Planning and Zoning Commission held a Public Hearing on this application on September 23, 2010 at which time action was deferred. On October 14, 2010, the Commission recommended that the proposed ordinance be approved for the following reasons and with the following amendments:

**Old Business/ Proposed Ordinances Relating to Manufactured Homes (continued)**

1. This Amendment is the result of meetings and recommendations from a Manufactured Housing Committee that included representatives from the County, Park Owners, and Home Owners.
2. This Amendment clarifies regulations regarding accessory buildings in manufactured home parks, and adds Code language addressing the construction, location and dimensions of unenclosed steps, landings and handicap ramps providing access to mobile homes, which had previously been subject to size and lot coverage limitations that were often unreasonable.
3. It is recommended that Section 2, creating a new Subparagraph 13 of Section 115-172G of the Code be amended in the last sentence to read, “An existing accessory building, of the same dimension, may be replaced in the same location if the accessory building was previously permitted by Sussex County and if authorized by the Park Management.” As currently worded, it is unclear who may have granted the previous permit.
4. It is recommended that Section 2, creating a new Subparagraph 14 of Section 115-172G of the Code be amended to insert the word “temporary” prior to the words “handicap ramps” throughout the Subparagraph; and by adding the words “for emergency needs” after the words “handicap ramps” in the first line of the Subparagraph.
  - a. It is recommended that the 4th sentence of new Subparagraph 14 be amended so that it states as follows: “Temporary handicap ramps may be permitted for emergency needs upon receipt of an affidavit from a doctor on an annual basis that an emergency situation exists and shall be subject to the approval of Park Management, the Director, and the County’s Chief of Building Code.”
5. It is recommended that a new sentence be added at the end of new Subparagraph 14 to state: “A temporary handicap ramp permitted under this Subparagraph shall be removed if the need for it no longer exists.”

The County Council held a Public Hearing on this ordinance

amendment on October 12, 2010 at which time action was deferred and the record was left open for (1) the recommendation of the Planning and Zoning Commission and (2) written public comments for ten working days after introduction of the Planning and Zoning Commission's recommendation to the County Council. It was noted that the ten working days terminated on November 24th at 4:30 p.m.

Old  
Business/  
Proposed  
Ordinances  
Relating to  
Manu-  
factured  
Homes  
(continued)

Mr. Lank reported that three letters were received during the written public comment period. The letters were from Roberta Hemmerich, John G. Walsh, and Pat Weyl. The letters were previously distributed to the Council and were made a part of the record.

The Council also discussed the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXVII 115-211 RELATING TO VARIANCES".

The Planning and Zoning Commission held a Public Hearing on this application on September 23, 2010 at which time action was deferred. On October 14, 2010, the Commission recommended that the proposed ordinance be approved for the following reasons and with the following amendments:

1. This Amendment is the result of meetings and recommendations from a Manufactured Housing Committee that included representatives from the County, Park Owners and Home Owners.
2. The Amendment clarifies that a neighbor to a property that has received an approved variance for the location of an accessory structure does not need to apply for his or her own variance when he or she replaces their own accessory structure with one of the same size, and as long as other setback requirements are met.
3. This recommendation is subject to the following suggestions:
  - a. There is an apparent typographical error in Section 1. It should refer to Section 115-211, not Section 115-121 as currently worded. The heading of the Ordinance correctly refers to Section 115-211.
  - b. Council should consider inserting the words "as previously permitted by Sussex County" to the Ordinance. This would make it consistent with the requirements of the Ordinance Amendment for Conditional Uses Manufactured Homes, which allows the replacement of an existing accessory building, but only if it was previously permitted by Sussex County.
  - c. Because this Amendment still requires all setback requirements to be met, and only avoids the need for a variance regarding building separation, this should be clarified.
  - d. It is suggested that the amendment be redrafted to incorporate these changes, so that it now reads as follows:  
H. In a Manufactured Home Park, if an adjoining site received

a variance for building separation from Sussex County, no variance for building separation caused by the adjoining site's variance shall be required for the replacement of an existing accessory structure previously approved by Sussex County, as long as all setback requirements are met and the replacement structure is of the same size and on the same footprint.

Old  
Business  
(continued)

Mr. Lank reported that, in regards to the two proposed ordinances, rearranging the wording does not change the intent of the ordinances and therefore, does not require that the ordinances be readvertised and new public hearings held.

Mr. Moore distributed the redrafted ordinances, which are based on the recommendation of the Planning and Zoning Commission.

M 653 10  
Defer  
Action on  
Ordinances  
Relating to  
Manu-  
factured  
Homes

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to defer action on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXIV § 115-172 G RELATING TO CONDITIONAL USES REGARDING MANUFACTURED HOMES" and the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXVII 115-211 RELATING TO VARIANCES" for the purpose of allowing time for the Manufactured Housing Ad Hoc Committee to review the Proposed Ordinances.

Mr. Moore expressed concern about the Motion. He stated that the Proposed Ordinances have been advertised for Public Hearing; that the Public Hearings have been held; that the record remained open for a period of time for written comments; that the written comment period has ended; and that if the Council now sends this matter back to the Ad Hoc Committee for further discussion, it would necessitate newly advertised Public Hearings.

Motion  
Died

The Motion Died for the lack of a Second.

M 654 10  
Defer  
Action on  
Ordinances  
Relating to  
Manu-  
factured  
Homes

An amended Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to defer action for a period of one week on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXIV § 115-172 G RELATING TO CONDITIONAL USES REGARDING MANUFACTURED HOMES" and the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXVII 115-211 RELATING TO VARIANCES" to allow time for the County Attorney to look at the potential of submitting the two ordinances to the Ad Hoc Committee for review and comment.

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

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

**(Mr. Cole was out of the room during the discussion on the ordinances.)**

**Requests Mrs. Webb presented grant requests for the Council's consideration.**

**M 655 10 A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to give  
Community \$400.00 (\$200.00 each from Mr. Wilson's and Mr. Phillips' Community  
Grant Grant Accounts) to New Coverdale Outreach Mission (NCOM) for  
community programs.**

**Motion Adopted: 5 Yeas.**

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

**M 656 10 A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to give  
Community \$200.00 (\$100.00 each from Mr. Wilson's and Mrs. Deaver's Community  
Grant Grant Accounts) to the Mispillion Art League for programs and activities.**

**Motion Adopted: 5 Yeas.**

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

**M 657 10 A Motion was made by Mrs. Deaver, seconded by Mr. Vincent, to give  
Community \$500.00 from Mrs. Deaver's Community Grant Account to the First State  
Grant Community Action Agency for their Community Clean Up Day.**

**Motion Adopted: 5 Yeas.**

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

**M 658 10 A Motion was made by Mr. Wilson, seconded by Mr. Vincent, to give  
Community \$250.00 from Mr. Phillips' Community Grant Account to the Millsboro  
Grant Lions Club for the purchase of Return Day pins.**

**Motion Adopted: 5 Yeas.**

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



**Mr. Phillips, Yea**

**M 659 10**      **A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give \$500.00**  
**Community**      **from Mr. Cole's Community Grant Account to the Rehoboth Beach Sunrise**  
**Grant**            **Rotary Club's annual fundraiser to benefit local charities.**

**Motion Adopted:      5 Yeas.**

**M 659 10**      **Vote by Roll Call:      Mrs. Deaver, Yea; Mr. Wilson, Yea;**  
**(continued)**      **Mr. Cole, Yea; Mr. Vincent, Yea;**  
                    **Mr. Phillips, Yea**

**M 660 10**      **A Motion was made by Mr. Cole, seconded by Mr. Vincent, to give**  
**Community**      **\$5,000.00 from Mr. Cole's Community Grant Account to the Rehoboth**  
**Grant**            **Beach Historical Society for the Rehoboth Beach Museum.**

**Motion Adopted:      5 Yeas.**

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

**There was no additional business.**

**M 661 10**      **At 12:24 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Vincent**  
**Go Into**        **to recess and to go into Executive Session for the purpose of discussing**  
**Executive**      **issues relating to pending/potential litigation and personnel. Motion**  
**Session**       **Adopted by Voice Vote.**

**Executive**      **At 12:26 p.m., an Executive Session of the Sussex County Council was held**  
**Session**       **in the office of the County Administrator for the purpose of discussing**  
                **pending/potential litigation and personnel. The Executive Session**  
                **concluded at 12:40 p.m.**

**M 662 10**      **At 12:42 p.m., a Motion was made by Mr. Vincent, seconded by Mrs.**  
**Reconvene**      **Deaver, to come out of Executive Session and to reconvene the Regular**  
**Regular**        **Session. Motion Adopted by Voice Vote.**  
**Session**

**Action**        **Mr. Moore announced that no action was necessary on Executive Session**  
                **items. He also noted that only issues relating to personnel were discussed.**

**M 663 10**      **At 12:43 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Vincent,**  
**Recess**        **to recess until 1:30 p.m. Motion Adopted by Voice Vote.**

**\*\*\***

**M 664 10**      **At 1:35 p.m., a Motion was made by Mr. Cole, seconded by Mr. Wilson, to**  
**Reconvene**      **reconvene the meeting. Motion Adopted by Voice Vote.**

**Mr. Phillips was not present and Mr. Vincent presided.**

**Public  
Hearing/  
C/U  
No. 1872**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MULTI-FAMILY DWELLING STRUCTURE (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6,000 SQUARE FEET, MORE OR LESS” (Conditional Use No. 1872) filed on behalf of Kim Swann.**

**Public  
Hearing/  
C/U  
No. 1872  
(continued)**

**Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on November 18, 2010 at which time the Commission recommended that the application be approved with conditions.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated November 18, 2010.)**

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

**Mr. Lank distributed copies of an Exhibit Book provided by the Applicant.**

**Kim Swann, Applicant, was present with Jim Fuqua, Attorney. They stated that a duplex structure is proposed; that the lot is a standard sized lot, 60 feet by 100 feet, in the Tower Shores Subdivision; that on September 10, 2010, the Board of Adjustment granted approval of a variance for the lot size to allow multi-family use of the lot; that a cottage exists on the site; that the cottage is not elevated to meet the Flood Zone requirements; that the cottage is one of a few homes that was not destroyed in the storm of 1962; that over the years, the older single family homes have been removed and replaced by duplexes or condominiums; that to the west of the site are duplexes within the B-1 Neighborhood Business zoning; that to the east are duplexes and condominiums; that across Admiral Road are duplexes; that all of the duplexes in the subdivision are on similar lots to this site; that the character of the subdivision is multi-family use; that there will be no adverse impact on the neighborhood or community since the use is similar to the residential character of the subdivision; and that all services in the area already serve the existing cottage and homes in the subdivision.**

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

**M 665 10  
Adopt  
Ordinance  
No. 2166  
(C/U  
No. 1872)**

**A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt Ordinance No. 2166 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MULTI-FAMILY DWELLING STRUCTURE (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6,000 SQUARE FEET, MORE OR LESS”**

**(Conditional Use No. 1872) filed on behalf of Kim Swann, with the following conditions:**

**M 665 10  
Adopt  
Ordinance  
No. 2166  
(C/U  
No. 1872)  
(continued)**

- 1. Only two units shall be constructed upon the property.**
- 2. The development shall be served as part of a Sussex County Sanitary Sewer District.**
- 3. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m. or shall be subject to the requirements of Tower Shores, if more restrictive.**
- 4. The Site Plan shall be subject to the approval of the Planning and Zoning Commission.**
- 5. The Conditional Use shall expire unless it is substantially underway within three (3) years of the Council's approval.**

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

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

**Mr. Phillips joined the meeting during the Public Hearing on Change of Zone No. 1697.**

**Public  
Hearing/  
C/Z  
No. 1697**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO MODIFY CONDITION NO. 10 IMPOSED ON ORDINANCE NO. 1573 FOR CHANGE OF ZONE NO. 1475, THE APPLICATION OF RIBERA-ODYSSEY, LLC, AS AMENDED BY ORDINANCE NO. 2018 FOR CHANGE OF ZONE NO. 1697, THE APPLICATION OF PENINSULA AT LONG NECK, LLC FOR “THE PENINSULA”, A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, TO EXTEND THE TIME TO CONSTRUCT AND OPEN FOR USE THE GOLF CLUBHOUSE AND NATURE CENTER FACILITIES” (Change of Zone No. 1697) filed on behalf of Land Tech Receiver Services, LLC.**

**Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on November 18, 2010 at which time the Commission deferred action and left the record open for a period of 10 days after receipt of the Restrictive Covenants and the Escrow Agreement to allow for Counsel's review.**

**(See the minutes of the meeting of the Planning and Zoning Commission dated November 18, 2010.)**

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

**Mr. Lank distributed copies of an Exhibit Book provided by the Applicant.**

Mr. Lank reported that, since the Public Hearing before the Commission, copies of the Escrow Agreement and the Restrictive Covenants have been received and are being reviewed by Vince Robertson, Assistant County Attorney. Also, Mr. Lank reported that ten additional letters/emails have been received in support of the application and one letter has been received in opposition to the application. The letters and emails have been made a part of the record.

Public  
Hearing/  
C/Z  
No. 1697  
(continued)

Jim Fuqua, Attorney, was present on behalf of the application. He stated that the application is to modify Condition No. 10 of Change of Zone No. 1475, the original Peninsula RPC Ordinance; that in November 2002, "The Peninsula" project was approved; that sales began in May 2004; that all amenities have been built except for the clubhouse and the nature center; that since 2007, the national economy has impacted the project; that there have been no developer sales since January 2008; that in February 2008, Ribera-Odyssey, LLC applied to modify this Condition and received approval in December 2008 that the clubhouse construction begin within 2 years and be completed with 3.5 years; that a performance bond was required to be posted; that the real estate market died during 2008 and 2009; that sales within the project started in May 2004, during the peak of the real estate market, and during that period, significant monies were expended to generate real estate prospects; that sales were brisk and pricing was at the top of the market; that approximately 425 lots, homes, and condominiums had been sold since the opening of sales and January 2008, representing 30 percent of the total properties to be developed in the project; that roads, water, sewer and storm drainage to serve over 1,200 home sites were installed, and over \$48,000,000 was expended to build an impressive array of amenities, which include a signature golf course, driving range, artificial hitting stations, practice greens and chipping areas, golf pro shop, outdoor pool, indoor pool, indoor heated spa, a wave pool, an outdoor heated spa, a health and fitness center with locker rooms and saunas, massage rooms, an exercise equipment room, an aerobics room, a children's playroom, a dining grill with seating for 44 people indoors and 90 people outdoors, eight tennis courts, a basketball court, a volleyball court, 10 miles of walking, biking and nature trails, a fishing pier, boardwalk and kayak launch dock, a community garden, a bay beach and community dock, and a self service community Post Office; that all amenities have been constructed with the exception of the nature center and clubhouse; that efforts to restructure the project ultimately failed and on October 14, 2009, the lender filed a motion with the Chancery Court of Delaware to appoint a receiver to manage the project and to preserve and protect its values; that Land Tech Receiver Services, LLC was appointed by the Chancery Court to manage the project; that Land Tech representatives came in to investigate the project and found that the project design included 31 stormwater management ponds; that the ponds had been constructed, but were not inspected by the Conservation District and that no record drawings had been prepared; that in excess of \$1.4 million in Letters of Credit had expired; that additional Letters of Credit had been issued to guarantee completion of certain roads and sewer infrastructure in excess of

Public  
Hearing/  
C/Z  
No. 1697  
(continued)

\$2.8 million and that most of these had expired; that there was no active sales program; that the builder program had ceased; that the Club was operating at a deficit in excess of \$2 million per year; that the fishing pier and boardwalk on the Indian River Bay had been damaged and was unusable as a result of a storm in Spring 2009; that the kayak launch was built, but was not accessible since it was not connected to the boardwalk; that State of Delaware subaqueous land lease fees were unpaid since 2005; that the previously approved clubhouse zoning matter was out of compliance since no site plan had been filed and no guarantee of financial assurance had been provided; that the Peninsula Community Association was a functioning HOA Board of Directors and no meetings had been held and no records were being maintained for the Board; that new laws had been passed in Delaware requiring that a homeowner sit on the HOA Board and none had been appointed; that Land Tech Receiver Services, LLC immediately made payment of past due taxes and sewer fees for over \$300,000; that the kayak launch area has been completed by providing connection to the boardwalk; that all of the stormwater management ponds have been inspected by the Conservation District and surveyed by the Project Engineer; that record drawings have been prepared and submitted to the Conservation District for review and approval and punch lists have been issued; that all ponds have been repaired and accepted by the Conservation District and a small Letter of Credit has been left in place to guarantee any needed repairs that might occur from project construction efforts; that with regards to roads and sewer, the Contractor has completed asphalt surface paving in portions of the Conservancy and Veranda phases where home construction is substantially complete, as well as the majority of Lakeside Village and all of Lakeside phases; that sewer in these areas has been inspected, punch lists prepared and completed, all for the purpose of garnering acceptance of the roads and sewer system and eliminating or reducing the Letters of Credit; that the total required Letters of Credit have been reduced to just over \$750,000 and all will be in place with the County in November 2010; that payment of the Delaware subaqueous land fees are now current; that they have re-launched the sales and marketing program to begin construction of a single family series of homes in the Marina Bay neighborhood; that a number of necessary facility repairs have been completed at the Club; that revenue generation and cost reduction efforts have reduced the current annual Club deficit to just over \$1 million; that the clubhouse zoning matter still remains unresolved; that in reference to the nature center, the initial phase, including 3 separate boardwalks, a floating dock for kayak launching and a parking area, has been completed; that the second phase will include a small screened gathering area, rest rooms, kayak storage and an outside deck that will tie into the boardwalks; that this phase has not been built; that the facility is planned to be owned by the HOA and maintained through HOA assessments; that the community is close to the point where it can support the nature center within the current HOA budget, without any increase in HOA fees; that an estimated cost to construct the remaining phase is \$150,000.00 to \$200,000.00; that in reference to the proposed permanent clubhouse, preliminary plans, a site plan and cost estimates have been completed, and they estimate that the

Public  
Hearing/  
C/Z  
No. 1697  
(continued)

permanent clubhouse, fully furnished, will cost around \$5 Million; that the clubhouse is planned to include dining capacity of just over 200, with additional seating on outdoor terrace, a full commercial kitchen, offices, coolers and freezers, flexible meeting space separable from the dining room via partitions, an entry foyer, restrooms, coat room, bridal room, substantial storage areas, a bar with seating for 30 plus with an outdoor terrace, golf cart storage for 85 carts, locker rooms, a renovated and expanded golf pro shop and office, office space for staff and a staff conference room, golf bag storage and additional parking; that the club has some 475 members; that through a reduction in operating costs, the club is on track to reduce the operating deficit in 2010 to just over \$1 Million; that the operation of a new clubhouse at this time would only further increase the operating deficit of the club by an estimated \$1.1 Million per year; that the Receiver and the lender are anxious to eliminate club operating deficits, so these additional deficits would have a direct impact on member dues, coming close to doubling the dues from their current level; that this is not desirable at this time; that the real estate market in The Peninsula would literally be priced out of the market when compared to the competition; that original projections called for a significantly higher percentage of full golf members; that the actual number is less than 20%, with about 30% social membership and 50% sport membership; that this results in a lower level of dues and usage to support club operations; that the clubhouse could not be built today without a significant increase in dues to all members; that the new clubhouse should be constructed when the number of members makes operating the entire facility, with the new clubhouse, economically viable; that Land Tech Receiver Services, LLC and Troon, the golf course management company, have worked closely together in an effort to reduce the current operating deficit of the club while not significantly affecting the overall level of service; that a minimum level of 750 members, with at least 250 of those being full golf members, or a total level of 950 members, even if there are not 250 full golf members, is required to make club operations economically viable; that they are proposing to amend Condition No. 10 as follows:

- A. Recreational facilities, e.g. tennis courts, swimming pool, community buildings, pathways, trails, and beaches shall be constructed and open for use by the residents within two (2) years of the issuance of the first building permit.
- B. The nature center shall be constructed and open for use by May 30, 2011.
- C. Construction of the clubhouse shall commence no later than the date that The Peninsula Golf and Country Club attains 950 members or 250 full golf members, whichever occurs first. All membership deposits paid after the effective date of this amended condition shall be placed in an escrow account created pursuant to The Peninsula Golf & Country Club Escrow Account for Membership Deposits dated the 3<sup>rd</sup> day of June, 2010, and modified on August 18<sup>th</sup>, 2010 (The Escrow Agreement) to assure construction of the clubhouse. In addition, Land Tech Receiver

**Services, LLC, (The Receiver) has confirmed that the sum of \$867,789 has already been deposited in said escrow account and that The Receiver shall deposit and additional sum of \$580,000 in said escrow account within seven days of the effective date of this amended condition. All funds deposited in said escrow account shall be released only in accordance with the terms of the Escrow Agreement.**

**Public  
Hearing/  
C/Z  
No. 1697  
(continued)**

- D. The Receiver shall provide semi-annual reports to the Sussex County Planning and Zoning Director indicating the number of Club Members and full golf members commencing seven days after the effective date of this amended condition.**

**Mr. Fuqua continued by stating that this proposal is in everyone's best interest; that the 70 letters in support, received to date, should show the homeowners' interest in the development of the project; that the economy is in a great decline; that the current Applicants are not the original developers; that they believe the proposed amended condition is an appropriate remedy; that the project should survive if the amendment is approved, and the approval of the amendment is critical to the success of the project; that the project is a beautiful unique community which has been hit by hard times and the amendment will benefit the homeowners, the lender, the County, businesses in the area, and will help in the operation of the community; that there are three levels of club membership: "Social" with an initiation fee of \$7,500 and monthly dues of \$150, "Sport" with an initiation fee of \$25,000 and monthly dues of \$210, and "Full Golf" with an initiation fee of \$47,500 and monthly dues of \$420; that dues will probably double if they are required to build the clubhouse immediately; that currently there are approximately 475 members of which 275 are "Sport" members, 100 are "Social" members, and 100 are "Full Golf" members; that they believe that the 950 member level will be achieved in 3 to 4 years, depending on the success of sales; that construction of the clubhouse will take 12 to 16 months; that they believe that the amendment represents some give and some take by everyone; that The Peninsula home owners are being delayed with regard to the clubhouse completion date, but they are avoiding significant increases in club dues; that given the level of development in the community today, the owners do have an impressive array of amenities to enjoy until the permanent clubhouse is constructed; that the bank is able to achieve an acceptable economic solution that allows it to maintain club operations and focus funds and efforts on sales of new real estate and bringing in new owners to the community and club; that the County will benefit by maintaining property values in this high end community and continue to provide significant tax revenues, and with many second home owners, there is a reduced burden on County services for these owners; that with sales projections annually for homes and home-sites in excess of \$35 Million, tax revenues will increase as new owners move into the community; that someone has to build these homes that will be sold, so this effort creates new jobs and there is a resultant positive impact in spending in the local economy from both workers and owners; that there are many failed**

Public  
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(continued)

projects that we have seen firsthand; that many lenders would have shut the doors given the circumstances at the Peninsula – a \$56 Million loan in default, a sales operation dead in the water for two years, a dreadful resort market and a club requiring additional infusion of \$2 Million per year; that The Receiver, in cooperation with Wells Fargo, wants to ensure that the Peninsula community thrives in the months and years ahead, but this requires that good business decisions are made and that the restart of the sales and marketing operations is successful; that approval of this amendment is essential to allow the project to continue to move forward; that they communicate regularly with the homeowners; that the Discovery Center building was reopened in May 2010 after renovation; that several builder/developers, e.g. Miller/Smith, NV Homes, Echelon, etc. are building in the project and now own some sections of the project; that the project contains a mixture of single-family detached dwellings, single-family detached condominiums, townhouses, and villas; that they are hoping to break even this year and for a strong sales year in 2011; that The Receiver has to give the Chancery Court quarterly reports on the status of the project; that some of the units have been sold at auction; that in excess of 300 homes have been built to date; that membership to the club is limited to owners in the project; that they have no intent to open membership outside of the project; that \$200,000 is being set aside for construction of the nature center; that the clubhouse is proposed to contain 18,000 square feet; that the 2008 amendment required a Performance Bond and the bond was not provided; that the Escrow Account is an interest bearing account and is an insured account; that memberships relate to units, whether individual or family; that they will submit a copy of the Escrow Agreement for Legal Counsel's review; that all initiation fees go into the escrow account; that the escrow account will remain in effect until the clubhouse is built or a bond is created to replace the escrow; and that all escrow account activities are reported to the Chancery Court.

Mr. Fuqua noted that Chuck Munn and Tom Henson of Land Tech Receiver Services, LLC were present to answer any questions.

Mr. Moore noted that the Escrow Account is being held in North Carolina and he questioned if there is any possibility of having it held in Delaware. Mr. Henson stated that the principal reason that the money is held in North Carolina is that the homeowners asked that the account be an interest bearing account and that when it became clear that the amount of the account would exceed \$250,000, he had to come up with a procedure to get the entire amount in an interest bearing account and that it participates in a CDARS Program, where it is broken into individual certificates of deposit, all of which have FDIC insurance. Mr. Henson stated that, assuming that there is a CDARS program in a financial institution in Delaware, he does not believe anyone would have a problem with the account being moved to Delaware.

Mr. Cole expressed concern about the extension being tied to memberships.



**Public comments were heard.**

**Public  
Hearing/  
C/Z  
No. 1697  
(continued)**

**John Gee, Dr. Char Stanko, Stuart Greenfeig, Steven Freedman, Mark Grahne (President of Atlantic Homes), Sheila Neville, John Stovall, Steve Doolan, Ed Niemann, and Ken Hoffman were present in support of the application. They stated that Land Tech has done a good job; that upon completion of the nature center, the only thing remaining to complete is the clubhouse and additional homes; that requiring the clubhouse to be built at this adverse time would put financial stress on the homeowners; that a finite date should be given (5 to 7 years) for construction of the clubhouse, which would give them the opportunity to raise the resources; that the clubhouse was projected to be 30,000 square feet; that no one could have projected the economic downturn and that everyone is suffering from it; that the success of The Peninsula also affects Millsboro and the surrounding areas; that there is an overwhelming amount of support for the amendment; that in this competitive construction environment, it would not be a good time to raise fees; that additional monthly fees would kill construction in The Peninsula; that they have everything they need in The Peninsula; that it would be a waste to have a large clubhouse with a large dining room and not enough people to fill it; that they hope The Peninsula will remain an affordable community; that it is not economically feasible to build the clubhouse; that it would have an adverse affect on future home sales at The Peninsula; that they have all the primary amenities now and there is not enough usage to justify spending that much more on a clubhouse at this time; that some homeowners are having trouble paying their dues now; and that the current facilities are more than adequate for the current number of members.**

**Mr. Gee submitted the results of an email poll that was taken: 205 responded in favor of the proposal and 4 responded in opposition to the proposal. Mr. Gee submitted the emails to the Council and the emails were made a part of the record.**

**Mr. Friedman submitted a copy of his letter of support dated December 1, 2010 into the record. He also noted that seven of his neighbors have signed proxies asking him to attend and speak in support of the amendment on their behalf. Copies of the proxies were submitted into the record.**

**Richard Abbott, Attorney, was present on behalf of Dennis and Carolyn Silicato in opposition to the proposed amendment regarding the deadline to complete the construction of the clubhouse at The Peninsula RPC. He stated that the deadline set by County Council was ignored for years and that an extension was not sought until after breach of the condition of approval; that the original deadline to build the clubhouse passed in 2005; that in November 2007, the County demanded that the developer immediately build the clubhouse; that nothing happened; that this effectively constitutes an unapproved 3-year extension of time; that in December 2008, the County Council adopted Ordinance No. 2018 which extended the time to construct the clubhouse and nature center; that**

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construction was required to commence by December 9, 2010 and be substantially completed by June 6, 2011; that the Ordinance also required site plans and performance bonding guaranteeing completion of the buildings no later than April 9, 2009; that this became another 3-year extension of time; that this proposed Ordinance is requesting an unlimited time extension; that if membership goals are not met, the clubhouse may never be built; that the Code provides that the County Council may, as a condition of RPC approval, adopt a schedule of construction and require safeguards which guarantee completion of the development plan; that Condition No. 10 was a schedule of construction and was imposed to insure timely completion of the amenities, including the clubhouse; that his clients object to the proposed amendment because hundreds of homeowners relied that a clubhouse would be built; that there has been no guarantee of completion of the clubhouse; that no hardship exists since Wells Fargo has plenty of money to build the clubhouse; that the Planning and Zoning Commission should recommend against the requested third extension of time because it would lead to an extension that would never end and potentially allow the clubhouse to never be built; that when the original developer marketed the properties, written and glossy marketing materials were provided that promised that a clubhouse would be built as soon as 350 club memberships were in place; that under the Declaration of Covenants, Conditions, and Restrictions for The Peninsula, all purchasers must become members of the Club; that 350 units were sold, therefore 350 memberships were in effect, at least 2 – 3 years ago, and the clubhouse is not yet built, creating a broken promise; that now The Receiver, on behalf of Wells Fargo, is asking for more time based on a false threat that if the clubhouse is built the existing 470 plus unit owners will have to bear the additional financial burden to pay for operations, maintenance, and upkeep of the clubhouse; that the Declarations provide that a *pro rata* share of costs will be paid by all owners in the project; that the large majority of the costs of operating the clubhouse will actually have to be borne by Wells Fargo; that the extension of time is really a government bailout; that if the County gives Wells Fargo one day past the December 9, 2010 deadline to start construction of the clubhouse, it is just handing out another Big Government Bailout to a Big Bank; that Wells Fargo already received a government bailout from the Federal government in 2008/2009; that the request should be denied and construction should start immediately; that The Receiver has not presented any clubhouse building plans or construction cost estimates; that no surety has been offered to guarantee construction of the clubhouse; that the County should deny the request unless they submit construction plans, cost estimates, and adequate security; that The Receiver was appointed by the Delaware Court of Chancery to oversee the project; that it has been made well aware both by the County and Mr. Abbott of its obligation to post surety and commence construction in accordance with the Ordinance enacted by County Council on December 9, 2008; that The Receiver and Wells Fargo have flaunted the law, ignored their legal obligations, and done nothing in an intentional effort to manufacture the need for the extension requested; that without adequate assurances in place, they will never build the clubhouse; that they

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did not commence construction as they knew that they were legally required to do over a year ago; that they cannot be trusted; that their request should be denied; that if there should be an extension granted, it should be for no more than 90 days and be conditioned upon the submission within 30 days of surety in the amount of no less than \$5,000,000 to insure construction of the clubhouse by the newly imposed deadline; otherwise, the County will be sending a message to all developers that the County is ready to give out governmental bailouts; that Wells Fargo is not paying their fair share and they should be paying 66 percent of the dues; that the homeowners are paying 100 percent of the cost when they should only be paying one-third of the cost; that the people that support this proposal don't know all the facts; that the best outcome for this process would be for the County to allow a couple of years to construct the clubhouse; and that Wells Fargo should post surety - a bond of 150 percent of the estimated cost - a \$7.5 million letter of credit; and that they should also be required to present development plans and have them approved.

Mr. Abbott submitted two documents into the record: a memo dated December 7, 2010 and an outline entitled "The Peninsula at Long Neck, Declaration of Covenants, Requirements for Wells Fargo Bank to Pay It's Fair Share.

Mr. Cole questioned if the County can now demand letters of credit. Mr. Moore responded that Legal Counsel is researching this issue.

Mr. Moore stated that the Covenants and Restrictions indicate that Wells Fargo is the legal/official owner of the lots and that in most cases, there is an exemption for the owner/developer from paying dues during the time of development. Mr. Moore stated that Legal Counsel will also be researching this issue.

Mr. Cole questioned if the Clubhouse could be scaled down.

Dennis Silicato addressed the suggestion that the project be scaled down and he stated that it has already been scaled down; that the project has been reduced from a \$17 million project to a \$5 million project; that the clubhouse was originally proposed to be 300,000+ square feet and that it has now been drastically reduced; that nothing has happened since the last extension request – no plans have been submitted and no bond has been posted; and that if an extension is granted, a specific time frame should be met and a bond or surety be provided for the County and the residents of The Peninsula.

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

M 666 10  
Defer  
Action on

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Change of Zone No. 1697 filed on behalf of Land Tech Receiver Services, LLC and to leave the record open for sixty days following the receipt of the

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**recommendation 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**

**M 667 10  
Adjourn**

**A Motion was made by Mr. Cole, seconded by Mr. Wilson, to adjourn at  
3:33 p.m. Motion Adopted by Voice Vote.**

**Respectfully submitted,**

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