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

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

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

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

Call to Order

Mr. Vincent called the meeting to order.

M 601 12 Amend and Approve Agenda

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to amend the Agenda by deleting "Personnel", "Pending/Potential Litigation", and "Job Applicants′ Qualifications" under "Executive Session"; and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

Corre-spondence

Mr. Moore read the following correspondence:

ALZHEIMER'S ASSOCIATION, GEORGETOWN, DELAWARE.
RE: Letter in appreciation of grant.

BARBARA DEL MASTRO, THE WAY HOME, GEORGETOWN, DELAWARE.
RE: Letter in appreciation of the Council's support.

DELAWARE GUIDANCE SERVICES FOR CHILDREN & YOUTH, WILMINGTON, DELAWARE.
RE: Letter in appreciation of grant.

READING ASSIST INSTITUTE, WILMINGTON, DELAWARE.
RE: Letter in appreciation of grant.

Corre-spondence (continued)

READ ALOUD DELAWARE, GEORGETOWN, DELAWARE.
RE: Letter in appreciation of grant.

ROTARY AREA 4 CAN-DO PLAYGROUND, SEAFORD, DELAWARE.
RE: Letter in appreciation of grant.

$tand by Me Presen-tation

Mr. Lawson and Mary Dupont, Director of Financial Empowerment, Delaware Health and Social Services, announced the County's partnership with $tand By Me. Ms. Dupont presented information on the new initiative that is designed to increase the economic security of all Delawareans. She reported that Financial Empowerment is a priority of Delaware Governor Jack Markell and that the Delaware Financial Empowerment Partnership (DFEP) is a joint project of the State and the United Way of Delaware which was formed to create and implement an innovative package of financial empowerment services (called $tand by Me). Ms. Dupont stated that they work with many employers, non-profit organizations, government agencies, faith-based organizations, school districts, etc. including target groups such as veterans, people with disabilities, and seniors. Ms. Dupont stated that the program includes the following elements: personal financial coaching, education, financial services, post-secondary education services, and community referrals. Ms. Dupont noted that here are no income guidelines for the program and that they have an array of consumer friendly financial products and services as a viable alternative to predatory services, such as pay day loans, title loans, etc.

Ms. Dupont reported that the program started in New Castle County in May 2011 and they are now launching the program in Sussex County; partnerships are being formed in Sussex County with Beebe Hospital, Nanticoke Hospital, Goodwill, Delaware Tech, and now with Sussex County. Ms. Dupont noted that in each County they have a lead non-profit organization that runs the program; the lead partner in Sussex County is Goodwill. She noted that they will be co-locating financial empowerment centers throughout the County and that the Sussex County library locations will serve the public; the location at Delaware Tech is for the students and the public.

Ms. Dupont reported that, in May through October, they have provided service to 1,979 people. She noted that the funding for the program has come primarily through the private sector.

Ted Becker, member of the United Way Board, stated that the program being established in Sussex County is very strong and he thanked Mr. Lawson for his endorsement of the program as well as all of the partners in Sussex County.

In early 2013, Sussex County will partner with $tand By Me to offer free financial coaching for the public at the County's public libraries and free one-on-one financial coaching to the County's employees.

Future Agenda Item

Mrs. Deaver commented that she has constituents that want the County to start a medical scholarship program and that she would like this matter placed on a future agenda for discussion and consideration.

Procla-mation/ Cape Field Hockey Team

The Council presented a Proclamation to representatives of the Cape Henlopen Field Hockey Team entitled "A PROCLAMATION TO HONOR THE CAPE HENLOPEN HIGH SCHOOL FIELD HOCKEY TEAM UPON WINNING THE 2012 DIAA (DELAWARE INTERSCHOLASTIC ATHLETIC ASSOCIATION) CHAMPIONSHIP".

Election Year Scholarship Contest

Mr. Lawson reported on the 2012 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 23 national, state and local races in the November 6th general election. To break a tie, each entrant was asked to predict the total number of votes the winner of the gubernatorial 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 over 300 participants. The following students were recognized by the County Council:

- **Winner Paige Shockley, 12, a sixth-grader at the Sussex Academy of Arts & Sciences in Georgetown. (correctly picked all 23 races, the only entrant to have a perfect score).**
- **First runner-up Bo Shockley, 18, a Senior at Sussex Central High School.**
- **Second runner-up Alexandra Coverdale, 17, a senior at Cape Henlopen High School.**
- **Third runner-up Preston Hitchens, 11, a sixth grader at Laurel Middle School.**
- **Fourth runner-up Emily Lingo, 12, a seventh grader at Beacon Middle School.**
- **Fifth runner-up Ryan Swingle, 15, a sophomore 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 Councilmanic Grants, as well as from the law firm of Moore & Rutt.

DOJ and HUD Settlement Agreement Implemen-tation

Mr. Lawson reported on the Department of Justice (DOJ) and the Department of Housing and Urban Development (HUD) settlement agreement implementation; the DOJ Agreement is called a Consent Decree and the HUD Agreement is called a Voluntary Compliance Agreement. These agreements require the County to take immediate steps to meet the terms of the Settlement Agreement. The first requirements are due within 30 days of entering into the Settlement Agreement (late December). Mr. Lawson reported on the immediate requirements and action the County has taken to

DOJ and HUD Settlement Agreement Implementation (continued)

comply with the settlement agreements:

- **<u>Hire or appoint a new Fair Housing Compliance Officer.</u> – The County has appointed Brandy Nauman to that position, effective December 10, 2012.**
- **<u>Update the County's website to include the fair housing logo.</u> – The County has completed this task. The Fair Housing logo will now appear on the website and different departmental letterhead.**

Mr. Lawson reported on an additional action item that requires Council's approval:

- **<u>Adopt a Fair Housing Policy which was provided/drafted by the DOJ.</u>**

  Mr. Lawson reviewed a proposed Fair Housing Policy. He noted that the draft Fair Housing Policy was included in the Council's packets for review.

M 602 12 Approve Fair Housing Policy

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council approves the aforementioned Fair Housing Policy required by the settlement terms of the Consent Decree, entered into with the Department of Justice (DOJ) effective December 11, 2012.

Motion Adopted: **5 Yeas.**

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

Mr. Lawson reported on an additional action item that requires Council's approval:

- **<u>Publish a Public Notice in local circulation describing the details of the HUD Voluntary Compliance Agreement.</u>**

  Mr. Lawson noted that the Public Notice was included in the Council's packets for review. He explained that it lists in general terms the stipulations of the Settlement Agreement and gives information to constituents in the event they have questions regarding the terms. This Public Notice is required by the VCA. With Council's approval, the Public Notice will be advertised.

M 603 12 Approve Public Notice/ VCA Agreement

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council approves the Public Notice required by the settlement terms of the Voluntary Compliance Agreement (VCA) entered into with the Department of Housing and Urban Development (HUD) effective December 11, 2012; the County Council instructs the County Administrator to publish such notice pending HUD approval per the terms of the VCA.

M 603 12 (continued

Motion Adopted: **5 Yeas.**

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

Mr. Lawson stated that with these action items, the County is in compliance with both the Voluntary Consent Agreement and the Consent Decree for the remainder of 2012. Additional action items will be brought to Council in early 2013.

FOIA Policy

Mr. Lawson presented a draft 2013 Freedom of Information Act (FOIA) policy. He noted that this is the most significant revision of the County's FOIA policy since it was last updated in 1995. The updated policy complies with new public access regulations set forth by legislation passed last summer by the 146th Delaware General Assembly and signed into law by Governor Markell. Public bodies such as Sussex County government must promulgate and adopt policies in accordance with 29 Del. C., Chapter 100, that, among other things, establishes fees, designates a FOIA coordinator, and implements a system to track requests. Mr. Lawson reported that this new policy updates and codifies the practice and policy the County already has in place; it also improves customer service and enhances the County's transparency. He noted that the County is in compliance with Delaware Code. He also noted that the proposal improves the County's website and process to service FOIA requests. Chip Guy, Communications Director, reviewed the proposed FOIA page to be updated on the County's website highlighting the process on how FOIA requests can be made; the new website will make the process more clear and will provide more options. Mr. Lawson advised that Mr. Guy will serve as the County's FOIA coordinator.

M 604 12 Adopt FOIA Policy

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council adopts the aforementioned FOIA (Freedom of Information Act) Policy as introduced and in accordance with 29 Del. C., Chapter 100, effective December 11, 2012.

Motion Adopted: **5 Yeas.**

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

Discussion/ Draft Ordinances Relating to Time Extensions

Mr. Lawson reported that, at the December 4th Council meeting, the Council requested that draft ordinances be written to address the expiring applications for Subdivision, Conditional Uses, and Residential Planned Community Districts that were extended under Ordinance No. 2208; the time extension for these applications will expire January 1, 2013. Mr. Lawson presented two draft ordinances for the Council's consideration and

Discussion/ Draft Ordinances Relating to Time Extensions (continued)

noted that the Council has three options: do nothing and the applications lapse, grant an additional uniform time extension of a certain length (for example, one or two years) to every application within this group; or come up with a process to only allow an extension of a certain length (for example, one or two years) to viable applications whereby the applicant must report back to the County seeking an extension. Mr. Lawson noted that, if the Council chooses to adopt an ordinance approving another extension, the extension will be retroactive back to January 1, 2013, since the ordinance will not be considered and approved before January 1, 2013.

Introduction of Proposed Ordinances/ Time Extensions

Mr. Phillips introduced the Proposed Ordinances entitled "AN ORDINANCE PROVIDING FOR THE ADDITIONAL TEMPORARY EXTENSION OF TIME FOR SUBDIVISION APPLICATIONS, CONDITIONAL USE APPLICATIONS, AND RESIDENTIAL PLANNED COMMUNITY DISTRICTS" and "AN ORDINANCE PROVIDING FOR THE ADDITIONAL TEMPORARY EXTENSION OF TIME FOR SUBDIVISION APPLICATIONS, CONDITIONAL USE APPLICATIONS, AND RESIDENTIAL PLANNED COMMUNITY DISTRICTS, WITH A PROVISION FOR FURTHER EXTENSION UPON WRITTEN REQUEST". The Proposed Ordinances will be advertised for Public Hearing.

Administrator's Report

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

1. <u>Christmas and New Year's Holidays</u>

Sussex County offices will be closed on December 24, December 25, and January 1 to celebrate the Christmas and New Year's holidays. In addition, the Sussex County Council will not meet on December 18, December 25, or January 1. The next regularly scheduled meeting of the Sussex County Council will be on Tuesday, January 8, 2013, at 10:00 a.m.

2. <u>Delaware State Police Activity Report – October 2012</u>

Per the attached Delaware State Police activity report for October, there were 3,358 total traffic arrests and 1,585 criminal arrests. Of that 1,585, 492 were felony and 1,093 were misdemeanor criminal arrests. Of the total hours on duty spent, 35 percent were spent on criminal investigations.

3. <u>Sussex County Emergency Operations Center Call Statistics – November 2012</u>

Attached please find the call statistics for the Fire and Ambulance Callboard for November 2012. There were 13,936 total calls handled in the month of November. Of those 9-1-1 calls in November, 76 percent were made from wireless phones.

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

TechWorld Medicals/ Request for Economic Develop-ment Loan

Mrs. Webb introduced Dr. James Liu, MD, PhD, and Chief Executive Officer for TechWorld Medicals, Inc., a manufacturing company for NasalCare and Dr. Healing Healthcare products. TechWorld Medicals, Inc. has applied for an Economic Development Loan in the amount of $200,000. Mrs. Webb reported that Dr. Liu has completed the application process and presented his project to the Economic Development Loan Committee at a public hearing. On November 16, 2012, the Committee recommended that TechWorld Medicals, Inc. receive a $200,000 loan from the Economic Development Loan Fund, with stipulations.

Dr. Liu presented a powerpoint presentation showing and explaining his products, the marketing of the products, the impact of this loan on jobs in the area, and the potential for the future. He explained that the loan request is to support the commercialization of the critically needed health care product, DrHealing™ AsthmaCare™ Kit, made based on a patent pending technology in their Milford facility. He stated that the Council's support is needed for the hiring of new employees and to add the needed clean-manufacture rooms. Dr. Liu stated that TechWorld has immediate plans to hire five employees within 3 months and 5 more employees in six months.

Mrs. Webb advised that TechWorld Medical, Inc. has received DEDO's support and that the County would structure its loan based on the milestones that TechWorld must meet (hire five employees in the County within 3 months and 5 more employees in the County within six months and at the end of 12 months, 10 more employees); if the milestones are not met, a balloon payment will become due.

The terms of the financing are:

- **$200,000 secured loan – UCC financing statement, mechanics lien, and personal guarantees by stockholders**
- **1 percent interest rate**
- **10 year amortization with a balloon payment at the end of every three years with an option to renew loan, as long as they continue to meet the new employment growth commitment**
- **All documents to be obtained and reviewed by legal counsel**

M 605 12 Approve Economic Develop-ment Fund Loan

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, that the Sussex County Council loan TechWorld Medical, Inc. $200,000 from the Economic Development Fund once County Attorney Everett Moore is satisfied with all documents relating to this financing transaction.

Motion Adopted: 5 Yeas.

M 605 12 (continued)

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

Wastewater Agreement

Hal Godwin, Deputy County Administrator, presented a Wastewater Agreement for the Council's consideration.

M 606 12 Execute Wastewater Agreement/ Barrington Park/ Phase 2

A Motion was made by Mr. Cole, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 733-2, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Dove Barrington Development, LLC for wastewater facilities to be constructed in Barrington Park (AKA Bishops Landing) located in the Millville Expansion of the Bethany Beach Sanitary Sewer District.

Motion Adopted: **5 Yeas.**

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

Airport Restaurant/ Proposed Lease Amendment and Request to Issue a RFP for Restaurant Operations

Hal Godwin, Deputy County Administrator, reported that Paul Buchness, the current restaurant owner at the Sussex County Airport (Lighthouse Landing) does not wish to renew his lease which expires May 31, 2013. Mr. Buchness has notified the County that he wants to leave the restaurant as of December 31, 2012 unless the County subsidizes the operation (rent reduction and payment of utilities). Mr. Godwin advised that he has worked with Mr. Buchness to develop a compromise that keeps him and the restaurant in business through March 2013 provided the County reduces his monthly rent to One Dollar per month for January, February and March; this extra three month arrangement will allow time to recruit a new restaurant operator. Mr. Godwin reviewed a proposed Lease Amendment, which is subject to legal counsel's review. Mr. Godwin stated that the restaurant compliments the airport operations.

Mr. Godwin reported that interest has been expressed in the restaurant facility and that a Request for Proposals (RFP) will be advertised with Council's approval. He noted that the RFP will also be subject to legal counsel's review.

M 607 12 Approve Lease Amend-ment/ M&P Adventures

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, that the Sussex County Council approves a Lease Amendment to the 2008 Lease for the Sussex County Airport restaurant to M&P Adventures, Inc. that will terminate the lease on March 31, 2013 and reduce the rent for the first quarter of 2013 to $1.00 per month.

Motion Adopted: **5 Yeas.**

M 607 12 (continued)

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

M 608 12 Approve Issuance of RFP for Airport Restaurant

A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Council approves a Request for Proposals (RFP) to be issued immediately for the lease of the County's restaurant at the Airport Terminal , as approved by legal counsel.

Motion Adopted: **5 Yeas.**

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

DTCC Proposed Addendum to Power-plant Lease

Jim Hickin, Director of Airport and Industrial Park, presented an addendum to the Commercial Lease the County has with Delaware Technical & Community College (DTCC) for Lot NA-3 at the Sussex County Airport. The lease is for use by the college for their Powerplant Maintenance training facility. When the Lease was prepared in 2011, the metes and bounds of the lot were preliminary and the terms of the lease stipulated that DTCC would provide a survey of the final lot definition. The lot has now been surveyed and the proposed lease addendum inserts the official survey in place of the preliminary drawing.

M 609 12 Execute Addendum to DTCC Power-plant Lease

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, that the Sussex County Council authorizes the Council President to execute the Addendum to the Commercial Lease for Lot NA-3 at the Sussex County Airport with Delaware Technical & Community College, as presented.

Motion Adopted: **5 Yeas.**

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

Proposed Project Closeout/ Inland Bays Regional Wastewater Facility, Exp. #1

Michael Izzo, County Engineer, presented a request for a Project Closeout for the Inland Bays Regional Wastewater Facility, Expansion No. 1.

Mr. Izzo advised that he negotiated a term sheet with the contractor, Whiting Turner Construction Co.. The term sheet includes:

- **a Change Order in the credit amount of $205,684.47; this would allow for final payment to be made to Whiting Turner Construction Co. in the amount of $650,735.17 [almost all ($630,000.00) is retainage that was withheld from previous payments]**
- **a requirement of as-built plans, operations and maintenance manuals for the equipment**

Proposed Project Closeout/ Inland Bays Regional Wastewater Facility, Exp. #1 (continued)

- **Whiting Turner to submit release of liens from all sub-contractors**
- **warranty period for the contract work commenced on March 15, 2012**

Mr. Izzo stated that, in addition to the term sheet, a Motion is needed granting Substantial Completion to the contractor and approval of Change Order Nos. 7 and 8 which grant the $205,684.47 credit, and a Contract Amendment in the amount of $79,997.00 to Whitman Requardt and Associates to provide inspections services for the extended construction period (construction was scheduled to finish in September 2011 and it was extended to a March/April 2012 timeframe).

M 610 12 Project Closeout Action/ Inland Bays Regional Wastewater Facility, Exp. #1

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that the following be approved for Sussex County Project No. 09-19, Inland Bays Regional Wastewater Facility, Phase 1 Expansion, contingent upon the receipt of approval from the funding agencies, including the following:

- **the formal term sheet between Sussex County and Whiting Turner Construction Co. be approved;**
- **Substantial Completion be granted to Whiting Turner Construction Co. and final payment be made and all held retainage be released;**
- **Change Order Nos. 7 and 8 be approved in the credit amount total of $205,684.47; and**
- **Contract Amendment No. 15 with Whitman Requardt and Associates be approved in the amount of $79,997.00.**

Motion Adopted: **5 Yeas.**

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

EOC Supple-mental Cooling System/ Bid Award

Steve Hudson, Director of Technical Engineering, presented the bid results for the Emergency Operations Center Supplemental Cooling System, Sussex County Project No. 12-03. Five bids were received; however, the bids came in higher than expected. The low bid was submitted by Gillis Gilkerson of Salisbury, Maryland in the amount of $476,685.00 (Base Bid), with no alternates proposed. Mr. Hudson stated that this would be a 120 day contract, probably with a June 1, 2013 completion date.

In response to questions, Mr. Hudson explained why the work was estimated to cost approximately $250,000 and why the bids came in much higher. He stated that two internal pumping stations inside of the building are required that were not included in the original proposal. Also, there is a building addition that was not included in the original proposal; the cost of the proposed building addition came in much higher than anticipated (a brick exterior is proposed to match the Emergency Operations Center

EOC Supple-mental Cooling System (continued)

(EOC) building and the waterline under the proposed area for the building must be relocated).

Joe Thomas, Director of Emergency Operations, spoke regarding the criticalness of the EOC building and he stated that there is a possibility that this project is eligible for a 50 percent match from FEMA.

M 611 12 Award Bid/ EOC Supple-mental Cooling System

A Motion was made by Mr. Phillips, seconded by Mr. Cole, based upon the recommendation of the Engineering Consultants and the Engineering Department, that Sussex County Project No. 12-03, Emergency Operations Center Supplemental Cooling System, be awarded to Gillis Gilkerson Builders, Inc. of Salisbury, Maryland, at the base bid amount of $476,685.00.

Motion Adopted: 5 Yeas.

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

Mr. Vincent stated that it is his hope that the County seeks some type of monetary payment from the contractor who constructed the original system.

Old Business/ C/U No. 1917

Under Old Business, the Council discussed Conditional Use No. 1917 filed on behalf of Roosevelt Domond, an application for a beauty salon, barber shop, and spa.

The Planning and Zoning Commission held a Public Hearing on this application on December 15, 2011, at which time the Commission recommended that the application be deferred. On January 26, 2012, the Commission recommended that the application be denied.

The County Council held a Public Hearing on the application on January 10, 2012 at which time action was deferred.

M 612 12 Adopt C/U No. 1917

DENIED

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BEAUTY SALON, BARBER SHOP, AND SPA TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 17,228.6 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1917) filed on behalf of Roosevelt Domond.

Motion Denied: 5 Nays.

M 612 12 (continued) **Vote by Roll Call:** **Mrs. Deaver, Nay; Mr. Cole, Nay; Mr. Phillips, Nay; Mr. Wilson, Nay; Mr. Vincent, Nay**

Old Business C/U No. 1933

Under Old Business, the Council discussed Conditional Use No. 1933 filed on behalf of Mark A. Giblin.

The Planning and Zoning Commission held a Public Hearing on this application on July 26, 2012, at which time the Commission recommended that the application be deferred. On August 9, 2012, the Commission recommended that the application be approved subject to the following conditions:

A. The impound yard shall be surrounded by a fence with landscaping to screen it from neighboring and adjacent properties.
B. No more than 18 vehicles shall be permitted on the property besides the Applicant's own vehicles.
C. No permanently disabled or abandoned vehicles shall be allowed to remain on the property.
D. There shall be one lighted sign which shall not exceed 32 square feet in size to identify the towing service and the impound lot. The sign shall include a phone number to call for information about vehicles impounded and for other information about the service.
E. No vehicles shall be displayed for sale.
F. All security lighting shall be downward screened so that it does not shine on neighboring or adjacent properties.
G. The Final Site Plan shall clearly depict the areas set aside for parking of impounded vehicles, vehicles that are being services, and towing equipment.
H. The area set aside for the landscaping business, including equipment storage and any bins for materials such as topsoil, mulch, etc. shall clearly be depicted on the Final Site Plan.
I. The service business hours of operation shall be limited to 7:00 a.m. to 6:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 noon on Saturdays, with no Sunday hours.
J. The Final Site Plan shall include a landscaping plan for the area surrounding the impound yard screening it from neighboring or adjacent properties.
K. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

It was noted that, during the Public Hearing before the Council, questions were raised regarding the title of the Proposed Ordinance; the title of the Proposed Ordinance referenced towing service and landscaping business and the Applicant stated that he was asking for a Conditional Use for

Old Business C/U No. 1933 (continued)

towing, service, and landscaping business. Lawrence Lank, Director of Planning and Zoning, stated that the Applicant has a towing service, he impounds vehicles, he services vehicles, and he has a landscaping business. Therefore, there is a question on whether there are 2 businesses or 3 businesses.

Mr. Vincent referenced how the Proposed Ordinance was advertised by the County; there was no comma between the words "towing" and "service". Mr. Vincent asked Mr. Moore what the cleanest way to handle this.

Mr. Moore recommended that the Council consider the application for two businesses, the towing service and the landscaping business, since this is how it was advertised. If the Applicant desires to have a service business, then the application can be re-advertised and a new public hearing held. Further, due to the question of the error in the title of the Proposed Ordinance, the County could offer to waive the re-application fee.

M 613 12 Amend Recom-mended Conditions for C/U No. 1933

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to amend the conditions recommended by the Planning and Zoning Commission on Conditional Use No. 1933, as follows:

Amend Condition A to read "The impound yard shall be surrounded by a fence with landscaping to screen it from neighboring and adjacent properties, to be constructed on or before June 1, 2013.

Amend Condition B to read "No more than 18 impounded vehicles shall be permitted on the property besides the Applicant's own vehicles."

Amend Condition C to read "No permanently disabled or abandoned vehicles shall be allowed to remain on the property. All existing and abandoned vehicles shall be removed within 90 days."

Amend Condition G to read "The Final Site Plan shall clearly depict the areas set aside for parking of impounded vehicles and towing equipment."

Amend Condition I to read "The landscaping business hours of operation shall be limited to 7:00 a.m. to 6:00 p.m. Monday through Saturday with no Sunday hours."

Motion Adopted: 5 Yeas.

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

M 614 12 Adopt Ordinance

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to adopt Ordinance No. 2283 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL

M 614 12 Adopt Ordinance No. 2283 (C/U No. 1933) (continued)

RESIDENTIAL DISTRICT FOR A TOWING SERVICE AND LANDSCAPING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.374 ACRES, MORE OR LESS" (Conditional Use No. 1933) filed on behalf of Mark A. Giblin, with the following conditions, as amended:

A. The impound yard shall be surrounded by a fence with landscaping to screen it from neighboring and adjacent properties, to be constructed on or before June 1, 2013.
B. No more than 18 impounded vehicles shall be permitted on the property besides the Applicant's own vehicles.
C. No permanently disabled or abandoned vehicles shall be allowed to remain on the property. All existing and abandoned vehicles shall be removed within 90 days.
D. There shall be one lighted sign which shall not exceed 32 square feet in size to identify the towing service and the impound lot. The sign shall include a phone number to call for information about vehicles impounded and for other information about the service.
E. No vehicles shall be displayed for sale.
F. All security lighting shall be downward screened so that it does not shine on neighboring or adjacent properties.
G. The Final Site Plan shall clearly depict the areas set aside for parking of impounded vehicles and towing equipment.
H. The area set aside for the landscaping business, including equipment storage and any bins for materials such as topsoil, mulch, etc. shall clearly be depicted on the Final Site Plan.
I. The landscaping business hours of operation shall be limited to 7:00 a.m. to 6:00 p.m. Monday through Saturday with no Sunday hours.
J. The Final Site Plan shall include a landscaping plan for the area surrounding the impound yard screening it from neighboring or adjacent properties.
K. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion Adopted: **5 Yeas.**

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

Old Business/ C/U No. 1945

Under Old Business, the Council discussed Conditional Use No. 1945 filed on behalf of Alfonso Matos.

The Planning and Zoning Commission held a Public Hearing on this application on September 20, 2012 at which time the Commission recommended that the application be deferred. On October 25, 2012, the Commission recommended that the application be denied.

Old Business/ C/U No. 1945 (continued)

The County Council held a Public Hearing on this application on October 9, 2012 at which time action was deferred.

It was the consensus of the Council to direct the Director of Planning and Zoning to submit proposed conditions and reasons of approval for the Council's consideration.

M 615 12 Defer Action on C/U No. 1945

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to defer action on Conditional Use No. 1945.

Motion Adopted: **5 Yeas.**

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

Grant Requests

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

M 616 12 Council-manic Grant

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give $250.00 from Mr. Vincent's Councilmanic Grant Account to Nanticoke Health Services Foundation for their Holiday Appeal Campaign.

Motion Adopted: **5 Yeas.**

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

M 617 12 Council-manic Grant

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give $1,000.00 from Mr. Phillips' Councilmanic Grant Account to The Women's Club of the Keenwicks for computers for the Selbyville Middle School.

Motion Adopted: **5 Yeas.**

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

M 618 12 Council-manic Grant

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give $1,000.00 ($500.00 each from Mr. Wilson's and Mr. Phillips' Councilmanic Grant Accounts) to the Greater Georgetown Chamber of Commerce for parade expenses.

Motion Adopted: **5 Yeas.**

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

M 619 12 Council-manic Grant

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give $254.95 from Mr. Wilson's Councilmanic Grant Account to Sussex Technical High School for the Spring Sports Poster.

Motion Adopted: **5 Yeas.**

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

M 620 12 Council-manic Grant

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give $1,500.00 ($500.00 each from Mr. Cole's, Mr. Phillips' and Mr. Wilson's Councilmanic Grant Accounts) to the Indian River High School Band Boosters for travel expenses. (See M 626 12 – amount of grant amended.)

Motion Adopted: **5 Yeas.**

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

M 621 12 Council-manic Grant

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to give $1,000.00 from Mr. Vincent's Councilmanic Grant Account to Seaford District Library for educational and social programs.

Motion Adopted: **5 Yeas.**

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

M 622 12 Human Service Grant

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give $1,000.00 from Human Service Grants to Junior Achievement of Delaware for program costs.

Motion Adopted: **5 Yeas.**

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

There was no additional business.

M 623 12 Go Into Executive Session

At 12:46 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to recess the Regular Session and go into Executive Session for the purpose of discussing issues relating to land acquisition.

M 623 12 (continued)

Motion Adopted: **5 Yeas.**

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

Executive Session

At 12:48 p.m., an Executive Session was held in the Caucus Room of the Council Chambers for the purpose of discussing issues relating to land acquisition. The Executive Session concluded at 12:53 p.m.

M 624 12 Reconvene Regular Session

At 12:54 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: **5 Yeas.**

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

Action

There was no action on Executive Session items.

Amend Grant/ M 620 12

Mr. Phillips referenced the Motion on the Councilmanic Grant to Indian River High School Band Boosters and he stated that he would like to increase the amount of his grant.

M 625 12 Revisit Grant Requests

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to revisit Grant Requests.

Motion Adopted: **5 Yeas.**

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

M 626 12 Council-manic Grant (replaces M 620 12)

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to give $3,500.00 ($2,500.00 from Mr. Phillips' Councilmanic Grant Account and $500.00 each from Mr. Cole's and Mr. Wilson's Councilmanic Grant Accounts) to the Indian River High School Band Boosters for travel expenses.

Motion Adopted: **5 Yeas.**

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

(This Motion replaces Motion No. M 620 11.)

M 627 12
Recess

At 12:56 p.m., a Motion was made by Mr. Cole, seconded by Mr. Wilson, to recess until 1:30 p.m.

Motion Adopted: 5 Yeas.

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

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M 628 12
Reconvene

At 1:39 p.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to reconvene the Regular Session.

Motion Adopted: 5 Yeas.

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

Public Hearing/ C/Z No. 1723

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.25 ACRES, MORE OR LESS" (Change of Zone No. 1723) filed on behalf of John M. Gilman.

The Planning and Zoning Commission held a Public Hearing on this application on November 15, 2012 at which time the Commission recommended that the application be approved.

See the minutes of the Planning and Zoning Commission dated November 15, 2012.

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

An Exhibit Book was distributed to the Council.

The Council found that John Gilman was present with Shannon Carmean, Attorney with Sergovic, Carmean & Weidman, P.A.

Ms. Carmean stated that the site has had Conditional Use approval for an athletic club and outdoor recreation center and related parking (C/U #1750/Ordinance 2002) since 2008; that the Applicant wishes to add professional office use to the existing permitted uses for the property; that the Applicant is now proposing to create an office or offices on the second

Public Hearing/ C/Z No. 1723 (continued)

floor of the existing building by applying for B-1 Neighborhood Business zoning; that the Conditional Use does not allow the Applicant to utilize the property to its fullest potential; that since the economic downturn in 2008, the Applicant has been unable to secure the necessary funds to fully open his athletic club; that the Applicant has been informed by several banks that they will only fund the project if he is able to lease space to generate outside business revenue and therefore, the B-1 zoning application was applied for and will provide flexibility to rent the upstairs portion of the building; that the proposal is in compliance with the Comprehensive Land Use Plan since it will encourage tourism and other responsible commercial and industrial job providers to locate and invest in the County; that devoting the land to active recreational uses will serve tourism; that the site is located in a Low Density Area where business development should be largely confined to businesses addressing the needs of agricultural activities and residential development; that the application is compliant due to the focus of retail and office uses that will be providing convenience goods and services to nearby residents; that the Applicant is an entrepreneur who does not seek financial partnership with the County, only approval of a B-1 zoning classification to meet the financial criteria of his lender to allow additional revenue sources necessary to finance the implementation of the primary uses addressed in his Conditional Use previously granted; that part of the purpose of the B-1 zoning classification references that it is the intent to serve the needs of a relatively small area, primarily nearby rural, low density and medium density residential neighborhoods, and to enhance the general character of the district and its compatibility with its residential surroundings; that signs are limited to those accessory to businesses conducted on the premises; that the number, area and type of signs are limited; that the active recreational uses are still intended; that the Applicant has owned the property for 19 years; that the site is currently restricted to minimal uses due to septic limitations; that DelDOT currently has limited the use of the site to not exceed more than 200 trips per day; that there are 31 business or commercial uses in the Roxana area; that the Exhibit Booklet contains petitions in support of the application from 16 residents within one mile of the site; that the rezoning should not adversely impact the community or property values; that the building is completed, the entrance and driveway are completed with curbing, and that he still is intending to install the fitness equipment for the fitness center on the first floor of the building.

Mr. Gilman stated that the site plan will not change from the existing Conditional Use; that the site plan includes 58 parking spots, a tennis court, two grass sports fields, and two stormwater management ponds; that one stormwater management pond exists and the new bank funding will pay for the construction of the second pond; that the project will consist of three phases – the first phase will be to rent the professional offices and obtain the loan which will enable him to purchase the equipment and construct the additional stormwater pond, the parking lot and the fields; the second phase will be to implement the business of the sports fields; the third phase will be to

Public Hearing/ C/Z No. 1723 (continued)

construct the swimming pool. Mr. Gilman stated that this project will create 2 full time jobs and 6 to 10 subcontractor positions (massage therapy, personal training, sports training, etc.); and that the rezoning should not adversely impact the community or property values.

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

M 629 12 Adopt Ordinance No. 2284 (C/Z No. 1723)

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 2284 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.25 ACRES, MORE OR LESS" (Change of Zone No. 1723) filed on behalf of John M. Gilman.

Motion Adopted: 5 Yeas.

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

Public Hearing/ C/U No. 1949

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE RELOCATION OF THE ACCESS EASEMENT TO THE PROPOSED BORROW PIT (CU #1897) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.1571 ACRES, MORE OR LESS" (Conditional Use No. 1949) filed on behalf of Banks Family Farm Preservation Trust.

The Planning and Zoning Commission held a Public Hearing on this application on November 15, 2012 at which time the Commission recommended that the application be approved for the following reasons:

1) **This application is part of a borrow pit application that was previously approved by Sussex County Council with conditions. As part of that approval, the area of the access road to the borrow pit operation was included in the ordinance granting the Conditional Use. After the approval was granted, the Applicant and its land planners recognized that the road needed to be slightly relocated from where it was originally shown.**
2) **This approval simply adjusts or corrects the location of the access road so that the Final Site Plan will accurately reflect where the road is located on the ground. The road is still located in the same general location as where it was depicted during the public hearing on C/U #1897 and the adjustments are very minor.**
3) **This approval of the minor adjustment to the access road location**

Public Hearing/ C/U No. 1949 (continued)

will have no impact on traffic or the neighboring public roadways.

4) This approval has no impact upon the primary use of the site as a borrow pit.

5) This recommendation is subject to all of the Conditions imposed as part of Conditional Use No. 1897.

See the minutes of the Planning and Zoning Commission dated November 15, 2012.

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

Mr. Lank advised that Solutions IPEM had submitted a site plan for C/U No. 1897 for a proposed borrow pit and it was found that the easement proposed to serve the borrow pit had a somewhat different legal description than the easement reviewed during the original public hearings; that it was determined that the easement needed to go back through the public hearing process to correct the location; and that according to Solutions IPEM, the easement is generally in the same location as the original easement; that based on updated site topography, the entrance has shifted north along Irons Lane approximately five (5) feet to avoid an existing power pole; and that the easement was shifted on-site to better align with an existing farm road that has always been intended to be utilized as part of the access.

Mr. Lank referenced the survey of the property and he stated that the application is for the relocation of approximately 5 feet for the easement that serves the borrow pit that has been approved previously.

The Commission found that Frank Kea of Solutions IPEM was present on behalf of the Applicants and he stated that this application should be considered an administrative matter; that the statement made by Mr. Lank is accurate as it relates to the easement; that the easement is only moving approximately 5 feet; and that he does not anticipate any impact on the roadway or the entrance location with this change.

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

M 630 12 Adopt Ordinance No. 2285 (C/U No. 1949)

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2285 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE RELOCATION OF THE ACCESS EASEMENT TO THE PROPOSED BORROW PIT (CU #1897) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.1571 ACRES, MORE OR LESS" (Conditional Use No. 1949) filed on behalf of Banks Family Farm Preservation Trust.

Motion Adopted: 5 Yeas.

M 630 12 (continued) **Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea**

Public Hearing/ C/U No. 1948

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR PROFESSIONAL OFFICE USE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.03 ACRES, MORE OR LESS" (Conditional Use No. 1948) filed on behalf of Sharon L. Sherwood and Van Sherwood.

The Planning and Zoning Commission held a Public Hearing on this application on November 15, 2012 at which time the Commission deferred action. On December 6, 2012, the Commission recommended that the application be approved with the following conditions:

A. The use of the property shall be limited to small scale professional offices, such as doctors, lawyers, artist studios, accountants or similar uses.
B. There will only be one unlighted sign on the premises that shall not exceed 32 square feet on each side.
C. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties. There shall be no more than two offices on the property.
D. No outside storage shall be allowed on the premises.
E. A 6-foot tall screening fence shall be installed along the northern boundary line of the property.
F. Hours of operation shall be limited to 9:00 a.m. to 5:00 p.m. five (5) days per week.
G. The parking shall comply with all Code requirements for the particular use of this property. The Final Site Plan shall clearly show all required parking and the parking areas must be clearly marked on the site.
H. The Site Plan shall be subject to approval of the Planning and Zoning Commission.

See the minutes of the Planning and Zoning Commission dated November 15 and December 6, 2012.

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

The Council found that Sharon Sherwood was present and she stated that they purchased the property approximately 2 years ago; that they have worked to restore the property; that they have tried to keep the original character of the property so that it has a residential character; that they

Public Hearing/ C/U No. 1948 (continued)

propose to use the home on the site that sits on Route One for professional use; that they propose to use the studio located behind the house; and that it is not their intent to rent the studio. Ms. Sherwood stated that she concurs with the Planning and Zoning Commission's recommendation, with the exception of Condition F where the hours of operation are listed. She stated that would like some leeway in establishing the hours of operation to allow for an 8 hour operation somewhere between the hours of 8:00 a.m. and 7:00 p.m., six days per week; and that these hours would give more flexibility in renting to a professional business.

Ms. Sherwood noted that she submitted a series of photographs of the area and the site.

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

At the request of Mrs. Deaver, Mr. Lank summarized the letters received in opposition to the application; the letters were entered into the record at the Public Hearing before the Commission.

M 631 12 Strike Recom-mended Condition F

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to strike Condition F recommended by the Planning and Zoning Commission.

Motion Adopted: 5 Yeas.

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

M 632 12 Adopt Ordinance No. 2286 (C/U No. 1948)

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to Adopt Ordinance No. 2286 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR PROFESSIONAL OFFICE USE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.03 ACRES, MORE OR LESS" (Conditional Use No. 1948) filed on behalf of Sharon L. Sherwood and Van Sherwood, with the following conditions:

A. The use of the property shall be limited to small scale professional offices, such as doctors, lawyers, artist studios, accountants or similar uses.

B. There will only be one unlighted sign on the premises that shall not exceed 32 square feet on each side.

C. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on neighboring properties. There shall be no more than two offices on the property.

D. No outside storage shall be allowed on the premises.

M 632 12 Adopt Ordinance No. 2286 (C/U No. 1948) (continued)

E. A 6-foot tall screening fence shall be installed along the northern boundary line of the property.

F. The parking shall comply with all Code requirements for the particular use of this property. The Final Site Plan shall clearly show all required parking and the parking areas must be clearly marked on the site.

G. The Site Plan shall be subject to approval of the Planning and Zoning Commission.

Motion Adopted: 5 Yeas.

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

Public Hearing (C/U No. 1946)

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

The Planning and Zoning Commission held a Public Hearing on this application on November 15, 2012 at which time the Commission deferred action. On December 6, 2012, the Commission deferred action again.

See the minutes of the Planning and Zoning Commission dated November 15 and December 6, 2012.

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

Exhibit Booklets were distributed to the Council.

Mr. Lank reported that, since the November 15th Public Hearing before the Commission, letters in opposition have been received from Kathy Kunkle, Joyce Stout, friends of the Donovans on Stockley Road, James and Nancy Buchler, and D. Wayne Starkey. The letters were submitted into the record.

The Council found that Gerry Desmond, General Manager of Clean Delaware, LLC, was present with with James Fuqua, Attorney with Fuqua, Yori and Willard, P.A., Laf Erikson, Soil Scientist with Atlantic Resource Management, Inc., and Chris McCabe of Coastal Compliance Solutions.

Public Hearing (C/U No. 1946) (continued)

Mr. Fuqua referenced the two packets of information that were previously submitted, the Exhibit packet and the booklet.

Mr. Fuqua stated that the application is to permit land application of Class B sanitary waste, non-sanitary food processing residuals, and water iron residuals and he noted that (during this Public Hearing) he would refer to all of the individual materials proposed to be applied to the property as bio-solids; that the application is for County approval of the use of the land; that the land application process and the bio-solids placed on the property are subject to State DNREC regulations and subject to a permit issued by DNREC that sets forth the details and specifications as to the operation including the type of bio-solids that can be applied to the land; that bio-solids are nutrient rich organic materials resulting from the treatment of waste – when treated and processed, these residuals can be recycled and applied as fertilizer to improve and maintain productive soils and to stimulate plant growth; that the application of bio-solids reduces the needs for chemical fertilizer and chicken manure; that the recycling of bio-solids has several benefits – it replenishes the organic matter of soil that has been depleted over time, it improves crop growth and yield, it reduces the need for chemical fertilizers thereby reducing production costs, and is considered both economically efficient and environmentally appropriate; that the site of the proposed use is on both sides of McColley Road (County Road 201) and the site is northeast of Route One and the City limits of Milford; that the site is owned by Lynn and Karen McColley; that the site contains a total of 259 acres; that the site is mostly cleared farmland and includes several poultry houses and wooded areas; that site evaluations were performed on several locations on the site; that the evaluation studied the topographic and geological conditions of the property; that it was found that the site is suitable for the requested use; that Clean Delaware, LLC has been in business for more than 20 years; that regulations on the use are subject to both State and Federal regulations; that a permit is required from DNREC for land treatment of bio-solids; that DNREC granted approval on January 1, 2012 to utilize all Clean Delaware, LLC sites; that they currently use three other sites for the same purpose; that the other three sites: (1) the Milton Farm, (2) the Ellendale site, and (3) the Harbeson site; that the same application methods are proposed for this site; that a copy of the DNREC permit is included in the Exhibit Packet; that the permit references sludge, septage and waste application limitations, groundwater limitations, monitoring requirements, stabilized septage, wastes, sludge stabilization process monitoring, vector attraction reduction, soil monitoring, groundwater monitoring, a schedule of compliance, bonding, monitoring, reporting, definitions, management requirements, responsibilities, and special conditions; that the reason for this application is that the Applicants need additional acreage for bio-solids disposal; that Clean Delaware, LLC is approved to accept sludge, septage, and waste from Allen's Harim Foods, LLC (Harbeson Plant), Perdue Georgetown Sludge, the Town of Bridgeville, the City of Lewes, the Town of Milton, and the Town of Selbyville, approved to accept septage from Artesian Resources community

Public Hearing (C/U No. 1946) (continued)

wastewater systems, B. Brittingham, Dukes Septic Services, Harry Caswell, Inc., McMullen Septic Services, Inc., Midway Services, Inc., Mobile Gardens M.H. P., Service Energy, LLC, Tidewater Utilities community wastewater systems, and Street Sanitation Services, approved to accept non-sanitary wastes from Dogfish Head Craft Brewery (brewery waste water), Eastern Shore Poultry Products (food processed grease), J.G. Townsend, Inc. (vegetable processing waste water), iron sludge from water treatment plants, Perdue Farms, Georgetown (dewatered sludge cake), RAPA Scrapple, Inc. (grease by-products), restaurant grease trap waste (containing no sanitary waste), and Roos Foods, Inc. (dairy waste); and that they are providing a service to businesses, industries, municipalities, and developments in Sussex County by the reuse of beneficial food bio-products.

Jerry Desmond provided information on the company, Clean Delaware, and the Company's vision for the McColley Farm, if approved; that the company currently has 20 employees; that in 23 years, Clean Delaware has never been in violation of their DNREC land application permit; that in those 23 years, DNREC has never contaminated a well; that in those 23 years, run-off from a Clean Delaware farm has never polluted an adjacent water body; that they are bonded and compliant and stewards of the environment; that growth requires they seek more land; that in the past 10 years, no additional land for bio-solids application has been sought or approved; that in looking for a site, he looked for: (1) a place that was out of the way, (2) a place where trucks could get on and off the road, (3) a place where trucks already travel and (4) a place where an off-loading site could be staged that would be safe, secure and obscure from view; that their heavy metal loading is minimal; that independent well testing that has been reviewed and analyzed by DNREC over the years from monitoring wells has indicated no danger or impact on water quality; that Sussex County, Kent County, City of Rehoboth, and the Town of Georgetown practice land application; that they will utilize the McColley farm approximately 38 percent of the time they operate; that in 1989 the company received approval from DNREC for the use of the other three sites; that they do not dump raw waste or handle hazardous waste; that prior to receiving any products, DNREC must authorize use of the products for crop growth; that the property will continue to be farmed; that they are proposing to create six sections of the property into sections for land application; that the permitted crops in the sections will be corn, wheat, and soybeans; that buffers (greater setbacks) will be established; that monitoring will be performed; that there will be two types of applications: the application of dry products and the application of wet products; that the dry products will be applied by spreader on a section of the fields and then disked into the soils; that the wet products are subsurface injected or spray applied on the fields; that there will not be any storage of equipment on the site other than normal farm equipment; that the equipment will be stored behind the poultry houses; that there will not be any wet product storage on the site; that all of the products have already been treated prior to land application; that very little odors are generated; that they have no plans on composting

Public Hearing (C/U No. 1946) (continued)

any products on the site; that the site is zoned AR-1 Agricultural Residential, which has a stated purpose of providing for a full range of agricultural activities and to protect agricultural lands from the depreciating effect of objectionable, hazardous and unsightly uses; that the Agricultural Districts are established to protect established agricultural operations and activities; that this type of use is authorized for Conditional Use applications; that they believe that the use complies, provides a service, and benefits many Sussex County businesses and communities; that the process is reviewed, monitored, and controlled by DNREC, making the use appropriate and essential; that the buffer zones referenced are setbacks from dwellings, wells, property lines, streams, drainage ditches, etc.; that they are submitting a copy of the DNREC buffer zone references, which reference that the following setbacks are required for surface application: 200 feet from occupied off-site dwellings; 100 feet from occupied on-site dwellings and potable wells; 25 feet from non-potable wells and public roads; 50 feet from bedrock outcrops, streams, tidal waters, and other water bodies; 25 feet from drainage ditches; that the following setbacks are required for subsurface injection: 100 feet from occupied off-site dwellings and potable wells; 50 feet from occupied on-site dwellings; 25 feet from non-potable wells; 15 feet from public roads; and 25 feet from bedrock outcrops, streams, tidal waters, other water bodies, and drainage ditches; that the products are tested by the clients, then approved by DNREC, and then they can be applied on the farm; that there may be 2 to 6 trucks per day; that the DNREC approval for this site is on hold until the Conditional Use is approved; that the site is viable for the use; that the soils are well drained with fine textured soils; that that have established all well sites in the area; that there are no public wells in the area; that 9 hand auger borings and 10 test pits were conducted to characterize the soil properties on the project area; that DNREC requires bonding and that they are currently bonded; that Nutrient Management Plans are required by DNREC; that the poultry houses on the site are in production; that the litter from the poultry houses will not be applied to this site; that a porta-toilet will be located on the site; that there will not be an office or scales located on the site; that the dry product is not a dusty product; that the dry product will be stored in a manure storage type structure or on a concrete pad; that a portion of the farm is irrigated and that they will not be adding any irrigation; that all setback buffers will be complied with; that there will be no hauling of dump materials, only approved bio-products; and that there should be negligible odors associated with this use.

Laf Erickson referenced the results of the soil testing and mapping performed on the site and he noted that DNREC field approval was given on January 5, 2012. He stated that what makes this site particularly well suited are the fine textured soils and the deep groundwater levels; that there are no areas proposed for land treatment within any flood plain or flood zone; that the tributaries and river are both shielded by a timber operation; that DNREC requires a very specific monitoring of both the soil and the groundwater; that Clean Delaware has made the concession that if there is

Public Hearing (C/U No. 1946) (continued)

a committee of neighbors that want to step forward, they would release these findings at the time of the required DNREC reporting; and that with the project as proposed, there will be no further degradation of the soil or groundwater quality from the point that it is today.

Chris McCabe commented on the potential abatement of surface water run-off, berm creation and the swale. He stated that, at the Planning and Zoning Commission Public Hearing, concern was expressed regarding buffers and surface water runoff and in an attempt to address those concerns, Clean Delaware is taking the initiative to go above and beyond the DNREC buffer requirements and install a 35 feet wide buffer of switch grass that gets 7 to 8 feet tall to line the perimeter of the properties and along the roadway along the McColley farm.

Jim Fuqua concluded by submitting the following proposed conditions of approval for consideration:

1) All activities shall be as authorized by and in compliance with Clean Delaware, LLC's DNREC permit "Authorization to Operate a Land Treatment System for the Agricultural Utilization of Sludge and Waste Products" (State Permit Number AGU 1202-5-03 and Amendments thereto); 2) This Conditional Use Approval shall remain valid and in effect for as long as the aforesaid DNREC permit exists for this site and shall automatically terminate in the event the DNREC permit expires or is terminated; 3) Land application activities shall be limited to the hours of 8:00 a.m. to 6:00 p.m. Monday through Friday; and 4) No land application material shall be stockpiled longer than seven (7) days on site.

Mr. Fuqua stated that during their presentation, they have explained the operation and addressed a lot of the concerns and objections raised at the Planning and Zoning Public Hearing; that traffic has been addressed – on average, there will be 2 to 4 trucks per day with a maximum of 6 trucks and only when bio-solids are being applied; that buffers will be in excess of what DNREC requires; that the buffers will be around the perimeter of the site; that the grasses in the buffer will remove any nutrients coming off of the site; that a berm/swale will be provided along the western boundary of the site and along McColley Drive that basically would ensure that water will not escape onto the adjacent properties; that DNREC requires a bond; that Clean Delaware has a $1 million liability insurance policy with an umbrella of additional coverage in the amount of $5 million; that this Conditional Use would only be valid if Clean Delaware is operating under a valid DNREC permit; that the proposed use is an agricultural activity that is critical to businesses and residents of the County; that Clean Delaware is experienced and has been in business for 20 years; that they are not proposing a wastewater facility on this site; that there is a need for this business; and that with the conditions proposed, this is an appropriate location for the proposed use.

Public Hearing (C/U No. 1946) (continued)

Public comments were heard.

There were no public comments in support of the application.

The following people spoke in opposition to the application: Joseph Warnell, William Pike, Robert Donovan, Jim Hammond, Mary Sue Sharp, Casey Sharp, Jason Donovan, Alan Mills, Howard Webb, Bill Hopkins, Neil Shockley, and Mary Walls Grant. They stated that they are concerned about the danger of this disposal product; that water will travel down and sideways to neighboring properties; that other states have stopped the land application practice due to health issues; that the product should be boiled or incinerated; that notices were not received regarding the meetings on this proposed use; that there will be a direct run-off to neighboring properties and the stream; that the run-off will go into the pond and into the marsh; that the EPA labels bio-solids as hazardous waste; that if it is safe, why is a permit required; that the site is not the proper location for a sludge farm and the Applicant should seek a more suitable site; that the application needs more study; that the use will result in lower crop yields for area farms and lower income; that following land application of sludge, crops cannot be sold for human consumption for a period of 3 years; that the proposed grass buffer will not stop run-off; that the Applicant previously stated that the building behind the chicken houses would be used for storage and that they will store waste there; that there could be an increase in the spreading of disease if there is an outbreak; that switch grass will not grow in some areas proposed; that farmers cannot apply nutrients during winter months, so why can Clean Delaware; that DNREC does not regulate everything that can be harmful; that run-off will still reach the Mispillion River even with the swale; that Ed Kee, Secretary of Agriculture, is concerned and that he is supposed to be contacting the County Council regarding this application; that representatives of Hanover Foods have expressed concern; that sludge will be placed around their homes; and that bio-solids have caused death and illness. The opposition expressed concerns regarding odors, insects, run-off, drinking water, effect on crops and livestock, impact on poultry houses, health and welfare, property values, road safety conditions, the execution of the plan, and the detrimental effect on wildlife, wetlands, and the river.

Mr. Hammond submitted an information packet into the record.

The Public Hearing was closed.

M 633 12 Defer Action on C/U No. 1946

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to close the Public Hearing and defer action on Conditional Use No. 1946 filed on behalf of Clean Delaware, LLC, and to leave the record open for written comments for a period of 60 days; and further, that the Director of Planning and Zoning be directed to contact the Department of Agriculture and the Delmarva Poultry Institute asking if they wish to comment on the application.

M 633 12 (continued)	**Motion Adopted:**	**5 Yeas.**
	Vote by Roll Call:	**Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea**

M 634 12 Adjourn **At 4:44 p.m., a Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adjourn.**

Respectfully submitted,

Robin A. Griffith
Clerk of the Council