SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 30, 2010

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 30, 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.

Turn Gavel Over to Vice President

Mr. Phillips called the meeting to order.

Mr. Phillips turned the gavel over to Mr. Vincent due to the fact that "there are items on the agenda that I would like to participate in today".

M 622 10 Amend and Approve Agenda

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to amend the Agenda by (1) changing the order of the items so that "Miss Delaware 2010 Kayla Martell" is moved to be the first item of business under David Baker, County Administrator, and (2) deleting "Pending/Potential Litigation and Land Acquisition" under "Executive Session"; and to approve the Agenda, as amended.

Motion Adopted: **5 Yeas.**

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

Minutes

The minutes of October 26, 2010 were approved by consent.

Corre-spondence

Mr. Moore read the following correspondence:

SEAFORD VOLUNTEER FIRE DEPARTMENT, INC., SEAFORD, DELAWARE.
RE: Letter in appreciation of the Council's donation to the "Wake Up Delaware Smoke Detector Program"

Corre-spondence (continued)

SUSSEX PREGNANCY CARE CENTER, GEORGETOWN, DELAWARE.
RE: Letter in appreciation of Human Service Grant.

Mrs. Deaver read the following correspondence:

GERALD A. LECHLITER, LEWES, DELAWARE.
RE: Setback from residences proposed in the new County Code section dealing with wind turbines.

Proposed Resolution to Issue Recovery Zone Facility Bonds for Indian River Power, LLC

Mrs. Webb presented a Proposed Resolution to issue Recovery Zone Facility Bonds for Indian River Power, LLC, a Delaware Limited Liability Company and wholly-owned subsidiary of NRG Energy, Inc.

Mrs. Webb reported that the County is not liable for payment of the bonds and the project does not pledge the credit of the County.

Mrs. Webb reported that the Recovery Zone Facility Bonds are a limited offer by the United States Treasury and the bonds must be closed by December 31, 2010. The Applicant has requested and received unused allocations from both New Castle County and Kent County. Mrs. Webb reported that New Castle County and Kent County have, by Resolution, credited their allocations back to the State and the State has, by Executive Order, reissued the allocations to Sussex County. Sussex County will issue the entire allocation, if approved.

The Industrial Revenue Bond (IRB) Committee considered the application following a Public Hearing on November 15, 2010. The project is for the acquisition, construction, installation, improvement, and completion of its Indian River Air Quality Improvement Project. The Committee recommended approval of the project, subject to the volume cap availability.

Mrs. Webb reported that the County's Bond Attorney, Ballard Spahr, LLP, has determined that the project is an eligible project and it meets all the Recovery Zone Facility Bond criteria.

Steven Arabia, Senior Manager of External Affairs for NRG, owners of the Indian River Power Plant, explained the project. He stated that the application is for the Indian River Plant, which has four coal-fired generating units. The project involves the installation of significant new air

Proposed Resolution (continued)

quality improvement technologies and control systems on Unit 4, the largest, newest and most efficient of the three remaining coal units. Unit 4 is the only unit that will remain in operation after Year 2013, in accordance with an agreement with DNREC. Mr. Arabia stated that, when the air quality improvement project for Unit 4 is complete, the plant will have one of the lowest emission rates of any coal generation station in the country. The $366 million project will reduce emissions below federal and Delaware standards. Mr. Arabia stated that, in addition to the air quality improvements, there will be a positive economic impact and approximately 400 to 500 construction jobs will be created. Currently, there are 250 to 300 tradesmen working on the Project. Under the agreement with DNREC, Unit 4 cannot operate beyond 2012 without the new environmental controls and, consequently, the project would allow NRG to maintain the jobs needed to operate and maintain the unit on a continuing basis.

M 623 10 Authorize Resolution R 027 10

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council authorizes Resolution No. R 027 10 entitled "A PROJECT RESOLUTION AUTHORIZING ISSUANCE OF UP TO $75,000,000 RECOVERY ZONE FACILITY BONDS (INDIAN RIVER POWER LLC PROJECT) SERIES 2010".

Motion Adopted: **3 Yeas, 2 Abstentions.**

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

Recognition of Miss Delaware Kayla Martell

Miss Delaware Kayla Martell addressed the Council and discussed her service as Miss Delaware including her efforts to educate the public about Alopecia areata, a condition in which partial or total hair loss occurs in both men and women.

The Council presented to Miss Martel a Proclamation entitled "A PROCLAMATION TO HONOR MISS DELAWARE 2010 KAYLA MARTELL".

Proposed Fuel Tax Resolution

The Council considered a Proposed Fuel Tax Resolution which was presented to the Council by Mr. Phillips at the November 16th meeting. Mr. Baker noted that, currently, there are proposals being discussed by Congress to increase the federal gasoline tax by up to .25 cents per gallon.

Mr. Baker read the Proposed Fuel Tax Resolution in its entirety:

A RESOLUTION EXPRESSING SUSSEX COUNTY COUNCIL'S CONCERN THAT A PROPOSED INCREASE IN THE FEDERAL FUEL TAX WOULD BE HARMFUL TO THE CITIZENS OF SUSSEX COUNTY, DELAWARE, AND THE COUNTY'S OVERALL ECONOMIC HEALTH

Proposed Fuel Tax Resolution (continued)

WHEREAS, there is a proposal to increase by 25 cents the federal fuel tax, at a time when gasoline prices are nearing $3 a gallon; and

WHEREAS, a fuel tax increase of 25 cents a gallon would cost the average Sussex County household more than $700 annually; and

WHEREAS, a high number of Sussex County residents are already unemployed or unable to find full-time work, while the national unemployment rate is at the highest sustained rate since the Great Depression; and

WHEREAS, a gasoline tax is particularly burdensome to lower- and lower-middle income citizens in non-urban areas, where there are few public transportation options available; and

WHEREAS, the County's agriculture industry is adversely affected by higher fuel prices in all aspects, from production to transportation of goods; and

WHEREAS, the County's tourism industry relies heavily on regional visitors whose discretionary spending could be curtailed by a significant rise in fuel prices; and

WHEREAS, increases in fuel taxes are passed on to consumers, affecting the price of most goods and services, thereby affecting the overall health and stability of our economy;

NOW, THEREFORE, BE IT RESOLVED that the Sussex County Council hereby urges the Delaware Congressional Delegation to withdraw its support for the proposed 25 cent fuel tax increase; and

BE IT FURTHER RESOLVED that the County Administrator shall send an official copy of this Resolution, upon its adoption, to each member of the Delaware Congressional Delegation for their consideration.

Mr. Cole suggested and the Council agreed that the next to the last paragraph should be amended to read that "the Sussex County Council hereby urges the Delaware Congressional Delegation to withdraw its support for <u>any fuel tax increase</u>".

M 624 10 Adopt Resolution No. R 028 10

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Resolution No. R 028 10 entitled "A RESOLUTION EXPRESSING SUSSEX COUNTY COUNCIL'S CONCERN THAT A PROPOSED INCREASE IN THE FEDERAL FUEL TAX WOULD BE HARMFUL TO THE CITIZENS OF SUSSEX COUNTY, DELAWARE, AND THE COUNTY'S OVERALL ECONOMIC HEALTH", as amended.

Motion Adopted: **5 Yeas.**

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

Mr. Phillips, Yea

Casino Moratorium Ordinance

The Council discussed the Casino Moratorium Ordinance (Ordinance No. 2119) that was approved on May 18, 2010, which affected applications for casinos and other gambling venues in the unincorporated areas of Sussex County. The Ordinance was a six-month moratorium which expired on November 18, 2010. In accordance with the Ordinance, "This Ordinance can be extended, modified or terminated at any time by a majority vote of all members of the County Council of Sussex County, Delaware."

Casino Moratorium Ordinance (continued)

Mr. Baker reviewed the following options:

- **Extend the moratorium with the introduction of a new ordinance.**
- **Consider adopting various rules and regulations for casino applications, i.e. creating a special zone for casinos.**

Mr. Moore stated that, when the moratorium was put into effect, the Council was looking at the possibility of drafting an ordinance or regulations addressing casinos in Sussex County. At the time, the only existing proposals were within municipalities or next to municipalities. Currently, there are no State laws in effect that would allow additional casinos.

Mr. Moore stated that the Council could consider adopting an ordinance creating a new zoning district or adopting an ordinance permitting casinos as a Conditional Use; however, guidance from the Council is needed in regards to (1) what zoning districts a Conditional Use for casinos would be permitted and (2) whether or not to exempt charitable gambling (which is permitted by Delaware Code). Mr. Moore also suggested that the Council could consider adopting an ordinance to regulate the footprint of big box buildings, which would include casinos.

It was the consensus of the Council to address, in some manner, big box buildings, including casinos. Suggestions were made to consider certain criteria such as closeness to schools, impact on traffic, size, acreage, limitations on buildings, etc.

In regards to extending the moratorium ordinance, Mr. Moore advised that a new Public Hearing would have to be held. He noted that if the matter had come up prior to November 18th, the Ordinance could have been extended.

M 625 10 Reintroduce Casino Moratorium Ordinance

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to reintroduce the Ordinance entitled "AN ORDINANCE PROVIDING FOR A SIX MONTH MORATORIUM ON APPLICATIONS FOR CASINO AND/OR GAMBLING OR GAMING VENUES IN SUSSEX COUNTY".

Motion Adopted: 5 Yeas.

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

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

Administrator's Report

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

1. <u>Bookmobile Schedule – Fall/Winter</u>

Administrator's Report (continued)

Attached is a copy of the County Library Bookmobile schedule for Fall/Winter 2010. As noted on the schedule, in addition to the normal stops, the Bookmobile will provide service in the Georgetown area at the Georgetown Library on Thursdays and Fridays from 10:00 a.m. to 4:00 p.m.

2. <u>Sussex County Airport Advisory Committee</u>

The Sussex County Airport Advisory Committee will be meeting on December 1, 2010 at 7:00 p.m. at the Sussex County Emergency Operations Center in Georgetown. Attached is a copy of the Committee Agenda. Additional consideration to proposed airport policies will be discussed.

3. <u>Caroling on the Circle – December 6, 2010</u>

As per the attached press release, the 27th annual Caroling on the Circle event will be held on December 6th at 6:30 p.m. in Georgetown. We encourage everyone to attend. We are continuing to focus on our food drive for the hungry and needy of Sussex County. County employees, schools, and various other civic organizations and businesses are contributing towards our effort, as in the past. We encourage anyone who attends to bring a canned good or other non-perishable food item as a donation on a voluntary basis. The Sussex County Volunteer Service Ladies Auxiliaries will provide cookies at the Georgetown Fire Company after the festivities.

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

Local Law Enforcement Grant Request

Mr. Godwin presented the following Local Law Enforcement Grant request:

Millsboro	**$ 9,446.39**	**CVSA Certifications, Firearms Training, Range Fees, Holsters**

M 626 10 Approve Local Law Enforcement

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, that the Sussex County Council approves a disbursement of $9,446.39 to the Town of Millsboro from Local Law Enforcement Grants.

Motion Adopted: 5 Yeas.

Grant

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

Request for Time Extension/ Request for Time Extension/ C/U 1668 (continued)

Lawrence Lank, Director of Planning and Zoning, presented a request from Karl M. Klink III and Melanie Klink for a one year time extension on Conditional Use No. 1668. This request was made on May 12, 2010.

Mr. Lank reviewed the history of the application and the time extension request.

Mr. Lank reported that the Klink's had originally applied for a Conditional Use for a country store and storage of overhead doors on September 20, 2005. The Planning and Zoning Commission held a public hearing on this application on October 26, 2006; on December 7, 2006, the Commission recommended approval of the application with conditions. The County Council held a public hearing on this application on November 14, 2006; on June 12, 2007, the Council recommended that the application be approved with conditions. One of the conditions was that the use be limited to a country store only.

On June 15, 2010, the County Council discussed the request for a time extension and it was decided to defer action to allow Legal Counsel time to review the Code for a possible alternative option that would allow the Council to provide the Applicant some type of relief from the expired application. On June 29, 2010, the request was again placed on the Council agenda, but was removed.

Mr. Lank explained that, if the Council agrees to approve the request for a time extension, it could be based on the fact that the request was received prior to the termination date of the anniversary of the approval.

M 627 10 Allow One Year Time Extension/ C/U 1668

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to allow a one year time extension for Conditional Use No. 1668 requested by Karl M. Klink III and Melanie Klink with the condition that the improvements must be substantially underway on the site by June 12, 2011.

Motion Adopted: **5 Yeas.**

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

Woodlands of Millsboro

Julie Cooper, Project Engineer, presented a Balancing Change Order request for the Woodlands of Millsboro project.

M 628 10 Grant Substantial

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Council grant Substantial Completion effective November

Completion/ Woodlands of Millsboro

15, 2010 to Melvin Joseph Construction Company, Inc. for Sussex County Project No. 09-14, Woodlands of Millsboro, and further, that the Balancing Change Order No. 1 be approved in the credit amount of $22,526.77, thereby decreasing the contract amount from $480,385.26 to $457,858.49, and that final payment be made and any held retainage be released in accordance with the terms and conditions of the contract documents, pending approval of the funding agency.

M 628 10 (continued)

Motion Adopted: 5 Yeas.

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

Public Hearing/ South Bethany SSD/ Rector Annexation

A Public Hearing was held on the proposed expansion of the South Bethany Sanitary Sewer District to include the lands of Charles V. Rector. John Ashman, Director of Utility Planning, reported that, on October 26, 2010 the County Council granted permission to prepare and post notices for the expansion of the South Bethany Sanitary Sewer District to include a parcel of land containing 1.06 acres more or less, on Muddy Neck Road owned by Charles V. Rector. The parcel is contiguous to the existing sewer district boundary. The Engineering Department received a letter from the property owner requesting that the parcel be annexed into the South Bethany Sanitary Sewer District; the property owner stated that his septic system is failing and for this reason, the request was made. It was noted that a single family home exists on the site.

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

M 629 10 Adopt R 029 10

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Resolution No. R 029 10 entitled " A RESOLUTION TO EXTEND THE BOUNDARY OF THE SOUTH BETHANY SANITARY SEWER DISTRICT TO INCLUDE A PARCEL OF LAND ALONG MUDDY NECK ROAD, WEST OF THE ASSAWOMAN CANAL, LYING CONTIGUOUS TO THE SOUTH BETHANY SANITARY SEWER DISTRICT, SITUATE SOUTHEAST OF THE TOWN OF OCEAN VIEW AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY".

Motion Adopted: 5 Yeas.

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

Requests

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

M 630 10 Community Grant

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to give $600.00 ($400.00 from Mr. Wilson's Community Grant Account and $200.00 from Mr. Phillips' Community Grant Account) to the Greater

Georgetown Chamber of Commerce for Christmas parade expenses.

Motion Adopted: **5 Yeas.**

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

M 631 10 Community Grant

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give $200.00 from Mr. Cole's Community Grant Account to The Wellness Community of Delaware to support Karen Pettyjohn and the Strides for Hope Sussex Team's fundraising efforts.

Motion Adopted: **5 Yeas.**

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

M 632 10 Community Grant

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to give $250.00 from Mr. Phillips' Community Grant Account to the American Heart Association to support Courtney Hasting's senior project.

Motion Adopted: **5 Yeas.**

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

Public Hearing/ West Rehoboth Expansion of the Dewey Beach SSD/ Herola Family

A Public Hearing was held to consider extending the boundary of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District to include three parcels of land consisting of 5.94 acres (lands of Herola Family, LLC) and part of a future service road. Rob Davis of the Engineering Department reported that the area to be added is located on the south side of Delaware Route 24, west of Delaware Route 1, and adjoins the existing sewer district boundary. One office building is proposed on two of the parcels and a restaurant is proposed on the third parcel. Mr. Ashman reported that the County Council approved a Conditional Use for the project on January 16, 2007 and that a Sewer Concept Plan has been approved.

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

M 633 10 Adopt R 030 10

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Resolution No. R 030 10 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE WEST REHOBOTH EXPANSION OF THE DEWEY BEACH SANITARY SEWER DISTRICT (WRSSD) TO INCLUDE PARCELS OF LAND ALONG THE SOUTHERLY SIDE OF STATE OF DELAWARE ROUTE 24, WEST OF THE TOWN OF

REHOBOTH BEACH, BEING SITUATE IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, DELAWARE".

Motion Adopted: 5 Yeas.

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

Introduction of Proposed Ordinance

Mrs. Deaver introduced the Proposed Ordinance entitled "AN ORDINANCE TO MODIFY CONDITION NO. 21 IMPOSED ON ORDINANCE NO. 1377 FOR CHANGE OF ZONE NO. 1400, THE APPLICATION OF OLDE TOWNE POINT, L.L.C. FOR "THE VILLAGE AT FIVE POINTS", A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY, SO THAT THE LIMITATION WITH REGARD TO COMMUNITY USE IS ONLY IMPOSED ON 2.52 ACRES, THEREBY ENABLING OLDE TOWNE POINT, L.L.C. TO USE THE REMAINING PORTION OF THE PROPERTY, 1.52 ACRES, FOR A PROPOSED PHARMACY OR RELATED USE" (Change of Zone No. 1699) filed on behalf of Olde Towne Pointe, LLC.

Additional Business

Under Additional Business, John Walsh commented on (1) the expired terms of members of the Board of Adjustment, (2) guidance from the County Council on Board of Adjustment issues as a result of the August 17, 2010 Workshop. Roberta Hemmerich commented on (1) the Manufactured Housing Ad Hoc Committee and (2) the hiring of a County Planner.

Pending Manu-factured Housing Ordinances

Mrs. Deaver commented on the letters received from John Walsh and Roberta Hemmerich and an email from Dixie Boucher asking the Council to defer on the two pending Manufactured Housing ordinances. Lawrence Lank, Director of Planning and Zoning, reported that following the Public Hearings on the two ordinances, a deadline of November 24, 2010 was established for the submission of written comments. Mr. Lank stated that he would be preparing a memo to Council with the correspondence received attached to the memo and that the matter could be placed on the December 7th Agenda for consideration.

Additional Business/ Public Comment Period

Mr. Moore stated that it appears that the Additional Business / Public Comment period is being used more frequently by the public for asking questions instead of its intended purpose of the public making comments after which the Council could put a matter on a future agenda for discussion.

M 634 10 Go Into Executive Session

At 11:35 a.m., a Motion was made by Mr. Cole, seconded by Mr. Phillips, to recess the Regular Session and to go into Executive Session for the purpose of discussing issues relating to personnel.

Motion Adopted by Voice Vote.

Executive Session

At 11:40 a.m., an Executive Session of the Sussex County Council was held in the Third Floor Conference Room for the purpose of discussing issues relating to personnel. The Executive Session concluded at 12:10 p.m.

M 635 10 Reconvene

At 12:15 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips, to come out of Executive Session and to reconvene the Regular Session. Motion Adopted by Voice Vote.

Action

Mr. Moore announced that no action was required on Executive Session items.

Mr. Cole commented on the Delaware Bay Beach Work Group meeting held on November 12, 2010. Mr. Godwin stated that the Work Group discussed erosion and flooding along the Delaware Bay from Fowlers Beach to Lewes, i.e. the encroachment on usable farmland.

M 636 10 Recess

At 12:17 p.m., a Motion was made by Mr. Cole, seconded by Mr. Wilson, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

****

M 637 10 Reconvene

At 1:34 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Cole, to reconvene. Motion Adopted by Voice Vote.

Public Hearing on C/Z No. 1691 and C/U No. 1849

There was no objection from the Council to combine the Public Hearings on Change of Zone No. 1691 and Conditional Use No. 1849 filed on behalf of Linder & Company, Inc., c/o Andrea Finerosky.

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 GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 34 ACRES, MORE OR LESS" (Change of Zone No. 1691) and "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 48.3595 ACRES, MORE OR LESS" (Conditional Use No. 1849) filed on behalf of Linder & Company, Inc., c/o Andrea Finerosky.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on these applications on November 10, 2010 at which time the Commission deferred action.

(See the minutes of the meeting of the Planning and Zoning Commission dated November 10, 2010.)

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

Mr. Lank distributed Exhibit Books which were previously provided by the Applicant.

Public Hearing on C/Z No. 1691 and C/U No. 1849 (continued)

Mr. Lank stated that he received on this date a letter from the Bethany Bay Homeowners Association, signed by F. D. Pacello, referencing The Pavilions and their opposition to the two applications. Mr. Lank noted that the letter was addressed to David Baker and was dated November 21, 2010. Mr. Lank distributed copies of the letter to the Council and read the letter in its entirety into the record.

David Crowley of Linder & Company, Inc. was present with Gene Bayard, Attorney for the Applicant; Garth Jones, Professional Engineer with Becker Morgan Group, Inc.; and John Phelps III, Environmental Scientist with Landmark Engineering and JCM Environmental. They stated that 5 of 6 homeowners associations at Bethany Bay have endorsed this application; that the Adams Farm is located north of Ocean View at the intersection of Old Mill Road and Railway Avenue; that the property is split zoned; that approximately 14 acres is already zoned GR General Residential; that the remaining acreage is zoned AR-1 Agricultural Residential; that other zonings in the area include GR, MR-1, CR, MR-RPC; that the parcel is a "hole in the middle of a donut"; that this is the last undeveloped tract in the immediate area; that according to the PLUS Report in regards to sanitary sewer, the project is located in the Millville Expansion of the Bethany Beach Sanitary Sewer District; that according to Sussex County Engineering Department, the project is within the Planning Study assumption for sewer service and adequate capacity does exist; that the connection point for Evans Farm is on Old Mill Road and the infrastructure has already been installed by Linder & Company at an estimated cost of $1.5 million; that a Traffic Impact Study (TIS) was completed for the project and the results of that Study are included in the Exhibit Book; that DelDOT reviewed the TIS and issued their review letter; that the road infrastructure improvements required by DelDOT to be built by the Applicant will cost in excess of $1,000,000; that DelDOT issued a Letter of No Objection for the entrance location; that the site is located in a franchised area approved for Tidewater Utilities; that Tidewater Utilities has provided a Willing and Able letter for the project; that in regards to water quality issues encountered by Tidewater in the service area, lead parameters were exceeded in a two block area of Sea Colony West; that this was not a violation; however, it had to be noted in their Water Quality Report to the entire service area; that the water source is not a part of the problem; that the problem is either customers' plumbing and/or the existing service lines; that it is not an issue with Tidewater's supply; that the well that supplies the Evans Farm is in a different location than the well that supplies Sea Colony; that Tidewater has provided assurances that corrective measures have been taken to correct the matter; that a stormwater pond is proposed in the middle of the site; that it is a main feature/amenity for Evans Farm; that all stormwater will be treated on site; that the stormwater pond is 2 to 4 times the size it needs to

Public Hearing on C/Z No. 1691 and C/U No. 1849 (continued)

be; that there is potential for groundwater recharge on the site; that the project is located in Investment Levels 2 and 3; that PLUS comments were incorporated in the revised plan; that they will comply with the requirements of 99-9C of the Code with no impact on wetlands and no impact on natural or historic features; that the project has approximately 80 percent open space; that the project will have planted buffers and will maintain the existing buffers around the site; that there will be minimal tree removal; that there will be street trees and on site landscaping; that the project is located in the Inland Bays Pollution Control Strategies and the project will comply with those requirements which is a 40 percent reduction in nitrogen and phosphorus; that they will have walking paths and bike lanes; that there is no anticipated impact on schools, public buildings, and community facilities since this is somewhat of a seasonal community and there are a lot of amenities on site; that Section 1.4 of the Exhibit Book outlines how the project complies with the Environmentally Sensitive Overlay Zone; that the Applicant intends to comply with Delaware Sediment and Stormwater requirements; that there are no known rare and endangered species on the site; that a wetlands delineation was performed in 2006; that there are two areas of non-tidal wetlands located on the site and no disturbance of those wetlands is proposed; that the amenity package will include a clubhouse with a fitness center, a pool, basketball court, tennis court, volleyball court; that they estimate that the 2-bedroom units will sell for $200,000 and the 4-bedroom units will sell for $300,000; that they anticipate breaking ground in three years and selling out in four years; that the project is consistent with the Quality of Life Act and State Strategies for Spending; and that the project is consistent with the character of the neighborhood.

There were no public comments in support of the application.

Public comments were heard in opposition to the application.

Frank Pacello, resident of Bethany Bay and former President of Sea Colony, stated that the State Planning Coordinator commented that (1) the project design is not without challenges, (2) there should be revisions made to improve the access, (3) that environmental challenges are there, and (4) there are traffic concerns; that he plans to meet with Gerald Esposito of Tidewater to talk about the water report and to ask them to correct the problems; that the standard does exceed the Maximum Contaminant Level; that they are still correcting a myriad of building deficiencies in Bethany Bay that have existed for nine years and they have spent $1.2 million to do that; that they have already spent in excess of $300,000 to fix problems with construction; that the developer has a track record for not doing the right thing in regards to the environment; that ponds in Bethany Bay need to be brought back to as-built and they need to be maintained; and that they are asking for a deferment of the application for 6 months since Linder & Company does not have the reputation for the Council to act without further information. [A letter from Frank Pacello was previously read into the record.]

Councilmembers discussed the water quality and stormwater pond issues that

were raised.

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

M 638 10 Defer Action on C/Z 1691

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action on Change of Zone No. 1691, filed on behalf of Linder & Company, Inc., c/o Andrea Finersoky, and to leave the record open for a report from Lawrence Lank, Director of Planning and Zoning.

M 638 10 (continued)

Motion Adopted: 5 Yeas.

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

M 639 10 Defer Action on C/U No. 1849

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action on Conditional Use No. 1849 filed on behalf of Linder & Company, Inc., c/o Andrea Finerosky.

Motion Adopted: 5 Yeas.

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

Public Hearing/ C/U No. 1870

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 SHEET METAL FABRICATION AND WELDING FOR THE POULTRY INDUSTRY AND OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 6.45 ACRES, MORE OR LESS, OF A 63.07 ACRE TRACT" (Conditional Use No. 1870) filed on behalf of Allen McCabe/McCabe's Farms, LLC.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on November 10, 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 10, 2010.)

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

Mr. Lank distributed Exhibit Books which were previously provided by the Applicant.

Allen McCabe, the Applicant, was present with James Fuqua, Attorney, and Mark Davidson of DC Group. They stated that the application is for a

Public Hearing/ C/U No. 1870 (continued)

sheet metal fabrication business and office; that the land is zoned AR-1; that the rear portion of the land is wooded and the front has been cleared and tilled; that a minor subdivision was completed to create a 6.45 acre parcel with a residence located on it; that the road frontage of the parcel is approximately 700 feet; that the Applicant wishes to relocate his business (McCabe's Mechanical Services, Inc.) to this site and to construct two buildings, a one-story workshop building (80 feet by 120 feet) and a one-story storage building (60 feet by 80 feet); that the existing house would be utilized as an office for the building; that they propose a new entrance from Route 18 in compliance with DelDOT's entrance requirements; that the existing residential entrance would be abandoned; that 26 parking spaces are proposed; that the buildings would meet all setback requirements; that the wastewater disposal area would be located in the front area and the stormwater management pond would be located in the rear area; that there would be an on-site well; that there are no wetlands or environmental features on the site; that normal business hours are from 7:30 a.m. to 4:30 p.m. Monday through Friday; that some emergency services are necessary; that maximum hours would be from 6:00 a.m. to 6:00 p.m.; that employees would occasionally meet at the site at 6:00 a.m. on weekends when off-site installations are scheduled; that all materials will be stored indoors and all work will be performed indoors; that waste materials will be stored in bins and dumpsters behind the building; that the Comprehensive Plan references the site being within a Low Density Area and the Plan states that the primary uses envisioned in a Low Density Area are agricultural activities and single family detached homes and that business development should address the needs of these two uses and that industrial uses that support or depend on agriculture should be permitted; that the use predominantly serves agriculture and specifically, the poultry business; that the site is located along a major collector highway; that the use predominantly serves agricultural industry uses; that the Comprehensive Plan also references that industrial uses that support or depend on agriculture should be permitted; and that several business are located in the immediate area.

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

M 640 10 Adopt Ordinance No. 2162 (C/U No. 1870)

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 2162 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SHEET METAL FABRICATION AND WELDING FOR THE POULTRY INDUSTRY AND OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 6.45 ACRES, MORE OR LESS, OF A 63.07 ACRE TRACT" (Conditional Use No. 1870) filed on behalf of Allen McCabe/McCabe's Farms, LLC, with the following conditions:

1. **The use shall be limited to metal fabrication, welding and related activities.**

2. **The hours of operation shall be limited to 6:00 a.m. to 6:00 p.m. Monday through Friday with weekend operations when off-site installations are scheduled.**
3. **With the exception of materials screened from view and stored in bins, there shall not be any outside storage. The location of the permitted storage bins shall be shown on the Final Site Plan.**
4. **One lighted sign shall be permitted, not to exceed 32 square feet in size per side.**
5. **Any security lights shall be screened from view so that they do not shine on neighboring properties or roadways.**
6. **Any dumpsters shall be located at the rear of the buildings and shall be screened from view of Route 18.**
7. **The Conditional Use shall expire unless it is substantially underway within 3 years of the Council's approval.**
8. **The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

M 640 10 Adopt Ordinance No. 2162 (C/U No. 1870) (continued)

Motion Adopted: **5 Yeas.**

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

Public Hearing/ C/U No. 1871

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 EXPANSION OF CONDITIONAL USE NO. 1265 (ORDINANCE NO. 1284) ANTIQUES AND CRAFT SHOP AND WILDLIFE AND FOLK ART BY ADDING THE SALE OF SWING SETS, SHEDS, OUTDOOR FURNITURE, FENCING AND VARIOUS GARDEN AND YARD ACCESSORIES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.05 ACRES, MORE OR LESS" (Conditional Use No. 1871) filed on behalf of Candleberry Creek.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on November 10, 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 10, 2010.)

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

Michael Rhue was present on behalf of Candleberry Creek and he stated that he proposes to expand their business to meet community needs; that there is no traffic impact; that the gift shop was previously approved; that they did expand to sell swing sets, sheds, etc. without prior approval; and

that there are no other similar uses on the highway, with the exception of one portable building business 12 miles north in Kent County.

M 641 10 Adopt Ordinance No. 2163/ C/U 1871
M 641 10 Adopt Ordinance No. 2163/ C/U 1871 (continued)

A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to Adopt Ordinance No. 2163 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR EXPANSION OF CONDITIONAL USE NO. 1265 (ORDINANCE NO. 1284) ANTIQUES AND CRAFT SHOP AND WILDLIFE AND FOLK ART BY ADDING THE SALE OF SWING SETS, SHEDS, OUTDOOR FURNITURE, FENCING AND VARIOUS GARDEN AND YARD ACCESSORIES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.05 ACRES, MORE OR LESS" (Conditional Use No. 1871) filed on behalf of Candleberry Creek, with the following conditions:

1. **Outside storage and displays of sheds, swing sets, and garden products shall be permitted on the site. The location of the display areas shall be shown on the Final Site Plan.**
2. **There shall be no more than a total of 30 swing sets and/or sheds displayed on the site at any one time.**
3. **All outside displays shall be located at least 60 feet away from the right-of-way of Route One, with the exception of one swing set and shed that can be located no less than 40 feet from the right-of-way.**
4. **The Final Site Plan shall contain the location of all entrances, driveways and parking areas.**
5. **The use shall be subject to all DelDOT approvals.**
6. **As stated by the Applicant, the hours of operation shall be between 10:00 a.m. and 5:00 p.m. but open 6 days per week.**
7. **Any sheds sold from the premises shall contain a notice that a shed placement requires a permit from Sussex County.**
8. **This approval shall be limited to the Applicant and his family. If the business or the site is transferred to anyone other than the Applicant or his family, this Conditional Use, which is an expansion of Ordinance No. 1284, shall expire.**
9. **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. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea; Mr. Phillips, Yea

M 642 10 Adjourn

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to adjourn at 3:03 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

Robin A. Griffith
Clerk of the Council