SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 29, 2011

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 29, 2011, 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**
David Baker	**County Administrator**
Susan M. Webb	**Finance Director**
J. Everett Moore	**County Attorney**

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

Mr. Vincent called the meeting to order.

M 169 11 Amend and Approve Agenda

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to amend the Agenda by deleting the following listed under David Baker, County Administrator:

2. COUNTY COUNCIL RECESS FOR COUNTY ADMINISTRATOR SEARCH COMMITTEE PUBLIC MEETING

<u>Agenda for County Administrator Search Committee</u>

A. Discussion of Process

B. Discussion of Applicants/Qualifications

C. Review Applications

D. Recommendations for Interviews

E. Recommendations to County Council

F. Adjournment of Committee

3. RECONVENE COUNTY COUNCIL MEETING

5. County Council Discussion of Applicants;

M 169 11 Amend and Approve Agenda (continued)

and, to amend #4 under David Baker, County Administrator, by deleting the word "Recommendations";

and, to delete "Executive Session – Personnel, Pending/Potential Litigation, and Land Acquisition" and "Possible Action on Executive Session Items";

and, to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of March 15, 2011 were approved by consent.

Attorney Comments

Mr. Moore commented on his recent eye surgeries and he thanked the Council, County staff, and others for their thoughts and prayers.

Main-tenance Building Proposal

Mr. Baker reported that a suggestion was made for the County to construct a pole shed type maintenance building for the purpose of providing cover for County owned equipment. The proposed building would be approximately 60 feet by 120 feet and located next to the paramedic maintenance building at the airport. The building would be sized to provide cover for the Emergency Operations Center command vehicle, the County bookmobile, a dump truck, tractors, and other maintenance equipment that is currently kept outdoors. This would help prevent maintenance problems for equipment in the future. Mr. Baker reported that the intent is to provide a basic pole shed type building without heat for this purpose. A small section within the building would enable County employees to have storage space for runway lights and other electrical equipment that is needed to maintain the airport. The estimated cost of this building is as follows:

1. Equipment building, including site work, building materials, labor and overhead doors – approximately $102,000

2. Concrete flooring:

a. A minimum of approximately 36 feet by 60 feet - $11,500; or

b. Concrete floor for the entire building, 60 feet by 120 feet - $34,000

The total cost is estimated to be from $113,000 to $136,000, depending on

whether or not a full concrete floor is included. Staff is recommending a concrete floor for the entire building.

Mr. Baker stated that another option is that this building could be paid for in this fiscal year and be paid for from the Capital Improvements Fund; alternatively, the project could be considered for the Fiscal 2012 Capital Improvements Budget.

Main-tenance Building Proposal (continued)

Mr. Cole stated that the construction should go through a bid process. Mr. Cole also recommended a concrete floor for the entire building.

Mr. Wilson questioned the size of the building stating that it is too large.

Doug Stoakley, Maintenance Supervisor, and Bobby Schoonover, EMS Technical Services Division Manager, spoke in regards to the proposal. They stated that they plotted out all the equipment and that the building would be full but would allow space to work around the equipment. They also stated that they thought there would be a savings if the County acted as the General Contractor.

M 170 11 Put Together Main-tenance Building Proposal with Costs

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to direct staff to put the maintenance building project together with actual costs/pricing (for presentation to the Council).

Motion Adopted: 5 Yeas.

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

Discussion of Adminis-trator Search Committee

In regards to earlier amendments to the Agenda, Mr. Moore stated that it was felt that amending the Agenda would make the County Administrator search process much cleaner. For this reason, the meeting of the Search Committee was postponed until Tuesday, April 4, at 9:00 a.m. The meeting notice for the Committee and the Agenda for the meeting will be posted on this date. Mr. Moore stated that this Council wants to be open about the process and that there has been nothing subterfuge concerning the process; however, due to the fact that all Council members are members of the Search Committee as well, the lines got blurred between what was the Committee and what was the Council. For this reason, it was felt that it is very important to go back and actually discuss the process from the start and therefore, the Agenda item "County Council Discussion of Administrator Search Committee" remained on the Agenda for this date.

Mr. Moore stated that the discussion on this date would pertain to the process, i.e. Administrator qualifications, Administrator job duties, advertising, what happens when the applications are received, what will the Committee do in regards to interviews, etc. Mr. Moore stated that the purpose of this is to keep the process moving and at the same time, have it as clean as possible.

Mr. Baker reviewed the job description and qualifications of the County Administrator, the Chief Administrative Officer of the County Government, who oversees the administration of all aspects of County Government including a $140 million budget.
Mr. Baker discussed the advertising and posting of the position;

Discussion of Administrator Search Committee (continued)

- **the advertisement was posted on the County's website January 19 until February 8**
- **January 20 and 23 – advertised in the Delaware State News**
- **January 27 and 30 – advertised in the News Journal**
- **January 31 – advertised in the National Association of Counties Newsletter**
- **January 20 through February 3 – included in the National Association of Counties Jobs-On-Line**

Mr. Baker stated that what is being recommended is that the County Administrator Search Committee be charged with duties including: that the applications be accepted and reviewed by the Human Resources Director to determine if the individuals who apply have the qualifications that meet the requirements as advertised; that the Director would report back to the Committee; that the Human Resources Director and the County Administrator provide questions to the Committee for their input; that the Committee have the ability to interview qualified candidates as the Committee deems fit; that the Committee recommend candidate(s) to the Council for consideration; and that the Committee check references and backgrounds, negotiate terms of employment including salary, and make a recommendation to the Council. Mr. Moore suggested that, to the extent that any of these items have already been completed, that the Council ratify those actions that have taken place, i.e. the advertisements have taken place, applications have been received and reviewed by the Human Resources Director; and some interviews have taken place. Mr. Moore suggested that a Motion be made authorizing the Committee to continue to do these actions and ratify the actions that have been taken to date.

Mr. Phillips questioned if the names of the candidates can be disclosed. Mr. Moore responded that the matter would have to be discussed with the candidates as there is an expectation of privacy.

Mr. Phillips stated that approximately 7 years ago, the idea of the position of County Administrator being an elected position was discussed. Mr. Phillips stated that the previous Council did not want to do that. Mr. Phillips stated that he made the argument that it is probably the most significant position in the County and he questioned if that choice shouldn't be left up to the people. Mr. Phillips questioned if there was any interest in exploring this.

Mr. Cole stated that Sussex County Council would have to be restructured to allow this.

Discussion of Administrator Search Committee (continued)

Mr. Wilson stated that the County Administrator is far more than anyone off the street that could get elected; that personality will not get the job done; that qualifications need to be met; and that for this reason he would not support the idea.

Mr. Moore noted that the agenda item was for a discussion on the Search Committee and that the issue raised by Mr. Phillips would be a discussion item for another time once it is has been placed on the Agenda and advertised.

M 171 11 Authorize County Administrator Search Committee and Actions of the Committee

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, that the County Administrator Search Committee will consist of the five Council members, the Human Resources Director Karen Brewington, County Administrator David Baker, and the County Attorney Everett Moore; and further, the Committee will be charged with finding an applicant that meets the County Administrator qualifications and job duties; that the position be advertised both locally and nationally; that the applications be accepted; that an interview process be determined; that the Committee interview the candidates; that the Committee make recommendations to the Council; that the Committee perform background checks; that the Committee negotiate a contract with the candidate; and further, to the extent that certain items have already been completed, such as the advertisements, receipt of applications, and interviews taking place; that this Council ratifies those actions that have already been taken.

Motion Adopted: 5 Yeas.

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

Administrator's Report

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

1. <u>House Bill No. 31 – Tax Dates</u>

House Bill No. 31, which is a housekeeping measure requested by Sussex County to change the billable date for Sussex County taxes to more appropriately match up with our fiscal year, has been approved by the State of Delaware House of Representatives. It has now been assigned to the Community/County Affairs Committee in the Senate.

2. <u>Federal Emergency Management Agency Flood Insurance Rate Map Meeting</u>

This is another reminder regarding the Federal Emergency Management Agency (FEMA) meeting scheduled to be held on March 30 from 3:00 to 5:00 p.m. in the Sussex County Council Chambers. Attached is information regarding the update of the flood insurance maps in Sussex County.

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

Fenwick Island SSD/ Escrow Agreement for the Water's Run Project

John Ashman, Director of Utility Billing, presented an Escrow Agreement with WRDG, LLC, for the Water's Run Project in Fenwick Island. The Agreement is to fund the engineering design, construction, inspection, and related costs for the sewerage facilities described as: 1- gravity sewer and appurtenances in Old Mill Bridge Road; and 2- collection system and small diameter pumping system to serve the Magnolia Shores Development. The Developer will be required to deposit the total sum of $361,537 into an account to be held in escrow for payment of costs incurred to design, construct, and inspect the gravity sewer and appurtenances in Old Mill Bridge Road; the funds are to be deposited no later than May 15, 2011. Mr. Ashman stated that the County will complete this construction as part of its Pump Station 30 and Force Main upgrade. The Developer is also required to deposit the sum of $33,500 into an account to be held in escrow for the payment of costs incurred for the County to design the collection system and small diameter pumping system to serve the existing Magnolia Shores Development or the Developer can agree to direct their engineer to provide equivalent plans and specifications. The Developer agrees to complete the construction in parallel with the first phase of construction of its Water's Run Development. If funds are needed in lieu of the developer's engineer completing the design, those funds shall be deposited into an escrow account no later than May 15, 2011.

Mr. Ashman noted that the Magnolia Shores' scope of work was included because the property is needed to make the Water's Run contiguous to the Fenwick Island Sanitary Sewer District and an agreement with their concurrence is to be included if the Developer agrees to install the sewer infrastructure at his cost.

Mr. Ashman also noted that the Council previously approved this expansion of the Fenwick Island Sanitary Sewer District on July 24, 2007; the expansion included the Magnolia Shores Development and the Water's Run Project; the Water's Run Project has since changed hands and WRGD, LLC, is the current developer of the project.

M 172 11 Execute Escrow Agreement/ WRDG, LLC/ Water's

A Motion was made by Mr. Cole, seconded by Mr. Phillips, that the Sussex County Council President is hereby authorized to execute an Escrow Agreement with WRDG, LLC, to finance the design and construction of sewer infrastructure in Old Mill Bridge Road and the Magnolia Shores Development, as presented on March 29, 2011.

Motion Adopted: 5 Yeas.

Run Project

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 173 11 Community Grant

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to give $1,000.00 ($200.00 from each Community Grant Account) to the Delaware Ducks Unlimited for the Greenwing Event.

Motion Adopted: **5 Yeas.**

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

M 174 11 Community Grant

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to give $750.00 ($500.00 from Mr. Vincent's Community Grant Account and $250.00 from Mr. Phillips' Community Grant Account) to the Laurel Alumni Scholarship Foundation for scholarship funding.

Motion Adopted: **5 Yeas.**

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

M 175 11 Community Grant

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to give $500.00 from Mr. Wilson's Community Grant Account to the American Cancer Society for the Making Strides Against Breast Cancer Annual 5K Walk and Race event.

Motion Adopted: **5 Yeas.**

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

M 176 11 Community Grant

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give $2,500.00 from Mr. Vincent's Community Grant Account to the Nanticoke Little League for operating costs.

Motion Adopted: **5 Yeas.**

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

M 177 11

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give $500.00 ($250.00 each from Mr. Cole's and Mr. Phillips' Community Grant

Community Grant

Accounts) to the Ocean View Boy Scouts Troop 281 for the purchase of a new trailer for camping and community service outings.

Motion Adopted: **5 Yeas.**

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

M 177 11 (continued)

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give $500.00 from Mrs. Deaver's Community Grant Account to Get Down Roadrunners AAU Basketball for operating costs.

M 178 11 Community Grant

Motion Adopted: **5 Yeas.**

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

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give $250.00 from Mr. Wilson's Community Grant Account to the Greenwood Police Department for the 2011 National Night Out event.

M 179 11 Community Grant

Motion Adopted: **5 Yeas.**

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

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to give $500.00 ($100.00 from each Community Grant Account) to the Sussex County Genealogical Society for conference expenses.

M 180 11 Community Grant

Motion Adopted: **5 Yeas.**

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

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give $1,000.00 from Mrs. Deaver's Community Grant Account to the Milton Community Foundation to organize a farmers market.

M 181 11 Community Grant

Motion Adopted: **5 Yeas.**

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

M 182 11 Community Grant

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to give $500.00 from Mrs. Deaver's Community Grant Account to Duffy's Hope to support their basketball game fundraiser which will help fund their ongoing outreach efforts.

M 182 11 (continued)

Motion Adopted: 5 Yeas.

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

Additional Business

Under Additional Business, Sandy Spence commented on the League's (Sussex County League of Women Voters) tour of the Emergency Operations Center.

M 183 11 Recess

At 10:55 a.m., a Motion was made by Mr. Phillips, seconded by Mr. Wilson, to recess until 1:30 p.m. Motion Adopted by Voice Vote.

****

M 184 11 Reconvene

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to reconvene at 1:33 p.m. Motion Adopted by Voice Vote.

Public Hearing/ C/U No. 1873

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A WINERY/STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.92 ACRES, MORE OR LESS" (Conditional Use No. 1873) filed on behalf of Wine Worx, LLC.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on March 10, 2011 at which time action was deferred. On March 24, 2011, the Commission recommended that the application be approved with conditions.

(See the minutes of the meeting of the Planning and Zoning Commission dated March 10 and 24, 2011.)

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

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

Mr. Lank reported on the comments outlined in two additional letters that were received into the record since the Public Hearing before the Commission; the letters were from the Sussex County Engineering Department and the Sussex Conservation District.

Nicholas Mobilia was present on behalf of the application along with Tim

Public Hearing/ C/U No. 1873 (continued)

Willard, Attorney. They reported that Mr. Mobilia has a 250 acre vineyard in Erie, Pennsylvania; that the store is currently selling bottled wines; that the State recognizes farm wineries as agricultural or manufacturing; that the site is currently zoned B-1 Neighborhood Business; that the site is across Route 54 from the vineyard; that the vineyard is located in an AR-1 Agricultural Residential District; that the site is 2,800 square feet; that the largest part of the property will be used for the manufacturing of the wine and the front of the property will be used for retail; that Delaware has several wineries; that Delaware has a Farm Winery Law; that this application provides for the fermenting and bottling of wine on the premises; that the State legislation occurred in 2009, and allows Fenwick Wine Cellars to open as a retailer, to plant the vineyard, and to apply for licensing; that they received their Farm Winery License in December 2009 and that they opened as a retailer on January 7, 2010; that the vineyard was planted in May 2010; that manufacturing requires tanks, hoses, pumps, filters, and a bottling line; that retail sales is a permitted use in B-1 Neighborhood Business Districts; that the site is in close proximity to other commercial/business uses and districts; that the site is located in the Environmentally Sensitive Developing Area according to the 2008 Comprehensive Land Use Plan; that the site is located in a Level 3 Area according to the State Strategies document; that 55 parking spaces exist on the property; that the Booklet includes a copy of the site plan and floor plans for the facility; that the retail center includes an existing restaurant/bar, a retail shop, and their shop; that all retail and processing activities are indoors; that there should not be any noticeable noise from the processing activities; that they currently have six (6) employees and anticipate an additional two (2) or three (3) employees; that DelDOT did not require a Traffic Impact Study; that they will work with the Engineering Department for approval and voiced no objections to that being a condition of approval; that this site is intended for retail sales; that the vineyard north of Route 54 will be used to raise the grapes; that Fenwick Wine Cellars has been operating the retail portion of the business for approximately one year; that sales and demand for the product will influence expansion of the vineyard north of Route 54; that they may have to purchase juices from grapes raised elsewhere to meet demands; that a winery does not use a lot of water; that the waste produce from the processing is recycled and spread on the vineyard as fertilizer; and that the Applicant does not own the property and the landlord is Keith Properties.

Mr. Willard submitted the following information regarding the winery process: "The industry standard for water usage is approximately one gallon of water used per gallon of wine produced on an annual basis. In 2010, Fenwick Wine Cellars sold 1,500 cases of wine or 3,570 gallons of wine. Had the wine been produced here, we would have used roughly 3,570 gallons of water in 2010."

Mr. Vincent stated that, at the Public Hearing before the Planning and Zoning Commission, a comment was made regarding the lack of a fence between the parking area and the subdivision (Fenwick Farms).

Mr. Willard stated that the applicant is not the property owner but a tenant and that the landowner is Keith Properties. Mr. Willard stated, however, that the Applicant wants to be good neighbors and that if it is made a condition, they will deal with it.

(continued) **Mr. Lank commented on the history of the use of the property and the fencing requirement.**

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

M 185 11 Adopt Ordinance No. 2184/ C/U No. 1873

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 2184 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A WINERY/STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.92 ACRES, MORE OR LESS" (Conditional Use No. 1873) filed on behalf of Wine Worx, LLC, with the following conditions:

1. **In conjunction with the Applicant's Farm Winery License issued by the Delaware Alcoholic Beverage Control Commission, this Conditional Use permits the fermenting, bottling and labeling of wine at the site.**
2. **The Conditional Use shall be limited to the approximately 2,800 square feet shown on the site plan with shared parking of 55 spaces. Any expansion of the Conditional Use shall require the review and approval of the Sussex County Planning and Zoning Commission and the Sussex County Council through public hearings.**
3. **The hours of operation shall be 10:00 a.m. to 8:00 p.m. seven (7) days per week.**
4. **Signage shall be in accordance with the sign regulations that exist for the B-1 Neighborhood Business District.**
5. **All Federal and State regulatory requirements shall be met.**
6. **The Applicant shall comply with all requirements of the Sussex County Engineering Department regarding any discharged wastewater into the County's sewer district.**
7. **The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Motion Adopted: **5 Yeas.**

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

Public Hearing/ C/U

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 OFFICES (GENERAL BUSINESS OR PROFESSIONAL) TO BE LOCATED ON A

No. 1882

CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 32,410 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1882) filed on behalf of John Lingo.

Public Hearing/ C/U No. 1882 (continued)

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on March 10, 2011 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 March 10, 2011.)

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

Mr. Lank reported on the comments outlined in an additional letter that was received into the record since the Public Hearing before the Commission; the letter was from the Sussex Conservation District.

Mr. Lank distributed copies of an Exhibit Book which were previously provided by the Applicant.

The Council found that John Lingo was present on behalf of his application. He reviewed the Exhibit Book and stated that the site adjoins a piece of property owned by his father; that the area includes several business uses, commercial uses, and a public utility; and that the site is not conducive to residential use since it is surrounded by business and commercial uses.

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

M 186 11 Adopt Ordinance No. 2185/ C/U No. 1882

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to adopt Ordinance No. 2185 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR OFFICES (GENERAL BUSINESS OR PROFESSIONAL) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 32,410 SQUARE FEET, MORE OR LESS" (Conditional Use No. 1882) filed on behalf of John Lingo, with the following conditions:

1. **The offices shall be limited to general business or professional offices.**
2. **Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring properties or Route 9.**
3. **The use shall comply with all DelDOT regulations and requirements. The entrance shall be from Route 9 as approved by DelDOT.**
4. **Signage shall be limited to one lighted ground sign not to exceed 32 square feet per side.**
5. **All trash containers shall be placed at the rear of the building and**

shall be screened from view. The location of the containers shall be shown on the site plan.

6. **The site plan shall be designed to accommodate all necessary parking spaces, right-of-ways, setbacks and landscaping.**
7. **The project shall comply with all applicable Sussex Conservation District requirements.**
8. **The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

M 186 11 (continued)

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. 1883

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.989 ACRE, MORE OR LESS" (Conditional Use No. 1883) filed on behalf of Margaret Taylor.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on March 10, 2011 at which time action was deferred. On March 24, 2011, the Commission deferred action again..

(See the minutes of the meeting of the Planning and Zoning Commission dated March 10 and 24, 2011.)

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

Mr. Lank reported on the comments outlined in an additional letter that was received into the record since the Public Hearing before the Commission; the letter was from the Sussex Conservation District.

Mr. Lank advised the Council that the site contains one structure with two units, one structure with three units, a manufactured home, and an accessory building. Mr. Lank distributed photographs taken by County staff. Mr. Lank explained that Units A, B, and C are in the one story (center) building with canopy; Units D and E are in the brick faced building, and the mobile home is the sixth unit. Mr. Lank stated that, based on a neighbor's testimony, there has always been a manufactured home on the site, even before zoning.

The Council found that Melvin Green was present on behalf of the application. He stated that Margaret Taylor owns the property and the

apartments; that she purchased the property in approximately 2006; that the six units existed on the property when it was purchased; that a contractor takes care of the holding tank on the site; and that they are asking to keep the apartments going.

Mr. Lank noted that the Applicant was issued a violation notice.

Public Hearing/ C/U No. 1883 (continued)

Mr. Lank reviewed some of the history of the site, including the replacements of the manufactured homes.

Public comments were heard.

Larry Blankenship, a tenant for three years, spoke in support of the application.

Amy Grambrill, a neighboring property owner, spoke in opposition to the application and she stated that she has lived in the area for 20 years; that there were no apartments on the property when she moved there although the trailer and the brick building were existing structures; that the brick building was a garage and an automobile dealership; that the applicant made apartments out of the brick building and the garage; that the area is a residential neighborhood; that since the apartments have been there, there has been a lot of police presence; that there is concern about the septic on the property; that six families live on .9 acres on Rossakatum Branch; that the density causes problems; that there is no parking for the apartments; and that there are safety concerns due to the parking along Route 13A and children playing on Horsey Road, the access road to a farm.

Elizabeth Messick, a neighboring property owner, spoke in opposition to the application and she stated that she has lived in the area since 1995; that when they moved in, the trailer was there and occupied and it has, more or less, been continually occupied; that the buildings in the front were not occupied; that there is a large turnover of tenants; that there are safety concerns; that cars are in and out of the site all day; that the police are at the site often; that the septic system cannot be environmentally safe; and that the multi-family use is not compatible with the area.

The Public Hearing was closed.

M 187 11 Request for Additional Information

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to require the Applicant to supply the County with a septic evaluation and documentation regarding the holding tank process.

Motion Adopted: **5 Yeas.**

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

M 188 11 Defer Action/ C/U 1883

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to defer action on Conditional Use No. 1883 filed on behalf of Margaret Taylor.

Motion Adopted: 5 Yeas.

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

M 188 11 (continued)

Public Hearing/ C/Z 1702

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 CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.93 ACRES, MORE OR LESS" (Change of Zone No. 1702) was filed on behalf of S. J. Y, LLC.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on March 10, 2011 at which time the Commission recommended that the application be approved.

(See the minutes of the meeting of the Planning and Zoning Commission dated March 10, 2011.)

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

Mr. Lank provided a history of the property: in 1990, a Conditional Use was approved for William Tribbett for a country decorating shop; in 1994, a Conditional Use was approved for Country Friends by Linda for a country craft shop and the sale of plants and produce; and in 2002, a Conditional Use was approved for Ron Yoder to expand a Conditional Use to include meat cutting and sales.

Mr. Lank reported on the comments outlined in an additional letter that was received into the record since the Public Hearing before the Commission; the letter was from the Sussex Conservation District.

Mr. Lank read a letter of support into the record written by State Representative David L. Wilson.

The Council found that Lamar Oder was present on behalf of the application. He stated that the purpose of the application is to allow the Applicant to sell the property; that they offered the property in auction in August and buyers were not interested in a Conditional Use of the property since it limits what the property can be used for; that the property is still vacant; and that individuals expressed an interest in purchasing the property if it was zoned B-1.

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

M 189 11 Adopt Ordinance M 189 11 Adopt Ordinance No. 2186/ C/Z No. 1702 (continued)

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to Adopt Ordinance No. 2186 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 CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.93 ACRES, MORE OR LESS" (Change of Zone No. 1702) was filed on behalf of S. J. Y, LLC.

Motion Adopted: 4 Yeas, 1 Abstention.

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

Public Hearing/ Adminis-trative Variance Ordinance

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXV §115-181 RELATING TO YARDS AND OPEN SPACES GENERALLY".

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission held a Public Hearing on this application on March 10, 2011 at which time the Commission deferred action. On March 24, the Commission deferred action again. The Commission expressed concern about the lack of a public hearing if a neighbor objects to a proposal; about controlling repeat offenders; and about the responsibility being put on the Director rather than the Board of Adjustment.

(See the minutes of the meeting of the Planning and Zoning Commission dated March 10 and 24, 2011.)

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

Mr. Lank explained that the draft ordinance allows for an Administrative Variance procedure; that the ordinance is not intended to relate to setbacks and separation distances within manufactured home parks; that the Amendment relates to single family lots, business/commercial parcels, and multi-family building separations; that the Department sees a lot of surveys; and that some of the surveys show changes in setbacks and separations established by the more modern technology in the equipment now used by surveyors compared to the equipment used in the past, i.e. chains and tape measuring to laser equipment.

Mr. Lank read a letter into the record from Richard Berl, Assistant County Attorney and Attorney for the Board of Adjustment; the letter was received on March 28th.

Mr. Moore clarified that the Proposed Ordinance does not include the manufactured home parks because that is by a separate ordinance entirely; therefore, what is being discussed on this date is in regards to areas other than manufactured home parks.

Public Hearing/ Administrative Variance Ordinance (continued)

Mr. Lank stated that manufactured home regulations are a part of the conditional use requirements.

Mr. Moore stated that the possibility of having an ordinance such as this one was discussed with the Manufactured Housing Committee and the Committee members had mixed reviews on the matter.

Mr. Lank stated that, under the proposal, administrative variances is an additional section of Article XXV §115-181 E and he read Sections 1 through 5 of the Proposed Ordinance.

Mr. Lank stated that, in response to the question raised by Mr. Berl and Mr. Wheatley, Chairman of the Planning and Zoning Commission, regarding repeat offenders, the Director will advise the applicant requesting the administrative variance that an application must be submitted to the Board. Mr. Moore noted that the Proposed Ordinance states that the Director <u>may</u> approve the administrative variance application.

Mr. Lank stated that, at the Commission's Public Hearing, a question was raised regarding the notification to neighbors of any decision. Mr. Lank stated that a policy would have to established for a notification process.

Mrs. Deaver stated that she objects to the tone of Mr. Berl's letter.

Public comments were heard.

Roberta Hemmerich spoke in opposition to the Proposed Ordinance. She stated that she applauds the County's efforts to make this process easier but she still has some concerns. She stated that the Proposed Ordinance does not specifically reference that it does not relate to manufactured housing and it should be clearly stated in the wording; that giving this power to one person would be a mistake and would potentially lead to more problems for the County; and that this would be an additional burden to the Director of Planning and Zoning that might prove very cumbersome.

John Walsh spoke in opposition to the Proposed Ordinance. He stated that there are three serious problems with the Proposed Ordinance as currently presented: (1) if this does not apply to manufactured housing, it should state that; (2) lack of transparency – with this ordinance, one person decides in private what has been decided in the past by a 5 member public board; there is no provision for the publication of the decision or a statement of the appeal process; and (3) lack of accountability – there is nothing in the ordinance that involves procedures to report the number of cases, what the decisions were, or what appeals may have been made; the Council is

removed from the process.

A discussion was held regarding the process in New Castle and Kent counties.

(continued)

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

M 190 11 Defer Action on Administrative Variance Ordinance

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to defer action on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXV §115-181 RELATING TO YARDS AND OPEN SPACES GENERALLY".

Motion Adopted: **5 Yeas.**

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

M 191 11 Adjourn

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to adjourn at 3:10 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

Robin A. Griffith
Clerk of the Council