

**MINUTES OF THE KENT COUNTY LEVY COURT
REGULAR BUSINESS MEETING
KENT COUNTY ADMINISTRATIVE COMPLEX
555 BAY ROAD, DOVER, DE
LEVY COURT CHAMBER, ROOM 203
Tuesday, December 21, 2010**

Call to Order

The Regular Business meeting of the Kent County Levy Court was called to order at 7:00 P.M. by President Banta.

Invocation & Pledge of Allegiance

The Invocation was led by Mr. Ennis and the Pledge of Allegiance was led by Mr. Brode.

Moment of Silence for our Troops

A moment of silence was observed for our Troops led by Mr. Sweeney.

Roll Call and Determination of Quorum

Allan F. Angel	Vice President
Harold K. Brode	Commissioner
Eric L. Buckson	Commissioner
Brad S. Eaby	Commissioner
Richard E. Ennis	Commissioner
George W. Sweeney, Sr.	Commissioner
P. Brooks Banta	President

There are seven (7) Commissioners present.

Adoption of the Agenda

M-309-10 Motion was made by Mr. Angel, seconded by Mr. Brode and carried by Roll Call vote 7 yeas to adopt the Agenda as presented.

PRESENTATIONS

1. Capital Credit Check Presentation to the Levy Court by Delaware Electric Cooperative Inc.

Layton Wheeler and Mark Neilson were in attendance to present the check to Levy Court. Mr. Wheeler explained the check was for the years 1988, '89, '90 and a portion of 2009 and is what is called Margins or Capital Credits. The check is for almost \$38 thousand from Delaware Electric Cooperative Inc. They have been coming for a few years with check presentations and that is a good thing – we bring good tidings. Delaware Electric Co-op serves members in Kent and Sussex County. “We Keep The Lights On” and we have the “Beat the Peek” program. If you do not have our in home indicator and three free CFL bulbs you need to get in touch with our office and let us fix you up. We bring tidings from Bill Andrew who could not make it tonight. Mark Neilson, Vice President, Delaware Electric Cooperative will make the presentation.

Mr. Neilson said it was a pleasure to serve the Waste Water Treatment facility. They are the largest customer of 83,000. The check was actually in the amount of \$37,958.76.

Mr. Banta thanked them on behalf of Levy Court, County Administrator and all involved. We sincerely appreciate this while trying to operate in a very challenging time in American history.

Mr. Medlarz said they appreciate the great rates they have with the Co-op.

Mr. Petit de Mange and all Commissioners expressed thanks as well.

2. Employee of the Year

Certificate of Recognition for Dorothy A. Cheatham was read into the record by Ms. Tanaka. Dorothy is Employee of the Year for 2010. The award was presented at the annual Employee Holiday Social.

3. Employee of the Month (January 2011)

John E. “Jack” Webb is Employee of the Month for January 2011. This was read

into the record by Ms. Tanaka. Jack works in the Dept. of Public Works as an Environmental Tech. I in the Div. of Engineering and has been with the County since May 2000. He is primarily responsible for inspecting area restaurants to verify compliance with FOG regulations and completing various tasks related to the waste hauler program. Jack helps in any way he can and can do pretty much anything. Congratulations Jack! He resides in Commissioner Buckson's and Ennis' districts.

Mr. Banta states the next item is Item IV which does not show on the Agendas. He asked Mr. Petit de Mange to read the Item.

Mr. Petit de Mange read a Kent County Levy Court Tribute to Commissioner Harold K. Brode. He has served faithfully and without reproach as a duly elected Commissioner of Kent County for the 6th District. Levy Court congratulates him on his four years of loyal service and is proud to present the Tribute.

Next, Mr. Petit de Mange read a Kent County Levy Court Tribute to Commissioner Richard Earl Ennis, Sr. He has served faithfully and without reproach as a duly elected Commissioner of Kent County. Levy Court congratulates Commissioner Ennis for his sixteen years of loyal service. He was given the key to the County earlier at a reception that was given in his honor.

7:15 P.M., PUBLIC HEARINGS

Ms. Keifer stated this Public Hearing is being conducted for the purpose of giving the citizens of Kent County the opportunity to provide testimony to the Levy Court on the item that is before them that has been referred from the Regional Planning Commission. Everyone will have an opportunity to speak. All Statements will be made from the podium at the front of the room. For the record, please give your name and address. Copies of any written statements or exhibits used during the testimony should be provided to the Clerk of the Peace for inclusion in the record for that item. The procedure will be as follows:

The president or the staff will introduce the application;

Levy Court will then receive testimony from all of those in favor;

Testimony will then be received from those in opposition;

After everyone has had an opportunity to speak, the President will declare the hearing on that application closed and the Levy Court will consider their decision. Decisions will be made this evening, by the Levy Court, based upon public testimony received this evening as well as a recommendation report submitted to the Levy Court from the Regional Planning Commission. Ms. Keifer requested that the RPC recommendation report be included as part of the permanent record for this proceeding.

Public Notice of this hearing was published in the Delaware State News, December 5, 2010 edition.

**PETITION FOR CONDITIONAL USE REQUIRING SITE PLAN
APPROVAL:**

Mr. Buckson:

1. Application Number/Title: CS-10-06 Tidewater /Roesville Estates; Applicant: Tidewater Utilities, Inc.; Owner: HOVBROS Roesville, LLC; Engineer: Cabe Associates, Inc.; Present Zoning District: AC (Agricultural Conservation); Present Use: Unimproved Subdivision Lot; Proposed Use: Temporary Central Water Facility; Area and Location: 0.31 acres ± located on the southeast side of Fallkirk Court, approximately 179 feet south of Mirren Court, being lot #309 of the Roesville Estates subdivision, west of Frederica; Kent County Property Identification Number: SM-00-140.04-09-21.00-000

Ms. Keifer gave a brief summary; RPC had a hearing on December 2 and on December 9 they voted unanimously to recommend conditional approval. Among the suggested conditions were that the permit should expire after two hundred fifty Certificates of Occupancy have been issued within Roesville Estates or five years. At the end of the period the Applicant would have the option of moving the facility or re-applying for another conditional use permit. Other conditions were revising the landscape plan to incorporate the species used throughout Roesville Estates; that the facility should be painted a neutral color and no signage permitted; fire hydrants within the subdivision be fully charged following the completion of the water treatment plant; the permits for adjacent lots – 308 and 310 - would be prohibited until the facility is removed.

Mr. Angel said he received some info just this evening about a site plan in reference to recommendation #6. He asked for more information.

One recommendation was that the landscaping for this site be outside the building envelope, said Ms. Keifer. Because the Applicant is saying the building will be temporary and ultimately removed the thought was the landscaping would be on the perimeter of the lot so it could remain when the house is ultimately built. The Applicant recently sent the exhibit showing a swale near the property line that would inhibit the ability along the property line to put all the landscaping. She believes the Applicant's representative will speak to this that some of the landscaping can be out of the building envelope so it can remain once the house is built.

Public Hearing is Open on Application CS-10-06

IN FAVOR

Mark Dunkle, Parkowski, Guerke & Swayze, 116 W. Water St., Dover – Present on behalf of the Applicant.

Mr. Banta asked Mr. Dunkle if he could give the decibel level at 75 feet once this facility is finished.

We could, answered Mr. Dunkle.

It would be important, said Mr. Banta. It appears to be about 75 feet from what might be the next home built and it would be important to know that number. He then wondered if it was going to be enclosed in some way.

Mr. Dunkle said this temporary facility is not destined to be inside a closure. The permanent facility you already approved is going to be inside. The original plan was to build a water tower and then have the treatment in the tanks permanent for that development and region in essentially a barn or house. That is what we are asking to put on hold because it cannot be supported right now because growth has dropped off. This temporary facility would not be enclosed because it will be moved and come back into a building lot. We would landscape it; fence it; will not build on the two lots adjacent to it while it is there; no one will be able to see it. It is in the back of Roesville; we are sensitive to what it looks like; when temporary period expires it will be removed.

Mr. Banta says it seems to him a pole barn, for a few dollars, or something that would have some aesthetic effect far greater than what you have shown might serve a better purpose for the moment. Later, you can build the beautiful building you have shown.

Mr. Dunkle said they had this discussion previously at Levy Court and the Office of Drinking Water and Safety has appeared and testified that they oppose enclosures for water tanks because it presents for them a safety inspection problem.

They don't have a vote here, said Mr. Banta.

I understand and appreciate that, said Mr. Dunkle, but, we did agree to enclose the water facility for the permanent facility. This is all about belt tightening, as we have all done. We are trying to bring a facility to charge this fire safety system – the hydrants. Once we put in the temporary tanks then the hydrant system gets charged and we can service the houses as they come in. It is all a matter of scaling down and scaling back to do the most economical thing. Putting up a pole barn for the temporary is not economical. After discussion and presentation we convinced RPC of that and we would like to convince you of the same.

Continue, said Mr. Banta.

Mr. Dunkle had an aerial picture brought up of several developments in the area. He said Tidewater had originally received approval to build a big water tank in Carpenter's Bridge. Also, in Carpenters Bridge there is a well facility and the water treatment facility which has some storage. That has been approved; that is the permanent facility that will supply water to all the developments. That plant will be inside a very nice building with dormers and other details that have been approved. Since that time, you know what has happened with the economy and that has stopped the ability to build this permanent water tower and the treatment facility inside the house. It cannot be done economically. Tidewater has customers to serve and houses to protect with fire hydrants. We have to do that and we can do it with the temporary facility. It will provide the pressure required by State Fire Marshall. That is what we want to do on a temporary basis. It is a compromise; it is not perfect but what compromise is? It is economical. We are in full agreement with Planning Division's recommendations with one adjustment. I have been in communications with the Planning Director about where to place the plantings. We do not want to plant down in the swale but will plant as close to the building line as we can above the swale and as close to the line away from the structure to achieve your goal. I believe we can work out the landscape plan without any problem. That would be the adjustment to Item 3 on the recommendations. The other requested change is #1 about when this will expire. We suggested after the 250th CO. It is a good way to measure it by the market. Five years was added on and it is sort of an arbitrary time limit that may not make any sense. Five years might be too quick. We would like to say let it be ten years or the 250th CO. That would be a more comfortable window. I would throw in that at the five year mark you could send us a letter saying we would like to continue this for five more years rather than coming back with an entirely new application. We are only talking about the length of time for the facility. We could check in with you after the five years but would really like the ten/250. Otherwise, we are happy with everything else that was recommended.

Mr. Buckson stated he was listening to concerns and recognizes the hard times. He believes Levy Court was understanding when they agreed to the change in the plan from the large tower. You have got us on the pump station – it is not landscaped and it is County property. We do not want to be overly intrusive on what you are putting out there. We realize the need to have this and do not want to come down hard. How do we make sure it is not visible and if so, that it is pleasing to the eye? Okay, we say you do not put a structure on top but we do need to be sure it is landscaped in a way it is not visible. He asked Ms. Keifer if the landscaping required right now in the locations identified is going to serve the purpose in the near distant future to basically give the impression it is a somewhat forested area?

Ms. Keifer said Staff and RPC has asked for a detail from the Applicant demonstrating the effect of the proposed landscaping. We have not received that.

What would we need to receive, asked Mr. Buckson, to have some insurance? I asked while we were doing the tower to do something at the Wal-Mart site and nothing was done.

I remember that, said Mr. Dunkle. I believe one of the conditions is that we are to show a landscape plan that shows what we will plant and what will it look like over five and ten years. We will comply with that.

Mr. Buckson's feeling is if you want the ten years you will have to put a house on it. If you want the five years we will go with the landscaping. That is where I am.

Mr. Dunkle saw no reason why they couldn't come up with acceptable plantings that will achieve what is being talked about.

Mr. Buckson wants to be sure he can answer any residents that have a concern that there is no environmental impact; it is somewhat of a necessity; the compromise is that if we can ensure it is not visible.

Ms. Keifer thought it might be possible as a condition of approval to clean up the one condition to say planting of the trees - they have to be six or seven feet in height and fast growing. That gives us some guidance as we work through the final approval.

Don Poore, 361 Rustin Lane, Roesville Est., Felton - I am not for or against at this but would like to ask about the noise level. When will we be able to get that answer?

Mr. Dunkle came back to say he could probably get the answer in less than thirty days.

Mr. Poore said he has not heard anyone in the development speak against this. I am inclined to believe the five years would be a better way to go. He was also concerned with landscaping.

IN OPPOSITION

None

Public Hearing is Closed on Application CS-10-06

M-310-10 Mr. Buckson **moved** to grant conditional approval based on Regional Planning Commission's unanimous vote of approval; lack of public opposition; as well as the Applicant shall comply with the following conditions: 1) conditional use

approval for this facility shall expire following the issuance of the 250th Certificate of Occupancy within Roesville Estates or after five years of the date of the approval, whichever comes first. Upon expiration of the conditional use, either a new conditional use application must be filed with the Planning Services or the facility must be removed; 2) provide documentation for the temporary easement for this use on the residential lots; 3) revise the landscape plan to allow trees to remain when the land is returned to residential use. Trees shall be planted outside the residential building set back requirements where possible allowing for the possibility of matured trees to remain; 4) landscape planning shall reflect plants typically found in this development on residential lots and selected from a list on the preliminary plant schedule approved for Roesville Estates such as Red Maple, Black Gum, Swamp White Oak for canopy trees, American Holly, Eastern Red Cedar and Servient Spruce for evergreen trees. Plants and trees chosen from this list shall also meet the minimum caliper suggested from the same approved list for deciduous trees (2 inches).

He stopped to ask Ms. Keifer if there was a reference that needed to be made there.

Her reply was if he was interested in adding that the trees be a certain height at the time they are planted that would be helpful for staff.

Motion continued – 5) before final approval provide elevations of subject site showing proposed landscape detail after one year, 3 years, 5 years and after ten years of growth with a minimum height of 7 foot at planting for fast growing species; 6) tanks and steel containers shall be painted a neutral color and signage is prohibited; 7) the hydrant system will be charged immediately following the completion of the water facility; 8) residential building permits are prohibited on lots 308 and 310 until the water treatment facility is removed and finally Levy Court shall review after five years at which time the approval may be extended another five years and it shall be required to expire.....

Ms. Keifer stated the Applicant had asked that instead of simply expiring at year five and having to go through a full fledged conditional use application that Levy Court would consider instead a review at five years which I think would re-place some of the language in the first condition.

So I need to follow up by saying shall expire after ten years, says Mr. Buckson. Is there a problem in reading that and reading #1?

Ms. Keifer suggested his most recent statement would supersede the last part of the first condition. Instead of it shall expire in five years Levy Court shall review in five years with the ability to grant essentially a five year extension but the application shall expire at ten years.

Add comments made by the Director of Planning, Sarah Keifer, said Mr. Buckson. My motion is to grant conditional approval.

Mr. Banta asked him if he wanted to add the decibel level at 75 feet within 30 days.

Sure, said Mr. Buckson. My understanding is it is a noise ordinance but how is it reflected in a condition of approval?

The development would be subject to our noise ordinance, answered Ms. Keifer. If there is something above and beyond, Levy Court can add it.

Mr. Banta asked it be added as a condition to be provided Ms. Keifer within thirty days.

Mr. Buckson stated he would include Mr. Banta's remarks as a condition of approval at this time; seconded by Mr. Sweeney.

Roll Call on Motion for Application CS-10-06:

Mr. Angel – yes, reasons stated

Mr. Brode – yes, reasons stated

Mr. Buckson – yes, reasons stated

Mr. Eaby – yes, reasons stated

Mr. Ennis – yes, reasons stated

Mr. Sweeney – yes, reasons stated

Mr. Banta – yes, reasons stated

Roll Call reveals 7 affirmative votes.

ORDINANCES RE: EMPLOYEE RETIREMENT PROGRAM

Messrs. Angel and Buckson:

1. **Ordinance LC10-39**, An Ordinance to amend Chapter 83 of The Kent County Code relating to County Employee Retirement Program to establish a three percent contribution for newly hired employees

Mr. Kujala stated this ordinance has been before Levy Court on three previous occasions and discussed at length at Committee on December 7. It would require a three per cent pension contribution under the IRS pick up rules for newly hired

employees. If the proposal is adopted Staff would request that you consider making the amendment similar to what the state pension rules are which has a \$6 thousand threshold before the 3 per cent is calculated on a pension contribution.

Mr. Sweeney asked if the amendment was added how would it affect existing employees? They do not get that benefit right away?

As currently written, this is a separate paragraph in the ordinance, said Mr. Kujala. The \$6 thousand threshold would not apply to current employees who contribute a one per cent.

That is an amendment we could make for existing employees in the near future asked Mr. Sweeney?

It is something to consider, said Mr. Kujala. I think I mentioned it is likely the Commissioners will have to re-visit the entire pension ordinance in the near future as we move forward with an IRS determination letter and this could be something you could address at that point.

Mr. Buckson said in the recollection of the amendment in his mind, typically the language used "at upon adoption" which would could be tonight, means these rules are then in place. I don't understand the need to hold off until July. If it is good for the County government it should be good upon adoption. I request that be removed. It was never and has never been my intention or Mr. Sweeney's to mirror the State. That has nothing to do with this. The amendment I would support is because I would not also want to give the impression I wanted to be more restrictive than the State. It is simply an effort to look at controlling future costs. Later in this agenda we have a request to increase funding to our current staff. I have no arguments against that but in order to do so you have to identify where you can create other savings. This is an effort and attempt to do that. It is not about State mirroring.

Mr. Angel asked if this had anything to do with the union negotiations going on.

Mr. Kujala said this proposal would not apply to either union contract. The unionized employees would not be impacted by the adoption of this amendment. New hires that will be members of the union will not pay the three per cent.

For clarification said Mr. Buckson, they will not pay based on the current contract they are under, based on an agreement to extend the current contract for year which was done after we attempted to do this in the past. We cannot continue to hide behind this. Seems every time these are brought up there are constant obstacles brought up to continue to bring this down. In the negotiation of the new contract, could that be a part of the new negotiations?

We will try to include them under that provision, answered Mr. Kujala.

Mr. Angel asked for further explanation of the IRS ruling.

For many years the IRS has been postponing a provision that government pension plans get a tax exempt determination letter, said Mr. Kujala. It looks as though they will not be postponing it this year. We have initiated the process for securing that tax exempt determination letter. The actuary is telling me that there may need to be some amendments to our ordinance in order to win approval from the IRS to grant the determination letter. My expectation is early next year I will be back with some amendments proposed by the pension attorney to address the IRS concerns.

IN OPPOSITION

None

Public Hearing is Closed on Ordinance LC10-39

M-311-10 Mr. Buckson stated he was encouraged to bring these ordinances back up for review. Clearly, for the record, these ordinances were defeated not too long ago. I accepted the decision and moved on. If it passes, so be it. I do not want to give the impression that these things have to be brought up every month until I get my way. That was not how this rolled out. I have done it once per year. We doubled it this year per request. My apologies. I make a **motion that we approve Ordinance LC10-39 An Ordinance to amend Chapter 83 of The Kent County Code relating to County Employee Retirement Program to establish a three percent contribution for newly hired employees; seconded by Mr. Sweeney.**

Mr. Angel asked if this was with the stipulation it be passed now or July 1st.

Mr. Buckson thought it would be effective after we take an original vote.
Correct, Mr. Pepper?

No, the motion to amend would have to come before the vote, said Mr. Pepper.

M-312-10 Let's go with the motion to amend, said Mr. Buckson. **I move to amend the proposed ordinance by adding the phrase "in excess of \$6,000" in Section 1 after the word "salary" and before the word "payable"; seconded by Mr. Sweeney.**

Mr. Buckson said he was only attempting to remove the language effective date. It shall be upon adoption which could potentially be tonight. The rest stays in; it will mirror what the State policy is as far as exempt \$6 thousand first.

Roll Call on the Amendment:

Mr. Angel – I prefer July 1st but will say yes

Mr. Brode – yes

Mr. Buckson – yes, based on prior comments

Mr. Eaby – yes

Mr. Ennis – yes

Mr. Sweeney – yes

Mr. Banta – yes

Roll Call on amending motion reveals 7 yeas.

Roll Call on original motion:

Mr. Angel – no

Mr. Brode – yes

Mr. Buckson – yes

Mr. Eaby – no

Mr. Ennis – yes

Mr. Sweeney – yes

Mr. Banta – yes

Roll Call on original motion reveals 5 yeas, 2 nay (Angel, Eaby) to approve LC10-39

2. **Ordinance LC10-40**, An Ordinance to amend Chapter 83 of The Kent County Code relating to County Employee Retirement Program to adjust the pension benefit multiplier for newly hired employees

Like LC10-39 just adopted, said Mr. Kujala, this proposal has also been before the Commissioners a couple of times and discussed at length at Committee. This will lower the pension benefit multiplier from the current two per cent to 1.8 per cent. The State multiplier Staff would request be used as a substitute which is a 1.85 per cent if the Commissioners are so inclined to adopt the amendment.

IN OPPOSITION

None

Public Hearing is Closed on Ordinance LC10-40

Again, for the record, said Mr. Buckson, this is about wants and needs. This will not be an immediate cost type of savings. When you look around and identify the problems governments are having we must prepare ourselves for what is eventually to come. This is an amendment. I request an amendment to Ordinance to LC10-40 and move to amend the proposed ordinance by replacing the figure 1.8% with 1.85% in Section 1. He then asked Mr. Pepper if that was an acceptable motion.

Mr. Pepper said he missed the motion to adopt the Ordinance and asked if one was made.

M-313-10 Mr. Buckson made a **motion** to adopt Ordinance LC10-40 An Ordinance to amend Chapter 83 of The Kent County Code relating to County Employee Retirement Program to adjust the pension benefit multiplier for newly hired employees; followed by the requested amendment that shall be read; seconded by Mr. Sweeney.

Again, Mr. Angel asked is this immediately or July 1st.

It will be immediate, said Mr. Buckson.

Now would be the time for proposed amendments, said Mr. Pepper, if the Commissioner desires to make one.

Mr. Angel said if he heard Mr. Buckson correctly, he already put the amendment in for the 1.85 over the 1.8. Is that correct? Mr. Buckson needs to re-read the amendment?

M-314-10 Mr. Buckson **moved** to amend the proposed ordinance by replacing the figure 1.8% with 1.85% in Section 1.

Now I'm confused, said Mr. Sweeney. First motion made was to go from 2.0 to 1.85 and it would be effective immediately. I seconded that motion. Is that not correct?

The original motion was to adopt the proposed ordinance which would set it at 1.8, said Mr. Pepper. The amendment would set it at 1.85.

OK, said Mr. Sweeney. I thought he set it at 1.85 at the outset but I will second the second motion of the amendment.

Roll Call on the amendment:

Mr. Angel – yes

Mr. Brode – yes, wording on the ordinance

Mr. Buckson – yes, reasons stated

Mr. Eaby – yes

Mr. Ennis –yes

Mr. Sweeney – yes

Mr. Banta – yes

Roll Call on amending motion reveals 7 yeas.

Roll Call on original motion:

Mr. Angel – no

Mr. Brode – yes

Mr. Buckson – yes

Mr. Eaby – no

Mr. Ennis – yes

Mr. Sweeney – yes

Mr. Banta – yes

Roll Call on original motion reveals 5 yea, 2 nay (Angel, Eaby)

CLOSE PUBLIC HEARINGS

OLD BUSINESS

1. Application CS-09-03 Coker Concrete, Staff Report on Compliance

Ms. Keifer stated this application was originally approved in July 2009; Levy Court reviewed it again August 24, 2010 and at that time revised the conditions of approval, the schedule for compliance with the conditions of approval setting a number of benchmarks. Most recently considered by Levy Court was the

deadline of November 23 of this year at which time the site entrance was to have been installed; the entrance gate was to be installed and a number of plantings shown on the preliminary approved landscape plan were to have been installed. As of Staff inspection on the 24th of November the entrance had not been installed. To date, it still has not been. As of this afternoon, I understand Mr. Coker has applied to DelDot for an entrance permit. The entrance gate has been installed but as discussed in Committee, it is not in the right location. It needs to be moved to the front. With respect to landscaping, the Applicant is working with Staff and another landscape architect to revise the landscape plan to account for the 290 trees that are required by our ordinance as well as provide the screening that is required by the zoning ordinance. As of this afternoon's inspection, there are 293 trees on the site; there is one small area between the proposed entrance road and the adjacent property owned by Goodhand that needs to be buffered; that was a condition of approval; that buffer is not in; we discussed it with Applicant today and we discussed it with the landscape architect. It will be reflected on the revised landscape plans. Mr. Coker expressed his intent to plant that area. While the landscaping on site is not necessarily compliant with the preliminary landscape plan, the Applicant intends to bring forward a revised landscape plan that is Code compliant for consideration.

Mr. Eaby asked, with respect to site entrance, do we have a photograph showing the location of the site entrance you just referenced?

Ms. Keifer highlighted it on the screen. We have a minor lot line adjustment plan in the office that is ready to be approved. We are waiting on a deed conveying that property and surrounding property to Mr. Coker. It is my understanding it is underway. Once we have that we can record. We have all signatures on the plan; we can record the lot line adjustment plan and the deed and then it will all be in Mr. Coker's ownership which makes getting the entrance permit much easier because he can be the sole signature.

Next, Mr. Eaby referenced the number of trees. The 293 trees would be equal to or above the amount that is required?

In terms of total tree density, said Ms. Keifer, it is above. Where they are placed will achieve the screening required.

With respect to dust control, said Mr. Eaby, where are we with that?

The next benchmark for compliance is actually installation of a sprinkler system in the rear of the site, said Ms. Keifer. My understanding upon inspection today, is that the infrastructure appears to have been installed.

Mr. Eaby asked where that would be located and to show it on the map.

Mr. Angel asked about the entrance that is not where it is supposed to be.

Ms. Keifer said Mr. Coker is currently using the existing entrance on the site. The gate itself is not where it was meant to be. It was to be right at the entrance to prevent trucks from cuing up along the road.

Mr. Angel states he has had 18 months to comply. We are at 17 months. Will he comply within a month?

Ms. Keifer said she could not speak for the progress Mr. Coker intends to make. I can speak to what we discussed today and Mr. Coker and his consultant have indicated we will have final plans. We received an e-mail today with final site plans. He has applied for the entrance permit in terms of constructing the entrance. That will be weather dependent in terms of paving it.

Trees that have been planted, are they what was requested on the conditional use, asked Mr. Angel?

They are not in total what was presented on the preliminary landscape plan. It is primarily White Pines, said Ms. Keifer. In terms of what Code requires to have screen, the White Pines, as they mature, will achieve the purpose.

There are White Pines, Red Maple and Cleveland Pears, said Mr. Angel. That is not what was dictated to be planted.

That is not what was on the landscape plan approved by Levy Court, said Ms. Keifer. That is why Mr. Coker is working with the landscape architect to put together a revised plan which is essentially an as planted plan. As we discussed at Committee the hope is to bring that and clean up the record so that in the future it is clear what landscape plan he is being held to.

My other question is how many complaints have you had on this project, asked Mr. Angel.

In recent past we have had three written affidavits from neighbors, said Ms. Keifer. We had six contacts with various neighbors and one in particular there was not an actual violation on the site. That is the most recent activity since summer of this year.

Mr. Angel then asked if any of them were not compliant with what we have asked them not to do with noise, time or anything like that.

Primarily, they are violations of the hours of operation, said Ms. Keifer. Some significance, some by minutes. There were some dust complaints but they are handled by DNREC. In those cases, we have contacted DNREC on behalf of the property owner and DNREC has indicated they need to speak directly to the

property owner. We have passed that along.

When, under the Conditional Use did he have to apply for the DeIDot entrance permit, asked Mr. Angel?

The specific application for an entrance permit was not listed, answered Ms. Keifer. The condition was the entrance had to be constructed and getting a permit was implied. The timing of actually getting the permit was not included in the list of conditions.

Was that our fault, asked Mr. Angel?

I don't know that not listing the date is an issue of fault, said Ms. Keifer; it is determining when the entrance needs to be installed and before you can do that you have to get a permit.

There wasn't a time frame for him to do that, asked Mr. Angel?

There was a deadline for having it installed, said Ms. Keifer.

When is that, asked Mr. Angel?

The deadline for installation was November 23, answered Ms. Keifer.

That is what I am trying to get at, said Mr. Angel. We have passed that. There are two motions tonight. The second motion is to give him more time on everything he hasn't complied with already. Is that correct?

Staff simply suggested some motions for Levy Court to consider, said Ms. Keifer. One, is to provide a revised schedule, keeping in mind weather considerations and Levy Court can do as they wish.

I remember saying back in August about the sprinkler system because we were going into the cold weather, having that done sooner, said Mr. Angel. It didn't go that way. These are all deadlines we have asked for repeatedly and you want to give him more time until April 25.

I am not saying Staff wants to do one thing or another. Staff simply presented alternatives, said Ms. Keifer.

One other question, said Mr. Angel. When was he supposed to move the concrete and things in the front to the back?

The revised approval from August required that materials stored on site shall be re-located to the rear portion of the site by January 21 of 2011, said Ms. Keifer.

Has that started, Mr. Angel asked?

I understand some has been moved but there is still a fair bit of material on the front portion of the property, said Ms. Keifer.

Mr. Angel believes there is more there now than has been in a while. That is why I am asking about the time frame. Is a month going to be enough for him to be compliant?

It is my understanding from Mr. Coker he will not be able to achieve that in one month, said Ms. Keifer. I submit that probably one of the most important conditions is to move that material.

Does this still have to do with the property in the back not being in his name, asked Mr. Angel?

No, answered Ms. Keifer, the property where the conditional use is actually approved is within Mr. Coker's ownership.

Is that part of the roadway issue for the entrance to get to that back part, Mr. Angel wanted to know?

Not to my knowledge, no, said Ms. Keifer.

Mr. Angel stated he received a call today about the land in question that he said would be in his name – he hasn't even contacted a lawyer yet. I keep hearing the same thing and nothing is getting done. Simple fact.

In regard to the entrance permit, said Mr. Banta, you said the application was in process or has to be made by January 21?

We received notification the end of today that Mr. Coker had applied for the entrance permit today, said Ms. Keifer.

The deed which has not appeared, said Mr. Banta – it is my understanding it is close to completion. I don't know when that will happen; the attorney is here and we might want to ask him to speak to that. He asked the attorney to come forward.

William Rhodunda, Jr., 1220 Market St., Wilmington, DE

The only question before you at this moment, said Mr. Banta, is in regard to the entrance permit which coincides with the final consummation of ownership of adjacent property which I understand has been paid for but no deed has been executed. What can you clear up for us on that?

Mr. Rhodunda explained there has been a delay in requesting the entrance permit because Mr. Coker did not have the land that is that private road titled in his name. That permit could not be processed until we got to that point. You may be aware that in October RPC rejected a concept of allowing an extension of that private road the thought being we could extend that private road to the back 100 acres. However, when that was rejected by RPC we met with the Planning Dept. and there was an agreed upon process to do a lot line adjustment which is a different path forward than what we had been proceeding on for several months prior to appearing before RPC. Our hope would have been back in October to have gotten the approval of the private road extension into the 100 acres. Since that did not occur we submitted a new plan and have been working closely with the Dept. to review two different issues that are before the County at this time – the approval of the concrete facility and the lot line plan. The lot line plan is critical to Mr. Coker being able to move forward with the plan associated with the concrete recycling facility because it takes the 30 foot road that will be used for access for the concrete facility and puts it in his name so he can lawfully submit for the entrance permit. The status of that issue is I have been in conversations with the attorney for the Zimmerman Estate talking about ways we will facilitate getting the Zimmerman Estate to sign off on signing a deed and a plan to permit the transfer of this property into Mr. Coker's name. The actual transactions occurred in 2004. There has never been a lawful transfer because of the "clean hands" that was imposed and the County's position that no plans would be reviewed. It is my understanding that today the County has signed off on a plan that I will give to the attorney for the Zimmerman Estate for signature. I will have a deed prepared; I have a legal description in my office to transfer to the attorney for the Zimmerman Estate for review.

Under previous testimony, said Mr. Banta, it was my understanding that someone failed to pay someone for someone's service. Where does that stand?

That has been taken care of, said Mr. Rhodunda. At this point they want a copy of the plan and the deed.

So you are saying the fees for this transaction have now been paid, said Mr. Banta?

Yes, that is correct, answered Mr. Rhodunda.

Mr. Angel asked when that was done.

That was several months ago, answered Mr. Rhodunda, maybe six. My firm wrote a firm check to the attorney. I can provide a copy of the check and the correspondence if needed.

Mr. Angel said he was told that as of today, there was no contact between the two

lawyers.

Well, there has been a lot of contact, said Mr. Rhodunda. The attorney for the Zimmerman family provided me with court filings that would permit the transfer of this property to Mr. Coker. There were issues surrounding the transfer taxes that were paid in 2004 and 2007 – they have been paid in full even though the land is not in Mr. Coker's name. Attorney, John Newcomer has been in contact with me. He prepared pleadings for Chancery Court so that the transfer could happen without any sort of implications for his client. We are still discussing other alternatives to having to go to Chancery to transfer title properly. I have a call into Mary Sherlock to discuss issues.

For clarification, Mr. Buckson wondered if it had been the understanding up until recently that Mr. Coker and this transaction was always kind of in limbo due to a "clean hands" ordinance of some sort. You couldn't move forward on obtaining the ownership because of the "clean hands" ordinance with the County which prevented doing things up until recently. Are you familiar with that?

The issue was a "clean hands" ordinance was applied and as the attorney involved with the original transaction in 2004; it has been a huge issue that has lingered since that time. The County would not process the plan; Chris has not been as quick as everyone would like but he is moving quickly, in place a lot, unfortunately.

Mr. Angel asked Ms. Keifer when the lot line plan was due. She said there was not necessarily a due date associated with it. Mr. Rhodunda is correct – the "clean hands" certainly held up this project for some time but when the "clean hands" was not a factor, the issue had been, there was not frontage for that property. That is why the lot line adjustment was required, but Levy Court did not set a date as to when the lot line adjustment plan was to be completed.

So, said Mr. Angel, even during the lawsuit when he was suing us, which we won, could he have been moving forth with things?

Ms. Keifer said she could not speak to what he could have done while it was being litigated.

Mr. Pepper said it was his understanding Mr. Coker was given notice of the meeting and requested to be here and present cause why the conditional use approval should not be revoked. I want to be sure Mr. Coker and his representatives had sufficient opportunity to present whatever it is they want to present on that issue before Levy Court determines what, if any, action it will take.

Mr. Banta asked Mr. Rhodunda if he had further comments. He said there were three issues today that needed to be completed by November 23 – the

landscaping; to date there have been almost 300 trees planted; pursuant to the landscape plan he was supposed to have 235 at this time; he is ahead of schedule on planting trees. The sprinkler system was to be in by December 23; it has been installed and is complete. The issues that have not yet been addressed are the installation of the entrance. As explained, because of title issues and transferring title, legally, he could not go forward with that. There has been progress in getting to the point where we can submit an entrance plan and have the ownership of the property transferred to Mr. Coker so he can move forward. I do need to reiterate there was a concept to go forward but RPC rejected it in October so Mr. Coker had been working in the right direction. The final issue, the gate; it has been installed at the rear. When the road is constructed which is not being used right now, a gate will be installed at the road. There is a gate at the entrance that is being used right now.

Doug Lieberman – The gate that is in is the same entrance to the rear of the property that is to be maintained with the proposed plan.

Mr. Angel interrupted to say he does not remember ever seeing a gate on any plan other than the one on the front. Is that correct?

Ms. Keifer said the preliminary plan that was approved by Levy Court did not contain a gate. The condition of approval was that a gate be installed to prevent cuing. There was a draft final plan submitted to our office that showed the gate in the rear. That plan was rejected by our office as a complete final plan because it did not address all of the conditions of approval. The Preliminary Plan did not show a gate.

That is what I was getting at, said Mr. Angel. I remember saying Chris does things when he wants, where he wants and how he wants and that is one of the things I used as an argument on that gate. The gate should be towards the front, not in rear.

I believe Chris met with Sarah today, discussed the gate and discussed moving it to the front, said Mr. Leiberman. Obviously, if you are not using the road you don't want to put the gate in at that spot. Everything is part and parcel; you have to build the entrance road and put the gate in together; to build the entrance road you need ownership of property.

I understand DelDot says the road cannot be connected until the permitting process and all is approved and there is no way to get to that road from the road, said Mr. Angel. That is why I am questioning why a gate was put up in the back.

Originally, that is where Chris wanted the gate, said Mr. Leiberman. As I said, Chris met with Ms. Keifer and they worked out where the gate is to be at the front of the site. He has agreed.

Mr. Angel said there needed to be some clarity on what direction they will take.

Mr. Buckson stated he was singled out as someone who sounds like a broken record and I accept that criticism so I have done my best to be quiet tonight but if we are looking at the motion to shut the business down and we are looking at three things he failed to meet I need someone to demonstrate to me how we can successfully defend that decision based on the testimony we had tonight. There is a want to shut him down but is there a standing statement to shut him down? He cannot obtain #1, based on what has been expressed tonight so it is difficult to ask him to adhere to #1. What he can do is utilize the existing entrance so technically it is difficult to shut him down on #1 when he has an existing entrance; we need to move on to #2. There is a gate or wire that has been there 20 years; the stopping mechanism has been there twenty years which is essentially what the gate is required to do – to stop people or trucks from moving in. Whether a wire or gate, it has done its purpose. Move on to #3 and I was prepared tonight to say I am sick of dealing with this; you are not compliant; you are not doing what you need to do; I have had enough; but, so I ask – we have the required amount of trees in place; we have a row of trees that need to line the road but I would be concerned about having them put in prior to the road being completed. It makes sense to not stop this and put it out of play or shut the business down because of twelve trees against a road that hasn't been constructed. So we get to the plan; is it required that he have the plan completed by today or just the installation of the trees?

Ms. Keifer states there was no set time for the plan to be completed other than January 21 when the preliminary approval expires. There is no extension after January 21 if we don't have the plans.

There is no option, says Mr. Buckson. We have to re-write laws in order to make that happen. There is no option; meet that condition or you are done. So, #3 and where in here can I express a motion to put him out of business? Is it on the twelve trees he failed to meet?

It is not that simple, states Ms. Keifer. I am not saying one way or the other if that warrants revoking a conditional use. I am saying there is a preliminarily approved plan and that is not what was planted. That needs to be planted or we need to update the plan.

In the past, this is not an exception to the rule, says Mr. Buckson. Applicants can come in and submit a revised plan, we can review and if it meets the terms it can be approved. This is essentially what he is doing right now. What is in the ground is acceptable but he needs the paperwork to clear the record – make paper match what is there.

Lastly, I received submission of receipts on all monies expended up to this point,

says Mr. Buckson. I am going to stop and simply say I don't know why there is a motion that needs to be made of any kind. He has a big time deadline coming on the 21st and currently, at this point, he has met the terms of conditions. I leave it up to you guys. It is your call.

OK, says Mr. Angel, he has done something he was not asked to do so now we have to make the paper change to make what he did legal. They were not the trees he was supposed to put in. He put in what he wanted. Is that correct Ms. Keifer?

He did plant trees that were not in keeping with what was in the preliminary landscape plan, said Ms. Keifer.

That is what I am saying, said Mr. Angel, he does what he wants, when he wants and he wants us to go back and change the rules for him. If we keep going, we will be setting a precedent.

Ms. Keifer said, responding to Mr. Buckson's statement, she understands that January 21 is the most significant date and if the plan is not finished then the approval is no longer valid. There are still some site improvements that need to be done -- moving material, a couple other improvements on the grounds. It would be very helpful to have a date by which those have to be completed. More action takes place when we have a deadline to look for, from Staff's perspective.

Mr. Buckson says he is Chairman of land use and because of that this application comes under my name. I am choosing to speak but it is somewhat because I am required to.

Personally, said Mr. Banta, I believe Mr. Coker has moved slowly in some cases, but he has achieved many of the things we have requested, particularly, the sprinkler system has been installed. Other things are being held up due to the finality of the deed. The one thing that needs to be done quickly is the material Mr. Angel referred to has been sitting forever and needs to be moved to the back of the property. Beyond that I am not prepared to put Mr. Coker out of business.

With respect to the trees that are planted versus what was on the site plan, said Mr. Eaby, it is my recollection a specific type of tree was requested and I believe it has been cost prohibitive or difficult to get. I don't think we have ever required that type of tree in the past or since then. I believe there is a legitimate discussion on the type of tree that has to have been planted there. It is my feeling the type of tree that was requested was difficult to get so in order to comply he planted other types of trees that act as a screen.

Mr. Angel differed with that. He stated he had contact with that tree company. There was a question from a local arborist that said they may not last. Mr. Angel asked about trying one to see how it would go and that was way back. At the cost

of a tree that grows 7 to 8 foot a year, I believe it was about \$35 per tree which is greatly different from the \$108 he is spending for a White Pine. Even with transportation, and a guarantee for the tree, he would have saved a lot of money but he chose to do something else.

Mr. Eaby gave further comment about the trees. Why he would have spent \$400 when he could have spent \$100 just to do something different doesn't seem logical.

M-315-10 Mr. Angel stated he guessed he would be the bad person; he is a constituent based person. I do not want to see him go out of business, I want him to comply but there is no leeway for him to comply. He doesn't want to comply. I make a **motion** that Levy Court revoke the Conditional Use of approval granted on July 21, 2009 for Application CS-09-03 Coker Concrete. The reason for revocation of approval is he is not in compliance with the conditions of approval including but not limited to the installation of landscaping, installing a gate at the entrance and paving the entrance all of which were directed to be completed by November 23, 2010; seconded by Mr. Brode.

Roll Call:

Mr. Angel – yes, if we don't do something to keep him on his toes he will continue to do what he wants, when he wants and how he wants. I have been saying that all along.

Mr. Brode – yes, don't want to put anybody out of business but I would like to see him revoked until he complies with Levy Court

Mr. Buckson – no

Mr. Eaby – no

Mr. Ennis – yes

Mr. Sweeney – no, I don't want to see Mr. Coker put out of business

Mr. Banta -- no

Roll Call reveals 3 yea (Angel, Brode, Ennis) , 4 nay (Buckson, Eaby, Sweeney, Banta)

Four votes negative, says Mr. Banta. Motion is denied.

Mr. Angel hopes that when this comes back next month and time has run out that there is an answer. There will be two new sitting Commissioners who I believe will not understand what has been going on.

M-316-10 Mr. Eaby had an **alternative motion** - that Levy Court approve a revised schedule to satisfy the Condition of Approval for Application CS-09-03 Coker Concrete. The extension shall include the following schedule of compliance: 1) apply to DelDot for an entrance permit by January 21, 2011; 2) install landscaping completed by April 25, 2011; 3) install an entrance completed by April 25, 2011; 4) install gate at the entrance completed by April 25, 2011; 5) install sprinkler system completed by April 25, 2011; and 6) relocate material completed by end of February 2011. In addition, all remaining conditions of the July 21, 2009 approval shall remain in full force and effect. The Planning Services staff shall inspect the property on the next business day following each of the above deadlines to determine compliance. Should the site be found to be out of compliance with the established schedule the application shall be placed on the next available Levy Court business meeting to consider revocation; seconded by Mr. Sweeney.

Mr. Sweeney said the original conditions set had the relocation of the material to be completed by January 21. Why has that been changed to March 23?

Ms. Keifer said Staff was offering alternatives. We understood from Mr. Coker he was fairly certain he would not meet the January 21 deadline to relocate the material.

He runs out the 21st of January, says Mr. Angel. So you want to extend him beyond his deadline?

The Plan, says Ms. Keifer, the Preliminary Plan approval expires January 21. That is separate from the actual improvements on site.

It is my understanding you have eighteen months for conditional use, correct, asked Mr. Angel?

For a traditional land development application you have eighteen months to get the plan finalized which is what we are talking about on the 21st, said Ms. Keifer. Normally, we are talking about construction. You then have another eighteen months to construct.

Any questions on Motion #2 and the second, in regard to stipulations for Coker Concrete, asked Mr. Banta? Seeing none, he called for Roll Call.

Roll Call:

Mr. Angel – no

Mr. Brode – not voting; leaving it to the two new Commissioners

Mr. Buckson – yes, but want to clearly state for the record as before, my vote of yes is based on accomplishments to date and liking or wanting to shut down a business has nothing to do with it. I will shut this business down if it fails to meet these types of conditions and yes, I have been willing to work but I don't want to give the impression that I will never vote not to shut them down. You have to continue to keep moving.

Mr. Eaby – yes

Mr. Ennis – not voting

Mr. Sweeney – before placing my vote I want to make sure not only Mr. Coker but Mr. Coker's representatives are clear on exactly what has to happen because as you have heard from Mr. Buckson and others we have put a certain amount of skin on the line for this over the last eighteen months and some cases six or seven years. My vote is yes, but understand that on January 21 you are sending ten people home if this isn't ready to go. My vote is yes.

Mr. Banta – yes

Roll Call reveals 4 yeas (Buckson, Eaby, Sweeney, Banta), 1 nay (Angel, 2 not voting (Brode, Ennis)

Motion passes with 4 votes in the affirmative.

NEW BUSINESS

Mr. Angel:

1. Appointment of Director of Community Services

Mr. Petit de Mange stated that Mr. Keith Mumford has served in the capacity of Interim Acting Director for the Department of Community Services since June 2009. This was after the retirement of our former Director as part of the early retirement option. We proposed an interim period of approximately eighteen months by which time we would make a permanent selection. I believe I speak for many in saying that over the past eighteen months Mr. Mumford has demonstrated the capacity to lead the Department of Community Services and provide the managerial oversight of the department in a diligent and completely satisfactory manner. Several major accomplishments have been made during this time period and are enumerated in the Memo. I would like at this time to recommend to Levy Court that we make Mr. Keith Mumford the Director of Community Services by appointment of Levy Court.

Mr. Sweeney said, as Chair of Community Services the last two years I have had the opportunity to work closely with Keith. I believe he knew he had some big

shoes to fill and I can say I am proud to work with Keith and believe this is well deserved.

Mr. Banta's comment was if the Library doesn't open for business tomorrow I would think my vote would hinge on that but hearing the laughter I am assuming it will open and in that case I will be supporting it.

Mr. Sweeny stated it will not open tomorrow. They are closed until Tuesday.

Because, asked Mr. Banta?

ServPro does a good job of cleaning things up but due to the water damage cases, book shelves and things must be moved in order for the carpet to dry out. It is not possible to open in the morning and we are off for the holidays starting Friday anyway.

Thursday, noon, corrected Mr. Banta.

They will return on Tuesday and be ready for business, says Mr. Sweeney, first thing in the morning.

Mr. Banta surfaced that because he did not believe the average public was aware of the situation that occurred there with one of the sprinkler systems.

Mr. Brode stated he was in favor of appointing Keith Director of Community Services. He will bring something up in a few minutes. There are others due to get promotions as well and I believe they deserve them too.

Mr. Petit de Mange said the Book Mobile would be operational tomorrow and the next day.

M-317-10 Mr. Angel **moved** to appoint Keith Mumford as Director of Community Services for Kent County effective December 22, 2010 and set his compensation rate at Grade 18, Step A; seconded by Mr. Sweeney; carried by Roll Call vote 7 yeas.

Mr. Buckson wished to acknowledge Mr. Mumford's date. She is Dennis K. Mumford's lovely daughter, Brittany Mumford.

Mr. Ennis:

1. Resolution 3184 - Extension of Retiree Benefits to James A. Higdon

Mr. Ennis read into the record Resolution 3184. Sheriff Higdon served the citizens of Kent County for 16 years and would have been eligible for retiree benefits within two years or immediately eligible for such benefits had the retiree benefits ordinance not been changed during his term of office. The actuary had included Sheriff Higdon's past service and projected his continued service in the

M-318-10 determination of the actuarial valuation of the County's Other Post Employment Benefits liabilities. **Therefore, be it resolved (motion)** by the Kent County Levy Court at its regular business meeting on December 21, 2010 that upon submission of a request for such benefits on or before January 31, 2011, James A. Higdon shall be immediately eligible for retiree benefits by adding four years to his total years of service solely for the purpose of achieving post employment benefits eligibility. The Personnel Director is authorized and directed to implement this extension of retiree benefits for James A. Higdon payable through the Kent County Retiree Benefits Trust Fund; seconded by Mr. Brode.

Mr. Kujala pointed out this was similar to the Resolution adopted by Levy Court last week. It works the same way in the Retiree Benefits Ordinance as it does in the Pension Ordinance. You are making the person eligible for the benefit, not really adding any additional costs to themselves. I just wanted to be sure you understood the format is the same as the pension benefit awarded last meeting.

Mr. Sweeney said he was not in favor of the motion by Levy Court last week based on the rule of the number of years that had passed between the two and all the years of service from Sheriff Higdon were contiguous. I want it to be clear that all the employee benefit changes I have been in favor of and supported over the past couple of years only affect new employees. Even though the Rule of 70 was taken out for, I thought new employees, not existing employees, and it doesn't seem to be the case. I will be supporting this motion.

Mr. Angel had a couple of points to make. The individual was already eligible for the Rule of 70 at the time of the amended retiree benefits on May 12. The retiree benefits have mostly been pre-funded for this individual; the cost for the current fiscal year has been largely funded; future expense will be paid from the OPEB Trust fund rather than the General fund. I will support this.

Roll Call on motion reveals 5 yeas (Angel, Brode, Ennis, Sweeney, Banta), 1 nay (Eaby), 1 not voting (Buckson). Motion approved

Mr. Buckson explained he did a "not voting" because he did not want to influence any of the sitting Commissioners in their decision. I would have been very supportive had we looked at the Rule of 70 and the fact that, traditionally, you have not applied it to sitting employees. Had we looked at that and made the correction to reflect that I would have been supportive. I can't support this as written but would have had we re-visited the Rule of 70 to keep it in the consistency of not applying it to current employees.

Mr. Brode:

1. Career Ladder Promotions

Memo was read into the record by Mr. Brode. The declining economic situation was addressed in November 2008 by the County Administrator. There were a

M-319-10

number of budget constraints to streamline costs and avoid a budget shortfall. Expenses over the past three budget years have been successfully reduced. One of the cost containment measures instituted by the County Administrator postponed all career ladder-type promotions which would normally occur whenever an employee achieved a required certification or requisite experience. Financial footing has been sound during these slow economic times due to what the employees did to reduce expenses. Mr. Brode believes it is now time to remove the limitation on these promotions. Therefore I **move** that effective January 1, 2011 any delayed or pending career-ladder type promotions proceed in a manner consistent with County policy before the budget constraints were imposed; seconded by Mr. Ennis.

Mr. Kujala states that since November 2008 we have consistently denied career ladder-type promotions. The way these typically proceed is the Department Head has to recommend that a person be promoted and essentially that has not occurred. Thirty-five employees have been impacted by the freeze and if lifted the estimated cost is about \$62 thousand, if all 35 immediately received their career ladder promotion. Maybe one or two are still not up to where they need to be. It is expected the cost can be covered by the existing salary line item figures which have been maintained lower than budgeted because we have consistently not filled all positions.

M-320-10

Mr. Angel wished to offer an amendment and read a statement before doing so. "The fiduciary responsibility of Levy Court was to provide an accountability of the monies received and spent especially with Mr. Petit de Mange's cost cutting, belt tightening, and staff management vision. Since these measures have taken place our Administrator believes we can proceed with the following and I support his leadership in demonstrating what should be the process in fulfilling the needs of everybody in Kent County, that's our residents and our staff. In other words, we promised we would get back to our residents and we need to keep our word since we now have the means of support for doing so. Having said that I **move** to amend the main motion to stipulate the following: that the pending career ladder-type promotions be postponed at this time and be considered for release within the Fiscal Year 2012 budget on or before July 1, 2011; and that prior to release of the pending career ladder-type promotions and the Fiscal Year 2012 budget incorporate a reduction in the property tax rate from the current rate of thirty-one (31) cents per assessed \$1 hundred value to a new rate of twenty-nine (29) cents per \$1 hundred assessed value for a net reduction of the property tax rate of two (2) cents; and that the Fiscal Year 2012 budget shall demonstrate that the projected General Fund revenue for Fiscal Year 2012 with the reduction of the property rate tax rate to twenty-nine (29) cents per \$1 hundred assessed value shall be sufficient to cover the added personnel cost to be incurred with the release of the pending career ladder-type promotions which is to be calculated at \$124 thousand 6 hundred eighty-six." That is my amendment to the main motion states Mr. Angel; seconded by Mr. Buckson.

Mr. Buckson requested five minutes to review a lengthy amendment he had no idea was coming. Request granted by Pres. Banta.

Before recessing, Mr. Petit de Mange wished to clarify a point. From the main presentation which stated the career ladder promotions were like an individual action – actually what occurred in 2008 and got incorporated now into two budgets by note in the budgets was a freezing of the entire pay scale. It was not a targeted mission against people pending promotions. It is still frozen at this time in accordance with FY2011 Budget that was adopted last year. I wanted that clarified because the way it was read made it sound as though I had a specific issue with career ladder promotions; it was not – it was a freezing of the pay scale.

Mr. Eaby stated he felt all of them would like to reduce taxes and recognize sacrifices the employees have made. I find it difficult half way through this budget to predict a two percent tax decrease in the next budget when we haven't begun the budget cycle. I believe the motion is asking us to right now vote for a two percent tax reduction.

It is, answered Mr. Angel, but not in this time frame - it is at July 1, after we finish the budget cycle as we know we have money now. Let's make sure we have enough money to continue to move forth after the July 1 cycle when we finish the budget cycle.

I understand the tax decrease would not start until the 2012 budget cycle, said Mr. Eaby, but the motion is asking us to vote on a two cent tax decrease now. I would like to be able to achieve that but I cannot possibly do that at this point.

Are we supposed to have this discussion now, asked Mr. Buckson? If we are, the key is in the first sentence which says "be considered". I would be happy to consider any one of these. I hope we are on footing that is sound enough that we can do these. It would be great. I still don't get it all. I have a question or two. If you are asking us to consider it, OK; if you are asking us to vote now for something we will do later, I think that is not a wise move. Are 1, 2 and 3 a consideration on July 1?

After you go through the process, yes, answered Mr. Angel. That is the way I believe Mr. Petit de Mange

Mr. Buckson interrupted to say none of these are binding. They are none required if we say yes to the amendment tonight? They are required to be considered but not adopted?

Mr. Petit de Mange believes what is contemplated is that 1) before we jump into career ladder promotions we postpone it until the budget cycle; 2) before we do that Commissioner Angel proposes a tax reduction and that is demonstrated that

with a tax reduction you can still afford the career promotions. I believe that is in essence what was put forth. Again, this is a proposal to postpone career ladder promotions until consideration with the FY12 Budget with a tax relief first before giving additional costs to the budget for personnel promotions.

So this is a general statement that at the end of the day we are going to consider step promotions as well as tax reductions, says Mr. Buckson. This in no way guarantees we will do that.

Based on going through the budgetary procedure and our discussions, says Mr. Angel. We promised that when we got money we would give back. Our employees are getting back as well. They are residents of Kent County so technically they are getting a small per cent. I am looking at the whole picture, not just the career ladder. We start with what we promised first. That is what I am holding my values to.

In essence, says Mr. Sweeney, you are asking to table this discussion until after the budget because given that the economy starts to recover over the next three months while going through the budget cycle, wouldn't you automatically consider our desires to lower the tax rate and release the step freezes? Wouldn't that be considered part of the budgetary process?

Yes, answered Mr. Petit de Mange.

So all this does is say we have seen the original motion; second motion is to table until after the budget cycle is over, asked Mr. Sweeney?

Mr. Petit de Mange wished to give a slight correction. I think what is being expressed is that the career ladder promotions would be considered as part of the FY12 Budget; it wouldn't be postponed until after the budget was adopted. It would be part of the consideration as the budget is written but I believe what is being proposed is that before we do that we a) do the tax relief and then if we still have financial resources to cover added personnel costs then we do that. That is the process I see.

It seems to me that is what we did during the retreat, says Mr. Sweeney. Two years ago we listed every option and started striking. We are not doing anything different other than tabling Mr. Brode's request.

No, said Mr. Angel, there are two things; you will vote for his career ladder step increase or we go with what Mr. Petit de Mange put together for me after our discussion.

I won't support it the way it is, stated Mr. Sweeney.

Mr. Angel stated he had an amendment on the next item as well. There is money

out there that is not taxpayer dollars. If there is money left over after the next amendment, it can go towards this too.

Mr. Petit de Mange asked if they were still under discussion of the amended motion.

We are under discussion of the motion to amend main motion, answered Mr. Pepper.

Mr. Petit de Mange wished to remind everyone that what is proposed in the main motion is a cost that 1) was not budgeted for; and 2) is not like a one time cost – it is a cost that builds in every budget after this and that is the concern. I think the most significant part of the amended motion was the first part – postpone consideration of this until we prepare the upcoming budget to be sure we can afford this moving forward. Can we afford it today? Maybe, maybe not; but we need to look at revenue projections for next year and how they are trending. That is the most important aspect of the amended motion.

Mr. Sweeney asked Mr. Petit de Mange if he supported the motion.

The amended motion, asked Mr. Petit de Mange?

You gave the statistics; you gave the facts, said Mr. Sweeney. Do you support the original motion?

The original motion, no, answered Mr. Petit de Mange.

Mr. Buckson says we have charged him with leading us through this crisis and he has done a tremendous job. That was a tough answer to give. The easy answer would be to dump it on us.

Says Mr. Banta, we have a County Administrator who, I think, diligently over the last number of years has carefully managed our money extremely well. The County is solvent and it appears as though as we pursue the budgetary process there is every indication that we will do the career ladder promotions and hopefully couple it with a tax reduction. That is only recommendation; we will have to see how the budget process goes. Business wise that is the appropriate way to handle this type of situation. He called for a vote on the amended motion.

Roll Call on the amended motion:

Mr. Angel – yes

Mr. Brode – no

Mr. Buckson – no

Mr. Eaby – no, it was a difficult answer the County Administrator had to give and it is not really the full answer. I know everyone here appreciates what the County employees have been asked to do over the last two years. We also are looking as best we can to treat the employees in the next budget cycle but I also believe we are only half way through this cycle; we went through a painful process to get here and I think we would be very premature at this point to undo all those things. We look forward, if the timing is right, to do it as we approach the next budget cycle.

Excuse me, said Mr. Banta. Is that not what the motion says – that we will explore that as we go through the budget cycle and you are voting no?

I am voting no for the amendment, that is correct, answered Mr. Eaby. The amendment also asks that before we give any raise to the employees that we have to give a tax refund. I would not necessarily support that. That is the priority Mr. Angel indicated.

Mr. Ennis – no

Mr. Sweeney – no

Mr. Banta – yes, I think it would certainly serve purpose to systemically go over all line items and at the end of the day I believe both items can be accomplished with no problem. Employees will be satisfied as well as the taxpayers.

Roll Call on amended motion reveals 2 yeas (Angel, Banta) 5 nays (Brode, Buckson, Eaby, Ennis, Sweeney,). Amendment dies.

Roll Call on original motion:

Mr. Angel – What is being proposed does not go against the employees. It is a common sense thing we promised we would do our due diligence on and I have to stick to my core belief, so, no

Mr. Brode - yes

Mr. Buckson – no, but I look forward to considering this in the future

Mr. Eaby – no, but look forward to considering it in the next budget cycle

Mr. Ennis – yes

Mr. Sweeney – no, but I'm committed to finding ways to take care of our employees in the next budget cycle

Mr. Banta - no

Roll Call reveals 2 yea (Brode, Ennis), 5 nay (Angel, Buckson, Eaby, Sweeney, Banta) motion is defeated

2. One Time Employee Bonus

M-321-10

Mr. Brode read this into the record. It is similar to the last one. Kent County employees have worked diligently to streamline costs since November 2008. Budget controls along with the pension incentive significantly reduced expenses and staffing. Due to good financial management and devotion of County employees, we did not have to impose furloughs or cut services and have maintained a sound financial footing during these slow economic times. Mr. Brode thinks it only fitting to recognize the unparalleled efforts of the County staff by awarding a \$300 bonus to certain eligible employees. In the spirit of the holiday season and for one time only, I move to award a \$300 lump sum bonus to full-time employees hired before July 1, 2010 but shall not include part-time or temporary employees, elected officials, the County Administrator, or positions with statutorily mandated salaries. The funding source will be financing fees from Recovery Zone Facility Bonds. We have \$1 hundred thousand from Sussex County, \$14 thousand from the AeroPark and \$11 thousand from the Dover Mart for \$125 thousand; seconded by Mr. Ennis.

Mr. Angel had an amendment but part of it Mr. Brode already mentioned and he was not aware that was going to be done. He asked Mr. Brode again where the money would be coming from.

Yes, said Mr. Brode, financing fees from Recovery Zone Facility Bonds, \$1 hundred thousand from Sussex County; \$14 thousand from AeroPark and \$11 thousand from Dover Mart.

Mr. Angel still wanted to give his amendment. "The employees of Kent County have not been provided with an increase in compensation since 2007. In 2008, due to economic conditions our performance based merit system of step increases was frozen and remains frozen at this time. During this time the County successfully executed an early retirement program which effectively reduced the overall employment base and in some cases resulted in shifting of job responsibilities. Elimination of positions; the re-assignment of some employees; although the retirement of nearly ten percent of the work force presented challenges for our employees, Kent County embraces this program as a necessary step that made a huge success. Our employees also embraced an aggressive organization wide cost containment strategy that has resulted in significant reductions and overall operational costs. As an added cost reduction measure over the past year our employees began to make contributions to their pensions through payroll deduction. You may recall that in October of this year the County Administrator set forth a proposal to allocate \$20 million in Recovery

Zone Bond Allocation for use in Sussex County for the rehabilitation of the Indian River Power Plant. Levy Court approved this Recovery Bond allocation and it has recently come to my attention that this Bond sale for the NRG Energy Inc. went to closing last week and as a result Kent County has realized an additional fee revenue for this Bond sale in the amount of \$1 hundred thousand - a half of one percent of the par amount. This represents unanticipated Fiscal Year '11 revenue. That leads me to my proposal. In recognition of significant and ongoing efforts made by our employees to ensure Kent County remains in sound, fiscal health as an expression of our sincere appreciation for good stewardship they have demonstrated in light of the fact no raises have been provided to the employees of Kent County for two years I have proposed that a one time bonus in the amount of \$3 hundred per employee for exempt and non-exempt employees that have been employed by Kent County for at least one year, calendar year, from this date, excluding part-time and temporary employees be provided at this time. I further propose that the cost of providing this one time bonus be paid out of the proceeds from the aforesaid bond sale fee revenue." That is my **motion**.

Mr. Brode said that sounded pretty much like what I just said but you didn't say anything about elected officials. Does that mean we get it too?

As per the Administration, the way this is written, everybody is equal; everybody is fair, said Mr. Angel.

I will not support this, said Mr. Brode. I will support the original motion.

Mr. Pepper reminded the President the motion to amend had not been seconded.

Hearing no second to the amended motion, Pres. Banta called for a vote on the original motion.

Roll Call:

Mr. Angel – I have a hard time saying yes because our Administrator is not going to get the benefit of his hard work and due diligence and long hours he has put in as well as some of our Directors and Staff which are being taken out of this.

Mr. Brode stated Staff is not included in this. It says "elected officials, County Administrator or positions with statutorily mandated salaries" or part-time or temporary employees.

I understand, says Mr. Angel. Our Administrator is a salaried employee. So, yes.

Mr. Brode – yes, on original motion

Mr. Buckson – I want to make sure and take 30 seconds to say surely I am concerned about spending and I am concerned about this belief now that we have

turned the corner and we can again begin to release spending and start spending some money so I express concern in that. I think as long as the State is in trouble we are always exposed and at the risk of being in trouble. We also have many different caps on expenditures which will eventually have to be released. Some of those are directly related to employees so we have got to quit sending this signal that we're on sound, financial footing because the reason we are on sound, financial footing is because we have made many sacrifices, a lot which have occurred through employees' willingness to do those things and we cannot expect to maintain those forever. We do not want to send this message to the State that we are looking good now and everything is fine because we are not. We have some corrections to make here and if we do get on sound footing with a surplus, all that means is we can start to address some of those constraints we put on that are temporary. Having said that, I always ask how you can pay for something. I get this when it works. There is money available; it is money outside the budget; it is an unexpected windfall and there is no question these folks deserve it. Employees all over the County, State, in the Country deserve it. We are fortunate to be in a position to address this so I do support this motion to give a \$3 hundred one time compensation specifically because it is not going to any elected official.

Mr. Eaby – yes

Mr. Ennis – yes

Mr. Sweeney – First, I want to thank the County Administrator for your last two years' effort to keep the budget under control. You have a great staff, a great group of people who work for you. Merry Christmas! I vote yes.

Mr. Banta – Because of the windfall Mr. Buckson referred to and the fact we did capitalize about \$1 hundred thousand on the Recovery Zone Bonds, which is the only way I could have supported this, because, financially, the County doesn't have the additional funds to do that but because we made a generalized profit to offset this \$3 hundred for our employees, my vote would be yes.

Roll Call on motion reveals 7 yeas. Motion passes

Tax Exemption Requests:

Mr. Brode:

1. **Harrington Fire Company Parcel 6-09-170.20-05-47.00**

Mr. Brode asked Mr. Eaby to handle this since he (Brode) is a member of the fire company.

Mr. Cox stated this was a request from the fire company for a ½ acre parcel of vacant land fronting an alley connecting with Clark Street in Harrington. The fire company uses it for parking. Schools Polytech and Lake Forest had no objection;

BOA voted unanimously to grant the request; no delinquent taxes posted; County's share of taxes is \$22.01.

Mr. Eaby asked if the fire company has paid taxes for this past year, will it be refunded.

Mr. Cox stated they had not requested a refund.

It they request one, says Mr. Eaby, would it be refunded?

There is a process for requesting a refund, says Mr. Cox. It is not usually done, but they can request it.

Mr. Angel thought we did not have a refund policy.

We have a process for requesting refunds, said Mr. Cox. Sometimes it happens. They are administrative justifications for refunds that come up from time to time.

Legally, I guess we can, said Mr. Angel.

Yes, if it is an administrative type error, says Mr. Cox.

M-322-10 Mr. Eaby **moved** to approve the request for exemption from property taxes by Harrington Fire Company as to parcel No. 6-09-170.20-05-47.00; seconded by Mr. Angel; carried by Roll Call vote 6 yeas, 1 abstention (Brode).

Mr. Buckson:

1. First United Pentecostal Church Parcels:

- 5-00-174.00-02-01.01
- 5-16-174.00-03-01.00
- 5-16-174.00-03-01.01
- 5-16-174.00-03-01.02

Exemption for these four parcels is being requested by the First United Pentecostal Church in the vicinity of Big Stone Beach in the Milford area. It is vacant land and the church plans to use two of the parcels for constructing a new religious facility and the other two the church is trying to sell but has not been successful, undoubtedly due to the slow commercial real estate market. Schools have no objection; BOA voted unanimously to recommend request be granted; all four parcels have current year tax posted and it will be removed if the exemption is approved.

M-323-10 Mr. Buckson **moved** to approve the request for exemption from property taxes by First United Pentecostal Church as to parcels No. 5-00-174.00-02-01.01; 5-16-174.00-03-01.00; 5-16-174.00-03-01.01; and 5-16-174.00-03-01.02; seconded by Mr. Eaby; carried by Roll Call vote 7 yeas.

2. **Milford Revival Center Parcels:**

- 5-16-183.10-02-15.00
- 5-16-183.10-02-32.00

Mr. Cox states this is for two parcels located in the City of Milford. The church plans to renovate a small building on one and the adjoining one they plan to use for parking. Schools have no objection; City of Milford has exempted both parcels; BOA recommends granting request; taxes are posted for current and two preceding years; all will be removed if exemption is granted.

M-324-10 Mr. Buckson **moved** to approve the request for exemption from property taxes by Milford Revival Center for parcels 5-16-183.10-02-15.00 and 5-16-183.10-02-32.00; seconded by Mr. Brode; carried by Roll Call vote 6 yeas, 1 absent (Eaby).

Mr. Sweeney:

1. **Del-Mar-Va Council of the Boy Scouts of America Parcels:**

- 2-00-085.00-02-05.02
- 2-00-085.00-02-05.03

This request, says Mr. Cox, is from the **Del-Mar-Va Council of the Boy Scouts of America**. Two parcels located in vicinity of New Burton Road; 85 acre tract that the Scouts plan to use as Headquarters and camping site and the other approximate 2 acres provides access to the main parcel; schools have no objection; BOA unanimously recommends this be granted; current year posted to account but will be removed if approved

M-325-10 Mr. Sweeney **moved** to approve the request for exemption from property taxes by **Del-Mar-Va Council of the Boy Scouts of America** as to parcels 2-00-085.00-02-05.02 and 2-00-085.00-02-05.03; seconded by Mr. Angel; carried by Roll Call vote 6 yeas, 1 absent (Buckson).

2. **Woodfield Homeowners Association, Inc. Parcels:**

- 7-00-111.04-03-97.00
- 7-00-111.04-04-98.00
- 7-00-111.04-04-99.00
- 7-00-111.04-05-98.00
- 7-00-111.04-05-99.00
- 7-00-111.04-06-05.00
- 7-00-120.00-04-96.00

There are seven, common element parcels for Woodfield Homeowners, says Mr. Cox. This is near Magnolia and the parcels are used for various purposes including Open Space, conservation and water management. School districts have no objection; BOA recommends approval; five parcels have no delinquent taxes; two parcels have current year taxes posted which would be removed if

approved.

M-326-10 Mr. Sweeney verified the two parcels with taxes due were current year only. He then moved to approve the request for exemption from property taxes by Woodfield Homeowners Association Inc. as to parcels 7-00-111.04-03-97.00; 7-00-111.04-04-98.00; 7-00-111.04-04-99.00; 7-00-111.04-05-98.00; 7-00-111.04-05-99.00; 7-00-111.04-06-05.00; 7-00-120.00-04-96.00; seconded by Mr. Buckson and Mr. Brode; carried by Roll Call vote 7 yeas.

End of Tax Exemption Requests

OTHER BUSINESS

None

INFORMATION ITEMS

None

PUBLIC COMMENTS

None

COMMISSIONERS' COMMENTS

Mr. Banta wished everybody a very Merry Christmas and hopefully prosperous and uneventful New Year and our two regular attendees' in the audience we appreciate your time and indulgence. God bless you for being here. Thank you.

Mr. Sweeney wanted to wish everyone in the audience a Merry Christmas; anybody within the sound of my voice – Merry Christmas; if you will notice this (held up an object) is from Commissioner Davis and I believe it is the Vietnam Veterans of America logo.

Mr. Banta said they all got one. Thank you.

Mr. Eaby said the Greater Dover Committee is trying to schedule a meeting with all the new and existing State Legislators to stress the importance of trying to get funding for the Regional Sports Complex, the Civil Air Terminal and some other projects. They are pushing on that avenue.

Mr. Banta had a comment in regard to the Kent Economic Partnership. We met this morning and I believe there are some exciting things moving forward in Kent County. I have a date, but not with me, for the Kent County Profile that will be unveiled at DSU this year instead of this building.

Mr. Petit de Mange believes the date is the 25th of January.

Thank you Petit de Mange. More information will come later, says Mr. Banta.

Mr. Angel said he would be going in the hospital in two weeks to have his knee replaced. I know we will be re-organizing on the 4th. Even though I won't be here I still am interested in being Vice President if all of you so desire. I wanted to throw my name out there; I have the time and effort to proceed forth and do the things I have been doing for the County and backing up the President. Also, I became a grandpa last month and my grandbaby is growing like a weed and they are right – they melt your heart. Hope all of you have that chance.

Mr. Brode states you cannot get ahead of me. I think I had one the same day.

“Merry Christmas” from Ms Tanaka.

ADJOURN

M-327-10 **Motion** was made by Mr. Angel, seconded by Mr. Eaby and carried by Roll Call vote 6 yeas, 1 nay (Ennis) to adjourn the meeting. Upon calling Mr. Brode's name he stated: Mr. President, Fellow Commissioners, and Mike Petit de Mange, 10/7 duration! **10:29 P.M.**



Loretta L. Wootten
Kent County Clerk of the Peace

29 Del.C. §10004(e)(2). The Agenda items as listed may not be considered in sequence. This Agenda is subject to change to include additional items including Executive Sessions or the deletion of items including Executive Sessions, which arise at the time of the meeting.