

**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, November 24, 2009**

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. Buckson.

Roll Call and Determination of Quorum

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

There are six (6) Commissioners present, one (1) absent (Angel).

Additions/Deletions to Agenda

None

Adoption of the Agenda

M-361-09 Motion was made by Mr. Ennis, seconded by Mr. Eaby and carried by Roll Call vote 6 yeas, 1 absent (Angel) to adopt the Agenda as presented.

Consent Agenda 09-18

Items on the agenda were discussed in committee. They are considered routine and non-controversial and will be acted upon by a single roll call vote of the Levy Court. There will be no separate discussion of these items unless a Commissioner so requests, in which event the item shall be removed from the Consent Agenda and considered separately.

- Dog Control and Licensing Request for Proposals (RFPs)
- SRF Loan Project: Water Storage Tank
- Draft Policy P09-06, Travel and Meal Reimbursement Policy Amendment
- Draft Policy P09-07, Dual Compensation Policy Amendment (RE: Receiver of Taxes) and associated Budget Amendments
- 911 Dispatch Center Personnel Request

M-362-09 Motion was made by Mr. Sweeney, seconded by Mr. Brode and carried by Roll Call vote 6 yeas, 1 absent (Angel) to approve Consent Agenda 09-18 as presented.

Approval of Regular Business Meeting Minutes of Tuesday, November 10, 2009

M-363-09 Motion was made by Mr. Brode, seconded by Mr. Sweeney and carried by Roll Call vote 6 yeas, 1 absent (Angel) to approve the Regular Business Meeting Minutes of Tuesday, November 10, 2009.

PRESENTATIONS

1. Employee of The Month

John A. Schulties of the Dept. of Planning Services was selected as Employee of the Month for the month of December 2009. Ms. Tanaka read this into the

record. John, Buildings Code Inspector III, has worked for Kent County since April 2005. His background as a contractor makes him imminently qualified to understand construction techniques and overcome unique challenges. He is also available after work hours to respond to 9-1-1 calls to inspect and condemn severely damaged structures when necessary. He serves as a member of the Lake Forest School District Board of Education and is a past school board president and recently served as president of the statewide DE School Boards Assoc. Supervisors praise John for his dedication and commitment. Congratulations on a job well done. John resides in Commissioner Brode's and Ennis' districts.

INTRODUCTIONS

None

It is not yet 7:15 so Pres. Banta asked Mr. Sweeney to move on to **Item #1** under his name, **New Business**.

Mr. Sweeney:

1. *Action* Item from the November 17th Community Services Committee Meeting: Library Acquisition Financing

Mr. Sweeney explained there is no presentation, it is just a matter of making a motion. During Executive Session, Levy Court and County Administration reviewed five different options for financing the move of the County Library to Long Acre Village. Of the five options, any that included taking any money from Ag Land Preservation was rejected. Levy Court wanted the public to know they are still committed to preserving Ag land within the County. Options including funding all the costs from one capital fund were also rejected. We are planning to spread the load across a couple of capital funds that were available. Two options split the money between Economic Development and the Gymnasium fund.

- M-364-09** Mr. Sweeney **moved** to approve the Library Purchase Financing Option #3 as set forth in the memorandum from the Director of Finance, Susan Durham, dated November 12, 2009 which shall consist of \$1,000,000 from the Library Capital Project Fund; \$515,000 from the Gymnasium Capital Project Fund; \$515,000 from the Economic Development Capital Project Fund; and \$40,000 from Operating Revenue, for a total of \$2,071,000 which shall cover the costs associated with the purchase, fit-out and furnishing of 10,034 square feet of floor area at The Centre at Long Acre Village for use as Kent County Public Library; seconded by Mr. Brode; carried by Roll Call vote 4 yeas, 2 not voting (Buckson, Eaby), 1 absent (Angel).

Four affirmative votes approve the motion.

7:15 P.M., PUBLIC HEARINGS

**PETITIONS TO AMEND COMPREHENSIVE PLAN MAP AND ZONING
MAP:**

Mr. Sweeney:

1. **Ordinance:** LC09-33; **Application:** CZ-09-02; **Applicant:** Glenn C. Mandalas; **Owner:** State of Delaware; **Present Comprehensive Plan Map Designation:** Commercial and High Density Residential; **Proposed Comprehensive Plan Map Designation:** Commercial; **Present Zoning District:** RM (Multi-Family Residential), BN (Neighborhood Business) and BG (General Business); **Proposed Zoning District:** BG (General Business); **Area and Location:** 6.40 acres ± (area of petition 6.0 acres ±) located on the west side of US Rt. 113 at the intersection of DE Rt. 10, south of Dover; **Kent County Property Identification Number:** ED-00-086.00-01-35.03-000

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.

Notice of this Public Hearing was published in the November 8, 2009 edition of the Delaware State News.

Ordinance LC09-33 is an application for re-zoning and Comprehensive Plan Map change, states Ms. Keifer. RPC took testimony on November 5 and at the November 12 business meeting voted unanimously to recommend approval citing the application is in keeping with the recommendations of the Comprehensive Plan; there is availability of infrastructure in the area and the request is

compatible with surrounding land uses.

Public Hearing is Open on Ordinance LC09-33

IN FAVOR

Glenn C. Mandalas, Esq., 103 S. Bradford St., Dover, DE – He appears on behalf of the equitable owner. As stated previously this comes with approval from RPC and also from Staff. Presently, there are three zoning classifications on this property, RN, BN and BG. We are proposing the entire parcel be zoned BG. A couple of things from the Staff recommendation are 1) the character of the neighborhood has changed to such an extent that a change to the requested classification would be appropriate and conforms to the Comprehensive Plan for Kent County in relation to land use; 2) Kent County public water and sewer will be available at the subject site. Based upon Staff analysis, they recommended approval.

IN OPPOSITION

None

Public Hearing is Closed on Ordinance LC09-33

M-365-09 Mr. Sweeney **moved** to approve Ordinance LC09-33 Application CZ-09-02 Petition to amend Comprehensive Plan Map and Zoning Map based on Staff and RPC recommendations. The new zoning classification conforms to the Comprehensive Plan for Kent County in relation to land use and the property is compatible with surrounding land uses as well as no public opposition; seconded by Mr. Brode.

Roll Call:

Mr. Angel – absent

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, as per staff recommendation, RPC recommendation and no

public opposition.

Motion is approved with 6 yeas, 1 absent (Angel).

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

Mr. Angel:

1. Application Number/Title: CS-09-07 McGinnis Green; Applicant/Owner: Cheswold Village, LLC; Engineer: Frederick Ward Associates; Present Use: Vacant / future retail; Proposed Use: Comprehensive Sign Plan; Area and Location: 37.46 acres ± located on the east side of U.S. Rt.13, approximately 1216 feet south of Co. Rd. 345, east of Cheswold; Kent County Property Identification Number: LC-00-047.00-01-44.00-000 & LC-00-047.00-01-44.03-000

Ms. Keifer gave a brief summary. This is zoned Gen. Bus. RPG took testimony on November 5 and on November 12 at the business meeting recommended conditional approval with two recommended conditions, in particular that the Wal-Mart sign sign on the northern façade not be lighted and that the two pylon signs on the Rt. 13 frontage be monument signs. This afternoon the Applicant sent a proposed compromise that I suppose he will speak to this evening showing one pylon sign at the main entrance of the shopping center and a monument sign at the secondary entrance.

Mr. Buckson asked if there was any compromise on the signage on the north side.

There has been no subsequent discussion of the sign on the northern façade, answered Ms. Keifer.

Mr. Banta asked Mr. Buckson if he was referring to the lighted sign.

The one you spoke of on the northbound side, said Mr. Buckson, but when she spoke of the compromise it was specific, I thought, to the pylons.

The one she spoke of, said Mr. Banta, (could not hear) and one monument sign.

Mr. Buckson said if he read the information correctly there is a concern about a sign on the northern border of Wal-Mart which faces the McGinnis property and the question of whether or not that can either remain, remain lit, remain the same size. That was the question. We are still having discussion about that or has there been a compromise on that also?

There have been no discussions about that sign subsequent to the RPC meeting, stated Ms. Keifer.

Public Hearing is Open on Application #CS-09-07 McGinnis Green**IN FAVOR**

Conny Malmberg, 30 The Green – He is representing the Applicant. This is a Comprehensive sign package application submitted for the Wal-Mart and the adjacent parcel which is a small shopping center and two out pads. He said Gabe Massa, architect for Wal-Mart, was present and had a power point presentation of different perspectives as you drive by and different angles of view they have created to make everything crystal clear. Also present is Lou ?, Developer of site and Steve Gorski, Civil Engineer. Staff asked for modifications on three issues – the two pylon signs they wanted to be monument signs and the sign on the north face of the building they suggested be removed or turned off. It is an LED sign, not exactly bright. They believe that if you change the landscaping pattern that was previously approved then monument signs worked fine. The other concern was raised by Mr. Towery, a neighbor in Eberton Estates who was afraid he might see light from that sign. The property most affected by this project is the property across the street and that is the church. The Pastor of that church supported this application as presented. With regard to the two pylon signs and the modifying of the landscaping, it is true that on the minor entrance to this site we can change the landscaping and use a monument sign in that location and we propose to do that as an accommodation to the Planning Staff and RPC's wishes. With regard to the pylon sign at the main intersection it is not possible or reasonable to make that a monument sign. It would be hidden with landscaping and there is no reasonable way around it without changing the entrance to the site plan. That will be shown in the power point presentation. The sign on the north, facing the building is an important sign, from Wal-Mart's perspective, to have. There is no logical, defensible reason to not light that. Signs are important – for direction and safety. He then asked Mr. Massa to come up.

Gabriel (Gabe) Massa, 3297, Rt. 66, Neptune, NJ 07753 - We met with the Planning Commission on the 5th and the business meeting on the 12th. Prior to the 5th we received some comments but did not have time to make adjustments to our Comprehensive Sign package when we presented it to the Planning Commission. Since the business meeting we have gone back and done some extensive due diligence. He then went through the power point presentation.

Mr. Banta stated he thought they had done an outstanding job in portraying what will be there and believes the compromise arrived at with Ms. Keifer on the signage he will agree with. He questioned the vegetation. Are we requiring that or are you just doing that?

Mr. Massa said it was his understanding that a lot of it was required but he believes a lot of it was above and beyond.

Mr. Buckson asked if the buffering out front was equal to the buffering around the entire perimeter. The buffering along the highway, is that equal in the amount that is also down towards the residents?

Mr. Massa said it was equivalent.

Mr. Buckson's concern was to lower the impact for the residents there. My goal is not to make it entirely invisible from the front, I just want to make sure we are equal in buffering around the northern border as we are on the western border.

Mr. Massa went through again what they have done. We have made this building sustainable as best we could. It has full cut-off lighting. We did not want to over illuminate this building. We just wanted to be sure to provide sufficient lighting to light the parking lot and provide safety for the customers.

We want this to succeed, said Mr. Buckson, once it has met the conditions required. Is there any speaking to a concern that it is not visual at all?

I think the building is beautiful, said Mr. Massa.

Ms. Keifer said some of the additional landscaping along the front is associated with a Board of Adjustment variance that was requested some time ago for some relief on the parking. The Applicant at that point said if you give us relief here we will offer additional landscaping. Some of that landscaping is a result of a different approval.

That is what I was trying to articulate, said Mr. Buckson. Additional landscaping but not necessarily additional landscaping that borders the highway or was it specific for the highway?

Ms. Keifer said as she recalls it was specific for the highway because she believes they were reducing tree planting within the parking lot. The idea was to shift some of it.

More discussion followed on the landscaping.

IN OPPOSITION

None

Public Hearing is Closed on Application CS-09-07

Due to the fact the subject site is zoned BG General Business in which a Comprehensive Sign Plan for a shopping center is permitted as a conditional use per Sections 187-40 and 205-231.1 of the Kent County Code and that the

M-366-09 Applicant complies with the 2007 Comprehensive Plan Mr. Sweeney **moved** to approve Application CS-09-07 a Conditional Use with Site Plan for a Comprehensive Sign Plan with following changes: strike two and three from the RPC recommended conditions and replace with the following conditions: 1) replacing #2, the proposed pylon sign #1 at the main entrance to the site shall be allowed as proposed and the proposed pylon sign #2 at the minor right in-right out entrance to the site shall be replaced with an illuminated monument style sign no more than one hundred square feet in area and no higher than 8 feet above grade; 2) the Wal-Mart sign on the northern façade of the building shall be allowed to be illuminated; seconded by Mr. Eaby.

Mr. Ennis said he sees pylon signs up and down, north and south of this location. All of a sudden we are changing to make it other than a pylon sign. I don't understand all of a sudden why. It seems from the testimony that initially the Applicant's recommendation was to have a pylon sign and it looks like RPC and Planning approved that or recommended that and now we are in the middle of the stream and saying we don't want to do that. I don't understand. I can't support the motion as it is. I think the pylon sign is proper.

Mr. Banta said, I agree with you, however, in negotiations with Staff in the past week, the Applicant has agreed to one pylon sign and one monument sign. Because of the vegetation in the area where the monument sign is they felt as though it was acceptable and they were happy with it. The Applicant is happy with one pylon and one monument sign.

Mr. Ennis then asked about the light on the building.

That stays, answered Mr. Banta.

Roll Call on motion:

Mr. Angel – absent

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

Motion approved with 6 yes, 1 absent (Angel)

Mr. Eaby:

1. Application Number/Title: CS-09-08 Maranatha Fellowship; Owner: Maranatha Fellowship; Applicant/Engineer: Minnich Engineering, Inc.; Present Zoning District: AR (Agricultural Residential); Present Use: Church; Proposed Use: Same with 10,200 sq. ft. addition; Area and Location: 4.49 acres ± located on the corner of Co. Rd. 161 and Co. Rd. 162, west of Dover; Kent County Property Identification Number: ED-00-075.00-01-12.04-000 & ED-00-075.00-01-12.05-000

Again, brief summary was given by Ms. Keifer. This is for a church expansion. Testimony was taken by RPC on 11/5 and at the business meeting on 11/12 voted unanimously to recommend approval including approval of a waiver from the required 6 ft. opaque barrier between residential and non-residential uses. The residential property owners actually submitted letters indicating they had no objection to that waiver being granted.

Public Hearing is Open on Application CS-09-08**IN FAVOR**

Kevin Mennick, Mennick Engineering, 250A Camden-Wyoming Ave. – This is a revision to a site plan. It is for an expansion on their facility on Deer Track Lane. It is a three phase project. The first would be an expansion to some classrooms for Bible study; second phase would be for a sanctuary and the third for a multi-purpose type building on the back.

Mr. Brode asked if they had handi-capped parking spaces and Mr. Mennick's answer was yes.

IN OPPOSITION

None

Public Hearing is Closed on Application CS-09-08

- M-367-09** Mr. Eaby **moved** to approve Application CS-09-08 a conditional use with site plan for a church and ancillary uses located inside the growth zone overlay district; motion includes a recommendation to grant the request for a waiver from the required 6 ft. high opaque barrier between non-residential uses and residential uses and further that the application comply in all respects with the November 5, 2009 Staff recommendation report. Also, based on unanimous approval by the RPC and no opposition; seconded by Mr. Ennis.

Roll Call:

Mr. Angel – absent

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 on motion reveals 6 yeas, 1 absent (Angel).

CLOSE PUBLIC HEARINGS

OLD BUSINESS

None

NEW BUSINESS

Mr. Buckson:

1. Appointment to the Board of Adjustment

Mr. Buckson believes they may not be able to act on the appointment. Mr. Mills has currently not resigned from his Sewer Advisory position and I am understanding there may now be a conflict when you serve on two Boards.

That is correct, replied Mr. Pepper. I think he needs to resign from the first before he can be appointed to the second.

What direction do I take, asked Mr. Buckson? He said he spoke to Mr. Mills and he agreed he has not yet resigned but fully intends to. Do we Table and put this back on another agenda?

Mr. Brode asked if it was possible to make an appointment tonight and when he resigns we won't have to come back. We have the paper work; we can approve it upon his resignation from the SAB.

Mr. Pepper did not believe it was a good idea to go down that road.

I assume we will be able to do this within two weeks time, said Mr. Buckson. I will do what is needed.

Mr. Banta thought they could put it on in two weeks once the resignation takes place.

Mr. Ennis suggested maybe Mr. Mills could attend the meeting if they have one even though he wouldn't have a vote. He would at least know what is going on.

Good suggestion, said Mr. Banta.

Mr. Ennis:

1. **Introduction of Ordinance LC09-42, An Ordinance amending Ordinance 09-27, An Ordinance authorizing the issuance of up to \$9,271,310 General Obligation Debt of Kent County for the construction of effluent disinfection and alternative energy type improvements to its Wastewater Facilities and authorizing all necessary actions in connection therewith**

Mr. Ennis read the Introduction into the record for public hearing on December 15, 2009 at 7:15 P.M.

OTHER BUSINESS

1. Vote to go into Executive Session immediately following the Business Meeting for preliminary discussion on site acquisition for a publicly funded capital improvement; legal strategy session regarding collective bargaining or pending or potential litigation; and personnel matters pursuant to 29 Del.C. 10004(b)(2), (4), and (9)

M-368-09 Mr. Eaby **moved** to go into Executive Session immediately following the Business Meeting for preliminary discussion on site acquisition for a publicly funded capital improvement; legal strategy session regarding collective bargaining or pending or potential litigation; and personnel matters pursuant to 29 Del.C. 10004(b)(2), (4), and (9); seconded by Mr. Brode; carried by Roll Call vote 6 yeas, 1 absent (Angel).

We will go into Executive Session and will not return, stated Mr. Banta.

2. Vote go into Executive Session immediately following the Committee Meetings on December 1, 2009 pursuant to 29 Del.C. 10004(b)(2), (4), and (9) for preliminary discussion on site acquisition for a publicly funded capital improvement; legal strategy session regarding collective bargaining or pending or potential litigation; and personnel matters

M-369-09 Mr. Eaby **moved** to go into Executive Session immediately following the Committee Meetings on December 1, 2009 pursuant to 29 Del.C. 10004(b)(2), (4), and (9) for preliminary discussion on site acquisition for a publicly funded capital improvement; legal strategy session regarding collective bargaining or pending or potential litigation; and personnel matters; seconded by Mr. Sweeney; carried by Roll Call vote 6 yeas, 1 absent (Angel).

INFORMATION ITEMS

None

PUBLIC COMMENTS

None

COMMISSIONERS' COMMENTS

Mr. Banta extended warm greetings to everyone for the Thanksgiving Holiday coming up. He hopes everyone has a reasonably enjoyable time. For Commissioner Ennis it will be one person short and I wish him well through this time. It cannot be easy. God speed and I hope the day goes well for you.

Mr. Brode said he was glad to see his friend Tom back.


Mr. Eaby apologized for being late. His son is in the hospital again; he is fine but it is costing me a fortune because every time he goes in they have to take blood. He is a big baby and so I have to promise him a DS game or something.

You know, said Mr. Banta, when the County Administrator's son or daughter has a situation like that he has to give them \$500. I think you are getting off a lot cheaper.

ADJOURN

M-370-09 **Motion** was made by Mr. Brode, seconded by Mr. Ennis and carried by Roll Call vote 6 yes, 1 absent (Angel) to adjourn the meeting. **8:14 P.M.**

We move into Executive Session and will not return, states Mr. Banta.



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.