

**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, October 27, 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. Eaby.

**Roll Call and Determination of Quorum**

Allan F. Angel	Vice President
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 seven (7) Commissioners present.

**Additions/Deletions to Agenda**

None

**Adoption of the Agenda**

**M-321-09 Motion** was made by Mr. Ennis, seconded by Mr. Angel and carried by Roll Call vote 7 yeas to adopt the Agenda as presented.

**Consent Agenda 09-16**

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.

*Items from October 20, 2009 Committee Meetings:*

- FY08 CDBG Recovery Allocation
- Big Oak Park: a) Paving Contract Change Order No. 1; b) Lighting Contract Change Order No. 1
- South Bowers Volunteer Fire Company Parking Lot CTF Project
- Hartly Sewer Project: a) URS Contract Amendment; b) Geotechnical Engineering
- Rezoning of County Complex and 911 Center

**M-322-09 Motion** was made by Mr. Brode, seconded by Mr. Ennis and carried by Roll Call vote 7 yeas to approve Consent Agenda 09-16 as presented.

**Approval of Regular Business Meeting Minutes of Tuesday, October 13, 2009**

**M-323-09 Motion** was made by Mr. Angel, seconded by Mr. Sweeney and carried by Roll Call vote 7 yeas to approve the Regular Business Meeting Minutes of Tuesday, October 13, 2009.

**PRESENTATIONS**

1. Employee of the Month

M. Richard "Dick" MacDonald is Employee of the Month of November 2009. This was read into the minutes by Ms. Tanaka. Dick is Assist. Dir. of Public Works- Facilities Management Div and has worked for the County since February

1998. He has an unmatched knowledge of the complex workings of the County buildings from blue prints to photocell lighting systems. He is praised by co-workers for his willingness to pitch in and help with what ever the situation – shoveling snow, mowing grass or changing a light bulb located 30 feet in the air. Congratulations! Dick resides in Commissioner Brode's and Ennis' districts.

## INTRODUCTIONS

None

It was not time for Public Hearings so Pres. Banta asked Mr. Sweeney to move to **Item 1, New Business.**

### Mr. Sweeney:

1. Action Item from Community Services Committee Meeting of Tuesday, October 20, 2009: Dog Park Proposal

Mr. Mumford gave a brief presentation. It has been decided they would consider the bid for the five ft. galvanized fence given by Nanticoke Fence Company. They were the low bidder at \$8,570. There were other considerations for amenities such as some landscaping, 2-in. wells, pads, etc. We feel we have made good use of the available land.

Mr. Eaby stated there was almost \$4,000 raised in public funding and another source was from savings from another project.

Mr. Mumford said that was correct; the funds were left over from the project at Big Oak.

Mr. Buckson believes this is forward thinking in regards to parks and recreation. This is opening another avenue. He believes maybe a skate park would be a good idea as well and maybe a BMX park. The key is low cost start-up and little maintenance.

- M-324-09** Mr. Sweeney **moved** to approve the award of a contract to Nanticoke Fence Company in the amount of \$8,570.30 for the purchase and installation of a 5 foot tall galvanized fence enclosure system as set forth in the bid specifications document for the Tibury Creek Dog Park Fencing Project, and as reflected on the attached schematic site plan for the creation of a Dog Park at Tibury Park, and authorize the President of Levy Court to execute said contract on behalf of Levy Court, and further move to approve the expenditure of additional funds in an amount not to exceed \$1,650 to complete the funding for associated concrete, tree plantings, benches and water well installation, for a total expenditure from County funds of \$10,220.30 to be transferred from the unexpended balance of capital funds from the Big Oak Park Ballfield Complex Project; seconded by Mr. Angel; carried by Roll Call vote 7 yeas.

**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.*

The Notice of this Hearing was published in the October 11, 2009 edition of the Delaware State News.

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

**Mr. Sweeney:**

1. **Ordinance LC09-32**, An Ordinance to amend the Comprehensive Plan Map Designation and the Official Zoning Map of Kent County, Delaware pursuant to the provisions of Kent County Code, Vol. II, Chapter 205 Zoning, Article III, Section 205-8 and Section 205-9, and Article XXVIII (changes and amendments) effective December 01, 2000, as amended.  
 (Reference: Application: CZ-09-01; Applicant: Frank A. Massuli; Owner: 5M Investors, LLC; Current Comprehensive Plan Map Designation: High Density Residential; Proposed Comprehensive Plan Map Designation: Commercial; Current Zoning District: RM (Multi-Family Residential); Proposed Zoning District: BG (General Business); Area and Location: 0.29 acres ± located on the northeast side of Palmer Road approximately 326 feet south of Co. Rd. 360, north of Camden; Kent County Property Identification Number: NM-00-094.15-04-

22.00-000)

This is CZ-09-01 states Ms. Keifer. RPC took testimony on 10/1 and on 10/08 they unanimously recommended approval citing the request would be consistent with the general character of the area. Facilities are in place to serve the site.

**Public Hearing is Open on Ordinance LC09-32**

**IN FAVOR**

None

**IN OPPOSITION**

None

**Public Hearing is Closed on Ordinance LC09-32**

**M-325-09**

Based on recommendation of Regional Planning Committee, Kent County Staff, and this re-zoning aligns the parcel with adjacent parcels north and south to BG, Mr. Sweeney **moved** to approve Ordinance LC09-32, an Ordinance to amend the Comprehensive Plan Map Designation and the Official Zoning Map of Kent County, Delaware pursuant to the provisions of Kent County Code, Vol. II, Chapter 205 Zoning, Article III, Section 205-8 and Section 205-9, and Article XXVIII (changes and amendments) effective December 01, 2000, as amended; seconded by Mr. Angel.

Roll Call:

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 yeas in favor.

**PETITION FOR CONDITIONAL USE APPROVAL:**

**Mr. Sweeney:**

1. **Application:** C-09-03 Collena Whaley; Applicant/Owner: Collena Whaley; Present Use: Residential; Proposed Use: Same with Home-based Beauty Salon; Area and Location: 0.19 acres ± located on the west side of David Hall Road, approximately 290 feet south of John Collins Circle, southeast of and adjacent to the city of Dover; Kent County Property Identification Number: ED-00-085.16-01-46.00/000

This for a home occupation of a beauty salon, states Ms. Keifer. It is in the Rodney Village Subd. and zoned RS1. RPC heard testimony on 9/3 and on 10/8 recommended conditional approval adding a condition that the Applicant actually widen the driveway to 18 ft. in width using 4 inches of stone to better accommodate off street parking.

**Public Hearing is Open on Application C-09-03****IN FAVOR**

None

**IN OPPOSITION**

None

**Public Hearing is Closed on Application C-09-03**

- M-326-09** Mr. Sweeney **moved** to approve Application C-09-03 resident with home occupation beauty salon based on Regional Planning unanimous approval and recommending conditional approval of this application; Staff recommendation and public testimony based on the following conditions: the Applicant shall comply with all conditions of approval for home occupation as provided in Section 205-366 Home Occupations General Provisions of the Kent County Code and Staff recommendations as described in the September 3, 2009 Staff recommendation report on pages 3-6; the hours of operation shall be from 8 A.M. to 6 P.M., Monday-Friday and 9 A.M. to 2 P.M. on Saturday, no Sunday hours; the Applicant shall expand the driveway to a minimum of 18 ft. wide using 4 inches of stone as described in the September 21, 2009 letter and attached diagram from the Applicant; seconded by Mr. Brode.

Roll Call:

Mr. Angel – yes, reasons stated

Mr. Brode – yes, reasons stated

Mr. Buckson – no, based on testimony although there was no public testimony;

visited the site; it is my impression, although I want to see home occupations occur, that we are forcing a square into a round hole with this particular application. The parking issues are legitimate. I am not sure how we address the comings and goings of residents that live in the area as well as the new individuals that show up to the tune of 3 to 4 thousand. There are some others but I just wanted to give a brief explanation. I support home occupation but it has to fit. Unfortunately, for me, this one doesn't.

Mr. Eaby – yes, reasons stated

Mr. Ennis –yes, reasons stated

Mr. Sweeney – yes, I think it is the right move to make

Mr. Banta – yes, reasons stated

Roll Call on motion reveals 6 yeas, 1 nay (Buckson) in favor

**Mr. Eaby:**

1. **Application: C-09-06;** Applicants: Michael & Angi Goodhand; Owners: W. Howard & Mary Ann Goodhand; Present Use: Residential; Proposed Use: Same with Dog Grooming Business; Area and Location: 0.64 acres ± located on the southwest side of Philchris Drive, approximately 335 feet southwest of Co. Rd. 355, south of Camden; Kent County Property Identification Number: NM-00-095.05-01-09.00-000

Again Ms. Keifer gave a brief summary of the Application. This site is zoned RS1. RPC heard testimony on 10/1 and on 10/8 they failed to secure four votes for any recommendation. It comes to Levy Court with no recommendation from RPC although she directed attention to Page 2 of the RPC recommendation report. That includes some of the conditions that some of the Commissioners had been considering as they discussed the application and were part of the original motion. The original Staff recommendation was for approval with conditions.

Mr. Eaby asked if it required more than a 4/3 vote when presented to Levy Court without a vote in favor by RPC.

Mr. Townsend believed they needed a super majority in the case of a **negative** recommendation. I will check it to be sure and will interrupt if I am incorrect.

Mr. Banta said it had always been his understanding a denial from RPC requires a super majority vote of Levy Court. This was not a denial – it was a split vote. I do not believe this requires a super majority, but 4 votes.

Mr. Townsend said that was his response – he does not believe a super majority is required.

### **Public Hearing is Open for Application C-09-06**

#### **IN FAVOR**

Michael Goodhand, 82 Philchris DR – He stated they had talked to the neighbors, explained what they want to do and answered questions. They met with Planning and he went over what they would and would not do. We will not have any dogs outside; none in the backyard. The pets will be taken inside; they will be groomed and there for only a short time. We will not have a tacky sign. A typical day would be three to four pets with a maximum of six.

Angela Goodhand, 82 Philchris DR – He (husband) will be home on Saturdays so if you want to knock off the Saturday hours that will be fine with me – we want what is best for the neighbors.

Mr. Goodhand continued his testimony and requested that the hours be extended to 6 so people will have time to pick up their pets because some come after work to pick them up. He also discussed parking, noise and setting precedence. Many people have written letters of support.

Mr. Eaby thought there might be circumstances where the pets may need to go outside. What happens then?

In that particular situation, said Mr. Goodhand, we have on the driveway side grass and 26 trees that screen that part of the driveway from the neighbors so the dogs can use that area. We will provide a trash can with a liner and would clean it up.

Mr. Eaby wanted to clarify that the extension to 6:00 was for pick up purposes only, that they were willing to have no Saturday hours and they also agreed to have no sign.

Mr. Goodhand said the time was correct but would prefer to keep the Saturday hours. There would be no sign, just a picture of a dog and cat above or beside the mailbox.

Mr. Eaby said it has been indicated the deed has a restriction against business use.

Mr. Goodhand said the original deed was for residential use only. As he stated earlier, there have been businesses on this street for many years.

Mr. Eaby said he was looking at the Goodhand's deed and it does not seem to have a restriction.

Mr. Brode still believes there will be an issue with barking dogs and he wanted to clarify there would be no dogs at night. Also, he said Staff recommended there be no street parking.

Mr. Goodhand said their driveway was 150 ft. long and by the house there is room for four cars to park, two abreast. There would be no need for on street parking.

Mr. Angel questioned if this was for supplemental income. If you are closed on Saturday and there is a holiday, do you need five days?

This has become somewhat an economic necessity, answered Mr. Goodhand. I have been self employed all my adult life and currently looking for a job. We are trying to have rules and conditions we can live with and not adversely affect the neighborhood.

Mr. Buckson said, to show good faith, he would recommend they remove the hours of operation on week-ends. He then spoke to the deed restriction. It appears we have two deeds. Is that possible or does it appear that the second one takes precedent because it appears to have been changed?

Mr. Townsend said he thought what might have happened was there was a deed restriction back in the chain of title. It probably states it runs with the land. The failure to repeat that in subsequent deeds does not lift the restriction from the property.

That is where I am challenged, said Mr. Buckson. I support home based projects but I am challenged with the fact I am approving something that I know, if taken to court, is restricted. The recommendation that should be done, but I can't give, is that you follow through with a request for a deed change. Otherwise, it runs with the deed.

Mr. Angel asked the Attorney if title insurance would be part of the deed when you purchase a home.

There could be a title insurance policy, said Mr. Townsend, that would protect the owners from certain risks but the type of restriction we are talking about would not be covered, the type of thing that would allow the owners to ignore the restriction.

Mark Johnson, 212 Greenview DR – He is directly behind the Goodhands. Purchased his home about two years ago and has two daughters who frequently play in the backyard. When the Goodhands mentioned they were proposing the dog grooming business he was not aware they owned a dog. We are in favor of this entrepreneurship with the economy being the way it is.

Carol ?, 152 Philchris DR – She supports this business.

Bob Penny, 66 Philchris DR – Is in favor of what they are doing; he has his own business and had to do some layoffs; he understands what they are trying to do; we live in tough times.

Mr. Eaby asked what his business was; he owns Milford Glass and Mirror.

Danielle Wilder, 74 Philchris DR – Lives next door; I do not see a problem with this.

Steve Schmidt, 81 Philchris DR – In favor because there are really no reasons not to be. I don't see a restriction on my deed. The only other concern was that this conditional use would carry with the property and I believe that has been addressed.

### **IN OPPOSITION**

William Bloomfield, 109 Philchris DR – Sent a letter to the Commissioners and wanted to review some of the issues. He believes the major concern is the fact they are taking a residential street and putting a business on it. He has a concern about property values and precedence. He wondered who would police the restrictions. He bought his property in 1987 and in his deed is the following statement: “no building shall be erected or used upon the above described lot or parcel of land except for residential purposes and buildings used in connection therewith”. I see no positives in this.

Mr. Banta explained we do have a Code Enforcement Div. and the City of Dover, DE State Police and Town of Smyrna, all those law enforcement agencies do a great job for our state and municipalities. Part of the reason they do so well is because they have informants; people call. If you see an issue or problem you call Code Enforcement and see what action needs to be taken.

Earl Webb, 88 Philchris DR – He is in opposition. He bought his property in 1964 in a single family residential zoning district and his deed states the same – “no building shall be erected or used upon the above described lot or parcel of land except for residential purposes and buildings used in connection therewith”. We have honored that deed for 45 years. I don't know why those restrictions wouldn't apply to anybody living on that street. We do not want a business to open in our neighborhood.

Mr. Banta wanted to say that in today's world, many people are working at home, from their homes and we don't even know it.

Mr. Webb followed that by saying that is true but they are not on the streets - they

are home and they stay home.

Mr. Eaby said if there are deed restrictions that prohibit this activity that is not something this Body can enforce. It is something you or other landowners in the development could enforce. If you so choose, you could seek to prevent the operation of this business through the court system by a Body that actually has the ability to enforce the deed restrictions. We are not ignoring them.

Dave Whitney, 149 Philchris – I am not opposed to someone starting a business. We bought our house after retiring from the Air Force and this neighborhood suited our need. I am opposed to anything that would take away from the character or charm that attracted us to the neighborhood, whether it be dogs barking or anything that might be opposed by someone operating a business.

William Fields, 148 Philchris DR, Dover – Has lived here since 1962 and prefer it stay as it is – strictly residential.

#### **Public Hearing is Closed on Application C-09-06**

Mr. Eaby said his first inclination was to try to find ways to deny this. Unfortunately, we can't do that. The zoning in this area permits, as a conditional use, this type of use. The fact it is permitted as a conditional use means that we can't just say no because we want the neighborhood to stay as it is. With that being said we are permitted to apply certain conditions to the application.

**M-327-09** Mr. Eaby **moved** to approve Application C-09-06 a permitted conditional use for this Applicant, for the Goodhands and would like to have the following conditions as set forth in the Staff recommendation dated October 1, 2009: 1) the hours of operation shall be limited from 8 A.M. – 6 P.M. (change from Staff recommendation), Monday – Friday and that there be no Saturday or Sunday hours; 2) animals scheduled for grooming shall not be allowed to be in the back yard area unattended; however walking dogs on a leash during their stay is permitted; 3) signage shall be limited to one informational sign that shall be by the mailbox and not exceed 2 ft. x 2 ft. in dimension and that's a slight change from the No. 3 as written in the Staff recommendation; 4) service shall be limited to six animals per day; 5) the use of the garage for the dog grooming business is limited to store supplies for the business only; it shall not be used for the grooming or housing of dogs; 6) approval shall be limited to this specific property and this specific Applicant. Should the Applicant no longer occupy the subject site the conditional use approval shall expire; 7) no customer parking on the street; all customer parking shall be in the driveway. And further, my motion to approve is based on Staff recommendation, public testimony, both for and against, and with respect to the parking I believe it would be reasonable to assume that most applicants will want to try to park as close to the entrance as possible and they may violate that once or twice but I believe the Goodhands will quickly inform them, park up here. If any of these restrictions are violated, it was

mentioned you can contact our Inspections and Enforcement Dept. and also contact me directly and I will be happy to field those calls at any time; seconded by Mr. Ennis.

Roll Call:

Mr. Angel – yes, reasons stated

Mr. Brode yes, reasons stated

Mr. Buckson – I believe we have the ability to look at the deed. When it is obvious we can decide not to issue any type of recommendation until the deed is cleared up. Whether I am in favor or not, I think is not relevant right now. I do believe the deed is something that needs to be dealt with. I understand why we do not. If it is an opinion, then it is my opinion we should deal with the deed first. I **will not** be voting on this.

Mr. Eaby – yes, reasons stated

Mr. Ennis – yes, reasons stated

Mr. Sweeney – yes, reasons stated

Mr. Banta – yes, reasons stated

Roll Call reveals 6 yeas, 1 not voting (Buckson) in favor.

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

**Mr. Brode:**

1. **Application:** CS-09-06; Applicant/Architect: William Byler, Jr.; Owners: Glenn L. & Nancy L. Martin; Present Use: Residential; Proposed Use: Home-based Contractor's Establishment; Area and Location: 19.47 acres ± located on the northeast side of Co. Rd. 103 approximately 845 feet northwest of Co. Rd. 103, west of Dover; Kent County Property Identification Number: WD-00-082.00-01-13.00-000

Ms. Keifer gave a brief summary. Site is zoned AR; RPC heard testimony on 10/1; on 10/8 they unanimously recommended approval in keeping with the Staff recommendation.

**Public Hearing is Open on Application CS-09-06**

**IN FAVOR**

Glenn L. Martin, 3155 Hourglass RD – Owned a business for 33 years. I did not understand that all of these things had to be done. We are trying to get things right.

### **IN OPPOSITION**

None

**M-328-09** Due to the fact it was unanimous at the RPC, Staff approval with one condition and no public opposition, Mr. Brode **motioned** to approve Application CS-09-06 and that condition is that there be no outside storage of vehicles or equipment related to the conditional use permitted; personal vehicles are exempted; seconded by Mr. Ennis.

Roll Call:

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 yeas in favor.

### **ORDINANCE RE: HOME-BASED CONTRACTOR ESTABLISHMENT**

**Mr. Buckson:**

- 1. Ordinance LC09-30**, An Ordinance to amend Kent County Code, Vol. II, Chapter 205, Zoning, Article II, Definitions, §205-6; Accessory structures and uses, Item C; Article V, AC – Agricultural Conservation District §205-47, Permitted uses and §205-48, Conditional uses; Article VI, AR – Agricultural Residential District, §205-63, Permitted Uses and §205-64, Conditional Uses; Article XXI Conditional Uses, §205-282.1 Home-based contractor establishments, no outdoor storage and §205-365 Table of Conditional Uses, and Article XXVIA, Supplementary Regulations to modify the definition of home-based contractor establishment and permit home-based contractor establishments, no outdoor storage within the AC

and AR zoning districts, subject to conditions.

(Synopsis: This Ordinance revises the definition of home-based contractor establishment and permits the administrative review and approval of home-based contractor establishments with no outdoor storage subject to conditions that would preserve the character of the neighborhood and with the approval of the Director of Planning Services. Home-based contractor establishments not meeting the required conditions or for which an adjacent property owner has submitted a letter of objection shall be subject to conditional use review and public hearing by the Regional Planning Commission and Levy Court.)

Ms. Keifer explains this ordinance revises our home based contractor's regulations to allow them as an administrative approval rather than automatically going through the conditional use process to allow them to be processed the same way home occupations are. Notification would go out to adjacent property owners and if anyone voiced an objection at that point an applicant could choose to move forward with a conditional use process and administrative approval could not be granted. The site plan requirement has been taken out. A plot simply showing where everything is suffices. Simply, it makes this an administrative process rather than a public hearing process.

To follow up, said Mr. Buckson, a few years ago we were pretty hard on changes of some things in regards to how we approve things. We decided to meet and go over the approval process and see what we could do to make it easier. I like this ordinance; I like the thought Levy Court takes in trying to apply logical ordinances for approval for developments, etc. and also look at ways to make things more efficient.

The neat thing about this, said Mr. Banta, is if there is opposition a red flag goes up; we get notified; they go through the hearing process. It is a fail safe position.

Mr. Buckson just wanted to say the two previous applications with opposition would not be able to utilize this process. It still allows for those with concerns to be heard. When there is no obvious opposition why are put people through this process.

Mr. Angel asked Ms. Keifer if this was just for the area or for anybody that may live across town or may know something and have a bone to pick with them.

Uniformly we notify within 200 ft. of the boundary of the site, answered Ms. Keifer. They are the ones who would get a certified notification of an application.

I know that, said Mr. Angel, but suppose they are operating something and haven't gone through the process and someone not in the area has an issue.

The ordinance speaks to those neighbors with opposition within the distance of 200 ft. answered Ms. Keifer.

Also, said Mr. Angel, in the letter of objection it states the application “may” be processed. Do we need to change the word “may”?

What that allows, says Ms. Keifer, is if there is something unusual about an application or if Staff might request a condition that an applicant would not be comfortable with. We have the opportunity to bring it to Levy Court.

**Public Hearing is Open on Ordinance LC09-30**

**IN FAVOR**

None

**IN OPPOSITION**

None

**Public Hearing is Closed on Ordinance LC09-30**

**M-329-09** Mr. Buckson **moved** to adopt Ordinance LC09-30 Home-Based Contractor Establishment. This is based on Staff Memo dated October 16, 2009; positive recommendation of RPC as well as no public opposition; seconded by Mr. Angel.

Roll Call:

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 yeas in favor.

## CLOSE PUBLIC HEARINGS

### OLD BUSINESS

**Mr. Buckson:**

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

**Application:** CS-08-18 Farmington Hot Mix Production Facility; Owners/Applicants: Stafford Properties, L.L.C.; Engineer: Becker Morgan Group, Inc.; Present Use: Agricultural; Proposed Use: Industrial – Hot Mix Production Facility; Area and Location: 22.61 acres ± located on the westerly side of U.S. Route 13, approximately 144 feet north of County Road 62, south of Farmington; Kent County Property Identification Number: MN-00-193.00-01-48.00/000

\*\*Application was TABLED at the Levy Court Business Meeting of September 22<sup>nd</sup>, 2009. The Public Hearing was closed. Written testimony was accepted thru Monday, October 12, 2009.

**M-330-09** Mr. Buckson **moved to lift** Application CS-08-18 Farmington Hot Mix Facility **from the Table**; seconded by Mr. Eaby; carried by Roll Call vote 7 yeas.

Mr. Buckson wanted to clarify procedure. We are not taking public testimony; we could potentially go right to a vote or we can ask questions on information presented since the last hearing.

You can ask questions of Staff and Commissioners and Commissioners can ask you or debate with the Staff, correct, said Mr. Banta.

Mr. Buckson said they were presented with new information. I offer all Commissioners to ask questions with Staff or potentially with a professional, if need be. Any questions?

Mr. Eaby stated they received additional information on the issue of the acceleration and deceleration lanes – the southbound acceleration lane being about 600 to 700 ft. long. The acceleration lane northbound was 1,400 ft. We received a letter from DelDot indicating that 700 ft. was not long enough for a fully loaded truck to get up to speed and I had a concern with that.

Ms. Keifer said she understood the concern. I can respond with the same response DelDot gave us. While they are limited to 6 or 7 hundred ft. for an acceleration lane south, their explanation seems to be that the trucks will be merging into the right hand lane with slower traffic so it is less of a concern to DelDot. They have also indicated that the conflict with the deceleration lane onto

Nine Foot RD is minimal because of the minimal amount of traffic making that right hand turn. Staff has continued to express the same concern but we are in the position of not being the regulatory authority. We did our best to get a response from DelDot who would ultimately approve the plan for the entrance.

I did not get see that they indicated what speed the trucks would get up to, said Mr. Eaby. The gist of it was no, they won't be up to full speed but they are going fast enough and with the traffic count and visibility it should not be a hazard for the vehicles traveling the speed limit down 13.

That is what they have responded with, said Ms. Keifer.

That would seem to address the traffic, said Mr. Eaby. You wonder what happens when traffic increases or could increase and how that will play into the slower moving truck. That was not really addressed.

DelDot appears to be saying this should work right now and should it change in the immediate future they will re-evaluate it, said Ms. Keifer.

Mr. Buckson reviewed some comments from DelDot about traffic. There are serious concerns about the additional truck traffic the proposed plant will add to this location. In particular is the short distance available for trucks exiting the site and seeking to weave across southbound 13 to make a u-turn at Nine Foot RD. At the same time they were saying to me it was OK to use that same pattern to approve almost 200 trucks a day for ESE. I didn't have the ability to say no because DelDot said it was good. He went on to talk about a traffic light. Less than two years ago DelDot was suggesting the Applicant consider another site for the plan. He has a challenge with the approval knowing what he knows and based on what he has seen. He discussed the light that Tilcon was able to get put in. He continued to vent his concerns.

Mr. Eaby questioned barriers and Ms. Keifer said the only separation she was aware of was the northbound acceleration lane. It is isolated until the trucks get up to speed and can merge onto the highway.

Mr. Buckson stated they spent a lot of time on this at the last meeting. I still had questions to potentially ask of the Applicant. I would like to know the procedure for that. There are some questions that have been presented based on further review. The reason to Table was to further review the information. We are challenging our ability to deny. We are told we have to approve with conditions. I need to know if the Applicant is going to meet the conditions that are presented here and the conditions we have formulated since the last meeting and any conditions I want to ask the Applicant. Do I have the opportunity to present some conditions that I feel are warranted to determine if they are willing to accept them or should I make a motion to approve with those conditions and if they don't like them they don't build?

Pres. Banta called on Mr. Townsend.

Mr. Townsend said what they need to attempt to do is create as clean a record as possible. When a public hearing is closed we try to respect that. There are occasions when additional questions are put to an applicant. It has been done in the past but does not necessarily say the Court has endorsed that practice. However, what Commissioner Buckson is proposing I think is less objectionable if it is not your intent to introduce new evidence. If you are simply asking questions of the Applicant that can be answered yes or no, I believe that is less objectionable than to ask the Applicant questions about their proposed use or ask for additional information which the opposition has not had an opportunity to review and which you would consider to be important in your deliberations. I prefer we not have extensive back and forth for purposes of defending your action tonight. If you proceed in that fashion that in my view would be less objectionable than opening up the record altogether to new information.

Mr. Banta felt if additional stipulations have been prepared in regard to approval it would seem more than fair that you make the appropriate motion stipulating those conditions that are beyond what we had before us but not inconsistent with what you have already said and proceed in that fashion rather than to give those in favor or opposition a chance to begin a new testimony. He thought it incumbent that if you are prepared to make a motion, whatever it may be, that it include those stipulations that you have so decreed as critical for passage or denial.

Mr. Angel said his questions and concerns about chemicals had been addressed and it is good to know that the people that live there will not be harmed. He would still like the condition that it at least be posted so the people know if there has been an issue or what is being done so they have information of their own area.

Mr. Buckson was back with more concerns and comments. He places some of the blame at his own feet. He did not foresee this, when they closed the public hearing, as being a closure. He understands why. This has taken a long time. The blacktop plant has gone out of their way to try to meet concerns. I don't see them as the enemy but I see the situation concerning the people living in the area. He realizes Farmington is a small area and recently they have had more than their share. He had many other comments and had a question that is specific to the Applicant because the Applicant will then tell me whether or not I have the ability to deny because I will place conditions that I think are reasonable. If that Applicant fails to meet the terms and conditions I, as a Court, am not obligated to further condition to meet his needs. They have already indicated they will take us to court if we deny. I need to build, based on my conditions, what it is I think is relevant. If they meet all terms and conditions that I feel are reasonable, then I have no cause but to approve. If I can't get these answers I have to deny.

Mr. Townsend told Mr. Buckson he was in a position to make or not to make a

motion or to support or not support one someone else makes. An unrelated point is the Applicant may or may not be prepared to answer questions tonight because the record was closed. I would like to stay away from a scenario where we are taking new evidence. If the presiding officer is willing to open it up a little I would urge you to make it yes/no type questions and not request additional information.

Mr. Banta's fear was, if they go down that path, they would be obligated to take a response from either side, whichever side you have questions for, from the other side and in order to get those comments, they would be entered into the record and the record for this hearing was closed. My recommendation is if you have a motion prepared with that criteria so encapsulated, make the motion and see where it goes from there.

Mr. Buckson said he would not make that mistake again. There will be no closed hearings until I – I screwed up; my bag; have to eat it.

The other alternative we have, provided there are four votes to do it, we could take a five minute recess and perhaps during that time there may be an accomplished situation where you can then present your motion, said Mr. Banta. That may not be accepted. Would that be fair or unfair, Mr. Townsend?

So long as the recess is exactly that, answered Mr. Townsend. If Commissioner Buckson has questions for the Applicant, that is fine. I would prefer not to see a huddle of Commissioners around the Applicant and opening ourselves to arguments that we are not abiding by our own rulings.

Mr. Buckson said he was OK. He said to Ms. Keifer he had in his paperwork for approval, listed on the front page, 11 steps and then the 30 or so. Do all need to be entered in?

The first page comes from Regional Planning Commission's motion and explains their reasoning for the recommendation they made, said Ms. Keifer. The balance are suggested conditions that you can consider. Most of them come from RPC's motion; some others we drafted based on what we heard at the last public hearing. There are alternatives to consider because alternative conditions had been discussed.

Mr. Buckson stated he knew what he wanted to approve if in fact he wanted to approve. Knowing that then, I need to start at 1 and move through each.

Ms. Keifer suggested he start with the first page and choose the conditions he thought appropriate.

Mr. Buckson stated he found virtually all except for the ones listed as or and of course would then have to select one. I see none I am really going to take out

other than 2 and 9 on the front page. Stay with me; it will take a few minutes and that is because of procedure, not that I am long winded.

**The following is copied and pasted:**

**M-331-09** *Mr. Buckson:* As I see, it, I **make a motion, I move to grant** conditional approval of application CS-08-18, Farmington Hot Mix Production Facility, located outside the Growth Zone Overlay District, including the requested waiver from the 5 foot front sidewalk requirement. This is based on Exhibit A, the Regional Planning Commission Recommendation Report dated September 26, 2009, Exhibit B, Public Testimony, Exhibit C, State's PLUS comments included herein and the findings of fact:

1. The subject site is zoned IG (General Industrial) and a hot mix facility is a permitted conditional use;
2. The application complies with the relevant Adequate Public Facilities Ordinances;
3. The application, with the changes articulated in the Requirements Section in the September 3, 2009 Staff Recommendation Report, pages 7 through 9, complies with the County Code;
4. There are both residential and agricultural land uses in close proximity.
5. The Farmington Fire Company has testified that they do not have capacity to adequately serve this site.
6. The applicant has provided the required environmental study, operations plan, and letters of approval required by Code;
7. The applicant has revised the site plan to shift the facility away from existing residential structures and increase the height of the proposed landscaped berms;
8. The applicant has testified that the facility manufacturer is GENCOR Industries, Inc., and the model is the Ultra Branch Plant designed to produce 400 tons of mix per hour when the operation is at capacity; and
9. The Regional Planning Commission recommended conditional approval.

Pursuant to Chapters 205 and 187 of the Kent County Code and pursuant to 9 Del. C. §4801 the Commission has reviewed the preliminary site plan application, the Staff Recommendation Report and furthermore, as part of this approval the applicant shall comply with all staff and agency requirements as described in the September 3, 2009 Staff Recommendation Report and comply with the following conditions:

1. The hours of operation shall be from 6:00 a.m. to 6:00 p.m. Monday through Friday and 7:00 a.m. to 1:00 p.m. on Saturday. There shall be no operations on Sunday, Christmas Day, Good Friday, New Years Day, the days

the State of Delaware is closed for Memorial Day, July 4<sup>th</sup> and Labor Day. The term "operation" includes the presence of any persons employed at the conditional use site, the appearance or arrival of any vehicles used to deliver or remove materials from the conditional use site, including the arrival of any motor vehicles and trucks used to transport any hot mix, asphalt or any other product or material to and from and on or off the conditional use site. This includes arrival of any trucks or motor vehicles prior to 6:00 a.m. or leaving after 6:00 p.m., Monday through Friday, and prior to 7:00 a.m. and after 1:00 p.m. on Saturdays and includes motor vehicles being parked on or off the conditional land use to await the beginning of operations on the site. The purpose of this condition is for public safety and to provide for the general welfare of the neighborhood to prevent truck drivers from arriving at the site prior to the beginning of operations. Parking outside the site and leaving the trucks running while they wait, the owners of the conditional use site can control the arrival and departure of the trucks anytime they enter into contracts with the companies that operate the trucks and purchase products. No trucks will be parked in the acceleration or deceleration lanes on the southbound Route 13 at any time. Operations include the delivery of any material used to produce hot mix and or asphalt and also maintenance or repair of any part, any equipment on the conditional use site. In other words, there are to be no off hour deliveries, arrival, work maintenance and/or repair in midnight hours.

2. The applicant shall coordinate with DelDOT on the installation of a traffic signal similar to the one at Tilcon/Pioneer site on Route 113 in Dover. Also, additional signage to notify the motorist of slow moving trucks entering the highway shall be coordinated with DelDOT to be placed north of the proposed entrance. The applicant shall coordinate with DelDOT to place no "stopping, standing or parking at any time" signs for a distance of a half mile in each direction from the site entrance. If DelDOT rejects any of the proposed measures, this application shall be denied.
3. The proposed silos shall be of neutral color;
4. The height of the material and stockpiles shall not exceed 30 feet;
5. Future rail access shall be considered a revision and require coming back to Levy Court and the Regional Planning Commission;
6. The Reclamation Plan shall be revised to demonstrate how the ponds in the water storage areas on site will be reclaimed;

7. All applicable air quality permits from DNREC and the EPA shall be secured and provided to the Department of Planning Services prior to final approval;
8. In accordance with Section 305-419.C, [205-419.C] Revocation of Permits: Permits issued under a conditional use approval may be revoked by the administrator for failure to comply with the conditions of approval or applicable regulations. Therefore, should the facility be found to be in violation of any condition of approval, including violation of any applicable environmental permits, the permit will be subject to revocation;
9. At any future point, should any required landscaping perish, it will be the responsibility of the owner/applicant to replace said plantings as a condition of the approval for this use;
10. The final plan must be approved within 18 months of preliminary plan approval and construction shall commence within 18 months of final plan approval;
11. The recommendations found on page 16 of the Environmental Noise Survey for the Farmington Hot Mix Facility by Compliance Environmental dated February 24, 2009 shall be implemented and incorporated into the final plan;
12. Provide additional noise attenuation features offered by Gencor Industries for the Model 400 TPH Ultratum including a burner silencer kit and exhaust fan variable frequency drives which are available from Gencor;
13. An irrigation system of a water truck shall be available to control the dust on site as conditions require;
14. The applicant shall establish an escrow account with an initial deposit in the amount of \$100,000.00 to fund the Reclamation Plan for the site after the removal of the hot mix production improvements. The escrow fund shall be deposited before the issuance of a building permit for the site. An additional annual deposit of \$10,000.00 shall be made into the escrow account by the applicant on or before June 30<sup>th</sup> of each successive year. Failure to make such timely deposits shall be considered a violation of the conditional use permit and grounds for termination. The applicant shall maintain such escrow account in a banking institution with offices in Kent County, Delaware;
15. All conditions and work related to the Reclamation Plan that pertains to the site shall commence and end within 6 months of the conditional land use site owner discontinuing use of the hot mix or asphalt plant on a regular basis. The term "regular basis" shall mean that a plant be operated at least half of the available days in any

given month in the calendar year. Non-renewals of any required business license related to the conditional land use of making hot mix/asphalt shall also begin with the six month time frame to complete reclamation of the site;

16. All applicant-owned vehicles on site shall be equipped with the Brigade Brand (or equivalent) Self- Adjusting White Sound Reversing Alarms as submitted to the Commission;
17. Planning Staff will conduct quarterly inspections for a period of two years after final approval to determine compliance of all of these conditions, as well as any inspection that the County deems necessary to enforce conditions;
18. All storage visible from access street and adjacent properties shall be screened from view or organized in an orderly manner on permanent racks, pads or other fixtures and all storage shall be situated behind the building setback line;
19. There shall be no onsite storage of materials, other than the materials that are used in making the hot mix/asphalt and none of the materials are to be sold other than the hot mix/asphalt or as an incidental to the sale of hot mix/asphalt;
20. No delivery truck or trailer and/or truck or trailer that arrives at the site for the purpose of picking up a load of hot mix/asphalt shall be cleaned, washed down, or have its trailer bed lubricated on site at any time other than the vehicle washing and lubrication area approved by the Planning Office and shown on the final site plan. Any such trailer bed lubrication shall be with non-hazardous and non-petroleum based products;
21. Compliance with the requirements of Chapter 161, Noise of the Kent County Code shall be maintained;
22. Any fuel stored on site shall be limited to the required machines that are stored and used continuously on site and shall not be used to fill vehicles delivering materials or removing hot mix from the site;
23. The owner shall provide the County with proof of liability insurance that covers damages that are caused off site, including damages to property, personal injuries and damage to livestock, agricultural crop, water supplies and/or poultry;
24. The applicant shall be required to meet with the adjoining property owners within 1,000 feet of the plant site as well as the Town Council two times per year to discuss operations of the plant. Minutes of the meeting shall be taken by the property owners and submitted to the Kent

County Planning Office to provide feedback to staff;

25. The deficient culvert underneath Nine Foot Road shall be corrected prior to the commencement of construction on the site;
26. The owner/operator shall perform annual stack testing at the site and demonstrate compliance with DNREC's Air Quality Permit. Such test shall be comparable with the test performed by DNREC every 5 years and results shall be provided to the Department of Planning Services. That's a yearly test;
27. Within 30 days of commencement of the use, the owner/operator shall complete or have completed a noise study that confirms that the plant does not violate or exceed the decibel limits established in the Kent County Noise Ordinance and verify that there is no net increase in the sound pressure in those areas that are already exceeding HUD's standards. Said study shall be provided to the Department of Planning Services;
28. There shall be no more than 45 vehicles [trips] in and 45 vehicles trips out of the site [per day] and no more than 9 vehicle trips and 9 vehicles trips out of the site per hour. A log of vehicle trips shall be maintained onsite for the periodic inspection by the County. Such log shall be signed by the owner of the conditional use, or a representative thereof by way of an Affidavit whereby the signor swears that the information is true and accurate;
29. The hot mix plant shall generate no more than 200,000 tons of hot mix per year. Production logs shall be maintained on site for the period inspection by the County. Such logs shall be signed by the owner of the conditional use or a representative thereof by way of an Affidavit whereby the signor swears that the information is true and accurate;
30. All conditions of approval shall apply during the construction, operation, and reclamation of the site;
31. If the applicant is found in violation of any permit issued by any Federal, State or local governmental agency, the applicant shall give the County notice of the violation immediately by contacting the Kent County Department of Planning Services in writing within one business day [of the violation];
32. The application shall pay a host fee of \$.05 per ton of hot mix/asphalt processed at the plant on June 30<sup>th</sup> of each year the plant is in operation to be paid equally to the Town of Farmington and the Farmington Fire District, with a minimum annual payment of \$2,200.00 per year;
33. The conditional land use owner shall be responsible for

all flooding of the adjoining property with water or rain runoff that is caused in any way, including, but not limited to the count elevation flow of water or the construction of berms, modifications or ditches;

34. No Lessee of the land in issue shall be issued a conditional use approval. Only the owner of the land, who will be responsible for the compliance of all Kent County Zoning Code Ordinances and Conditional Use shall be issued the conditional use approval by the County. At all times, the owner of the land, in which the conditional use operates, shall be responsible for the compliance with all County Ordinances and conditions of approval of the conditional land use and this responsibility shall not be signable.

I appreciate you for allowing me, that is my motion for approval.

*Mr. Eaby:* That was a very lengthy motion, the first I've heard of a lot of the conditions. I didn't know if it was possible to have that typed and if we have time to digest it or review it or . . .

*President Banta:* First of all, to discuss it, we'll need a second.

*Mr. Angel:* I'll second it for further discussion.

*President Banta:* Motion by Commissioner Buckson, seconded by Commissioner Angel. Commissioner Eaby?

*Mr. Eaby:* Thank you Mr. President. I would like an opportunity to review that before voting, if possible, even if it's just a 15 minute recess or 20 minutes recess.

*President Banta:* I do not see the invalidity of allowing us to (inaudible) since we just did receive that. If you chose to do that and Mr. Buckson can provide you with that . . . Mr. Angel, do you have something you want to add?

*Mr. Angel:* Yes, I agree with Mr. Eaby on this, but at the same time, our lawyer on the end, I hope he would have time to digest that too and make sure that we're covering all the bases or if we're cutting into something we shouldn't be cutting into, to give us some fair warning before go further.

*President Banta:* Was that question directed to counsel?

*Mr. Angel:* Yes, it was.

*Mr. Townsend:* If the question is, Mr. President, would it be helpful if I had a few minutes to review the motion, the answer would be yes.

*President Banta:* Okay, so we'll need to take a 10 minute recess and we'll need a motion to do that, and then we'll have that.

*Mr. Buckson:* I can identify the ones that are not already in your packet ,if that helps, I can do that rather quickly, I believe.

- President Banta:* Mr. Eaby says he'd like a recess and we need a motion and a second.
- M-332-09** *Mr. Eaby:* I **move** for a 15 minutes recess.
- Mr. Brode:* Second.
- President Banta:* Motion by Commissioner Eaby, seconded by Commissioner Brode, 15 minute recess for the process of evaluating the motion that Commissioner Buckson just made. Many of us have not had an opportunity to see all of it, although we did know a lot of it. So, Lorri would you please call the roll.

**End of copy and paste.**

Roll Call:

Mr. Angel – yes

Mr. Brode – yes

Mr. Buckson - yes

Mr. Eaby – yes

Mr. Ennis – yes

Mr. Sweeney – yes

Mr. Banta – yes

Roll Call reveals 7 yeas.

Fifteen minutes from now we shall return, said Mr. Banta. It will be 10:00.

**Reconvene** – 14 minutes late

Mr. Banta asked for further discussion and Mr. Eaby requested the floor.

- M-333-09** Mr. Eaby made a **motion to amend** Commissioner Buckson's motion. First, is with respect to the light - Mr. Buckson's motion had as a condition that the Applicant obtain approval for a light at the intersection. I am amending that to read the Applicant shall coordinate with DelDot on the installation of a traffic signal similar to the one at the Tilcon Pioneer site on Route 1/113 in Dover. Also, additional signage to notify motorists of "slow moving trucks entering highway" shall be coordinated with DelDot to be placed north of the proposed entrance. The Applicant shall coordinate with DelDot to place "no stopping, standing or parking at any time" signs for a distance of ½ mile in each direction

from the site entrance. If DelDot rejects any of the proposed measures a letter confirming such shall be provided prior to final plan approval. That is amendment #1.

**Amendment #2** is with respect to the reclamation. The motion was for an initial contribution of \$100,000 and an annual contribution of \$10,000 and so my motion is to make an initial contribution of \$50,000 with an annual contribution of \$5,000.

The **third amendment** is with respect to the contribution to the Farmington Fire Company and/or the Town of Farmington. The amendment is to make a \$2,500 annual contribution to the Farmington Fire Company.

The **fourth potential motion** is, and I have a question for Staff, that is with respect to the RPC. Did they make any recommendations as to the number of trips in and out of the site entrance?

Ms. Keifer said the RPC's recommendation did not address trip generation.

Then my amendment, said Mr. Eaby, would be to delete Commissioner Buckson's condition for the limitations of the entrance trip generation.

Mr. Angel seconded for discussion.

Mr. Angel asked what was the trip limitation and what was the purpose Mr. Buckson was putting on it and why do "no trip" now?

Mr. Eaby did not believe it was appropriate to have those restrictions; they were not required by RPC. Maybe Mr. Buckson can answer why he had them in.

Mr. Angel had a question for Mr. Townsend, Attorney. This was not discussed in RPC; we do not have the right to add extra conditions on this because it was not discussed at RPC?

You do have the right to impose additional conditions, answered Mr. Townsend. The present motion as amended imposes a significant number of additional conditions to those that were recommended by RPC.

Mr. Angel asked Mr. Eaby why they wouldn't want some type of limitation in a certain time frame.

Mr. Eaby believes the site entrance permit is based on the traffic study done and I am deferring to the traffic study and information contained in it as to what the estimated trips are.

I can see that, said Mr. Angel, as long as they get a light there to offset some of

the safety issues. That is the concern.

Mr. Eaby said he understood but he was not tying this to a light. To me they are somewhat different.

Back to Mr. Townsend, said Mr. Angel. Due to the traffic, and I was not on the light issue until it was brought forth, I was on the chemical issues, because of health, safety and welfare of what we are supposed to be doing for any business or anybody traveling the highway, even though it is DelDot, can we not have a number and/or with the light with traffic travel ins and outs.

Mr. Townsend said he was concerned about a condition which would require the Applicant to place a traffic signal at their entrance knowing the Applicant doesn't have the authority to place the traffic at the entrance without the approval of DelDot. It think the Applicant has said repeatedly they would love to have a traffic signal there but without DelDot's approval they can't put one there. It is not an issue of money. It is with respect to a condition that essentially prohibits them from proceeding without DelDot's approval to place a light there is my concern. It would be subject to objection. With respect to the trips, that is a different question. You probably could fashion some type of trip limitation that would be defensible but if you make it too harsh it could be deemed to be unreasonable and secondly, it would be difficult for the County to enforce it as a practical matter. If I understand the motion to amend, it removes all limitations on number of trips in and out of the facility.

Mr. Angel said he was basing this on new information Mr. Buckson presented tonight as to what DelDot said about accidents in that area and what the 911 Center is saying which is totally different. That is my concern as well as having learned Tilcon is getting a light across a major SR1 to go north. What's fair is fair and what's not, that is a safety issue too.

Mr. Townsend asked for a point of order. Where are we here? We have a motion to amend. Has it been seconded? (yes) I am sorry, I missed that. He asked Mr. Angel if he had an additional question or was he debating the merits.

Mr. Angel just wants to be sure what they do tonight is fine. I do not want to go to Court for the wrong reason because DelDot put one in for Tilcon and with Mr. Buckson bringing up the information about the amount of accidents on that road recently is greatly different from what DelDot said. I am looking at the health, safety and welfare.

Mr. Banta stated he was 99% sure the Tilcon light was gone. I do believe it has been removed.

Mr. Townsend said it was his understanding the light had been removed but the motion to amend said that the Applicant would seek DelDot approval to place a

light at the entrance as was done in that case and I don't think it is problematic even though the light is removed.

Mr. Angel wanted to be sure they had this for the record, we can move forth.

Mr. Banta stated there is a motion and a second on the floor. The amendment presented by Commissioner Eaby. If no further questions about that we will vote on the Amendment first and then the motion.

Roll Call on the amendment:

Mr. Angel – yes, as per Mr. Eaby's amendment

Mr. Brode – yes, reasons stated by Commissioner Eaby but if the Applicant can't talk DelDot into a light maybe they can get the Senators and Representatives to do something with a light there – just a suggestion

Mr. Buckson – no

Mr. Eaby – yes, reasons previously stated

Mr. Ennis – yes, reasons stated

Mr. Sweeney – no, I prefer original conditions

Mr. Banta – yes

Roll Call reveals 5 yeas, 2 nay (Buckson, Sweeney)

Amendment passes.

Next we will have Roll Call on original motion that went through the amendment, stated Mr. Banta.

Mr. Buckson asked if the motion to approve fell under his name. My motion was without the amendment so my question is does this move forward under my name or take Commissioner Eaby's role?

It appears to me that the motion as presented now will appear with both names – Mr. Buckson as the maker of the motion and Mr. Eaby as the maker of the amending motion. It doesn't take precedence but is included with the motion, explained Mr. Banta.

I would not have made a motion for approval without those conditions said Mr. Buckson, so, it is what it is but I want it very clear for the record there would not have been a motion for approval and I'll be voting against my own motion then.

Roll Call:

Mr. Angel – yes, as per amendment and changes

Mr. Brode – yes, reasons previously stated

Mr. Buckson – no

Mr. Eaby – yes, reasons previously state

Mr. Ennis – yes, reasons stated

Mr. Sweeney – no

Mr. Banta – yes, reasons stated

Roll Call reveals 5 yeas, 2 nay (Buckson, Sweeney)

Five affirmative votes approves a motion as presented in regard to Conditional Use Site Plan Approval CS-08-18, states Mr. Banta.

**\*RECESS TO EXECUTIVE SESSION**

**M-334-09** Motion was made by Mr. Sweeny, seconded by Mr. Angel and carried by Roll Call vote 7 yeas to move into Executive Session. **10:30 P.M.**

**RECONVENE BUSINESS MEETING 10:50 P.M.**

**OLD BUSINESS**

**Mr. Sweeney:**

1. Action item on site selection for County Library

Mr. Sweeny stated he was disappointed in the negative reaction to the County as we were trying to move forward with the continuation of library services. The result has been a considerable amount of harsh words directed at myself and fellow Commissioners for what we feel is the right thing to do and in trying to be fiscally responsible to the taxpayer's expectations of us as their representatives. I want to personally thank the County Administrator, the County Librarian and Staff of the Kent County Library for all their hard work in five long months of searching for a suitable location; their explanations of funding; countless meetings and all their advice, specifically to me, during this issue. He wanted to thank Attorney Crystal Carey for her hard work in preparation of an original contract we had voted on. To that extent I **move** to rescind and render null and

**M-335-09**

void the motion of October 13, 2009 that was passed by Levy Court by vote of four (4) in favor, two (2) against and one (1) not voting which authorized Attorney Crystal Carey to prepare a purchase offer and Provisional Contract of Sale for the acquisition of a 12,000 sq. ft. portion of the building and commensurate land interest located at 120 Old Camden Road and to advance said purchase offer and Provisional Sales Contract to the Seller for review and consideration thus nullifying said action in total; seconded by Mr. Brode; carried by Roll Call vote 6 yeas, 1 not voting.

**M-336-09**

Mr. Sweeney read the following: In order to address the concerns of citizens throughout the County and to ensure that the County remains involved in long range plans to provide library services to all County residents I make the following motion: I **move** to accept the Agreement for Purchase of Assets Contract presented to Levy Court by the Seller, Longacre Village LLC, on October 22, 2009 for the purchase of Units 1, 2 and 3 at Longacre Village Shopping Center totaling 10,034 sq. ft. in total floor area contingent upon the Seller establishing the commonary maintenance fee at \$1 per sq. ft.; further contingent upon the Seller completing all building fit-out construction in order for the building to be made ready for occupancy by Kent County no later than April 1 and further contingent upon the legal review of said document and legal acceptance of that document; seconded by Mr. Angel;

Roll Call:

Mr. Angel – yes

Mr. Brode – yes, however I want you to know it is not because of any pressure from anybody else; I am doing this because of my constituents in the Harrington area

Mr. Buckson – Let me be clear on my **no** vote. I don't support or not support the project. I think it has a tremendous amount of merit. My whole decision in voting no tonight on Lessard and now Longacre was because I felt that we had multiple individuals – groups and organizations, government agencies, who had requested that we pause this process, communicate with them our direction and work together. I understand the logic, I like the location but that was my reason for no. I know it's not going to make a lot of sense but I hope that it does in my mind which is why I said no – the pace and speed, so no

Mr. Eaby – not voting

Mr. Ennis – yes, the main purpose of my voting for this particular motion is that it will better serve all the people of Kent County – the people in the south deserve as much support in library services as those in the north and the middle. I think this will be a better location for everybody and I believe we will have a better fulfillment of the mission we have to provide those library services.

Mr. Sweeny – yes

Mr. Banta – a comment before I cast my vote; for my 13 years of service on Levy Court I have always received reasonably positive and good comments regardless of how I voted, regardless of what went down. This issue was extremely passionate; so passionate that friendships, I think, have diminished to some degree. Relationships have certainly diminished to some degree; the challenge for all of us and not necessarily to mend fences, but at least retain the ability to speak together and work together as a County for the common good I do not think over the past few weeks the intent of some people opted to do that but to divide and hopefully conquer. That is not the reason for government be it municipal or County or State. We need to be a team that works together. As you see tonight as the vote has thus gone that's what we are attempting to do and have always attempted to do though there are those that attempted to shortcut the process. I do respect all library personnel; I still have respect for most of the people that called me; and maybe I'll retain respect for the balance of those as time goes by. Time is a great healer. I am distressed that people I have known my entire life would call and make comments like they did. With that being said I vote yes.

Roll Call reveals 5 yeas, 1 nay (Buckson), 1 not voting (Eaby).

Mr. Angel wished to reiterate it was not the people that brought this issue to us. We did our homework and have been doing it. When it comes to maintaining library services I am already on record saying that we need more library services. I put it up there with everything else that is a service. Doing away with the library service down the road or looking at the building right now which is busting at the seams and is growing to the point where it is not valuable to stay there a year, two years or three more, waste taxpayer dollars and not have anything to show for it. That is why I switched my thought on going to the newer site of the second proposal. First of all there was enough support. In order to keep the library services viable and for our constituents, that was my deciding factor on what I voted for tonight. I think the library is a valuable service for any community and it gets very territorial with people and their libraries.

## **NEW BUSINESS**

**Mr. Ennis:**

- 1. Introduction of Ordinance LC09-36,** 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

Ordinance LC09-36 was read into the record by Mr. Ennis. Public Hearing will be at 7:15 P.M., November 10, 2009.

2. Appointment of Wastewater Contract Negotiating Team

**M-337-09** Mr. Ennis **moved** to appoint and authorize the County Attorney, Personnel Director, Public Works Director, and Acting Wastewater Facilities Division Manager to negotiate a successor agreement with CWA Local 1034, Branch 312 representing wastewater treatment plant employees; seconded by Mr. Angel; carried by Roll Call vote 7 yeas.

**Mr. Buckson:**

1. **Introduction of Ordinance LC09-39**, An Ordinance to amend Kent County Code, Vol. II, Chapter 205, Zoning Article V, Agricultural Conservation District, §205-49, Maximum Density and §205-59 Village development minimum requirements; Article VI, Agricultural Residential District §205-65, Maximum Density and §205-75 Village development minimum requirements; Article VII, RS-1 Single Family Residential District, §205-76, Purpose; Article XIX Cluster Development §205-240 Density Transfer Provisions, Item D; Article XXVIA Supplementary Regulations §205-397.2 Growth Zone Overlay District, Items C(1), (2), and (3), and Appendices 205:A1 Agricultural Conservation, 205:A2 Agricultural Residential, 205:A4 Multifamily Residential, 205:A5 Residential Manufactured Home, 205:A6 Single-Family Residential, and 205:A7 Medium Density Residential repealing the provisions adopted by Ordinance 08-05 and readopting those provisions with language to prohibit the use of community wastewater treatment and disposal facilities throughout the County; delete the Village Design standards within the Agricultural Conservation and Agricultural Residential zoning districts; and eliminate inconsistencies with respect to density and minimum lot size between and within Chapter 205, Zoning and Chapter 187, Subdivision and Land Development.

(Synopsis: This Ordinance prohibits the use of community wastewater treatment and disposal systems throughout the County, removes the Village Design standards within the Agricultural Conservation and Agricultural Residential zoning districts in favor of the density and design criteria contained in Chapter 187 and within the Growth Zone Overlay requirements, and eliminates inconsistencies with respect to density and minimum lot size between and within Chapter 205, Zoning and Chapter 187, Subdivision and Land Development.)

Ordinance LC09-39 was read into the record by Mr. Buckson. Public Hearing will be November 10, 2009 at 7:15 P.M.

2. **Introduction of Ordinance LC09-40**, An Ordinance to amend Kent County Code, Vol. II, Chapter 187, Subdivision and Land Development, Article X Required Improvements §187-53 Minimum Requirements, Item

D Sanitary sewerage facilities by repealing the provisions adopted by Ordinance 08-06 and readopting those provisions with language to prohibit the use of community wastewater treatment and disposal facilities throughout the County.

(Synopsis: This Ordinance prohibits the use of community wastewater treatment and disposal systems throughout the County and requires the low density development option for major subdivision outside of the Growth Zone.)

This was also read into the record by Mr. Buckson. Public Hearing is November 10, 2009 at 7:15 P.M.

### **OTHER BUSINESS**

1. Move to have Executive Session following the Committee Meetings on November 3, 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-338-09** Mr. Eaby **moved** to have Executive Session following the Committee Meetings on November 3, 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. Brode; carried by Roll Call vote 7 yeas.

### **INFORMATION ITEMS**

Mr. Banta stated he attended the Viet Nam Memorial dinner at Felton Friday night. County Administrator was present and it went very well. He believes they made between \$7 to 10 thousand. Last night Commissioner Angel and he attended a function at DAFB at the museum as a civic event for community leaders and that went very well.

Mr. Petit de Mange reminded them of Leadership, tomorrow, twelve noon. Second, reminder that on Friday, November 6, the Tourism Board will be holding their annual event. It is an awards program – the 18<sup>th</sup> Annual Awards – and this year will be recognizing and celebrating Delaware State Fair as the grand recipient in recognition of their 90<sup>th</sup> year of the Fair. I would encourage any Commissioners who can to be there. We are supporters of Kent County Tourism; we are on the Board and it would be good if we had some representation.

Mr. Ennis said he and Mr. Brode attended the Bobby Quillen Memorial last night in Harrington. It was very well attended; good entertainment and good food.

## **PUBLIC COMMENTS**

Marie Cunningham – As an individual she wanted to thank the Commissioners for their serious consideration concerning the matter of the relocation of the Kent County Public Library. It was a difficult decision and it is very encouraging to all Kent County residents to know and see you take these matters seriously and try to come to a decision that best serves all residents of KC. As Chairperson of the Kent County Library Advisory Committee I look forward to working with our Committee as we continue to build library service in KC for the good of all. People are very passionate about their libraries as we have seen of late. Thank you very much.

Holly Sebach – We have lived here for 13 years and we love the Kent County Library. We want you to know that we are very appreciative of you keeping this library going even if we have to drive further now. We are there once, twice, three times a week. I cannot understand why anyone would be against this. I love Dover but I do not like going to the Dover library. It is a service I am so glad you did not give up.

## **COMMISSIONERS' COMMENTS**

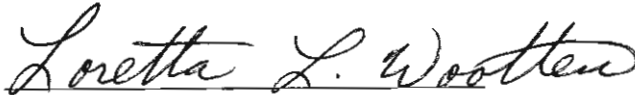
Mr. Sweeney explained he would be out of town for the next 12 days. He will be available via County phone and e-mail. That means I will miss Committee meeting next week.

Mr. Angel asked that our Staff, under Commissioner Buckson, look at some of our Ordinances. For example, the concrete and asphalt plants and look at maybe having it sub-divided. Sub-classification for different uses because right now it is lumped with so many different things that can go there that I think it is more hazards and more contentious for what can be put there. I think we need to look at either having a subdivision or sub-line or something different within that Code. I was told we could do that so I want to be sure we can have the Staff, under Mr. Buckson, bring that forth.

Mr. Buckson had a point of clarification. During my original introduction of Ordinance LC09-39, I read it into the wrong Levy Court hearing date. The date it is 12/15/09 and not 11/10. It was not on the paper so I took a shot that it was the same as Commissioner Ennis' and it was not. That follows with LC09-40, the same problem. It will be heard 12/15.

**ADJOURN**

**M-339-09** Motion was made by Mr. Angel, seconded by Mr. Brode and carried by Roll Call vote 7 yeas to adjourn the meeting. **11:15 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.