

**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, July 26, 2011**

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. Howell and the Pledge of Allegiance was led by Mr. Buckson.

Moment of Silence for our Troops

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

Roll Call and Determination of Quorum

Allan F. Angel	Vice President
Eric L. Buckson	Commissioner
Brad S. Eaby	Commissioner
Glen M. Howell	Commissioner
Terry L. Pepper	Commissioner
George W. Sweeney, Sr.	Commissioner
P. Brooks Banta	President

There are seven (7) Commissioners present.

Additions/Deletions to Agenda

None

Adoption of the Agenda

M-174-11 Motion was made by Mr. Angel, seconded by Mr. Pepper and carried by Roll Call vote 7 yeas to adopt the Agenda as presented.

Consent Agenda 11-09

Items on the Consent Agenda were discussed in committee on Tuesday, July 12th, 2011 and Tuesday, July 19th, 2011. They are considered routine and/or 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 July 12th Committee Meetings:

- Kitts Hummock Sewer Extension; Teal Contract; Change Order Nos. 5 tl
- Hartly Sewer Expansion Project – Master Plumber Services Contract Aw

Items from July 19th Committee Meetings:

- Frederica West I Sewer Area Public Works Agreement with Refunding Clau. Final Approval
- Request for Retirement of records, Register of Wills Office
- SmartNet Contract Renewal
- Credit Card Processing for Parks and Recreation

M-176-11 Motion was made by Mr. Eaby, seconded by Mr. Sweeney and carried by Roll Call vote 7 yeas to approve Consent Agenda 11-09 as presented.

Approval of Regular Business Meeting Minutes of Tuesday, July 12, 2011

M-177-11 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, July 12, 2011.

Pres. Banta acknowledged the presence of Representative Jack Peterman, former Levy Court Commissioner.

PRESENTATIONS

1. Tribute to Kent County Amateur Radio Club

Ms. Tanaka read the Tribute into the record. Kent County Levy Court extended

recognition to The Kent County Amateur Radio Club for its outstanding community service in support of vital public safety and emergency response communications in Kent County, DE. KCARC was founded in 1950 by a group of amateur radio operators in support of their hobby and to provide aid to the Civil Defense System in DE. The members are volunteers who perform a multitude of important communications tasks during emergency situations. On behalf of all residents of Kent County, the Levy Court expresses its sincere appreciation to The Kent County Amateur Radio Club for its longstanding commitment to volunteer public service during times of extraordinary need.

Some members of the club were present to receive the Tribute.

2. National Association of County Information Officers Recognition Plaque

Recognition was given to Kent County Levy Court by NACIO for their continued support of Bret Scott as NACIO President from 2009-2011. Presentation was made by Mr. Scott.

3. Employee of the Month

Employee of the Month for August 2011 is Ruth Ann Jones from Planning Services. She is a Permit Tech III in the Div. of I&E and has been an employee since October 2005. Over the years she has achieved expertise in her field. Congratulations Ruth Ann on a job well done. Ruth Ann resides in Commissioner Howell's and Pepper's districts.

INTRODUCTIONS

None

PUBLIC HEARINGS

PETITION TO AMEND COMPREHENSIVE PLAN MAP AND ZONING MAP:

Mr. Buckson:

The following application was TABLED by the Levy Court on May 24, 2011 with the PUBLIC HEARING left OPEN:

1. LC11-06, 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: CZ-11-02 D & A Burton, LLC (Applicant: Acorn Holdings (DE), LLC; Owner: D & A Burton; Engineer: Davis,

Bowen & Friedel, Inc.): Request Comprehensive Plan Map Amendment from Low Density Residential to Commercial and Zoning Map Amendment from AC (Agricultural Conservation) to BG (General Business). Located inside the Growth Zone Overlay District.)

Ms. Keifer gave a brief summary of the Ordinance.

M-178-11 Mr. Buckson made a **motion** to Lift from the Table Application LC11-06; seconded by Mr. Pepper and Mr. Eaby.

Roll Call:

Mr. Angel – yes

Mr. Buckson – yes

Mr. Eaby – yes

Mr. Howell – yes

Mr. pepper – yes

Mr. Sweeney – yes

Mr. Banta – yes

Roll Call reveals seven (7) yeas.

Public Hearing is Open on Ordinance LC11-06

IN FAVOR

Jack Peterman, 595 Log Cabin RD, Milford, DE – Definitely support this; it will mean jobs in the area; it is in the right location; the State and everyone I have talked to has supported this in this particular area. I would like to say that whatever the Burton's say they will do, they have always done.

IN OPPOSITION

None

Public Hearing is Closed on Ordinance LC11-06

Mr. Buckson wished to clarify the specifics for the Tabling. This situation was not about jobs or the expansion or the right of the company to expand. There

M-179-11

was never any question of the integrity of the Burton's. It was specifically a question of uncertainty on what the re-zoning may or may not do to the impact on traffic in the area. At that particular time we did not have some specifics. I believe it was a wise decision to Table so that we could get some specifics. I compliment and thank the individuals who were at the DelDot meeting and for producing the letter that clearly defined what it is will happen and the time lines for it to happen. I encourage Rep. Peterman to seek funds for the improvements that need to be made. I **move** to approve Application LC11-06 based on the findings of information; the reasons stated prior to making motion; seconded by Mr. Pepper.

Roll Call:

Mr. Angel – yes, reasons stated and no opposition

Mr. Buckson – yes, reasons stated

Mr. Eaby – yes, reasons stated including letter of explanation from DE Dept of Transportation dated July 7, 2011 concerning the improvements for the subject site

Mr. Howell – yes, reasons stated

Mr. Pepper – yes, reasons stated and there is no public here in opposition and great opportunity for economic development and jobs

Mr. Sweeney – yes, reasons stated

Mr. Banta – yes, reasons stated

Roll Call reveals seven (7) yeas.

CLOSE PUBLIC HEARINGS

OLD BUSINESS

None

NEW BUSINESS

Mr. Sweeney:

1. A request for a revision to a Planned Unit Development (PUD) - CS-03-02 Longacre Village, which will then allow a revision and re-recording of the Subdivision component of that PUD... SL-03-25.

Ms. Keifer states this was originally approved by Levy Court in April 2003. It is

currently under construction and they are requesting the setbacks for ten of the lots to be changed from previously approved 20' setbacks to 18' feet in the front and 12' in the rear. It comes to Levy Court because the original setbacks were determined when the application received conditional use approval. The reason for the change is the market has changed; there is an interest in building one story duplexes which require a greater footprint. The side setbacks will stay the same. All other characteristics of project will remain the same. The builder is present tonight.

Mr. Sweeney had a concern about Lots 87, 88, 89 and 90. They currently back up to other properties that are currently not under construction. He wished to verify that lots 174 through 179 were not being changed.

At this point they are anticipated to be townhome lots, said Ms. Keifer.

Does Levy Court have authority to modify the request to not include Lots 87 and 88, asked Mr. Sweeney?

It is in your purview, answered Ms. Keifer, to determine whether or not you want to grant the different setbacks for all lots or a portion of the lots.

Mr. Sweeney then asked the builder if he owned the lots 174 through 176 and he did not. So you have no control over what they are planning to do, said Mr. Sweeney.

The builder stated they had considered all options. One story living is what our buyers are looking for and currently the size allows for two stories with bedrooms on the second floor. It has proven to be an inferior product so we have re-designed it to one story living. He further explained their plans.

Mr. Sweeney is concerned about the distance between the back of the product and the property line. He asked the builder if he could live with having eight of the lots approved and look at a different product without the setback modification for the other two?

The builder said he owned lots 87 and 88 and two lots across the street, 79 and 80. If we were able to have the other lots amended I am now stuck with lots I have nothing to build on because the product that fits will not sell in that community. It would be a hardship.

Ms. Keifer wished to say the setbacks for the townhouse units is 20' already. If they convert to duplexes it will give more room.

The builder stated the townhouses are a product that do not sell either. The stairs and two story living are not what this particular market wants.

Mr. Banta wished to verify 87 and 88 were on a contract and the builder answered yes, by the same individual.

Mr. Angel asked if there would be parking on the street and the builder stated he did not believe off street parking was offered. There is curb but no lines per se.

Mr. Angel was concerned about fire trucks getting into the area. He asked about the width of the street.

The builder stated there was no on street parking and we are not changing anything with the roads; they are in place. We are just increasing the footprint of our model; we are not modifying anything with the fire department.

Mr. Banta then questioned the issue of no on street parking and the builder said he would need to refer the question for terminology.

Ms. Keifer explained that two off street parking spaces are provided on these lots. The County does not prohibit on street parking but that is more likely in the case of visitors or there is some type of party. By Code, they must have two spaces for off street.

Mr. Buckson commented on decisions made on applications specifically in Changes of density or impact of infrastructure. Once something is done and we see a change in the market and change such as this that doesn't negatively impact anything around it but basically puts it on the market, is there a call? I got the impression from Ms. Keifer this is somewhat a non-controversial request. He wondered if the owner of the properties across the street knew about this request and the intent to change.

The owner said she did, her name is Sarah Caldwell and she has signed the required letter that went out to her.

She is not present to protest, said Mr. Buckson. I wanted to follow up with that; at the end of the day I think it is their call; I support this.

M-180-11 Mr. Sweeney **moved** that the Levy Court approve the revised setbacks for duplex lots 79-84 & 87-90, reducing the front setback from 20 feet to 18 feet and reducing the rear setback from 20 feet to 12 feet to enable the construction of 1-story duplex units with attached garages; seconded by Mr. Pepper; carried by Roll Call vote 7 yeas.

2. **Introduction of Ordinance LC11-16**, An Ordinance amending The Code of Kent County, State of Delaware, Volume I, Chapter 168 – Parks and Recreation, §168-5 – permits; fee schedule, to allow groups using the Sports Field Rental policy to vend food and beverages during their event

for public hearing on Tuesday, August 9, 2011 at 7 PM

Mr. Sweeney read Ordinance LC11-16 into the record for introduction only.

Mr. Angel:

1. *Action item from the July 12th Administration Committee Meeting:* Draft Agreement with Kent Economic Partnership establishing a Division of Economic Development and Business Assistance.

Mr. Petit de Mange stated he had distributed a revision that was reviewed in Committee on 7/12 dealing with Item #5 pertaining to the hiring of a Director of Economic Development. The initial draft had that we would be assuming the existing Kent Economic Partnership's Chief Executive officer. There has been a change indicating the County would be hiring a Director. The Agreement was reviewed by the Kent Economic Partnership Board of Directors and authorization to the Chairman of that group was rendered by vote of the Board to approve this Agreement and is forwarded tonight for consideration by you.

M-181-11 Mr. Angel **moved** to approve the Consolidation Agreement between the Kent Economic Partnership and Kent County Levy Court as presented, and to authorize the President of Levy Court to execute said Agreement on behalf of Kent County Levy Court; seconded by Mr. Sweeney; carried by Roll Call vote 7 yeas.

2. **Introduction of Resolution 3245**, DuPont Manor Addition of Yard Waste Collection Service *for public hearing on Tuesday, August 9, 2011 at 7 PM*

Mr. Angel read Resolution 325 into record for introduction only.

3. **Introduction of Ordinance LC11-11**, An Ordinance amending §128-47 of the Kent County Code to Cap the Sheriff's Fee on Sheriff's Sales *for public hearing on Tuesday, August 9, 2011 at 7PM*

Ordinance LC11-11 was read into the record by Mr. Angel for introduction only.

Mr. Pepper:

1. *Action item from the July 19th Public Safety Committee Meeting:* 911 Center Parking Lot Expansion Update/Further Action discussion continuation

Mr. Pepper did not believe there was need for any further discussion. I think the next phase is for the Engineer to go to the City of Dover to finalize what needs to be done to start construction and then go from there.

M-182-11 Mr. Pepper **moved** to approve Change Order No. 2 in the amount of \$22,000.00 to Landmark Engineering for design services and reimbursable necessary for obtaining Preliminary Plan approval from the City of Dover's Planning

Commission for a code compliant parking lot expansion of the 911 Emergency Services Center with funding from original capital project funds source; seconded by Mr. Angel; carried by Roll Call vote 7 yeas.

Mr. Banta asked Mr. Pepper to explain, for the public, why this space is needed at the 911 Center.

Mr. Pepper said when the 911 Center was built we were trying to cut as many costs as possible. We did the building, storm water retention pond and minimal parking spaces. With the number of employees, meetings, and events there is a need for more parking. We are at the point where we are encroaching on our neighbors across the street, the State of DE Highway yard so need additional space. We also need storage space for utility trailers that carry the Red Cross emergency operations equipment and the 911 emergency operations equipment which at the present time are taking parking spaces. That is why we are at this point.

Mr. Banta added that people need to understand that if the Center goes down, the large van, fully functional as a command center in the event of a disaster to the 911 Center, needs to be on site and parked there. At the present time there is not space for it to do so.

Mr. Buckson said what they have agreed to is to further define exactly what the costs are for what the biggest plan would be and then the decision can be made on what we can afford at that particular time. We are basically setting in place the plan because there is a need for an expansion. I look at it as an investment in a center that is going to take care of needs of the County for a long time.

OTHER BUSINESS

2. Vote to have Executive Session following the Committee Meetings on Tuesday, August 2, 2011 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-183-11 Mr. Eaby **moved** to go into Executive Session following the Committee Meetings on Tuesday, August 2, 2011 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. Angel; carried by Roll Call vote 7 yeas.

INFORMATION ITEMS

Mr. Angel reminded everyone about the trash issue in DuPont Manor. That will

be coming up on August 9.

PUBLIC COMMENTS

None

COMMISSIONERS' COMMENTS

Mr. Angel said a firefighter lost their home this past week-end, unfortunately. He thought perhaps the County could take a collection. They service us and I am always ready to help the public service people. It must be devastating when you loose everything.

Mr. Banta asked Mr. Petit de Mange if it would be appropriate to put a notation in next month's newsletter to let people know about the disaster of one of our firefighters and see if anyone would want to come forward with contributions or is that not appropriate.

Mr. Petit de Mange said we could do that and that was OK with Mr. Angel.

ADJOURN

M-184-11 **Motion** was made by Mr. Angel, seconded by Mr. Buckson and carried by Roll Call vote 7 yeas to adjourn the meeting. **8:05 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.