

**MINUTES OF THE KENT COUNTY LEVY COURT
BUSINESS MEETING
KENT COUNTY ADMINISTRATIVE COMPLEX
555 BAY ROAD, DOVER, DE
LEVY COURT CHAMBER, ROOM 203
TUESDAY, APRIL 23, 2019**

Call to Order

The Business Meeting of the Kent County Levy Court was called to order at 7:00 p.m. by President Banta.

Invocation and Pledge of Allegiance

The Invocation was led by Mr. Howell; the Pledge of Allegiance was led by Mr. Angel.

Moment of Silence for our Troops

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

Roll Call and Determination of Quorum

Allan F. Angel	Commissioner
Eric L. Buckson	Commissioner - Absent
Jeffrey W. Hall	Commissioner
Glen M. Howell	Commissioner
Terry L. Pepper	Vice President
George W. Sweeney, Sr.	Commissioner
P. Brooks Banta	President

There are six (6) Commissioners present; one (1) absent at Roll Call.

Adoption of Agenda

M-19-066 **Motion** to approve the Agenda made by Mr. Angel; seconded by Mr. Sweeney; carried by Roll Call vote six (6) yeas; one (1) absent.

Consent Agenda 19-5

Items on the Consent Agenda 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 items shall be removed from the Consent Agenda and considered separately under New Business.

- Approval of Levy Court Business Meeting Minutes of Tuesday, March 26 and April 2, 2019
- Items from the April 16, 2019 Committee Meetings:
 - Utility Body Work Truck with Crane Purchase – Bid Award
 - RFQ Local Limits
 - RFP Results/Award (Architectural & Engineering Services – Forrest Avenue Paramedic Sub-station)

M-19-067 **Motion** to approve Consent Agenda 19-5 made by Mr. Pepper; seconded by Mr. Sweeney; carried by Roll Call vote six (6) yeas; one (1) absent.

PRESENTATIONS

Resolution 3744, Soil and Water Stewardship Week, April 28 through May 5, 2019

Lorri Tanaka read the following into the record:

WHEREAS, The 2019 theme for the 64th Annual Stewardship Week is “Life in the Soil: Dig Deeper.” and

WHEREAS, fertile soil and clean water provide us with our daily sustenance, and

WHEREAS, effective conservation practices have helped provide us a rich standard of living, and

WHEREAS, our security depends upon healthy soil and clean water, and

WHEREAS, stewardship calls for each person to help conserve these precious resources,

WHEREAS, Kent County Levy Court recognizes the 64th year of the National Association of Conservation District’s Soil and Water Stewardship Week, and recognizes the ongoing efforts of the Kent Conservation District.

NOW, THEREFORE BE IT RESOLVED that the Levy Court of Kent County Delaware does hereby proclaim the week of April 28th through May 5th as Soil and Water Stewardship Week for 2019 in Kent County.

M-19-068 **Motion** was made by Mr. Pepper; seconded by Mr. Sweeney to approve Resolution 3744; carried by Roll Call vote six (6) yeas; one (1) absent.

The Commissioners and County Administrator asked Mr. Bruce Snow from the Kent Conservation District to join them at the front for the presentation of the Resolution, commemorative photos and remarks.

Employee of the Month, May 2019

The following was read into the record by Ms. Tanaka:

Kent County Department Heads have selected Michael S. Rigby from the Department of Community Services as the May 2019 Employee of the Month. Mike serves as Assistant Director of Community Services – Parks & Recreation Division and has worked for Kent County since January 1995. He is responsible for managing the development and maintenance of the County's five parks as well as ensuring that a comprehensive program of recreational activities are offered to the public. Mike was originally hired more than 20 years ago as a Parks Maintenance Foreman and was promoted to his current Assistant Director position in 2016. Since then, he has worked tirelessly to forge complementary relationships between parks and recreation staffs and the community as a whole. In addition to his numerous duties as Assistant Director, Mike plays a vital oversight role in the construction of numerous park improvements, oversees facility management for the Recreation Center Complex, and processes facility rental requests. He was previously honored as Employee of the Month in July 1997. According to Community Services Director Jeremy Sheppard, "Mike is an exceptionally versatile and loyal County employee. He is constantly looking to make Kent County Parks and Recreation better. He takes a tremendous amount of personal pride in our facilities and programs."

Congratulations Mike on a job well done! Mike resides in Commissioner Howell's and Pepper's Districts.

Mike joined the Commissioners, Mr. Petit de Mange and Jeremy Sheppard at the front of the dais for congratulatory remarks and photos.

INTRODUCTIONS

Allan Kujala advised the Commissioners one new employee was scheduled for introduction this evening and that honor would go to Andy Riggi, Assistant Director of Public Works on behalf of Diana Golt, Director of Public Works.

Mr. Riggi introduced Cathy Moore, Secretary in the Department of Public Works. Cathy was hired on April 1, 2019 and according to Andy is fitting in “really well, working good.” Cathy most recently worked with the Delaware Public Health Lab and prior to that for the Division of Public Health and brings with her over 39 years total experience in secretarial and business office management. Cathy currently resides in Commissioners Hall’s and Pepper’s districts.

Cathy expressed her appreciation for being given the opportunity to be a part of the Kent County team and looks forward to serving the community.

PUBLIC HEARINGS

Sarah Keifer stated these Public Hearings are being conducted for the purpose of giving the citizens of the County the opportunity to present testimony on the application and ordinances that are before the Levy Court.

Everyone will have a chance to speak. All statements are to 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 hearing should be presented to for identification and inclusion in the record.

For each application before the Levy Court:

1. The President of Levy Court will introduce the application;
2. The Levy Court will then receive testimony from those in favor;
3. Testimony will then be received from those who may be opposed.
4. After everyone has had an opportunity to speak, the hearing on the application will be closed and the Levy Court will then take what action it deems appropriate.

Levy Court’s decision will be based upon public hearing testimony given at this meeting and a recommendation submitted to the Levy Court by the Regional Planning Commission. I would ask that the recommendation be included, by reference, in the permanent record of the meeting established by the Clerk of the Peace.

The Public Notice of the Hearing was published in the April 5, 2018 edition of the Delaware State News.

PETITIONS FOR CONDITIONAL USE REQUIRING SITE PLAN APPROVAL

Mr. Howell:

1. **Application #/Name:** CS-19-02 / Cow Marsh Creek; **Applicant/Owner:** Tower North Development LLC / Pritchett, Robert Edward & Rosemarie; **Zoning District/Proposed Use:** AR Agricultural Residential)/Telecommunications Facility; **Area & Location/ID#:** 64.3+/- acres on the west side of Bayberry Lane and the south side of Sandtown Road (DE Road 56) approximately 4 miles northwest of Chandlers Road, west of Felton/SM-00-126.00-01-35.00-000

Ms. Keifer: The application before the Levy Court tonight, CS-19-02 is a Conditional Use Site Plan for a Telecommunications Tower. The site overall is just over 64 acres on the west side of Bayberry Lane and the south side of Sandtown Road, west of Felton. The Regional Planning Commission took testimony on the application at their April 4th hearing and at their April 11 business meeting voted unanimously to recommend conditional approval. Within that recommendation was also recommended approval of two waivers, one from the locational requirements, in the Ordinance that is routinely granted. They also recommended granting a waiver from the frontage sidewalk. And then finally two conditions, the Regional Planning Commission recommended and the Applicant agreed to in the hearing was the installation of a light on the tower as well as ensuring that the generator on site would be powered by propane rather than diesel. So again this comes with a recommendation for conditional approval, I'm happy to answer any questions you might have.

Public Hearing Open on Application CS-19-02**IN FAVOR**

Jonathan Jordan, Attorney on behalf of the Applicant. Sworn in at this time were witnesses:

Dave Grigonis, 3801 Berrybridge Way SE, Marietta, GA,

Chris Lasch, behalf of AT&T, 200 North Warner Road, King of Prussia, PA

Paul Chan, behalf of Jacobs Engineering, 200 North Warner Road, King of Prussia, PA

Andrew Petersohn, DBM Engineering, Box 165, Fairview Village, PA

Mr. Jordan: Our case is basically summarized in the exhibit binder and all of the documents that are in the exhibit binder have been provided to you previously. I'd just like to put them in order where we can say turn to tab 6. And I know this Board has heard many applications so I'm going to try to move quickly. We do have a Planning Staff recommendation as well as the Regional Planning Commission Recommendation for the waivers that we requested, a waiver from Section 205-360 (a) (1) that requires a cell tower to be built on property that accommodate a 1000' setback from all property lines and a 1500' setback from any dwelling located on an adjacent property. We do comply with all of the required setbacks and we are on a 64 acre site. There's only one property in our

search ring. If you guys are familiar search ring is the area where the tower must go in order to achieve the network objectives and if you look at tab 6 on page 5 that's a picture of our search ring which is showing where the universe of possible properties we could have located on and there's only one property in that search ring that would meet those dimensional criteria. We negotiated with that property owner but were unable to come to terms with them so we turned our attention to Mr. and Mrs. Pritchett and signed a lease with them. The Planning Commissioner concluded that we have hardship to justify that waiver. We're also seeking a waiver from the requirement from sidewalks along the road frontage. We're not proposing any land development. The only dirt disturbance would be a 12' gravel driveway so the sidewalk would cause a hardship and also create a sidewalk to nowhere. So again we are recommended for that waiver as well. I'd like to spend a minute talking about why the tower is necessary for AT&T and again I know you've heard this before but basically the usage rate is increasing 47% per year compounded which basically takes up the bandwidth of the existing antennas and if you look at again tab 6 pages 7 and 8, page 7 is the existing coverage in the area. And in the center of that map it's says C O W Marsh Creek, Cow Marsh Creek, that's the proposed site and if you look around that proposed site you see a lot of the yellow patches that is what we call in vehicle coverage meaning the signal could get inside the vehicle but it wouldn't get inside your house. So our goal is to have green coverage which is in building coverage and as you can see there's a lot of...a lot of the area around Cow Marsh Creek does not have building coverage. Now if you flip to the next page, page 8, that shows what the coverage would look like after the proposed tower's built. And again Mr. Petersohn prepared this report, tab 6 he could go into detail that you want to establish our need for the tower and how we selected it. The antennas are also compatible with First Net which is a nationwide First Responder network that's promulgated by the Federal Government and AT&T won the bid to be the national provider for First Net. And what that does is in a crisis, in an emergency it makes sure that there's band width available for first responders and also enables first responders to have uniformity of equipment throughout various jurisdictions. And again we can do into more detail, there are other people here, Mr. Lasch can explain First Net a lot better than I can. Next we go to tab 7, is the FCC report which shows that our proposed emissions compliance is .07% of the FCC limits. Tab 6, the tower is designed to accommodate three more wireless providers so a total of four carriers could go on this antenna. Tab 8 is a report concluding that the proposed antenna would not interfere with any other signals or appliances. Tab 9 is a FAA report showing that there are no FAA issues for the proposed tower. Tab 10 is our site plan that shows the tower is at least 350' from the nearest property line and over 700' from the nearest dwelling. The site plan also shows a 6' chain link fence and a 25' landscape buffer around the tower. The proposed facility will not generate noise, glare or traffic. The only traffic is one maintenance visit per month. It does not place any demands on public services. It complies with all County regulations as well as FCC and FAA requirements. It's consistent with the Comprehensive Plan and I think that's really about it. Does the Board have

any questions for any of our witnesses? We have civil engineering witnesses and radio frequency engineering witnesses.

Mr. Sweeney: So this tower right now will fill in the yellow area you indicated in section 6?

Mr. Jordan: Yes if you look at... There's a before and after, so if you look at page 8 that's what we'll have afterwards.

Mr. Sweeney: But that's with one carrier, correct?

Mr. Jordan: That's with AT&T, yeah.

Mr. Sweeney: Now is this tower also available for other carriers?

Mr. Jordan: Yeah, three other carriers.

Mr. Sweeney: Are there three other carriers already assigned?

Mr. Jordan: I don't believe so... Mr. Grigonis could speak to that.

Mr. Grigonis: No, there's no other carriers currently assigned but the tower will be marketed to all three other carriers.

Mr. Sweeney: So in your experience when you've done this in other places how quickly does that happen?

Mr. Grigonis: When we set up our business model we have to go *INAUDIBLE* and include one additional carrier, that's how from a business prospective that's how the tower's actually successful by getting that second tenant. We're pretty much dependent on it for it to be a successful business investment standpoint. There has been some interest. Verizon's been very active down here. T-Mobile's been also active all through the State of Delaware with the merger that's happening now with those two, with Sprint. Sprint's been a little quiet and obviously T-Mobile's has taken that into consideration as well I'm sure I mean that's the speculation. But as of right now AT&T is what we call the anchor tenant and we're targeting the other carriers to get on afterwards. Once these towers are built too they kind of market themselves. You know, once steel is in the air it's kind of a rush to market especially with competitive the nature of the carriers that are left you know in this country. Our goal is to have a second tenant on this site within the first five years. I kind of set it up to...I mean within the first three years to have that second tenant is really my internal goal but to my investors it's in the first five.

Mr. Sweeney: Excellent, thank you.

Mr. Pepper: I'm sure you're aware over the years we've had quite a few of these before us. Is there anything about this particular site or this particular tower that's particularly different than any other tower in the general area that you can think of?

Mr. Jordan: First Net is the response I'm getting in the back, that AT&T has that contract with the Federal Government to provide First Net. It makes sure that there's band width available to emergency responders, there's that aspect to it. But you know other than that it's typical of the other towers that you're seeing.

Mr. Pepper: Structurally everything is pretty much like all the other towers?

Mr. Jordan: Oh yes, we have to come through and get a building permit and I believe we have to have a ** plan that comes and gets a building permit.

Mr. Pepper: Thank you.

Mr. Angel: As a Commissioner I sit on the NACo Board for telecommunications, in fact I'm the vice president this year. And when this discussion came up about First Net and trying to get broadband and more people onboard for services, my point and I always say this when somebody comes before I will always approve this unless it's detrimental for the tower, which it's not. So I just want to go on record for that. I have other comments when I make my approval.

Rose Pritchett, 18 Bayberry Lane, Felton, DE: For a number of years cellphone communications in our area had many problems for instance, both of our sons who live on our property on the farm, but in separate homes had problems connecting or staying connected on their cellphones. Sometimes I would call one of their phones and it would go immediately to voicemail and they wouldn't get the message for hours later or not at all. It had long been a concern of mine that if an emergency should come up that I wouldn't be able to reach one of my sons that live right across the street and that did happen about 3 weeks ago. We had a dire emergency come up, thank God I was able to contact my son that day but it's really a frightening thing to me. We gave it a lot of thought when Mr. Grigonis first reached out to us in 2018 of February to propose placing a tower on our property. We called him and told him we were interested and to please send us a copy of the proposal, which he did and we took it to our attorney for discussion and legal advice and he recommended, he said there were no problems as far as he could see. So we also checked out Central Line Communications of their website and with the Better Business Bureau, we wanted to do due diligence.

Mr. Grigonis has been a pleasure to work with; he's always been upfront and very helpful in explaining things we didn't understand. He also told us there was another property in the area that was also being considered and he was working with them but there was some problems but we didn't know where the other property was or who the owner was just until this month. So when the sign for the Change of Use was put on our property about a month ago a number of our

neighbors stopped by to read the sign and they contacted us by phone and told us how glad they were that the tower was going up and were hoping for better service in our area. For instance Mr. Jeffrey Alexander, Mr. Edwin Alexander, Mr. Ben Stafford, Mr. Lester Longfellow and Mr. Brian McAnney were just a few of our neighbors who were pleased with our decision because they said in our area there were dead spaces they couldn't use their cellphones. So my husband and I want to thank you for your consideration in this matter to help improve communications in our area. Thank you.

IN OPPOSITION - None

Public Hearing Closed on Application CS-19-02

M-19-069 Mr. Howell: I **Move** that we approve CS-19-02 Cow Marsh Creek Tower North Development LLC Pritchett, Edward and Rosemarie; Zoning District/Proposed Use; AR (Agricultural Residential/Telecommunications Facility; Area & Location/ID#: 64.3+/- acres on the west side of Bayberry Lane and the south side of Sandtown Road approximately 4 miles northwest of Chandlers Road, west of Felton/SM-00-126.00-01-35.00-000; seconded by Mr. Angel.

Roll Call

Mr. Angel: As I said, I sit on the board for NACo, and increasing the reliability and usage for telecommunication for our community in accordance with the Federal Telecommunications Act of 1996 the reason we want this also is for First Net for our first responders and better service. For those that weren't at the meeting last week for NACo of our three Counties I brought up this as an issue. I cannot call from Kitts Hummock to Dover, 1 ½ miles from my house but I can go all the way to Hawaii and I can hear somebody like they're standing right next to me. So for the increase of telecommunications and towers I vote yes.

Mr. Buckson: Absent

Mr. Hall: Yes.

Mr. Howell: Yes, it's a reasonable request and no opposition.

Mr. Pepper: Yes, in the past this type of tower come before us years ago it wasn't always an easy thing but now it's more necessary than back then since landlines are going away and it's also a public safety thing and my recent elect most of the people that I talked to in that area this is one of their complaints, they didn't have adequate cellphone coverage. A matter of fact, several of the folks on Mrs. Pritchett's list that called her, also I've talked to and they said the same thing they need better cellphone coverage out there. So I'm glad to see it and yes.

Mr. Sweeney: Yes, based on RPC suggestion for approval, on Staff approval, based on no opposition, it's a good thing to do. This is going to cover a large area, my vote's yes.

Mr. Banta: Based on the public testimony tonight in the affirmative, based on Staff recommendation, RPC recommendation, I vote yes.

Roll Call reveals six (6) yeas; one (1) absent. Application CS19-02 has been approved.

PUBLIC HEARINGS CLOSED

OLD BUSINESS - None

NEW BUSINESS

Mr. Howell:

1. Appointment to the Building Code Review Committee

M-19-070

Motion by Mr. Howell to approve Mr. Daryl Minner to the Building Code Committee; seconded by Mr. Sweeney; carried by Roll Call vote six (6) yeas; one (1) absent.

Mr. Hall:

FY2020 Annual Operating Budget: Introductions of the following Ordinances and Resolutions pertaining to the Fiscal Year 2020 Budget for public hearing on May 7, 2019 at 7 p.m.:

1. Resolution 3735 – FY20 Property Tax Rate 30.0 cents
2. Resolution 3736 – FY20 Old Mill Acres Suburban Park District Tax Rate 4.4 cents
3. Resolution 3737 – FY20 Royal Grant Suburban Park District Tax Rate 5.7 cents
4. Resolution 3738 – FY20 Eagles Nest Suburban Park District Tax Rate 6.5 cents
5. Resolution 3739 - Kent County Disposal District No. 1 User Rates \$2.58 per 1,000 gallons
6. Resolution 3740 – FY20 Kent County Library District Tax Rate (Unincorporated Areas) 3.3 cents
7. Resolution 3741 - FY20 Milford Library District Tax Rate 7.75 cents
8. Ordinance LC19-04, An Ordinance adopting the Annual Operating Budget for the Library Tax District of Kent County, Delaware for the fiscal year beginning July 1, 2019
9. Ordinance LC19-05, An Ordinance adopting the Annual Operating Budget for Kent County Delaware, for the fiscal year beginning on July 1, 2019 and ending June 30, 2020
10. Resolution 3742 - Command to the Director of Finance to collect Sewer

Delinquent Accounts by District as of March 31, 2019

OTHER BUSINESS

Mr. Pepper:
M-19-071 Move to go into Executive Session immediately following the Business Meeting for preliminary discussion on site acquisition for a publicly funded capital improvement; legal strategy session regarding collective bargaining or pending or potential litigation; and personnel matters pursuant to 29 Del. C. 10004(b) (2), (4), and (9); seconded by Mr. Sweeney; carried by Roll Call vote reveals six (6) yeas; one (1) absent.

Mr. Pepper:
M-19-072 Move to go into Executive Session immediately following the Committee Meetings of May 7, 2019 for preliminary discussion on site acquisition for a publicly funded capital improvement; legal strategy session regarding collective bargaining or pending or potential litigation; and personnel matters pursuant to 29 Del. C. 10004(b) (2), (4), and (9); seconded by Mr. Sweeney; carried by Roll Call vote reveals six (6) yeas; one (1) absent.

INFORMATION ITEMS - None

PUBLIC COMMENTS – None

COMMISSIONER COMMENTS - None

M-19-073 **Motion** to adjourn was made by Mr. Sweeney; seconded by Mr. Hall; carried by Roll Call vote six (6) yeas; one (1) absent. 7:53 **p.m.**



Trish Brown
Kent County Deputy Clerk of the Peace