

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 10, 2018

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 10, 2018 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
George B. Cole	Vice President
Robert B. Arlett	Councilman
Irwin G. Burton III	Councilman
Samuel R. Wilson Jr.	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore Jr.	County Attorney

The Invocation and Pledge of Allegiance were led by Mr. Vincent.

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 207 18
Approve
Agenda**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to approve the Agenda, as posted.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of March 20, 2018 were approved by consent.

**Corre-
spondence**

Correspondence

Mr. Arlett read a letter from Marty Ross, Chairman of the Planning and Zoning Commission, announcing his retirement when his current term expires in June 2018.

**Public
Comments**

Public Comments

Paul Reiger commented on the April 9, 2018 Board of Adjustment meeting; commented on commercial kennels; commented on the ordinances adopted at the March 20, 2018 meeting; and commented on the definition of a farm as it pertains to animals (dogs, horses, livestock).

Dan Kramer commented on the retirement of Planning and Zoning Commission Chairman Marty Ross.

**M 208 18
Approve
Consent
Agenda
Items**

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to approve the following items listed under the Consent Agenda:

- 1. Wastewater Agreement No. 984-18
Sussex County Project No. 81-04
Coastal Club – Land Bay 7 – Phase A (Construction Record)
Goslee Creek Planning Area**
- 2. Wastewater Agreement No. 891-3
Sussex County Project No. 81-04
Tidewater Landing – Phase 2
West Rehoboth Expansion North Planning Area**
- 3. Wastewater Agreement No. 1051
Sussex County Project No. 81-04
Americana Bayside – Melson Property, Phases 1 and 2
Fenwick Island Sanitary Sewer District**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Adminis-
trator's
Report**

Mr. Lawson read the following information in his Administrator's Report:

1. Sussex County Council Comprehensive Land Use Plan Workshop

The next Sussex County Council Comprehensive Land Use Plan Workshop will be held on Wednesday, April 11th, at 9:30 a.m. in Council Chambers. A copy of the agenda is attached.

2. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Showfield - Phases 2 and 3, effective March 20th; Windmill Woods - Phase 1, effective April 2nd; and Saddle Ridge - Phase 1A, effective April 3rd.

3. Howard Clendaniel

It is with sadness that we note the passing of County pensioner Howard Clendaniel on March 19th. Mr. Clendaniel began his career with Sussex County in January 1991 and served as Registrar for the Register of Wills until January of 1995. Mr. Clendaniel was re-elected to the position of Registrar in the Register of Wills office in January 1999 until his retirement in January 2007. We wish to extend our condolences to the Clendaniel family.

(continued) [Attachments to the Administrator's Report are not attachments to the minutes.]

Tower License Agreement for Broad-band Expansion Dwayne Kilgo, Director of Information Technology, presented a proposed Agreement for Incentivizing Wireless Internet Service Providers (WISP), which will expand broadband in Sussex County. The agreement authorizes any WISP access to all County-owned vertical assets (e.g., towers) and/or access to up to two (2) State-owned towers.

M 209 18 Approve Agreement for Incentivizing WISP A Motion was made by Mr. Cole, seconded by Mr. Arlett, that the Sussex County Council hereby approves the Agreement for Incentivizing Wireless Internet Service Providers (WISP), as presented, and authorizes the IT Director to execute said Agreement with eligible and qualified WISPs, as determined through the Request for Proposals (RFPs).

Motion Adopted: 4 Yeas, 1 Nay.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Nay; Mr. Cole, Yea; Mr. Vincent, Yea

Public Hearing/ Arbor-Lyn Expansion/ West Rehoboth Area A Public Hearing was held to consider expanding the boundary of the West Rehoboth Area of the Sussex County Unified Sanitary Sewer District (Arbor-Lyn Expansion) to include properties situated on the north side of County Road 275 (Warrington Road) (Parcels 334-12.00-127.02, 127.04 and 127.05). John Ashman, Director of Utility Planning, reported that the expansion was requested by Limitless Development Consultants, LLC; the expansion will consist of 35.46 acres ± and is proposed at 144 EDUs. The project will be responsible for System Connection Charges of \$6,360.00 per EDU based on current rates. On February 27, 2018, Mr. Ashman reported that the Engineering Department would like to look at including the adjacent Parcel 124.01; the Department contacted the property owner and the property owner stated that he does not wish to connect. Mr. Ashman reported that the Engineering Department recommends including Parcel 124.01 and that it would be Council's decision whether or not to make the property owner connect. Mr. Ashman also reported that another property owner requested that their parcel (Parcel 125.00 – Beebe Campus location) be included in the expansion. He noted that the parcel can be included in this proposed expansion and an additional public hearing can be avoided.

There were no public comments.

The Public Hearing and public record were closed.

There was a consensus of Council to include Parcel No. 125.00 in the expansion area.

**M 210 18
Adopt
R 005 18**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to Adopt Resolution No. R 005 18 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) TO INCLUDE PARCELS 334-12.00-124.01, 125.00 127.02, 127.04, AND 127.05 ON THE NORTH SIDE OF WARRINGTON ROAD; THE PARCELS ARE LOCATED IN THE LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE”.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
Chandlee
Expansion/
Bethany
Beach
Area**

A Public Hearing was held to consider expanding the boundary of the Bethany Beach Area of the Sussex County Unified Sanitary Sewer District to include property situated on the north side of Muddy Neck Road (Chandlee Expansion). John Ashman, Director of Utility Planning, presented the request to include Parcel No. 134-17.00-10.00 owned by Josh and Sara Chandlee. Mr. Ashman reported that the parcel was provided a sewer lateral connection as part of a previous project. Mr. Ashman stated that the Engineering Department would also like to include the neighboring parcel (Parcel 9.00) as part of the expansion as the parcel was also provided a lateral. The expansion will consist of 1.04 acres, more or less. The property owner(s) will be responsible for System Connection Charges of \$6,360.00 per EDU based on current rates. Mr. Ashman reported that a letter was sent to the owner of the neighboring parcel and no response has been received. The Engineering Department recommends including it in this proposed expansion.

Public comments were heard.

Josh Chandlee spoke in support of the proposed expansion.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 211 18
Adopt
R 006 18**

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to Adopt Resolution No. R 006 18 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) TO INCLUDE PARCELS 134-17.00-9.00 & 10.00 ON THE NORTH SIDE OF MUDDY NECK ROAD; THE PARCELS ARE LOCATED IN THE BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE, AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE”.

**M 211 18
(continued)**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Main-
tenance
Garage**

Hans Medlarz, County Engineer, presented the bid results for the Sussex County Maintenance Garage Project (Project #17-09).

**M 212 18
Award
Bid/Main-
tenance
Garage
Project**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, that Contract #17-09, Sussex County Maintenance Garage, be awarded to Delmarva Veteran Builders, LLC for their low bid of \$1,993,110.00 for Base Bid Items A-1, A-2, A-3, A-5 and Bid Alternate B-3.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Route 54
Expansion
Project/
C/O**

Hans Medlarz, County Engineer, presented Change Order No. 1 for the Route 54 Expansion of the Fenwick Island Sanitary Sewer District (Project #14-10).

**M 213 18
Approve
Change
Order/
Route 54
Expansion
Project**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for Contract #14-10, Route 54 Sewer Expansion of the Fenwick Island Sanitary Sewer District Area, be approved, which decreases the contract amount by \$6,948.90, for a new total of \$2,223,562.10.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**Report on
CZ 1846**

Janelle Cornwell, Planning and Zoning Director, referenced the Public Hearing on Change of Zone No. 1846 (CMF Bayside, LLC) held on March 20, 2018 and stated that the Council deferred action and left the record open to allow for a new plan to be submitted showing a reduction in the size of the two large ponds in the upland area and to submit proposed environmentally sensitive conditions of approval. Ms. Cornwell reported that the information has been received and that the record will remain open for 15 days for the submission of written public comments in response to the information received.

Grant Requests

Mrs. Jennings presented grant requests for the Council's consideration.

M 214 18 Councilmanic Grant

A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to give \$1,000.00 from Mr. Wilson's Councilmanic Grant Account to the Georgetown Middle School for expenses associated with the Robotics Club's competition in the World Championship.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

M 215 18 Councilmanic Grant

A Motion was made by Mr. Burton, seconded by Mr. Cole, to give \$600.00 from Mr. Burton's Councilmanic Grant Account to the Lewes Children's Learning Garden for operating and garden construction costs.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

**M 216 18 Councilmanic Grant/
Withdrawn**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to give \$1,000.00 from Mr. Burton's Councilmanic Grant Account to the Milton Historical Society for the Discover Delaware 2018 Lecture Series.

Mr. Burton and Mr. Wilson withdrew their Motions.

M 217 18 Councilmanic Grant

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to give \$750.00 from Mr. Burton's Councilmanic Grant Account to the Milton Historical Society for the Discover Delaware 2018 Lecture Series.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

Introduction of Proposed Ordinances

Mr. Wilson introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A STORAGE WAREHOUSE FOR SMALL CONTRACTORS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 4.74 ACRES, MORE OR LESS" (Conditional Use No. 2139) filed on behalf of Arctec Properties, LLC (Tax I.D. No. 530-17.00-10.00) (911 Address: 14906 and 14910 Sussex Highway, Bridgeville).

**Introduction
of Proposed
Ordinances
(continued)**

Mr. Wilson introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TRUCKING BUSINESS, LANDSCAPE AND MATERIAL STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.0 ACRES, MORE OR LESS” (Conditional Use No. 2140) filed on behalf of Santay Trucking c/o Samuel Connors (Tax I.D. No. 230-31.00-27.00, 27.01 and 27.01) (911 Address: 14292 DuPont Blvd., Ellendale).

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN I-1 INSTITUTIONAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 19.9136 ACRES, MORE OR LESS” (Change of Zone No. 1853) filed on behalf of Beebe Healthcare (Tax I.D. No. 334-12.00-125.00) (911 Address: None Available).

Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-5 SERVICE/LIMITED MANUFACTURING DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5.306 ACRES, MORE OR LESS” (Change of Zone No. 1854) filed on behalf of Ferguson Enterprises, Inc. (Tax I.D. No. 334-5.00-139.00) (911 Address: 32359 Lewes-Georgetown Highway, Lewes).

The Proposed Ordinances will be advertised for Public Hearing.

**Council
Members’
Comments**

Council Members’ Comments

Mr. Cole reported that a Certificate of Appreciation has been received from the Delaware SeaSide Railroad Club in appreciation of Council’s recent grant.

Mr. Moore read the rules of procedure for zoning hearings.

**Public
Hearing/
CZ 1770**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 114.4821 ACRES, MORE OR LESS” (Change of Zone No. 1770) filed on behalf of TD Rehoboth, LLC (Tax Map I.D. No. 235-23.00-1.00) (911 Address: None Available).

**Public
Hearing/
CZ 1770
(continued)**

Mr. Moore explained that this Public Hearing is a special circumstance because there was not a new application nor was there a new presentation to the Planning and Zoning Commission; this is a result of the Court Order ordering that “the Rezoning Application be re-submitted for a new public hearing and a new vote solely by Sussex County Council”. Mr. Moore read the Final Order into the record.

Mr. Moore reported that the record for the Public Hearing includes all materials and submissions made in connection with the prior Public Hearing. Additionally, nothing shall prohibit the submission of additional or new materials in connection with the new public hearing.

Janelle Cornwell, Planning and Zoning Director, reported that, since the advertisement of the new Public Hearing, the following has been received: three letters in opposition, a letter from the Department of Agriculture citing concerns about agriculture in the area; and Exhibit Booklets from both the Applicant and the Attorney representing the opposition.

James Fuqua, Attorney, was present on behalf of the Applicant. Mr. Fuqua noted that with him were Lou DiBitonto, member of the LLC; Joe Caloggero with The Traffic Group; Steve Gorski with Duffield Associates, and Richard Forsten, Esquire, with the law firm of Saul Ewing LLP.

Mr. Fuqua referenced his submission of Supplemental Exhibits dated April 10, 2018 which includes: Sussex County population estimate, tourism data, Cape Gazette article “Record 9 million tourists come to Delaware”, Sussex County’s Capital Transportation Program (CTP) Request, DelDOT letter dated January 9, 2018, sample response from the Delaware Office of State Planning Coordination to revised strategy comments, 2015 Delaware Strategies for State Policies and Spending, Revised Economic Benefit Summary, letter in support from the Sussex Economic Development Action Committee, Trout-OverBrook Towne Center, Market Demand Analysis Research Study, December 2015, and legal descriptions of 50.44 acre parcel and 64.04 acre parcel.

Mr. Fuqua commented on Council’s prior denial of this application and the Court of Chancery’s ruling. He reported on the designation of this property as being located in a growth zone per the County’s 2008 Comprehensive Plan; stated that the application complies with the 2008 Comprehensive Plan; stated that, per the County’s Zoning Ordinance, a large scale commercial use has to be located adjacent to an arterial roadway and that the application site is located adjacent to Route 1; and commented on the past and future of Sussex County and referencing population of (including seasonal residents) and visitors to Sussex County. He stated that the previous application was to rezone 114 acres from AR-1 to CR-1 for a large scale commercial use; that the Applicant has made a significant revision to the proposed development of the property; that the Applicant has submitted a revised concept site plan showing the front 50.44 acres of the parcel planned for a large scale commercial development containing

**Public
Hearing/
CZ 1770
(continued)**

approximately 312,000 square feet; that this is an approximate reduction of the previous plan by 63 percent in floor area; that the Applicant now proposes to develop the remaining 64.04 acres (rear of the property) as a single family lot cluster subdivision containing 135 single family lots with open space and recreational areas; that this residential proposal will require a separate subdivision application and public hearing; that the proposed residential use was reviewed as part of the PLUS process on September 27, 2017 and a subdivision application was filed with the County in February 2018; that the 135 single family lot cluster subdivision is a permitted use under both the existing AR-1 zoning as well as the requested CR-1 zoning designation; that the only thing before the Council on this date is the CR-1 zoning application. Mr. Fuqua noted that the application site is not located in a rural area intended for farm preservation, but it is in a growth area.

Mr. Fuqua reviewed the legal requirements of a zoning decision and the application's compliance with the legislative standards of the Comprehensive Plan, the Sussex County Zoning Ordinance, and 9 Del. Code §69-04. He stated that the application complies with the Strategies for State Policies and Spending. Mr. Fuqua commented on the site's previous designation as being located in an Investment Level 3 Area which was later changed to an Investment Level 4 Area. Mr. Fuqua explained why any consideration to an Investment Level should be Level 3 since it was the designation in existence when the application was filed and when the public hearings were held. He also explained why the Investment Level designation should be irrelevant to Council's decision stating that the Strategies for State Policies and Spending and its Investment Level Maps are not land use plans and therefore, are not legislative standards.

Mr. Fuqua commented on the application's compliance with the 2008 Comprehensive Plan, the location of the application site in the Environmentally Sensitive Development Area, a growth area created by the Plan, and the application's compliance with the standards for large scale commercial uses. He stated that the site is an appropriate location for the proposed uses; that three farms/sites in Sussex County, including this site, are the only available sites for this use; that this site is the only available location in a designated growth area; and that a large scale commercial use must be located to an adjacent major arterial road as defined in the Subdivision Ordinance. He stated that this application will provide a wide and extensive variety of retail and service activities, some of which are not currently available in Sussex County, and will serve a wide area as a regional shopping center.

Mr. Fuqua referenced DelDOT's letter dated January 9, 2018 in which DelDOT recommends that the application be considered without a Traffic Impact Study (TIS) and he discussed the grade separated interchange and intersection improvement planned at the Route 1 and Cave Neck Road intersection. He stated that, in regard to this application, DelDOT's Corridor Capacity Preservation Program Manager indicated that he had no

**Public
Hearing/
CZ 1770
(continued)**

objection to the proposed development provided that a grade separated intersection at Route 1 and Cave Neck Road was utilized (contained in DelDOT's letter dated September 9, 2014); that after the Applicant decided to significantly reduce the size of the proposed commercial use and that information was submitted to DelDOT, DelDOT provided an additional letter dated January 9, 2018; that in the 2018 letter, DelDOT states that a TIS would not be required or useful at this time and recommends that the application be considered without a TIS, and that DelDOT will evaluate the need for a TIS when an actual subdivision or land development plan is proposed; that in the 2018 letter, DelDOT also states that any proposed development of the parcel that generates over 200 vehicle trips per day, would require construction of the grade separated interchange built to State standards; that the Cave Neck Road intersection, without considering this application, is planned to have a grade separated intersection improvement; that both DelDOT and Sussex County recognize the need for that improvement at that intersection but funding will put it off to an undetermined date in the future; and that the Applicant's proposal will expedite construction of the improvements.

Mr. Fuqua referenced the decision on the LT Associates, LLC (Change of Zone 1690) application and stated that the reasons stated for the denial of that application are reasons for approval of this application.

In his presentation, Mr. Fuqua discussed the layout of the site which is currently farmland, the environmental requirements and benefits, the fact that full compliance with DNREC regulations will be required; sediment and stormwater management plans which must be approved by reviewing agencies; availability of central water and sewer service, traffic issues, economic benefits, and other commercial zonings/uses in the area.

Mr. Fuqua discussed why the Council should change its vote and approve the application and he referenced the Planning and Zoning Commission's recommendation of approval.

Public comments were heard in favor of the application.

Dan Kramer commented on the Applicant's right to start a business if they want to; commented that traffic is not a problem; commented that if a property owner wants to protect their view, they should purchase it; and suggested that the matter be put to a referendum.

There were no additional public comments.

**M 218 18
Recess**

At 12:42 p.m., a Motion was made by Mr. Cole, seconded by Mr. Arlett, to recess until 1:45 p.m.

Motion Adopted: 5 Yeas.

M 218 18
(continued) **Vote by Roll Call:** **Mr. Arlett, Yea; Mr. Burton, Yea;**
 Mr. Wilson, Yea; Mr. Cole, Yea;
 Mr. Vincent, Yea

M 219 18 **At 1:45 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Arlett, to**
Reconvene **reconvene.**

Motion Adopted: **5 Yeas.**

Vote by Roll Call: **Mr. Arlett, Yea; Mr. Burton, Yea;**
 Mr. Wilson, Yea; Mr. Cole, Yea;
 Mr. Vincent, Yea

Public
Hearing/
CZ 1770
(continued) **Rob Witsil, Attorney, spoke in opposition to the application on behalf of the**
 Overbrook Town Center Coalition, Rich and Sandy Borrasso, Rich and
 Jane Holtkamp, Jeff and Brenda Stone, Ken and Sara Kraft, and Kenny
 and Susan Hopkins.

Mr. Witsil referenced the Exhibit Book he submitted and the documents contained therein: 9 Del. Code §6904; Minutes of the Planning and Zoning Commission's Public Hearing dated June 11, 2015; September 9, 2014 DelDOT reply to Applicant's Traffic Impact Study; Traffic Group, Inc. – Peak Hour Levels of Service; Environmental Assessment and Public Facilities Evaluation Report (portion of); Cape Gazette article (May 28, 2015); DelDOT Capital Transportation Program for FY 2016 through 2021 and Associated Spending Plan; Office of State Planning Coordination PLUS Review Reports dated December 20, 2012 and October 24, 2017; Preliminary Land Use Service (PLUS) Map; Future Land Use Map and enlarged portion; Sussex County Zoning Map and enlarged portion; Sussex County 2008 Comprehensive Plan Update; Woodlands and Natural Areas Map and enlarged portion; Floodplains and Wetlands Map and enlarged portion; Watersheds and Waterways Map and enlarged portion; Rathkopf Law of Planning and Zoning § 26A; Developer's original PLUS application; 2008 Plan Update Map (designating spending levels); 2010 and 2015 Delaware Strategies for State Policies and Spending Maps (designating spending levels); 2010 and 2015 Delaware Strategies for State Policies and Spending Strategies, Level 3 and Level 4 text; Sussex County Comprehensive Plan Water Supply; Wellhead and Excellent Recharge Areas Map; Sussex County Zoning Code, Article IV, AR-1 Agricultural Residential District; Article XI, CR-1 Commercial Residential District; Article XXV, Section 115-194.1 Combined Highway Corridor Overlay Zone, and Section 115-194.3 Environmentally Sensitive Development Area; Development Coordination Manual – Corridor Preservation Program – Appendix P, Pages 1-4; Email from Stephen Bayer, Planner, to Gary Norris, May 21, 2015; Correspondence dated June 17, 2015 from Secretary of Department of Agriculture, State of Delaware, Ed Kee and Correspondence dated January 24, 2018 from Secretary of Department of Agriculture, Michael Scuse; Thomas Ford, Landscape Architect, Land Design, Inc., Report; Traffic Solutions, Inc., Overbrook Town Center

Public
Hearing/
CZ 1770
(continued)

Traffic Analysis, June 2, 2015; Trout Development, LLC promotional information; Excerpts from Sussex County Council Hearing Transcript; Allen Chorman & Sons, Inc. correspondence to Sussex County Council for June 2, 2015 public hearing; October 24, 2017 PLUS Review of 2017 PLUS review of 2017-09-08; 66.5 acre subdivision – 135 units by Office of State Planning; and January 9, 2018 DeDOT letter to Janelle Cornwell, Director, Sussex County Planning and Zoning. Mr. Witsil also submitted Proposed Findings of Fact for denial, a summary of Proposed Findings of Fact for denial, and a copy of Ordinance No. 1645 relating to the Environmentally Sensitive Development District Overlay Zone (ESDDOZ).

Mr. Witsil referenced the location of the parcel in the Environmentally Sensitive Development District Overlay Zone (ESDDOZ) and he explained why he believes this Ordinance “kills” their application; that the entire parcel is located in the ESDDOZ; that it is an overlay district and not its own district; that the underlying zoning category of this parcel is AR-1; that any uses prohibited in the AR-1 District are also prohibited in the ESDDOZ; that commercial uses are not permitted and are specifically prohibited in the overlay zone; that the Applicant needs the change of zone, which they have applied for, but they are not entitled to the change of zone as a result of the language in the E9SDDOZ ordinance; and that there have been a lot changes since the June 2, 2015 public hearing.

Mr. Witsil commented on the Council’s vote (April 12, 2016) and reasons for the vote; commented on the changes and new evidence since the June 2, 2015 Public Hearing; stated that one important change is the designation from a Level 3 Area to a Level 4 Area in the Delaware Strategies for State Policies and Spending. He stated that the application is not in compliance with the Sussex County Zoning Code and he noted the purpose of the AR-1 District; stated that if the Change of Zone is granted, the use would be out of Council’s control and there would be many permitted uses; that the application is not in compliance with the 2008 Comprehensive Plan Update; that the proposed use is an intensive use and will impact valuable natural resources in the area near the site, including area farmlands and marshlands; that the amount of impermeable surface in the area would increase drastically; that two Secretaries of the Department of Agriculture have stated that the proposed rezoning would negatively impact farms in the area and result in certain operations no longer occurring on area farms; that the proposed large-scale commercial development is not in character with the general agricultural and small business character of the area; that no information has been provided by DeDOT of a public-private partnership for the intersection project at Route 1 and Cave Neck Road; that the rezoning is not in compliance with 9 Del. Code §6904; that there are no assurances that public safety agencies will not be negatively impacted and there is no evidence that they would be able to adequately serve the area; that the proposed rezoning is spot-zoning; that there would be a negative environmental impact on the area; and that the application would be more appropriate submitted as a Conditional Use application.

**Public
Hearing/
CZ 1770
(continued)**

Mr. Witsil discussed the application's numerous inconsistencies with the 2008 Plan Update, the Sussex County Zoning Code, the Delaware Department of Transportation Corridor Capacity Preservation Program and Delaware Strategies for Policies and Spending. He stated that the facts that the 114 acre parcel is located on Route 1 and may be served by extensions to nearby water and sewer systems, and that it is located in the Environmentally Sensitive Developing Area, does not support an approval of the rezoning to an intensive commercial use.

Richard Holtkamp, Rich Borasso and Kenny Hopkins submitted an Exhibit Booklet and presented a powerpoint presentation on behalf of the Overbrook Town Center Coalition in opposition to the change of zone application. They referenced the history of the Coalition, the mission of the Coalition, the submittal of a new petition in opposition to the application containing over 600 signatures; and they reviewed key factors for the denial of the application: the Council should not focus on just one use or purpose; under current ordinances, the developer can intentionally present one site plan at the hearing and not be bound to build it; the developer could build any mixture of many permitted uses; the rezoning of this large tract of land is inconsistent and grossly "out of character" with the surrounding zoning and uses of adjacent properties; the State has designated this parcel as an Investment Level 4 Area where State Investments & Policies are to retain the rural landscape and preserve open spaces and farmlands; the parcel in question is subject to the State Corridor Capacity Preservation Program which requires any development to not increase congestion; DNREC has determined that a significant portion falls within an excellent groundwater recharge; that any activity that increases impervious cover may adversely affect groundwater and the expected contaminants could easily compromise water and the fragile ecosystem. Mr. Hopkins, an adjacent property owner and farmer, stated that farmland needs to be preserved for future generations; that the proposed project will have a huge economic impact on farmers; that farmers will lose land to harvest and they will not be able to handle the traffic caused by the proposed project; that farm operations will be negatively impacted; that his livelihood will be affected; that the safety of farmers will be jeopardized; that wildlife needs to be protected; that the Great Marsh is near the proposed project and with the runoff, this natural habitat will be compromised; that his property is located behind the proposed project and he has a deeded easement from Route 1 to his farm, which states that he does not have to share the easement; that he has been told if the project is built, he will have to go behind the Center and share his driveway with tractor trailers and delivery trucks; that if his tractor breaks down, traffic into the mall will back up; and that he will not be able to hunt the front part of his property anymore.

Nine additional people spoke in opposition to the application. They stated that income will be lost if this application is approved; that shooting activities and irrigation activities will be limited; that Roosevelt Inlet will be negatively impacted by run-off of dirt, trees, bark, etc.; that the increase in traffic will negatively impact the area; that this is an environmentally

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(continued)**

sensitive area that attracts a lot of people that enjoy open space and clean water; that the impact of hurricanes needs to be considered and development should be planned accordingly; that the proposed use is not in character with the area; that other commercial uses in the area are small commercial uses, i.e. a piano store and a bike store; that the presence of a large scale mall would overwhelm public safety agencies; that regardless of the construction of an overpass, traffic will back up and spread out impacting other roadways; that the application will result in environmental destruction; and that more shopping malls are not needed as many are closing; and that there will be unintended consequences.

There were no additional public comments and the Public Hearing was closed.

**M 220 18
Defer
Action on
CZ 1770**

A Motion was made by Mr. Burton, seconded by Mr. Arlett, to defer action on Change of Zone No. 1770 filed on behalf of TD Rehoboth, LLC.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

It was noted that, in accordance with the Court Order, Council will vote on the matter within 30 days.

**M 221 18
Adjourn**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to adjourn at 5:25 p.m.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;
Mr. Wilson, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

**Robin A. Griffith
Clerk of the Council**

{An audio recording of this meeting is available on the County's website.}