



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 29, 2008

Call to Order

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 29, 2008 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Finley B. Jones, Jr.	President
Lynn J. Rogers	Vice President
Dale R. Dukes	Member
George B. Cole	Member
Vance Phillips	Member
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Assistant to the County Administrator
James D. Griffin	County Attorney

M 089 08 Approve Agenda

A Motion was made by Mr. Rogers, seconded by Mr. Phillips, to approve the Agenda, as distributed.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea

Corre- spondence

Mr. Griffin read the following correspondence:

DELAWARE COMMUNITY FOUNDATION, WILMINGTON, DELAWARE.

RE: Letter in appreciation of the Council's recent \$15,000 contribution to the First State Roundball Fund (for the Bayball Classic) at the Delaware Community Foundation.

LAWRENCE STEELE, BETHEL, DELAWARE.

RE: Letter and copies of newspaper articles regarding the County's Land Use Plan.

State Police Grant

Mr. Baker introduced Lt. Colonel Mark Seifert and Major Randy Hughes of the Delaware State Police and Joe Swiski, Chief Administrator for the State of Delaware Homeland Security.

**Legis-
lative
Update**

The Council presented a check in the amount of \$578,530.00 to the Delaware State Police in accordance with the County's three existing Agreements in which the County agreed to provide funds for additional troopers and vehicles in Sussex County.

Mr. Godwin reviewed legislation currently before the General Assembly that affects Sussex County:

**House Bill No. 30 - Relating to the Application of Wastewater.
Passed House; in Senate Committee.**

**House Bill No. 39 - Relating to a 7 member Planning and Zoning Commission.
Passed House; in Senate Committee.**

**House Bill No. 42 – Relating to a 7 member County Council.
Passed House on 1/22/08; not yet assigned to Senate Committee.**

**House Bill No. 111 – Relating to Realty Transfer Taxes.
Remains in House Land Use Committee; recently removed from hearing list.**

**House Bill No. 186 – Limiting ability of local governments to permit subdivision of property.
Remains in House Land Use Committee; recently removed from hearing list.**

**House Bill No. 189 – Relating to Tax Ditches.
Passed House; assigned to Senate Finance Committee.**

**House Bill No. 233 – Relating to Land Use Planning and Education.
Remains in House Land Use Committee.**

**House Bill No. 239 - Relating to growth management, public services, facilities and infrastructure.
Remains in House Land Use Committee for Public Facilities and Services.**

**House Bill No. 244 - Relating to Transfer of Development Rights.
Remains in House Land Use Committee.**

**House Bill No. 280 – Relating to the Design and Construction Standards for Roads and Streets.
Voted out of the House Land Use Committee on 1/23/08; Primary Sponsor Representative Schwartzkopf has promised to work the Bill on House Floor until June; this allows the County time to address the issues. More time may be available, if needed.**

**House Bill No. 306 - Relating to Overlay Zones.
Introduced on January 23, 2008.**

**Legis-
lative
Update
(continued)**

Mr. Baker commented on House Bill No. 280. He stated that the Bill is being held for the County to work on amendments to its regulations. Michael Izzo, County Engineer, will be submitting a proposal to the Council for revisions to the County's regulations.

Mr. Baker commented on the Special Development Tax District proposal that the Council agreed to support. Mr. Baker reported that Senator Venables, Representative Ewing, and others have agreed to sponsor this legislation.

Mr. Baker reported that Representative Schwartzkopf has indicated that he will sponsor the Suburban Community Road Bill (a housekeeping measure). Mr. Baker stated that other sponsors will be sought.

Mr. Baker reported that the General Assembly will be out of session until March 11th.

**Adminis-
trator's
Report**

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

1. Delaware Aviation Hall of Fame Appointment

We are pleased to announce that Mr. Jim Hickin, the County's Director of Airport and Industrial Park Operations, has been asked to serve on the Board of Trustees for the Delaware Aviation Hall of Fame. The Hall of Fame has inducted 38 men and women since its inception in 2000. It honors outstanding service in aviation. We wish to congratulate Mr. Hickin on this appointment.

2. Delaware Department of Transportation - Capital Transportation Program Meeting

An informational workshop regarding the proposed Capital Transportation Program for Fiscal Years 2009-2014 will be held at the South District Administration Building in Georgetown on Thursday, January 31, from 4:00 p.m. to 7:00 p.m. The focus of this workshop will be the draft Capital Transportation Program for Fiscal Years 2009-2014.

3. Proposed Golf Village Sanitary Sewer District

The Sussex County Engineering Department will be conducting a Public Hearing in the Sussex County Council Chambers, 2 The Circle, Georgetown, Delaware, on Wednesday, January 30, 2008, at 6:00 p.m. The purpose of the hearing is to establish the boundaries of the proposed Golf Village Sanitary Sewer District.

4. Indian River Inlet Bridge

Attached is a News Release from the Delaware Department of

Transportation regarding the status of the Indian River Inlet Bridge Project.

**Adminis-
trator's
Report
(continued)**

As noted, three finalists for replacement of the bridge have been selected for consideration. Final approval of one of the proposals is expected in late spring. The new longer bridge is proposed to be 2,600 feet long, with 900 feet over the inlet. Piers for the proposed bridge are to be placed in the ground and remain out of the water.

5. Beneficial Acceptance

The Engineering Department granted Beneficial Acceptance on January 23, 2008, to Epworth Methodist Church, Agreement No. 588. The developer is Epworth United Methodist Church, and the project is located on Route 271, Holland Glade Road, Rehoboth Beach, in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, consisting of one single connection for the church. Included with this report is a fact sheet on the project.

6. Accident - January 28, 2008 - Millsboro Fire Company Ambulance

Attached is a Media Release issued on January 28 regarding an accident involving a Millsboro Fire Company ambulance. The ambulance was involved in a collision at approximately 6:15 a.m. on January 28. A vehicle crashed into the right rear side of the ambulance. Two EMTs from the Millsboro Fire Company have been treated for injuries. One was treated at Beebe Hospital and released with minor injuries. EMT Frank DeFord is being evaluated at Christiana Hospital. Sussex County Paramedic John Schmitt, a 15-year paramedic, was flown to Christiana Hospital and is being treated for possible head injuries.

Our thoughts and prayers are with John Schmitt and his family. We hope that he recovers quickly.

7. County Pensioner - Barry Harrington

We are sorry to announce that Barry Harrington, a County pensioner, passed away on January 27, 2008. Mr. Harrington retired on August 31, 2002, with 20 years of service. He was 67 years old. He worked as a Purchasing Agent and Maintenance Worker III at the South Coastal Regional Wastewater Facility for 20 years. We wish to express our condolences to Mr. Harrington's family.

**Compre-
hensive**

Susan Webb presented Sussex County's Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2007; copies of the Report were

**Annual
Financial
Report**

previously mailed to the Council.

Mrs. Webb recognized Elaine Graves and Jean Schmidt of Jefferson, Urian, Doane & Sterner, P.A., the County's auditing firm.

**Compre-
hensive
Annual
Financial
Report
(continued)**

Mrs. Webb reported that Net Assets increased by \$44 million over Fiscal Year 2006. She reported that as of June 2007, the General Fund had an undesignated fund balance of \$9.9 million, which is 17 percent of the 2008 Budget; this percentage last Fiscal Year was 23 percent; this decrease is due to the General Fund having a deficit for Fiscal Year 2007. The County experienced a \$2.7 million deficit for the Fiscal Year; this was due to the drop in the real estate market which caused reductions in real estate related revenues. Mrs. Webb stated that this is the first deficit in 17 years; that the County has been fiscally responsible by reserving the Realty Transfer Tax funds for appropriate uses; that the Realty Transfer Tax funds are critical to the Budget; and that the State will continue to be encouraged to not change the Tax in any way. Mrs. Webb reviewed major capital sewer projects: \$16 million in sewer infrastructure paid by developers, environmental studies and sewer boundary extensions, SCRWF Expansion, construction of new sewer districts to go online in 2008; Angola Neck, Johnson's Corner, and Oak Orchard Expansion areas are in preliminary sewer planning phases.

Mrs. Webb noted that one of the major expenses in the financial statements and the Budget is the Pension Fund; the County's Fiscal Year 2007 contribution was \$9.1 million to the Pension Fund and the Post-Retirement Employee Benefit Fund. The \$9.1 million is the Actuary's recommended amount, plus \$1.5 million extra contribution to the Post Retirement Employee Benefit Fund. The Pension Fund is 93 percent funded and the Post Retirement Employee Benefit Fund is approximately 35 percent funded. The accumulated balance of these two funds is \$54 million; in December 2007, an additional contribution of \$6.8 million was made.

Mrs. Webb stated that the County's only debt is for the Water and Sewer Districts; the Water and Sewer Funds have a total of \$160 million in outstanding bonds payable.

Mrs. Webb concluded by commenting on the County's future financial planning and the current state of the economy:

- Declining Housing Market = Declining Revenues
- Increase in Population = Increase in County Services
- Rise in Energy Prices = Rise in Expenses

Mrs. Webb stated that she believes conservative and realistic budgeting and fiscal management results in successful financial results. She stated that Fiscal Year 2007 followed this formula, with the result being a strong and sound financial year. Mrs. Webb noted that the County has strengthened its financial condition over the past years: generous grants, paid off

Comprehensive Annual Financial Report (continued)	<p>General Fund debt, healthy pension, and substantial reservations for future commitments and projects. She stated that the County needs to balance the growth that has been seen over the last several years with existing County resources while facing a decrease in revenues. She noted that the County's goal should be to reflect the change in the economy but continue to provide a strong financial base for now and into the future.</p> <p>Mrs. Webb advised that this Report will be submitted to the Government Finance Officers Association (GFOA) for consideration of a Certificate of Excellence in Financial Reporting. The County has received a Certificate of Excellence for the past five consecutive years. Mrs. Webb advised that this is the highest recognition that can be received in financial reporting.</p> <p>Mrs. Graves of Jefferson, Urian, Doane & Sterner, P.A. commented on the County's strong financial position, which is a result of the County's "excellent budgeting techniques".</p>
M 090 08 Approve Comprehensive Annual Financial Report	<p>A Motion was made by Mr. Rogers, seconded by Mr. Dukes, that the Sussex County Council approves the Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2007.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</p>
Requests	<p>Mrs. Webb presented grant requests for the Council's consideration.</p>
M 091 08 Youth Activity Grant	<p>A Motion was made by Mr. Dukes, seconded by Mr. Phillips, to give \$4,500.00 [\$2,000 from Mr. Jones' Community Investment Grant Account and \$2,500.00 (\$500.00 from each Youth Activity Grant Account)] to Owens Station Sporting Clays for the Delaware Ducks Unlimited 2008 Greenwing Event.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea</p>
M 092 08 Youth Activity Grant	<p>A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$250.00 from Mr. Phillips' Youth Activity Grant Account to the Delaware Warriors Baseball for expenses.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea;</p>

Mr. Jones, Yea

M 093 08 Grant	A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$500.00 from Mr. Phillips' Councilmanic Grant Account to the Friends of the Millsboro Public Library for their Annual Gala.
M 093 08 Council- manic Grant (continued)	Motion Adopted: 5 Yeas. Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Additional Business	Under Additional Business, Daniel Kramer stated that the County has been running in a deficit before but never would admit it.
M 094 08 Recess Regular Session/ Go Into Executive Session	At 11:08 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Phillips, to recess the Regular Session and to go into Executive Session for the purpose of discussing Potential Litigation. Motion Adopted: 5 Yeas. Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
Executive Session	At 11:09 a.m., the Sussex County Council held an Executive Session in the Caucus Room of the Council Chambers for the purpose of discussing Potential Litigation. The Executive Session concluded at 11:26 a.m.
M 095 08 Out of Executive Session/ Reconvene Regular Session	At 11:27 a.m., a Motion was made by Mr. Rogers, seconded by Mr. Dukes, to come out of Executive Session and to reconvene the Regular Session. Motion Adopted: 5 Yeas. Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Dukes, Yea; Mr. Rogers, Yea; Mr. Jones, Yea
M 096 08 Recess	At 11:27 a.m., a Motion was made by Mr. Dukes, seconded by Mr. Rogers, to recess until 1:30 p.m. Motion Adopted by Voice Vote.
Reconvene	Mr. Jones called the Council back into session at 1:30 p.m.
Public Hearing C/Z No. 1630	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 LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 68.30 ACRES, MORE OR LESS" (Change of Zone No. 1630) filed on behalf of

L. T. Associates, LLC.

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(continued)**

Mr. Rogers stated that it has come to his attention that it has been publicly stated that a perception exists that he may have a conflict of interest and that he should disqualify himself from participating in the Public Hearings on L.T. Associates, LLC.

Mr. Rogers read a prepared statement outlining his reasons for not disqualifying himself from participating in the Public Hearings. Mr. Rogers noted that he made this determination after seeking an opinion on the legal standards, requirements and laws.

The Planning and Zoning Commission held a Public Hearing on this application on January 10, 2008 at which time the Commission deferred action and the record was left open to receive DelDOT's comments on the Traffic Impact Study and to receive comments from DelDOT about proposed regional traffic improvements to serve the Kings Highway and Gills Neck Road area. The record was left open for 20 days on only the DelDOT information; if the information is not submitted within 30 days, the Applicant and/or DelDOT shall report the status of the information to the Commission at the next public meeting. In addition, the Commission left the record open until the close of business on January 18, 2008 for any party to submit comments relating to the County's PLUS comments that were inadvertently omitted from the State's April 23, 2007 PLUS letter.

(See the minutes of the meeting of the Planning and Zoning Commission dated January 10, 2008 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.

Mr. Lank distributed an Exhibit Book to the Council (which was the same book received by the Planning and Zoning Commission). Mr. Lank also distributed an Exhibit Book of Supplemental Materials, dated January 23, 2008. Both Exhibit Books were made a part of the record.

The following were present on behalf of the Application: Dennis Schrader, Attorney; Tom and Sally Ford of LandDesign, Inc.; Steve McCabe of George, Miles & Buhr, LLC; Bob Rodgers and Derek Kennedy from Orth-Rodgers & Associates; Jeremy Kalmbacher from Tidewater Utilities, Inc., and Bill Lingo and Paul Townsend. Mr. Schrader explained that the ownership group of the property is J. G. Townsend & Co. and that the proposed developers of the project are L.T. Associates, LLC.

Mr. Schrader stated that the project is called the Townsend Village Centre; that the site is approximately 68.3 acres and is zoned Agricultural Residential; that it is part of the farming operations of J. G. Townsend &

Co.; that it is proposed to have a 520,000 square foot commercial site; that the site is located in an Environmentally Sensitive Developing Area; and that it is identified as a Level 2 Area on the State's Strategies maps and that portions of the site are in a Level 3 Area.

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(continued)**

Mr. Schrader stated that their presentation of facts will allow the Council to conclude that this is an appropriate site for the proposed use of the property.

(These minutes do not go into detail on the presentations made by the various speakers on behalf of the application. For more information, please refer to the substantial information provided in the Exhibit Books, to the Planning and Zoning Commission's Report and to the audio of the meeting.)

Tom Ford of LandDesign, Inc. gave an overview and description of the project; he commented on the PLUS Review and how the Comprehensive Plan fits; and he spoke to CR-1 compliance.

Mr. Ford responded to some of the comments and concerns made during the Public Hearing before the Commission: timely notification to area residents of the proposed project; drainage, evacuation, and storm water management effects; wellhead concerns; traffic; Comprehensive Plan; and the appropriate land use for this application.

Mr. Ford stated that he met with DelDOT in June 2004 regarding the project; that the plan has been massaged over time; that the plan has evolved into a 520,000 sq. ft. retail center.

Mr. Ford reported that the proposed project has been reviewed by the Office of State Planning Coordination (OSPC) as a part of the PLUS review process and its comments have been responded to by the Applicant. He also reported that the OSPC has stated in their final review letter to the County that "The State has no objection to the development of this property..."

Bob Rodgers of Orth-Rodgers presented a power point presentation on the Traffic Impact Study for both projects (the Townsend Village Centre and the Governors Project) since they were done concurrently.

Mr. Schrader noted that, when the Commission held their Public Hearing, the Traffic Impact Study (TIS) was not yet available. The TIS review letter for the Gills Neck Road Subdivision (Townsend Property) was received by the County on January 16, 2008 and it was announced by the Planning and Zoning Commission on January 24th that the Report was available for public comment and that written comments in regards to the TIS would be accepted for 20 days.

In DelDOT's letter, dated January 16, 2008, regarding the Traffic Impact Study, it was stated that the TIS review letter was completed under the

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(continued)**

responsible charge of a registered professional engineer whose firm is authorized to work in the State of Delaware (McCormick Taylor). DelDOT accepted the TIS review and concurs with the recommendations. In the TIS review letter, it was recommended that, if the Council chooses to approve the application(s), fourteen (14) items should be incorporated into the site design and reflected on the record plan. (This report is available for review in the Office of Planning and Zoning.)

Sally Ford discussed storm water management and hydrology issues on the site.

Steve McCabe presented an overview of the wastewater service for the area. He reported that the proposed project would be served with central sewer by the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and that the projects have been provided with sewer capacity of 4 EDUs per acre. He stated that this application proposes less than 2 EDUs per acre.

C.T. Bouchau, a retail real estate advisor, presented an overview of the market demands for the project. He stated that the market is evolving to a more affluent year-round community and that this change has led to a new market niche for retailers. He noted that one example of these retailers is Harris Teeter, who recently opened their first Delaware location on Route 54.

Mr. Schrader stated that they are not proposing one structure of 520,000 sq. ft.; that they are proposing 13 structures in a campus-type arrangement; that any changes to this proposal would require site plan review and approval; and that due to the location of this site, it will always be subject to change, as will the area, but it may not always be agricultural.

Mr. Schrader advised that he submitted a letter to the County Council, which is included in the Exhibit Book, entitled “Supplemental Materials”, in reference to the projects compliance with the Comprehensive Plan.

Mr. Schrader referenced the opinion of the Office of State Planning Coordination that this is not an objectionable project and it conforms with the Livable Delaware principles as articulated in the legislation.

Mr. Schrader concluded by advising that proposed Findings of Facts are included in the Exhibit Book entitled “Supplemental Materials”.

Recess

Mr. Jones declared a recess at 4:30 p.m.

Reconvene

Mr. Jones called the Council back into Council at 4:40 p.m.

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Public comments were heard on Change of Zone No. 1630.

Joe Hoechnor spoke in support of the application. Mr. Hoechnor presented

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(continued) **a hand-out for Council’s review which included information on two outlet sites, one in Williamsburg, Virginia and one in St. Augustine, Florida. He stated that shopping centers and historic towns are not incompatible uses.**

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(continued) **John Sergovic, Attorney, was present to speak in opposition to the project on behalf of John Mateko and his group (Managing Growth Around Lewes) and David Ennis and his group (Citizens Advocating a Livable Lewes). Mr. Sergovic noted that Mike Tyler was in attendance on behalf of the Citizens Coalition, Inc.**

Mr. Sergovic stated that the application is totally incompatible with the 2003 Land Use Plan and the 2007 Draft Plan; that whatever the site plan shows is meaningless; that if the site is zoned CR-1, the Council cannot even mandate the highway improvements; that it is not a Conditional Use and no conditions can be placed on the approval; that it cannot be determined what the impact on EDUs will be until it is known what the number of fixture unit counts are (that go into the 520,000 sq. ft.) because the number of EDUs for commercial is based on fixture unit counts and not on square footage; that the project is not compatible with other zonings in the area; that there is nothing on Kings Highway that approaches the magnitude of 520,000 sq. ft. of retail; that the CR-1 zoning cannot comply with the existing Comprehensive Plan or the proposed Comprehensive Plan Update; that the Plan does not specify highway commercial between Route 1 and the City of Lewes; that there is a legal issue regarding this application – every other application that was filed in September or October 2007 will be heard sometime 2 years out; that the application for the townhouse project came in under County Ordinance No. 1920 which allows an acceleration of public hearings for cluster zoning; that he questions how this application got accelerated; that this did not give the public the opportunity to exercise their due process rights to make a study of the proposal; that the Traffic Impact Study performed by Orth-Rodgers and agency comments were not received until January 23rd which does not provide sufficient time to study the material fully; that the proposal is really for a regional shopping center; that a TIS was not available for review prior to the Public Hearing; that the site is located in an Environmentally Sensitive Development District; that the Comprehensive Plan Update calls for a neighborhood shopping/village center, not a large scale shopping center, to serve the rapidly growing population; that a 520,000 square foot retail shopping center is not a neighborhood business center; that 520,000 square feet exceeds the 75,000 range of a shopping center in a B-1 Neighborhood Business District; that this is a massive project that is just a little smaller than all three outlet centers (currently on Route One) put together; and that the project would have potentially major impact on an existing established community.

John Mateko stated that he was present representing Managing Growth Around Lewes. He stated that they support growth; however, they want quality growth that is compatible with the character of the area; that Lewes is a national treasure; that they are concerned about traffic volumes that

will be generated; that they are concerned about public safety and welfare; that they are concerned about property values; that empty stores still exist at the Village of Five Points – there are six to twelve empty stores; and that the business community is strongly opposed to the project.

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(continued)**

Mr. Mateko submitted the following into the record: an editorial in the Cape Gazette, dated January 21, 2008, commenting on how saturated the market is; a letter from the Natural Trust for Historic Preservation, Philadelphia, Pennsylvania, voicing their concerns over the proposed project at the gateway for Historic Lewes; and a letter from Representative Joseph Booth commenting on the impact of this type of usage on the citizens in the area and how it would “impinge the character and charm of Lewes”; that he has seen the DelDOT 6-year outlook plan and listed priorities and there is no priority to spend monies to improve the roadway in this area; and that he asks the Council to weigh all the facts and to consider the long term consequences.

It was noted that Ted Bishop, the Deputy Planning Director for DelDOT, stated at his presentation in Lewes to the Mayor and City Council that it would take at least ten years to get any major road improvements and that there is no plan nor any money for those improvements.

Michael Lenhart of Lenhart Traffic Consulting, Inc. stated that it needs to be determined what engineering is available and feasible to be able to make improvements to the road system; that certain improvements as evidenced by DelDOT are not feasible to support this rezoning; that the Applicant’s study did not evaluate the impacts on Route 1; that he has concerns regarding the TIS and some of its assumptions; that the rezoning would require public funding to dualize a 1.3 mile section of Kings Highway and resolve traffic inadequacies; that there are significant questions regarding this application’s consistence with the Delaware Strategies for State Policies and Spending and it is questionable when or if this project would receive public funds; that the site is located primarily in Investment Level 3, which states that roadway improvements to support new development are not encouraged and funds will not be allocated for these types of investments until they have been allocated in Level 1 and 2 areas; that the McCormick Taylor report states that major roadway improvements would need to be funded through the State’s Capital Transportation Plan in order to support the new development and based on the State policy, it appears that funding for roadway improvements to support new development are not encouraged; and that there will be serious failures even with improvements recommended by DelDOT. Mr. Lenhart submitted his written comments into the record. Mr. Lenhart previously submitted two reports to the County: one dated January 9, 2008 and one dated January 23, 2008.

Charlie Hewlett, a Real Estate Advisor with Robert Charles Lesser & Co., stated that they have done a Retail Macro-Level Market Opportunity Analysis for Sussex County within the last twelve to eighteen months; that they have looked at the current inventory of spaces and what the likely

projected demand is going to be for retail space in the County considering both the residents' and tourists' impact on the market; and that they have done a site specific analysis for a project known as the Vineyards. Mr. Hewlett submitted a written report of his comments for the record.

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James Ford, Mayor of the City of Lewes, stated that he was in attendance representing the rest of the elected officials and the people of the City of Lewes. Mr. Ford read his letter, dated January 29, 2008, into the record which states that the following Motion was unanimously adopted by the City of Lewes Mayor and City Council at their regular meeting on January 14, 2008:

“The City of Lewes opposes the current requests for consideration pending before the Sussex County Planning & Zoning Commission and Sussex County Council. C/Z #1630 – AG-R to Commercial, Consideration of Zoning Change, and C/U #1772 – Conditional Use, as neither of these requests reflect land use recognized in the current or proposed amended County Comprehensive Land Use Plans, and ultimately have the potential to degrade the quality of life for our City based on concerns regarding water issues, traffic impact and the health, safety and welfare of our community.”

Mayor Ford advised that the City requests that this documentation be entered into the record for both Change of Zone No. 1630 and Conditional Use No. 1772 public hearings as reflecting the current position of the City of Lewes.

Mayor Ford stated that the magnitude of the concern expressed by the community and by the Mayor and Council speaks for itself.

Mayor Ford commented on the Memorandum of Understanding (MOU) that was referenced during discussions on this date. He stated that the City has a MOU with the State and they have been working on one with the County relating to comprehensive plans, land use, developing a green zone, and continual communications and monitoring.

Mayor Ford stated that, in regards to the recharge land, the City of Lewes does not own the land, it is owned by others; however, it is an excellent recharge area for the City of Lewes. The Mayor pointed out the opportunity to gather current information regarding storm water management and the monitoring of the water recharge area for the City. The Mayor stated the importance of the water quality for all citizens served by water in this area and the protection of all citizens in this recharge area. The Mayor noted that, upon approval of prior subdivisions and developments fronting Gills Neck Road, known as Breakwater and Cadbury of Lewes, part of the conditions of storm water management were dictated by an agreement to collect and resupply the area with as much water as possible pertaining to pervious surfaces. Mayor Ford stated that

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(continued)

expert data should be available as to the success or failure of this engineered stormwater management system. Mayor Ford referenced comments made about evacuation and flooding and the possibility of advance notice and that there is certainly a possibility that there would not be advance notice with evacuations. He noted that the problem with evacuations is getting people to leave. He stated that this means there has to be a proper means of routes and it must be monitored and available to everyone. The Mayor stated that there is already a huge demand on the volunteer fire department; that he questions which route will be used by emergency medical service providers from the site to Beebe Medical Center; that he is concerned about the need to dualize Kings Highway and the time it would take to do that; that this would be a capital improvement project for DelDOT and funding may or may not occur; that the potential, proper infrastructure may never be in place; that this is not an appropriate land use for the area; that no economic development need has been presented; and that the proposal is not recognized in the County's Comprehensive Plan. The Mayor asked the Council to hear the voice of the community.

David Ennis was present representing the Citizens Advocating Livable Lewes. He stated that run-off and drainage are major concerns and he referenced comments made in the PLUS Review letter; that in regards to impervious surface, the State recommended never to exceed 50 percent and the Applicant's report states that it will be 77 to 80 percent if they fulfill the project build-out; that the original West Rehoboth spray irrigation system was designed for about 8,000 additional homes; that it is hard to imagine that the 8,000 homes have not already been exceeded; that the County Engineering Department's comments stated that this plan requires extensive regional construction to be completed by the developer with the added requirement to participate in and contribute funds to a necessary treatment plant upgrade in accordance with an approved sequence of construction; that he questions - if there is any public money required to be used for this expansion process, where is it coming from and has it been appropriated; that there is a concern about the rising sea level and its impact on the supporting infrastructure; that there is concern about storm water capacity, run-off, drainage, and flooding issues; that this project has changed dramatically since it was reviewed by the PLUS process and the Council should deny all (three) applications; however, if Council deems the applications have merit, the Applicant should be asked to return to the State's PLUS process with a comprehensive submission under one application that could be looked at in its entirety.

Mr. Ennis submitted written comments along with an Exhibit Package (A) into the record.

Robert Weiner, a Land Use Attorney and Consultant, commented on how other counties view these dilemmas on the principles of sound land use plans. He stated that the PLUS process considered an application of 330,000 sq. ft. of retail and that now it is 521,000 sq. ft. and for this reason, the application(s) should be sent back to the PLUS process. He stated that

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(continued)**

the proposal will have a harmful affect on older shopping centers on Route 1; that he agrees the land will not remain open but that does not mean that the only option is a regional shopping center; that other options would be a 75,000 sq. ft. neighborhood shopping center or a community like the Village of Five Points; that traffic is a concern – that a triple left turn is dangerous; that there is not a community need for this project; and that there are three ways to look at land use – appropriateness, density, and timing – that all levels need to be met at the same time.

Michael Tyler, on behalf of Richard Anthony, submitted 17 pages of testimony in opposition to the application(s).

Michael Tyler presented a petition containing 1,600 to 1,700 signatures in opposition to the application(s).

Michael Tyler, President of Citizens Coalition, Inc., stated that the project will attract a lot of truck traffic on roads that are already burdened; that traffic affects quality of life; that vehicle miles travelled equates to pollution, safety problems, etc.; that he didn't hear traffic counts for a rainy summer day; and that many intersections in the area are now at a Level F. Mr. Tyler read his letter of opposition and submitted a written copy into the record.

Ronal Smith, Susan DuBre, Tom Owen, Sandy Phelan, Carolyn Quinn, Barbara Wood, Gavin Braithwaite, Mary Ann Ennis, Jules Jackson, Judy Roth, Dave Greer, and George Gibson spoke in opposition to the application.

They stated that the site is not appropriate for the proposed rezoning; that the volume of traffic on Kings Highway will be the same as on Route One; that there are enough retail shopping opportunities on Route One; that the establishment of such a huge commercial development would destroy historic Lewes' tranquil and attractive downtown; that the rezoning will degrade public safety, reduce home property values, and degrade the economic viability of downtown Lewes as well as neighboring communities; that this type of development will put drinking water supplies at risk; that increased traffic will negatively impact the Cape May Lewes Ferry, Cape Henlopen State Park, and ambulance access to Beebe Hospital; that they are concerned for the safety of children as well as walkers, bikers, and joggers that use Gills Neck Road; that they are concerned about the impact on the Cape Henlopen School District and especially the high school which is located directly across the road from the proposed 520,000 sq. ft. retail establishment; that there are indigenous burial grounds on or near the site; that research has indicated that a minimum of 50 burials have been removed from the area; that traffic and infrastructure problems need to be addressed before considering the application; that the project will affect the quality of life of residents in Lewes; that they are concerned about the impact on the environment and the negative impact on natural resources; that DelDOT cannot keep adding lanes to accommodate traffic; that the

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proposal will exacerbate the rising sea level problem; that wells will be impacted by the impervious surfaces proposed; that drainage will be a major problem for the site and the area; that the size of the project will destroy the historic town's bustling, highly attractive downtown; that the application does not comply with the Sussex County Comprehensive Plan, Lewes' Comprehensive Plan or Livable Delaware; that evacuation routes must be protected; that the developer has failed to give a compelling reason for the zoning change; that there are major concerns about the size and scope of the proposed developments and their numerous impacts on traffic and other quality of life issues; and that it is not in the public interest to approve this application.

A petition signed by 36 owners and managers of Lewes' downtown business was submitted in opposition to the application.

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

**M 097 08
Defer
Action on
C/Z
No. 1630**

A Motion was made by Mr. Rogers, seconded by Mr. Cole, to defer action on Change of Zone No. 1630 filed on behalf L.T. Associates, LLC and to leave the record open until the close of business on February 13, 2008 for written comments only.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
 Mr. Dukes, Yea; Mr. Rogers, Yea;
 Mr. Jones, Yea**

**Public
Hearing
C/U
No. 1772**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES (472 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYNG AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 186.56 ACRES, MORE OR LESS" (Conditional Use No. 1772) filed on behalf of L. T. Associates, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on January 10, 2008 at which time the Commission deferred action and left the record open to receive DelDOT's comments on the Traffic Impact Study and to receive comments from DelDOT about proposed regional traffic improvements to serve the Kings Highway and Gills Neck Road area. The record was left open for 20 days on only the DelDOT information; if the information is not submitted within 30 days, the Applicant and/or DelDOT shall report the status of the information to the Commission at their next public meeting. In addition, the Commission left the record open until the close of business on January 18, 2008 for any party to submit written comments relating to the County's PLUS comments that were inadvertently omitted from the State's April 23, 2007 PLUS letter.

(See the minutes of the meeting of the Planning and Zoning Commission dated January 10, 2008 for additional information on the application, correspondence received, and the Public Hearing before the Commission.)

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(continued)**

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record.

Mr. Lank distributed an Exhibit Book to the Council (which was the same book received by the Planning and Zoning Commission). Mr. Lank also distributed an Exhibit Book of Supplemental Materials, dated January 23, 2008. Both Exhibit Books were made a part of the record.

It was noted that the written comments submitted by Mayor James Ford, City of Lewes, on Change of Zone No. 1630 also relate to this application and are considered a part of the record for this application.

The following were present on behalf of the Application: Dennis Schrader, Attorney; Tom and Sally Ford of LandDesign, Inc.; Steve McCabe of George, Miles & Buhr, LLC; Bob Rodgers and Derek Kennedy from Orth-Rodgers & Associates; Jeremy Kalmbacher from Tidewater Utilities, Inc., and Bill Lingo and Paul Townsend.

Mr. Schrader stated that these representatives previously appeared in the last application (Change of Zone No. 1772) and that they were also present on behalf of this application to answer any questions raised by the Council.

Mr. Schrader stated that Ordinance No. 1920 was adopted in July 2007 and it provided for the ability of a developer to apply for a different density than that which is provided for in the underlying zoning category (AR-1 in this case); that through this Application, they are seeking a greater density than permitted in an AR-1 District; that the density would be increased by 99 dwelling units; that the project would result in some extended extra buffering between this project and the other projects; that it increases the amount of open space; that in this project, the density is higher but the open space is greater due to the design; that within the watershed wherein the project lies, there will be \$20,000 per additional unit provided to the County Council to be used for conservation purposes within the watershed; that the site is 185.56 acres; that they are seeking the capability to have multi-family townhouses with the increased density; that the total number of units would be 472; that the dwelling density would be 2.53 dwelling units per acre and an open space of 81 percent; that the site is located in the Environmentally Sensitive Developing Area; that it is located in the State's Level 3 Area; that Dr. Brandenberger's report is included in the Supplemental Materials Exhibit Book under Tab 7 entitled "An Estimate of the Number of School Age Children Residing in the Proposed Developments of Senators and Governors near Lewes, Delaware"; that Senators is a subdivision request before the Planning and Zoning Commission; that the Report estimates that

approximately 109 additional students would be brought into the school district from the Governors project; and that the Supplemental Materials also provide a summary of the Phase I investigations at the Townsends site identifying archaeological features located on the site.

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(continued)

Mr. Ford stated that they are proposing to develop the site through Ordinance No. 1920, the “Bonus Open Space” Ordinance as a multi-family community (Governors); that the application consists of 186.56 acres; that they propose to develop only 34 acres; that the wooded area on this site is 85 acres and that 61 acres (of the 85 acres) will go into conservation and 24 acres will remain in the Homeowners Association’s care; that part of the woods that remain are a part of the archaeological fields; that the application is for the development of 472 multi-family residential units; that the proposed 472 units are designed to be contained within fifty-three (53) 6-unit townhouse buildings and fourteen (14) 11-unit buildings; that the project has a gross density of 2.53 units per acre; that a total of 152.38 acres shall remain in open space, which calculates to 81.7 percent; that the Proffer Ordinance only requires 40 percent open space; that there will be 88.86 acres of open space and 63.72 acres of conservation area; that the site contains 17.85 acres of State wetlands, 39.47 acres of Federal 404 lands, and 129.24 acres of upland area; that interconnectivity will be established through connectors between the Townsend Village Centre, this project, and the Governors project; that the project would be served by central water and sewer; that currently Gills Neck Road does not have stormwater management; that this project will handle the stormwater for all of Gills Neck Road; that they believe this plan reflects preservation of cultural and archaeological resources; that 96 percent of the site will be preserved, leaving only a 4 percent disturbance on the site; that the project went through the PLUS Process; that there were no negative comments; that the PLUS process and comments are referenced in Tabs 1 and 2 of the Governors’ Exhibit Book; that DelDOT generally supports this plan; that the project will provide a superior living environment; and that 373 units would be permitted on this site without using Ordinance No. 1920.

Steve McCabe of George, Miles & Buhr stated that there has been a second revision to the sanitary sewer concept plan and it is being reviewed; that the first revision addressed the Hawkseye Project and the Senators Project; that there was a subsequent revision that addressed the Governors and the Townsend Villages Centre; that, on the record now is 487 EDUs and that is in excess of the number of EDUs applied for by this application; that the sewer capacity allotted for the project was 4 EDUs per acre under the County’s plan and that the number of EDUs applied for by this application is less than that.

Mr. Griffin questioned to whom the 61 acres of conservation area would go to. Mr. Schrader responded that it would have to be determined who the grantee would be but it would be to someone who would perpetually maintain it.

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C/U
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(continued)**

Paul Townsend of L.T. Associates stated that they have been in contact with the archaeological conservancy for approximately 2 years; that they would like control of the Native American sites; that they have an on-going relationship with the State of Delaware and they desire to add lands to the Cape Henlopen State Park, either as buffers or as actual lands to be used for recreation.

Mr. Schrader concluded by advising that proposed Findings of Facts and Conditions are included in the Exhibit Book entitled “Supplemental Materials”.

(These minutes do not go into detail on the presentations made by the various speakers on behalf of the application. For more information, please refer to the substantial information provided in the Exhibit Books, to the Planning and Zoning Commission’s Report and to the audio of the meeting.)

There were no public comments in support of the application.

Public comments were heard in opposition to the application.

Michael Tyler of the Citizens Coalition stated that the site is in a Low Density Area and an Environmentally Sensitive Area; that there should be expert data showing the size of the buffers; that stormwater ponds are good news and bad news and they are an attractive nuisance; that this site is an excellent water recharge land essential to maintaining the water resources for the City of Lewes and as for residents encompassing a much wider area; and that not every parcel of land is suitable for development.

Mr. Tyler asked that the County look into the following: that when the Cadbury and Breakwater developments (and possibly the Hawkseye and Wolfe Point developments) were approved, DelDOT required that Clay Road be upgraded. He noted that this has not yet happened.

Mr. Tyler read his letter of opposition and submitted a written copy into the record.

Michael Tyler, on behalf of Richard Anthony, submitted 15 pages of testimony in opposition to the application.

John Mateko asked that the comments made during the previous Public Hearing be incorporated into the record of this Public Hearing to the extent that they apply to this application, especially the comments of Mike Lenhart, Dave Ennis and Bob Weiner. He also asked that the following be entered into the record: the Lenhart Traffic Consulting Study and the Resolution of the City of Lewes of January 15, 2008, referencing the City’s opposition.

John Mateko stated that David Ennis had a conversation with DelDOT’s

Director of Planning, Ralph Reeb, and that Mr. Reeb stated that he would be desirous of holding a joint DelDOT and Sussex County workshop with regards to the issues in this area.

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(continued)**

John Mateko stated that he has had conversations with Connie Holland of the Office of State Planning Coordination and that she has stated that she does not feel that, as developed, the site plans (both applications) are consistent with the intent of Livable Delaware. (Councilman Cole suggested that Ms. Hollands' comments be obtained in writing and submitted to the County.)

John Mateko stated that he is opposed to the project due to the extensive traffic it would generate; that, according to Mr. Lenhart's Traffic Study, the Senators, Governors, and Showfield projects on Gills Neck Roads will generate a total traffic count of 12,000 vehicles per day, which is the magnitude that a regional shopping center generates and therefore, Gills Neck Road is facing traffic that two regional shopping centers would generate; and that the traffic would be too much for Gills Neck Road.

Dave Greer stated that he worries about the water recharge area and the width of the buffers and that the main problem with the project is the traffic that it will generate.

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

**M 098 08
Defer
Action
on C/U
No. 1772**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to defer action on Conditional Use No. 1772 filed on behalf L.T. Associates, LLC and to leave the record open until the close of business on February 13, 2008, for written comments only.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Dukes, Yea; Mr. Rogers, Yea;
Mr. Jones, Yea**

**M 099 08
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Dukes, to adjourn at 9:43 p.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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