



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 29, 2009

Call to Order A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 29, 2009, at 3:00 p.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Vance Phillips	President
George B. Cole	Vice President
Joan R. Deaver	Councilwoman
Michael H. Vincent	Councilman
Samuel R. Wilson, Jr.	Councilman
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Deputy Administrator
J. Everett Moore	County Attorney

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

Mr. Phillips called the meeting to order.

M 557 09 A Motion was made by Mr. Vincent, seconded by Mr. Wilson, to approve
Approve the Agenda, as posted.
Agenda

Motion Adopted: 3 Yeas, 2 Absent.

Vote by Roll Call: Mrs. Deaver, Absent; Mr. Vincent, Yea;
Mr. Wilson, Yea; Mr. Cole, Absent;
Mr. Phillips, Yea

Employee The County Council recognized and presented a Tribute to John Edwin
of the James in the Engineering Department who was nominated as Employee of
Quarter the Quarter for the Third Quarter of 2009.

Mr. Cole joined the meeting.

Town of Mr. Baker reported that a letter dated September 17, 2009 was received
Ellendale from the Town of Ellendale requesting a grant for up to \$5,000 to be used
Grant for a planning study for water service in Ellendale. The Town is applying

Request for a USDA grant for approximately \$15,000 towards the cost of the study.

Mrs. Deaver joined the meeting.

**Town of
Ellendale
Grant
Request
(continued)**

Mayor Delores Price stated that, after talking with the Town's Treasurer and other Town Council members, she became aware that the Town would have to repay the Council for the grant funding. The Town Treasurer stated that they have \$5,000 to cover the amount requested from the County and therefore; they are rescinding their request for financial assistance at this time. Mayor Price also stated that the Town is going to proceed with the water project on its own.

Mr. Baker explained that one of the options discussed was that, if the County fronted the money and if the project did take place, then the money would be reimbursed to the County as part of the project costs.

**Adminis-
trator's
Report**

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

1. **Clean Hands Policy Report**

From October 22, 2008, to September 18, 2009, over \$655,000 has been collected as a result of the Clean Hands Policy. This amount represents delinquent taxes and sewer and water charges owed to the County. Building permits are withheld until payment is received of these items in full.

2. **Sussex County Airport Committee Meeting**

The Sussex County Airport Committee will meet on Wednesday, October 7, 2009, at the Sussex County West Administrative Complex, 22215 DuPont Highway, Georgetown, at 6:00 p.m. Mr. Jim Hickin will be presenting an update on the status of the County Airport and Industrial Park, including answering questions regarding the proposed policies.

3. **Western Sussex Historic Byway Public Hearings**

As per the attached release, public hearings will take place by the Western Sussex Scenic and Historic Byway Advisory Committee on October 21, October 28, and November 2 in Seaford, Laurel, and Bethel. This Committee is preparing an application to the Delaware Department of Transportation for federal funds for the byway.

4. **Property Tax Due Date**

Wednesday, September 30, 2009, is the due date for Sussex County property taxes. The Treasury Division will not post interest or penalties if a tax payment is postmarked September 30 or sooner for current tax bills.

5. Sussex County/NACo Prescription Drug Discount Card Program

Adminis-
trator's
Report
(continued)

Sussex County residents can now get their prescription drug discount cards simply by clicking their computer's mouse. The Sussex County/NACo Prescription Drug Discount Card program now allows participants to print their own cards directly from the Internet. Simply visit www.caremark.com/naco and select the "Print a Card Now" banner at the top of the page. Users will be asked to select their state and their county, and then to fill in some general information. Once participants print the cards, they can begin using them immediately to save an average of 20 percent on qualifying prescription drug purchases.

The cards are still available at all County buildings and local public libraries, as well as within various town and city halls, senior centers, and at participating pharmacies. Since the program's introduction in November 2007, more than 5,300 users have saved an estimated total of \$186,843 thanks to the Sussex County/NACo Prescription Drug Discount Card program.

Corre-
spondence

Joan Deaver announced that she received a letter from a constituent complimenting Michelle Warren (Engineering Department) for her helpfulness to the people of Oak Crest.

NSP –
MOUs/
Milford
Housing
Develop-
ment Corp.
and
Diamond
State
Community
Land
Trust

William Lecates and Brandy Bennett of the Community Development and Housing Division presented a proposed Memorandum of Understanding with Milford Housing Development Corporation (MHDC) and the Diamond State Community Land Trust (DSCLT) for the Neighborhood Stabilization Program. Both agencies were approved by the Delaware State Housing Authority for the Program.

Ms. Bennett reviewed the proposed MOUs for both agencies:

Milford Housing Development Corporation (MHDC)

- MHDC will receive a 0% loan from the NSP funds to purchase a foreclosed house in one of the five targeted areas of the County.
- MHDC will act as the General Contractor for any homes that require rehabilitation.
- Upon the sale of the home to a qualified homebuyer, NSP funds are repaid to the County's NSP Fund. MHDC will be entitled to receive a flat rehabilitation administrative fee of \$3100 per house, but could receive a 5% administrative fee for any homes sold to those below 50% of AMI.
- In the event the NSP home is not sold to a qualifying buyer within 365 days, the County's loan is due in full.

Diamond State Community Land Trust (DSCLT)

**NSP –
MOUs/
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Land
Trust**

- **DSCLT will receive a 0% loan from the NSP funds to purchase a foreclosed home in one of the five targeted areas of the County.**
- **For any homes that require rehabilitation, the County would follow the traditional CDBG bid process to complete the work.**
- **The home would be sold to a qualified homebuyer.**
- **A NSP subsidy stays in the Land Trust to fill the affordability gap for the homeowner. This subsidy is protected by a County lien that would be repaid in full in the event the property is ever sold on the open market or if DSCLT dissolves.**

Mr. Vincent questioned the status of the MOU with DSCLT since a copy of the contract has not been distributed to Council members as of this date.

It was noted that the Memorandum of Understanding (MOU) for DSCLT is still being worked on due to the fact they are still determining the amount of the mortgage. Mr. Moore reported that the concept is complete, however, the contract is not complete and once it is finalized, it will be subject to the review and approval of the County Attorney and the Finance Director.

**M 558 09
Grant
Approval
to Enter
into MOUs
with
MHDC
and
DSCLT**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, that the Sussex County Council grants approval to enter into Memorandums of Understanding with Milford Development Housing Corporation and Diamond State Community Land Trust to acquire, rehabilitate and sell foreclosed homes through the Neighborhood Stabilization Program.

Motion Adopted: 4 Yeas, 1 Nay.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea; Mr. Wilson, Nay;
Mr. Phillips, Yea**

Mr. Vincent stated that, in the future, the Council should only be approving things that have been finalized and in a form to be reviewed by the Council.

**Update
and
Discussion
on
Proposed
Airport
Policies**

Mr. Hickin, Director of Airport and Industrial Park Operations, reported that in April 2008, the County Council approved publishing a series of policy documents that address the County's operation of the Sussex County Airport and that would formalize various rules for use of the Airport. The policies will ensure that the County is meeting State and Federal requirements for Airport operations. In December 2008, three volumes of the policy documents were released for public comment. Mr. Hickin noted that comments received were previously distributed to the Council members. Also distributed was a final draft of the airport policies for Council's review.

Mr. Hickin explained that this is the beginning of a two month review and approval process. The draft documents will be put on the County's website for public review. The documents will be discussed at the public Airport

Meeting on October 7th. A Public Hearing before the County Council is proposed to be held on November 17th, at which time the Council can consider the adoption of the Airport Policies.

Additional Business
Additional Business/ Safe Haven Animal Sanctuary (continued)
Under Additional Business, Anne Gryczon of Safe Haven Animal Sanctuary of Sussex County, reported on the status of the construction of a No-Kill Animal Sanctuary on Shingle Point Road between Georgetown and Milton which is scheduled to be completed in December 2010. Ms. Gryczon also reported that Safe Haven is requesting that the Council consider limiting the term of the 2010 Dog Control Contract to one year as they would like to bid on the Contract in 2011. She stated that, under Safe Haven, all direct and supportive dog control services would be centralized in Sussex County and that they would be able to provide effective, efficient dog control and care for animals in their brand new facility by January 2011.

M 559 09 Go Into Executive Session
At 3:46 p.m., a Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to recess the Regular Session and to go into Executive Session for the purpose of discussing personnel and land acquisition issues.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea; Mr. Wilson, Yea;
Mr. Phillips, Yea**

Executive Session
At 3:47 p.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing personnel and land acquisition. The Executive Session concluded at 4:12 p.m.

M 560 09 Reconvene Regular Session
At 4:13 p.m., a Motion was made by Mr. Cole, seconded by Mr. Vincent, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea; Mr. Wilson, Yea;
Mr. Phillips, Yea**

M 561 09 Approve Limited Early Retirement Option
A Motion was made by Mr. Cole, seconded by Mr. Vincent, that Sussex County Council approves a limited early retirement option, as an extension of the previous offer, to Employees A, B, C, D, and E who: (1) expressed interest in the original early retirement offer, (2) are vested and eligible to receive a pension now, (3) whose retirement would not create the need to hire another employee from the outside, and (d) voluntarily accepts this offer for three years added to the pension calculation.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea; Mr. Wilson, Yea;
Mr. Phillips, Yea

M 562 09 At 4:15 p.m., a Motion was made by Mr. Vincent, seconded by Mr. Wilson,
Recess to recess until 6:00 p.m. Motion Adopted by Voice Vote.

M 563 09 At 6:00 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Vincent,
Reconvene to reconvene. Motion Adopted by Voice Vote.

Attorney Vince Robertson, Assistant County Attorney, was present.

Letter Mr. Phillips read a letter into the record from County Attorney Everett
Read Moore, which stated that “Due to a personal potential conflict of interest, I
into have asked the Assistant County Attorney, Vince Robertson, to conduct the
Record hearing tonight. My conflict is not due to a professional conflict – I have not
from nor do not represent any of the parties involved in tonight’s hearings. I am,
Everett however, a member of a LLC that owns real estate in Maryland. One of the
Moore, applicants tonight is also a member of the LLC. Even though I have never
County discussed this project with the applicant and normally only see the applicant
Attorney once a year at our annual meeting, I believe that in the interests of full
disclosure and avoiding even the appearance of impropriety that it is best
that I recuse myself and have Mr. Robertson handle this matter.”

Defer on The first Public Hearing scheduled was Change of Zone No. 1689 filed on
C/Z behalf of O. A. Newton & Son Co. and Perdue Agribusiness, Inc. and it was
No. 1689 determined that no one was present on behalf of the Application. The
Council deferred action on the application until the end of the meeting.

Public A Public Hearing was held on the Proposed Ordinance entitled “AN
Hearing/ ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF
C/Z SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL
No. 1690 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 45.77
ACRES, MORE OR LESS” (Change of Zone No. 1690) filed on behalf of
L. T. Associates, LLC.

The Planning and Zoning Commission held a Public Hearing on this
application on September 10, 2009 at which time they deferred action for
further consideration.

(See the minutes of the meeting of the Planning and Zoning Commission
dated September 10, 2009.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the
Commission’s Public Hearing.

Mr. Lank distributed Exhibit Books which were provided by the Applicant.

Mr. Lank distributed copies of all correspondence received on Change of Zone No. 1690 to the Council members. The correspondence included comments from the City of Lewes, the Sussex Conservation District, the Sussex County Engineering Department, a letter of support and 121 letters and emails in opposition.

Public
Hearing/
C/Z
No. 1690
(continued)

Mr. Lank reported that on this date, prior to the start of the Public Hearing, additional correspondence was received: a Memo dated September 29, 2009 from David Ennis in opposition and a new Exhibit Book from Sergovic & Ellis on behalf of the opposition. Copies of the Memo and the Exhibit Book were distributed to the Council members.

Mr. Lank reported that, prior to this meeting, he received a letter of opposition from the Lewes Historical Society, dated September 28, 2009. Mr. Lank read the letter into the record.

Mr. Lank reported that, prior to the meeting, he also received a handwritten note from Alvin and Crystal Messick of Millsboro in support of the project.

Mr. Lank distributed two colored reports provided by the City of Lewes: the Greater Lewes Subarea Plan and the Greater Lewes Foundation Annual Board Meeting.

Mr. Lank noted that all correspondence and submissions received were made a part of the record.

It was determined by a show of hands that approximately 22 people were present in support of the application and approximately 110 people were present in opposition to the application.

Dennis Schrader, Attorney, was present on behalf of the Applicant with Frank Kea of Frank M. Kea Communities, LLC; Jack Hollon of Mushinsky Voelzke Associates; Tucker Moorshead of Earth Data Inc.; James Willey, Jr. of George, Miles & Buhr; Thomas Martens of ERA (Economics Research Associates); Bob Rodgers of Orth-Rodgers & Associates, Inc.; Derrick Kennedy of Orth-Rodgers & Associates, Inc.; and Laf Erickson of Atlantic Resource Management, Inc.

Mr. Schrader stated that the project site is owned by J. G. Townsend & Company; that a similar application for the project site was previously withdrawn as a result of the public comments regarding the size of the project and the size of the proposed shopping center; that in response to comments, the project was scaled down and re-presented to PLUS; that as a result of the PLUS comments, it was scaled down again by another 67,000 square feet to 45.77 acres; that the project is located across Kings Highway across from the Cape Henlopen High School; that it is located at the corner of Gills Neck Road; that the project consists of 45.77 acres more or less; that there is an additional tract of land containing 22 acres that was withdrawn which was a

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part of the old application but is not a part of this application; that the site is currently located in an AR-1 Agricultural Single-Family Residential District and it is used for the farming operation of J.G. Townsend, Jr. Co.; that this property has been characterized as an orphan farm as it is the last remaining farm of this size in this particular area; that the site is surrounded by development – either residential, commercial, high school, and the City of Lewes; that they are proposing a rezoning to a CR-1 Commercial Residential District with a large scale use which is permitted per the County's ordinance along a major arterial roadway; that the site contains 300,000 square feet of proposed commercial use; that an enclosed mall is not proposed; that it would be a mall with many different structures; that the site is located in an Environmentally Sensitive Developing Area under the County's Comprehensive Plan of 2008; that under the State Strategies for Spending, the site is located in a Level 2 Area and a Level 3 Area; that there are public highways and private roads involved in this project; that sanitary sewer service will be provided by Sussex County as a part of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that water will be supplied by Tidewater Utilities; that there are no delineated State or Federal wetlands on the site and no buffers will be required under any of the PLUS comments since any portion of the site is 500 feet from any known wetlands; that this is not a site plan review; that 15 percent of the site is dedicated structure; that the project will be phased in; that there are eight buildings proposed; that there are no grave sites on the project site; and that there are a lot of things that have been read, said, and heard about this project that are not true.

Mr. Schrader stated that he submitted a legal Memorandum, dated September 29, 2009, to Council President Vance Phillips in rebuttal to Mr. Sergovic's argument and interpretation that (1) the application is procedurally defective and should not be heard; (2) that the application is not in compliance with the Sussex County Comprehensive Plan Update; and (3) that the application is not in compliance with the Zoning Code because the project is not located on U.S. Route 9. The letter contains argument regarding the following procedural issues: (a) Good cause shown for withdrawal of Change of Zone No. 1630 and (b) No Ordinance is required to give Change of Zone No. 1690 expedited treatment. The letter also contains argument regarding the following issues: (1) Change of Zone No. 1690 complies with the Comprehensive Plan Update, (2) Table 8 and Large Scale Uses in the Environmentally Sensitive Developing Area, and (3) Change of Zone No. 1690 complies with the Sussex County Zoning Code. Mr. Schrader noted that there were three map attachments to the letter which include a copy of the 1957 maintenance map for Sussex County showing Kings Highway proceeding into Lewes; by 1985, it had become U.S. Route 9 and was a by-pass to the Cape May-Lewes Ferry diverting traffic away from downtown. Mr. Schrader's letter, with map attachments, were made a part of the record.

Mr. Schrader reported that DelDOT has entered into a Memorandum of Understanding with the Applicant for certain highway requirements and that off-site improvements will be made. Mr. Schrader distributed a list of the off-

site improvements and the document was made a part of the record. Mr. Schrader stated that Secretary of Transportation Carol Ann Wicks and the County's Comprehensive Plan designate Kings Highway as U.S. Route 9. Mr. Schrader stated that when the ordinance was drafted in 1991, it was intended that Kings Highway would be a major arterial roadway and when an ordinance was written creating CR-1, it recites Section 99-5 (Subdivision Code); and that this site is located on a major arterial roadway and the CR-1 classification is something that can take place at this particular site.

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(continued)

Mr. Schrader reported that the review by the Office of State Planning Coordination (PLUS) did not result in any objection to this project and that DelDOT did not have any objection to this project.

Mr. Kea stated that the project site is located in one of seven growth areas enumerated in the Comprehensive Plan; that it is in an area where infrastructure exists to support development or where it has been or will be provided by the developer; that the site is surrounded by existing or previously approved commercial, single family and high density multi-family residential development; that this is an urbanized area; that there is a demand for over 350,000 square feet of commercial space in the area; that the health, safety and welfare of the citizens of the County will be served by the application of this land use to the property as it relates to: (1) health: a) nutrients will be reduced, b) localized, shallow, unconfined aquifer will be recharged through the use of Green technologies, c) use of ground water will be reduced by elimination of agricultural water wells or conversion of them to residential/commercial irrigation purposes, d) multi-modal transportation choices will allow non-vehicular access to the site thus reducing local vehicular trips, e) providing shopping/entertainment venues closer to nearby residents will reduce and shorten vehicular trips thus reducing carbon dioxide output; (2) safety: a) transportation improvements at the cost of the developer, b) because traffic movement will be improved at intersections, evacuation in case of emergency will be improved, 4) incompatible farm vehicle traffic will be reduced when the on-going farming operation relocates thus improving safety; welfare: a) temporary and permanent jobs will be created, b) there will be tax benefits to State and County governments, c) anchor stores will provide a benefit to other commercial uses in the area, d) the commercial center will serve the needs of the citizens of the County and the City of Lewes and will serve the needs of tourists attracted to the area, e) the proposed 100 space parking lot for potential future shuttle use will benefit the merchants of Lewes and shuttle users; f) the proposed 25 space cyclists parking area will benefit those using the bike trail and will add convenience; g) sewer and water service can be made available to the surrounding parcels; that opposition from the City of Lewes and associated organizations will be based on one concept – that the material in the Exhibit Book doesn't mean what it says; that the Exhibit Book material is provided by professionals and follows the County Comprehensive Plan; that there will be fully signalized pedestrian oriented traffic signals; that the Council will hear that Beebe Hospital is in opposition to the application; that this is not the case; that what they said is they are concerned about the traffic; that Mr. Fried and his Board were

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unfamiliar with the traffic improvements proposed by the Applicant; that the statement that there is a 1,000 to 1,500 percent change in traffic is untrue; that there is a 30 percent change in traffic; that DelDOT has stated that the improvements will result in an acceptable level of traffic movement; that there will not be commercial on the other 22 acres; that the YMCA is going on the 22 acre site and there is a Memorandum of Understanding that demonstrates this; that they will not harm the Lewes water wells; that there are sediment and erosion control laws, and stormwater management laws, which will be complied with; that there is the Pollution Control Strategy, requiring a reduction of nutrients to a minimum of 40 percent; that if the farm is taken offline and replaced with a shopping center, nutrients will go down; that the opposition will state that there is a 24 year oversupply of commercial in this area; the truth is that commercially zoned land does not equal an oversupply of uses, they have to be built to be an oversupply; that the truth is the vacancy rate is 4 percent unless you count the un-built Vineyards; that Lewes wants a green belt without having to annex or buy the land; that they want to cut out the portion of the County's Comprehensive Plan that was legally adopted and replace it with the Future Scan Plan that was developed.

The Memorandum of Understanding with the YMCA was made a part of the record.

Mr. Moorshead stated that the City of Lewes operates a well field that is perpendicular to Kings Highway across from this site; that concerns have been expressed about the quantity and quality of that water; that an area around the well field has been designated as a source area by DNREC, which is given special protection; that the proposed land use is compatible with those protections; that what is being proposed is not an industrial hazardous waste site; that it will not be a hazardous waste site; that the land is presently a farm field that is irrigated and therefore, it presently has impacts on the quality and quantity of water; that the irrigation of fields takes water that would have gone to recharge and move towards the City of Lewes' well field; that the agricultural well pumps it out of the ground and approximately 60 percent evaporates; that removing that well will increase recharge, which is defined as water that reaches the water table; that the proposed project will have a positive effect on the Town of Lewes' well field in that there will be an increase in water quantity and it will eliminate a major source of nitrogen; and that the Applicant proposes to collect rainwater on the site, treat the rainwater, and recharge it underground.

Mr. Willey stated that the County's new ordinance on groundwater protection states that roof drainage should go directly to bio-retention facilities; that this is what they propose; that the Preliminary Site Plan illustrates (1) the proper amount of parking, (2) DelDOT recommended entrance improvements, (3) vehicular and pedestrian interconnectivity to the Governors Development, (4) 100 spaces for potential future shuttle parking to downtown Lewes, (5) 25 spaces for users of the existing and improved multi-modal/bike path, (6) stormwater management areas; that the Environmental Assessment and Public Facilities Evaluation Report is included in the Exhibit

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Book and that it references drainage design and stormwater management, public water supply, public wastewater collection, treatment and disposal, traffic considerations, threatened and endangered species, preservation of non-tidal wetlands, provisions for open space (9.13 acres of green space), provisions for public and private infrastructure, economic, recreational and other benefits, historic and cultural resources, conformity with current Sussex County Comprehensive Plan Update, and mitigation and detrimental impacts. Tom Martens presented an economic analysis of the application. He stated that a Market Analysis and an Economic Impact Analysis are included in the Exhibit Book. Mr. Martens clarified that the supportable square footage will serve existing households also; that the proposal is for a community shopping center with a primary trade area of 5 to 6 miles, based on the road network; that there will be a secondary trade area that would extend beyond that; that it is true there may be competition with other proposed centers; and that the analysis is based on a ten-year time frame.

Jack Hollon advised that, included in the Exhibit Book, are graphics showing the design considerations and architectural character of the project. He stated that they used the community design element in the Comprehensive Plan for a community center with 300,000 square feet of retail and 20,000 square feet of office space; that a regional shopping center is typically an enclosed mall of 400,000 to 800,000 square feet; that any reference to a regional shopping center on this site is not accurate; that a Target or Kohls is a possibility; and that the footprint of the project site is not large enough for a Walmart or Sams Club.

Bob Rodgers presented an overview and graphics of traffic issues, including the actual traffic study submitted in May 2006, road improvements, traffic models, and a traffic simulation. He stated that DelDOT determines the scope of study for a project; that traffic counts were performed for a.m. and p.m. during the week and Saturday; that the most important peak period is the Saturday shopping peak; that the Saturday peak hour is 1,193 trips (a reduction of 700 trips in one hour in comparison to the previous application) that six of the intersection/roadway improvements will be totally funded by the Applicant; that four of the intersection/roadway improvements will be a joint project of DelDOT, the Applicant, and other developers; that it is the intent of the proposed improvements to maintain a Level of Service D; that the intersection of Kings Highway and Gills Neck Road, even with the proposed improvements, may remain at Level of Service E; that improvements are proposed to Gills Neck Road, Kings Highway, Dartmouth Drive, Clay Road and Delaware Route 1 and are included in the Exhibit Book; that bicycle, pedestrian, and transit improvements are recommended, which are also included in the Exhibit Book; that the Applicant will be dedicating a right-of-way on Gills Neck Road and Clay Road for widening; that the off-site construction costs of the improvements will be \$3.6 million and an estimated right-of-way contribution; that the Applicant's total contribution will be \$8.5 million; and that all of this is detailed in the signed agreement with DelDOT. Mr. Rodgers showed DelDOT's simulation model and pointed out errors in that model.

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Mr. Schrader concluded by stating that, at some point and time, this site will be developed and will not remain in farmland; that the application does comply with the requirements of the Comprehensive Plan and Map; that the information presented is included in the Exhibit Book; that the greenbelt around Lewes, which other people seek in this area, is inconsistent with the principles of Livable Delaware; that Livable Delaware calls for all development to be pushed towards Town Centers; that Lewes is a Town Center; that this development is proposed on the periphery of Lewes; that a Letter of No Objection has been received from DelDOT; that there is an Agreement between the Applicant and DelDOT; that the PLUS Report was favorable and there was no objection to this application; that the project will be phased in and will respond to market conditions; that the architecture of the area has been considered; that the Council's decision on this application must be supported by the evidence on the record, not about what is read in the newspapers and not on the placards that appeared before the County building and not about petitions; and that it is the law of this State that land use laws are to be liberally construed in favor of the landowner and that the use is to be favorably construed in favor of the landowner. Mr. Schrader referenced the case of Gibson vs. Sussex County in which Vice Chancellor Strine said "in making a land use approval decision of this kind, the Council is not free to bend to the prevailing breeze, but must rationally and fairly apply its zoning code and regulations".

Public comments were heard in support of the application.

C. W. Mitchell, Anne Colwell, and Georgia Spade of the YMCA spoke in support of the application and stated that the proposed project site is an excellent location for the YMCA to expand its services.

David Horsey spoke in support of the application and stated that jobs are needed in the County and that this project will create construction and other jobs.

At 8:21 p.m., the President declared a short recess.

The President called the Council back into session at 8:37 p.m.

Public comments were heard in opposition to the application.

James Ford, Mayor of the City of Lewes, stated that he was speaking on behalf of the City of Lewes as an elected official representing constituents and their concerns, views and opinions "which by far clearly are objectionable to the proposal"; that in regards to the Future Scan Proposal, there is no intention whatsoever by the City of Lewes to attempt to replace anyone's Comprehensive Land Use Plan with the Future Scan Project but rather they envision the Future Scan Project as a possibility and an opportunity to have discussion with various levels of government and for the adjacent property owners to go through a process that is different than what has been explored

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in the past that would create a better end product for all involved so that the final product is more economically marketable and mobility, environmental issues, etc. can be addressed in an overall broader vision; that the PLUS application is for a rezoning of 68.30 acres; that this Public Hearing references 45.77 acres, leaving 22.53 acres for future development; that the YMCA has been approached and may be in agreement with the Applicant for the use of the 22.53 acres; that since this is the first time this has been stated publicly and since the Public Hearing was advertised for the 46 acres only, that he recommends that the record remain open for a period of time regarding this new information; that the Site Plan and subdivision of land use as presented, meaning 46 of the 68 acres for development at this time, is totally detached from zoning approval; that land use by change of zone would then be regulated by all County Ordinances applicable to that zone: height, setbacks, lot coverage, and permitted uses; that the list of permitted uses adds 45-50 potential commercial land uses as being permitted; that without condition or contingency for the proposed development attached to the zoning change, any one of the permitted uses could be applied to the 68 acres under consideration; that the applicant must provide a need to rezone this land which they have noted; that the City has major concerns with the water issues in this environmentally sensitive area; that since the last application, the Delaware River Basin Authority has presented plans for improvement of the Freeman Highway Bridge and will begin work this winter; that plans do not include widening of the bridge or approaches; therefore, regardless of whatever potential widening or additional lanes are added to Kings Highway, a bottleneck will occur as you approach Lewes from the south; that this will complicate access to the City, negatively impacting transportation services, such as EMS response, ambulance approach to the hospital, police and fire services by Lewes, as well as, support and backup from other agencies; that this will negatively impact the business community as frustrated drivers cannot get to the Lewes downtown area; that the proposed anchor grocery store is yet another threat to the small town quality of life services provided by local businesses, and everyday traffic for residents is degraded; that the City is currently under contract with The Renaissance Group for a study to review carrying capacity of approaching corridors and a potential shuttle jitney service; that final results of the study are pending; that studies indicate failing capacity at times; that while the developer proposed improvements, traffic capacity must increase fourfold to reach demands; that the City has concerns regarding the potential demands placed upon the Lewes Police Department for response and service calls to this area as required when the Delaware State Police is not available; that this has the potential to impact the number of police officers on duty, overtime, and thus a possible financial burden on the taxpayers of the City; that there will be temporary jobs for the construction; that it will do more of job relocation, not creation; that there currently exists a 30 percent vacancy rate of retail in the area, with Nassau Vineyards approved and under construction; that economic demand for all of this retail and commercial use is not available, thus job relocation or shifting will occur before job creation; that they question the Applicant's compliance with Sussex County Code (115-194.3), ES-1 Environmentally Sensitive Development District Overlay Zone, specifically: B-1(c) justifies this is applicable; B-2

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incomplete submission, B-2(d) not addressed surrounding roadway systems adequately of public facility evaluation report; that the City acknowledges that the Lingo and Townsend families have deep roots; that there is no assurance that once this land is up-zoned, it will remain in their hands or be developed as presented; that the next owners may not have the same high standards and sensitivity to local concerns; that if the zoning change is approved, any permitted use recognized by the County commercial zone could be built there; that the County's, not Lewes', density, height, and setback requirements apply; that the City is concerned that the up-zoning will negatively impact the character of the area, the wellhead protection area and create safety issues on the surrounding roads; that the City of Lewes recognizes the need for managed, orderly growth coordinated through various levels of government, property owners and service providers; that Lewes has entered into a Memorandum of Understanding with Sussex County and has and will continue to attempt to strengthen this agreement through intergovernmental cooperation; that Lewes has hired planning consultants and is reviewing carrying capacity of roads as well as exploring local mass transit options using green energy sources; that development should proceed following all best practices, sustainable methods to produce the utmost quality product that is beneficial to the City, County and State residents of today and tomorrow, while offering appropriate economic recovery and employment opportunities for now and the future; that they are seeking to maintain their quality of life; and that the zoning change consideration is not in the best interest of Lewes or Sussex County and he requested that the Council deny the request based on twelve (12) reasons, which were included in his comments.

Mayor Ford submitted his comments in writing and they were made a part of the record including a letter from Dr. Srihari Peri, MD in opposition to the project and expressing concerns regarding his and his colleagues' ability to respond to Beebe Medical Facility; a letter from Noble Prettyman, Cape Henlopen Board Member, in opposition due to anticipated traffic flow of any commercial development on the proposed site, which would create a potential safety hazard for the students of Cape Henlopen High School; and a letter from F. Rogers Jones, President, Board of Trustees, Lewes Historical Society, in opposition to the project due to the historic character of Lewes and for the preservation of Lewes, Delaware's Oldest Town.

Gary Stabley, President, Board of Public Works, stated that he is in attendance at this meeting on behalf of their customers; that they have raised questions and concerns about the safety of their public water supply and the potential negative impact on the City of Lewes' wells and recharge areas; that he questions what the County Council is going to do to see that these concerns are addressed including oversight, enforcement, and funding; and he questioned if roads will be built and if the public water supply will be protected in this region. Mr. Stabley presented an Exhibit Booklet which included his comments and the Board's concerns regarding the proposed project. The Booklet was made a part of the record.

Mr. Robertson stated that the YMCA is not a part of this application and that they would have to submit their own land use application and he asked that the County Council not consider anything regarding the YMCA as it does not have anything to do with the change of zone on this site.

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John Sergovic, Attorney, was present on behalf of the opposition (Managing Growth Around Lewes, Inc. and the Citizens Coalition, Inc.) along with Mike Lenhart of Lenhart Traffic Consulting, Inc.; William Moyer of Moyer Environmental Consulting; Charles A. Hewlett of RCLCO Real Estate Advisors; Gail Van Gilder of the Lewes Scenic Byway Committee; Mike Tyler, President of Citizens Coalition, Inc.; and John Mateyko of John Mateyko Architect, LLC.

Mr. Sergovic submitted an Exhibit Book which included his statement regarding procedural issues, non-compliance with the Comprehensive Plan Update, Large Scale Uses in the Environmentally Sensitive Areas, Council's function regarding compliance with the force of law Comprehensive Development Plan, and violation of the Sussex County Zoning Ordinance.

Mr. Sergovic stated that there are significant legal problems with this application; that his clients are opposed to the approval of this application for up-zoning; that there are two procedural challenges to the consideration of this application by the Commission and County Council: 1) no cause to allow withdrawal of Change of Zone No. 1630 in December 2008; that the Applicants failed to withdraw the prior application per Code; that the Applicant withdrew their prior application before the prior County Council on the day that the Council was to decide; that the Applicant did not say what his good cause was for requesting the withdrawal; that the County Council granted the request of the Applicant to withdraw and to permit expedited review of a new and substantially similar application; 2) no ordinance provision exists to give Change of Zone No. 1690 expedited treatment; that the Applicant should have been required to go through the regular procedure for a change of zone and any expedited review of the application is unauthorized, inappropriate and unlawful; that the Applicant should not have been able to reapply until December 17, 2009; that this is a legal problem created by the prior Council; that the prior Council granted expedited review which is special treatment to the Applicant; that there is precedent in the County's ordinance that says "we have to establish these expedited treatments by ordinance"; that the expedited review should have been granted by ordinance; that the project size is unknown; that the impact that they are reporting is 320,000 square feet; that they question what is the true impact on the County in this location and the cumulative impact if this rezoning is granted; that the Applicant is not giving the entire picture; and that this application fails to comply with the 2008 Comprehensive Plan Update or the Zoning Code.

Mr. Sergovic presented that the alleged reduction from 500,000+/- square feet to 320,000+/- square feet is a smoke screen; that the existing 46 acres can be developed at 500,000 +/- square feet or greater through a simple

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Special Use Exception process before the Board of Adjustment, without State PLUS review, or County Council review; that the Comprehensive Plan identifies preferences between growth areas; that development is encouraged first in the Municipalities, then in the Town Centers, then in the Developing Areas, and lastly in the Environmentally Sensitive Developing Areas; that the Land Use Element for the Environmentally Sensitive Developing Areas provides guidelines for non-residential uses; that while the Comprehensive Plan recognizes that additional commercial uses may be needed, the Comprehensive Plan provides that retail and office uses are appropriate, but larger scale shopping centers and office parks should be confined to selected locations with access to arterial roads; that the Comprehensive Plan directs that large intense shopping centers are encouraged in Highway Commercial areas and identifies the location on the maps; that the Comprehensive Plan's Land Use Map does not support this large scale development at the proposed location; that once the County Council adopted the Comprehensive Plan, the Land Use Map has the force of law; that the Land Use Map does not designate the site for Highway Commercial development; that there is no Highway Commercial shown along Kings Highway; that approving this application despite its not being mapped as a Highway Commercial area is legally impermissible and is confirmed by the Court of Chancery in the case of O'Neill vs. the Town of Middletown; that the Applicant's "Statement of Conformity with the June 2008 Comprehensive Plan Update" report continually repeats itself that they conclude that the property is within a designated Growth Area, the Environmentally Sensitive Developing Area, with a designation of Low to Medium Density, which specifically allows the Commercial Residential District; that it is obvious that the Table 8 reference from the Comprehensive Plan is designed to allocate the intensity of residential densities to those zoning districts permitting residential use; that the application violates the Zoning Code since the site is not on Arterial Route 9; that the purpose of the Commercial Residential District is to provide sufficient space in appropriate locations for a wide variety of commercial and miscellaneous service activities generally serving a wide area and located along major thoroughfares where a general mixture of service activities now exist; that the Code provides that such uses shall be adjacent to a major arterial roadway, as defined by the Subdivision Ordinance to be located where adequate infrastructure is existing, planned or funded and shall be completed prior to the issuance of a Certificate of Compliance; that only Savannah Road meets the Zoning Code location for large scale uses; that the Subdivision Code provides that the Major Arterial Roadway Route 9 is Savannah Road and not Kings Highway, therefore this project will not be located on a Major Arterial Highway and will therefore be inconsistent with both the Comprehensive Plan and the Zoning Code; and that the application is not only incompatible with the current Comprehensive Plan and the Zoning Code, but is actually diametrically opposed to the principles avowed in those mandates governing legal permissible rezoning.

Bill Moyer stated that his review indicates that there is nothing in the Code for Livable Delaware or the Code by which the Office of State Planning

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Coordination (OSPC) operates; that there is nothing that would allow the OSPC to make a recommendation; that the Future Land Use Element of the Conservation Plan Update states that the goal and purpose of the Future Land Use Plan is to conserve the County's agricultural economy by promoting farming and preserving agricultural land values; that the proposed use meets the goal and the proposed land use would deviate from that goal (Comprehensive Plan Update of 2008); that this farm site adjoins the existing 68 acre farm that is in agricultural preservation; that permitted uses in the Environmentally Sensitive Developing Areas includes a range of housing types; that retail and office uses are appropriate but larger shopping centers and office parks should be confined to selected locations with access to arterial roads; that in regards to the Conservation Element, that runoff from the proposed shopping center will include oil and grease from car leaks, improperly discarded used oil, heavy metals from car exhausts, worn tires and engine parts, brake pads, rust, used antifreeze and road salts; that this run-off will eventually make its way to Pot Hook Creek and the Inland Bays; that in regards to the Water and Wastewater Element of the 2008 Comprehensive Plan Update (CPU), the current land use meets the objectives and the proposed land use will deviate from the CPU; that in regards to Water Supply Protection, the current land use allows for low density residential development and the proposed land use will deviate from the CPU; that the Historic Preservation Element of the CPU lists the Townsend Site in Lewes as being on the National Register of Historic Places; that the submitted rezoning application fails to address this goal of the CPU and therefore, is an incomplete application; and that there are insufficiencies of the Environmental Assessment set forth in the George, Miles & Buhr Report for the Applicant dated August 24, 2009. (Mr. Moyer's testimony is included in the Exhibit Book submitted by Mr. Sergovic.)

Gail Van Gilder of the Lewes Scenic and Historic Byway Committee stated that Gills Neck Road and Kings Highway have been designated by the State of Delaware as State Scenic and Historic Byways; that six roads in Lewes were designated as scenic byways which are Kings Highway, Gills Neck Road, Savannah Road, Pilottown Road, New Road and Cape Henlopen Drive; that these roads are some of the most scenic and significant in the State based upon their vast scenic and historic resources; that the Comprehensive Plan references that the purpose of the Byways program is to identify, preserve and enhance roadways that possess outstanding visual qualities and that it is required that a corridor management plan be developed to outline strategies to preserve and enhance the roadways; that the Byways program is a program of both the Federal Highway Administration and DelDOT; that the State program meets federal guidelines and allows the State to designate roads to be eligible to apply for federal funding; that the application poses an enormous risk to the tourist economy and the real estate market for vacation and retirement homes; and that the application will overwhelm the Byway and seriously jeopardize Lewes' appeal as a tourist destination.

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Michael Lenhart presented information to identify the traffic impacts associated with the application and he stated that, included in the Opposition's Exhibit Book is a September 9, 2009 letter from himself to the Planning and Zoning Commission explaining the Comprehensive Plan and its applicability of this project at this site and DelDOT's review. In addition, a letter is included in the book dated September 29, 2009 and he highlighted some points in that letter: that in the Sussex County Code it states that an applicant "shall at a minimum" provide an analysis of the increase in traffic and the effect on the surrounding roadways; that the base for the traffic study conducted on Kings Highway should be 2 residential units per acre; that the applicant's study and the DelDOT review did not look at the existing zoning; that the traffic study was performed on the potential build-out of the commercial zoning; that the Applicant's Traffic Impact Study did not evaluate the impact on several crucial intersections; that an updated Traffic Impact Study has not been performed for this application; that in reference to the trip generation characteristics of shopping centers, pass-by trips are existing trips that are already on the road network, thereby supporting that neighborhood centers serve the existing area and do not draw a significant number of new trips to the site from outside the area; that the size of this project is more than twice the size of the average community shopping center as defined by the International Council of Shopping Centers; that the current AR zoning would allow for a density of 2 units per acre, resulting in 90 units that generate approximately 944 trips per day on an average weekday; that the proposed project would generate a total of 16,336 trips per day on an average weekday; that a shopping center does not have a short peak period that tapers off quickly; that shopping centers begin to generate significant traffic around 11:00 a.m. to Noon and then generate significant and fairly consistent traffic volumes throughout the afternoon and beyond the evening peak period; that these extended periods can have a significant impact on a community and should be considered in the context of a rezoning and the resulting impacts on the health, safety, and welfare of a community; that an average community shopping center would have a trade area range from 3 to 6 miles from the site; that depending on the ultimate tenant mix, this site could be considered a regional shopping center with a trade area range of up to 10 to 15 miles from the site, which could extend to Bethany Beach and Georgetown; that the 23 acre area reduction from the original application could easily be considered in the future for rezoning if this application is approved; that the current concept plan even shows drive aisles and parking in the southern portion of the property that would provide access to the 23 acres in the future; that DelDOT has even commented that they will grant an additional right-in and right-out access to serve the future portion; that the majority of the site is located in an Investment Level 3 Area according to the Strategies for State Policies and Spending; that the site has been identified as within an Area of Concern near the City of Lewes on the Potential Municipal Annexation Areas and Areas of Concern Map in the Comprehensive Plan; that the Comprehensive Plan references that the challenge in the Environmentally Sensitive Developing Areas is to safeguard natural areas and mitigate roadway congestion without stifling tourism and

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the real estate market; that it is obvious on the Land Use Map that there are numerous locations along Route 1 that are intended to be developed with Commercial Residential zoning; that the DelDOT review indicates that three of the study intersections will fail under the total traffic conditions with full build-out of the project; that the Kings Highway/Gills Neck Road intersection is projected to fail without the dualization of Kings Highway; that in consideration of the evidence, it would not be prudent to approve this application when it is acknowledged and proven that significant traffic deficiencies will result, and that future public funds will be needed to address the deficiencies created by this application; and that it is clear that the application is simply not appropriate at this location, does not conform to the Comprehensive Plan, and will have significant impacts to traffic that cannot be adequately mitigated.

Charles Hewlett stated that the existing retail market conditions in the beach area indicate that approximately 2.1 million square feet of existing retail exist; that 90% of it exists along Route 1; that there is a vacancy rate of approximately 30%; that most centers have at least one vacancy; that the current retail market is already 324,000 square feet in oversupply; that there should be a 24 year supply of retail space based on existing projects under construction, and planned and proposed projects; that super stores have a dramatic negative impact on smaller stores; that super stores will draw from larger areas in the 10 to 15 mile radius range; that a 1994 application was considered in close proximity to this site and was denied because: (1) no need was established, (2) the application was not in compliance with the then Comprehensive Plan, (3) other sites were available, (4) job opportunities were only speculative, (5) safety concerns were voiced such as emergency access, (6) infrastructure was inadequate, and (7) the project would not enhance the site; that this application will have serious negative effects on Lewes, the First Town in the First State, and its historic legacy where people can see firsthand restored homes, historic buildings and museums; that the project could impact the Cape Henlopen State Park and the Cape Map – Lewes Ferry traffic; that the use could impact the Cape Henlopen High School and its students, teachers, and buses; that the use could impact ambulance and other emergency services that use Kings Highway to access the Beebe Hospital; that Lewes is already a town center and does not need to be expanded; that the Village of Five Points, only 1 mile from the site, already serves local and regional customers with a supermarket and many other shops and services; that the Vineyards at Nassau project is under construction and will provided more space for retail and offices; that this site will not serve the community; that seasonal traffic swells in the summer creating back-ups that emit exhaust fumes; and that traffic blocks access and strains the infrastructure.

Michael Tyler of Citizens Coalition stated that board members of the YMCA feel they have been lured into being a part of this development; that there is a conflict regarding the location of the site (southwesterly vs. southeasterly); that the site is located on the southeast corner of Road 268 and Kings Highway and Gills Neck Road; that the project will have serious

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negative effects on Lewes, the Cape Henlopen State Park; and emergency responders; that the Village of Five Points lies exactly one mile from its entrance to the proposed Clay Road entrance of this application site; that existing shops, restaurants and supermarket more than adequately serve local and regional customers; that if you add the cumulative traffic impact of the Villages of Five Points with the already approved Vineyards on Route 9, the housing slated for Gills Neck Road and on other roads serving Lewes, then adding this site is ill advised; that the area is already on commercial overload; that the traffic will create air pollution, dangerous driving conditions, and it will compromise safety; that it will foster heavy truck traffic and add to the already burdensome cumulative effect on traffic that no road widening will change from Level of Service F; and that this application threatens the special character of Coastal Sussex – Historic Lewes, Cape Henlopen State Park, the Cape-May Lewes Ferry and the people living in surrounding developments on Lewes' fringes. Mr. Tyler submitted his written comments and they were made a part of the record.

John Mateyko stated that the issue is about people and land and history; that the question is if this land should be rezoned to put a major shopping center there; that traffic is already a problem; that Kings Highway is fixed and cannot be made wider; that there are too many cars and too small of a road; that it will significantly and irrevocably damage the historic character and quality of Historic Lewes; that this rezoning will harm the character of Lewes and with it, jobs, business, business investment, and the tax base for the City and the County; that doctors cannot get to Beebe Hospital now; that 60 percent of the ambulances go to Beebe Hospital; that they have increased their emergency service 58 percent in the last nine years; that the application should comply with the Ordinance (Section 115 – 194.3 Environmentally Sensitive Developing District Overlay Zone) – an analysis of the increased traffic and the effect on the surrounding roadway system; that the Office of State Planning Coordination was supposed to make sure this was done before the application came to the County; that the rezoning will not produce construction jobs in the County; that the jobs in Lewes are based on the historic character of the City (tourism); and that this project will drive out independent business people. Mr. Mateyko submitted his comments in writing which included literature regarding the historic character of Lewes. Mr. Mateyko's submittals were made a part of the record.

Comments in opposition to the application were heard from Jules Jackson, Peter Coveleski, Kathy O'Hanlon, Betsy Farlow, Eve Aldred, Joanne McNaught, Nadine Wick, Ralph Richardson, Rachel Leonardo, Amy Felker, Tom Panetta, Andrew Thomas, Carol Dobson, Sumner Crosby, David Ennis, and Richard Anthony. They expressed concerns about and stated the following: the significance of archaeological sites that would be destroyed by this project; that this site has a role in Delaware's History both for the Native American community as well as for all residents; vehicular fatalities due to collision that would be caused by this project; that the project would create an opportunity for crime; that the entire area

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would change; that a commercial center in Lewes does not make sense; that there will definitely be a traffic impact; that cars already back up on Kings Highway and Gills Neck Road due to ferry traffic; that a traffic light at Clay Road will cause gridlock without the new project; that under today's conditions, a traffic light at Clay Road will result in failing intersections at the high school and back up around Dartmouth Road; that the intersection of Savannah Road and Wescoats Corner and Clay Road is already a poorly designed intersection and it is barely handling the Village of Five Points; that there are safety concerns; that paramedics and patients will have trouble getting to the hospital safely; that the project will be a distraction and a temptation to students at the high school; that students crossing over Kings Highway will be a major safety issue; that school activities take place in the evening hours as well and will be crossing the road at any of those hours; that it is unreasonable to assume that the students will walk to and use the designated crosswalk; that students crossing the road is already a dangerous situation without the proposed project; that the proposed project will have a negative impact on Cape Henlopen State Park, including the habitat; that the Park already experiences over-capacity and has to close at times due to the over-capacity; that the project will cause light pollution; that the Delaware State Park system lacks funding to control existing traffic conditions in the park and surrounding bike trail areas; that Council is requested to vote "No" to help maintain access to the Park and protect environmentally sensitive areas; that Lewes cannot sustain a large shopping center in the off-season; that the project would ruin the downtown area; that the Council needs to start preserving rural characteristics that exist; that there is a fragile eco system in this area; that a commercial enterprise of this magnitude is not needed and it is very dangerous to the welfare of everyone; that the groundwater flow path for the Lewes well field goes through the Brownfield of the proposed project known as the The Arbors of Cottagedale, through the Tidewater well area, and under Route One; that he questions how The Governors, The Senators, and this proposed project will affect groundwater and that a new study needs to be performed; that it is unknown what the damage will be to the well water; that drainage is a concern; that the entire Pot Hook Creek is within the Conservation Easement; that there will be sheet flow of water (running over the ground) on ground that they are trying to preserve and protect from possible artifact or burial sites being disturbed; that the shopping center would have 1,884,447 square feet of impervious surface; that there is concern that there has been some misrepresentation regarding archaeological matters; that traffic already creates a problem for first responders; that Section 115-83-3 of the Code states that this classification can only be approved where adequate infrastructure is existing, planned or funded; that a report from Senator Simpson states that there are no funds and infrastructure isn't planned; and that infrastructure doesn't currently exist.

Betsy Farlow submitted a hand drawn map of the project area. Nadine Wick submitted a petition containing more than 2,300 signatures in opposition to the Lingo Townsend rezoning application. Rachel Leonardo,

Ralph Richardson, David Ennis and Richard Anthony submitted written comments and documents. All submittals were made a part of the record.

Mr. Lank read a letter into the record from Diana Coulton Beebe in opposition to the application. The letter was made a part of the record.

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Mr. Robertson requested that a copy of the Applicant's and the Opposition's power point presentations be submitted and made a part of the record.

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

**M 564 09
Defer
Action
on C/Z
No. 1690**

A Motion was made by Mr. Cole, seconded by Mr. Vincent, to close the Public Hearing and to defer action on Change of Zone No. 1690, filed on behalf of LT Associates, LLC.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea; Mr. Wilson, Yea;
Mr. Phillips, Yea**

**Public
Hearing/
C/Z
No. 1689**

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 LI-2 LIGHT INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 2.702 ACRES, MORE OR LESS" (Change of Zone No. 1689) filed on behalf of O. A. Newton & Son Co. and Perdue Agribusiness, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on September 10, 2009 at which time they recommended approval.

(See the minutes of the meeting of the Planning and Zoning Commission dated September 10, 2009.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing.

Robert F. Rider, President of O. A. Newton & Son Co. was present and he stated that they thought the entire parcel was zoned LI Light Industrial and it is actually zoned part LI and part AR-1; that their intent is to bring the entire parcel into one zoning classification; and that there will be no change in use.

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

**M 565 09
Adopt
Ordinance
No. 2082
(C/Z
No. 1689)**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt Ordinance No. 2082 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A LI-2 LIGHT INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 2.702 ACRES, MORE OR LESS” (Change of Zone No. 1689) filed on behalf of O. A. Newton & Son Co. and Perdue Agribusiness, Inc.

**M 565 09
(continued)**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Vincent, Yea; Mr. Wilson, Yea;
Mr. Phillips, Yea**

**M 566 09
Adjourn**

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to adjourn at 12:50 a.m. Motion Adopted by Voice Vote.

Respectfully submitted,

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