



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF JANUARY 10, 2008

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 10, 2008 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Benjamin Gordy, Mr. Michael Johnson, Mr. Rodney Smith, and Mr. I. G. Burton III with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Shane Abbott – Assistant Director and Mr. Richard Kautz – Land Use Planner.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Minutes of December 12, 2007 as amended, the Minutes of December 13, 2007 as amended, and the Minutes of December 20, 2007 as circulated. Motion carried 5 – 0.

OLD BUSINESS

C/U #1707 – application of **THE KEITH CORPORATION** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a retail store and mini-storage to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 9.47 acres, more or less, lying west of U.S. Route 13, 450 feet north of Route 46 (Elks Road).

The Commission discussed this application which has been deferred since November 8, 2007.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/U #1713 – application of **KEITH SMITH** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for commercial storage buildings to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.2278 acres, more or less, lying north of Route 17, 200 feet west of Road 382 (Route 20) at Roxana.

The Commission discussed this application which has been deferred since December 13, 2007.

Mr. Smith stated that he would move that the Commission recommend approval of C/U #1713 for Keith Smith for commercial storage buildings based upon the record and for the following reasons:

1. The site contains 2 pre-existing structures that have historically been used for commercial uses, including an antique store, upholstery shop and blacksmith shop.
2. The proposed use, with the limitations placed upon it, will provide a location for service uses that will benefit and support the surrounding residents of the County.
3. The use, with the limitations placed upon it, will not adversely affect neighboring properties or traffic in the area.
4. This recommendation is subject to the following conditions:
 1. Only the four-(4) existing steel buildings, in addition to the pre-existing non-conforming structures, shall be permitted.
 2. Only one business or tenant shall be permitted in each of the four-(4) steel buildings.
 3. There shall be no retail sales permitted from the four-(4) steel buildings.
 4. No outside storage shall be permitted, including marine or motor vehicles, trailers or crates.
 5. No manufacturing shall be permitted on site, with the exception of the blacksmith shop.
 6. There shall only be one (1) centralized dumpster on-site, which shall be shown on the Final Site Plan and which shall be screened from view of neighboring and adjacent properties.
 7. Hours of operation shall be from 7:00 a.m. to 7:00 p.m. Monday through Saturday.
 8. A landscaping plan shall be submitted with the Final Site Plan. The landscape plan shall include vegetated buffers along all adjacent properties. The buffer to be consistently maintained for maximum effect of both aesthetic and practical viability.
 9. The Applicant shall comply with all DelDOT requirements concerning the project.
 10. Outside lighting shall be screened with downward illumination to avoid shining on neighboring properties.
 11. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

C/U #1714 – application of **BERNARD DERA** to consider the Conditional Use of land in a GR General Residential District for a multi-family dwelling structure (4 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County,

containing 32,653 square feet, more or less, lying west of Route 357 (Cedar Neck Road) and north of Assawoman Canal.

The Commission discussed this application which has been deferred since December 13, 2007.

Motion by Mr. Smith, seconded by Mr. Gordy and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/Z #1631 – application of **GARRETT W. HERRING (HERRING REAL ESTATE, LLC)** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying southeast of Route 24, 1,000 feet northeast of Love Creek, to be located on 1.0 acre, more or less.

The Commission discussed this application which has been deferred since December 13, 2007.

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1631 for Garrett W. Herring (Herring Real Estate, LLC) for a change of zone from AR-1 to B-1 based upon the record and for the following reasons:

1. The location was previously approved by the Planning and Zoning Commission and County Council for a Conditional Use. That Conditional Use was limited to a Chiropractic Office only. The applicant no longer operates a chiropractic office at the site.
2. B-1 Neighborhood Business District zoning is appropriate for the site, since it would be consistent with other uses on the south side of Route 24, including a B-1 re-zoning on the property immediately to the east of this site.
3. The zoning would be consistent with the purposes of the B-1 District which are to provide retail shopping and personal services to serve the needs of a relatively small area, primarily nearby rural, low-density or medium-density residential neighborhoods.
4. The re-zoning will not adversely affect neighboring properties or traffic in the area.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 5 – 0.

ORDINANCE AMENDMENT – AN ORDINANCE TO REPEAL CHAPTER 80, RELATING TO LOT MAINTENANCE AND TO AMEND CHAPTER 115, ZONING, ARTICLE, XXV, SECTION 115-191 RELATING TO THE PARKING, STORAGE AND MAINTENANCE OF VEHICLES AND BOATS AND PROHIBITED GROWTHS AND ACCUMULATIONS ON NON-AGRICULTURAL LANDS, WASTE MATERIALS OUTSIDE COMMERCIAL PREMISES, ENFORCEMENT

METHODS AND THE VIOLATIONS AND PENALTIES RESULTING THEREFROM.

The Commission discussed this Ordinance Amendment which has been deferred since November 8, 2007.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

PUBLIC HEARINGS

Mr. Robertson described how the public hearings would be conducted.

C/Z #1630 – application of **L. T. ASSOCIATES, LLC** to amend the Comprehensive Zoning Map 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, land lying at the southeast corner of the intersection of Road 267 (Gills Neck Road) and Road 268, to be located on 68.30 acres, more or less.

The Commission found that prior to the meeting the Applicants had submitted an Exhibit Booklet which contains a listing of the project team, a project overview and photo review, a copy of the Office of State Planning Coordination final response with copies of the Applicants responses to the concerns raised by the agencies during the PLUS review, a copy of the application for rezoning with a Development Report and a report on compliance with zoning, a series of maps, survey, and a site data report, a memo referencing contact between one of the developers and representatives of the City of Lewes Board of Public Works, a stormwater concept and memo, traffic and site circulation information, and letters from utility providers offering service.

Mr. Lank provided the Commission with copies of correspondence in reference to this application (C/Z #1630) and Conditional Use #1772 which were received prior to the meeting. The correspondence included comments from the County Engineering Department Utility Planning Division, comments from the Delaware Agricultural Lands Preservation Foundation in reference to both applications, comments from the Sussex Conservation District in reference to both applications, and E-mail and letters in opposition to the application from Richard McKay, Gina Ricker, Jules Jackson, Dr. Peter J. Coveleski, Tiffany B. Derrickson, Chet and Denise Poslusny, Betty B. Farlow, and Michael A. Wheatley.

The Commission found, based on comments received from the County Engineering Department Utility Planning Division, that the site is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that wastewater capacity is available for the project; that Ordinance No. 38 construction will be required; that the current system connection charge rate is \$3,994.00 per EDU; that a connection to the system is not available at this time; that the developer is in the process of completing off-site regional infrastructure and upgrades to serve other development on the same parcel

and in the area; that the developer will construct the connection point for the Village Center; that conformity to the North Coastal Area Planning Study will be required; that connection to the sewer system is mandatory; that a project that does not exceed 410 EDUs would be within the capacity limits of the overall approved concept plan for the parcel; that the project would conform to the West Rehoboth Planning Study and system design assumptions for sewer service; that a sewer concept plan for providing sewer service to the area, including this parcel, was previously approved; 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 this information and requirements are detailed on the approved concept plan, with additional conditions provided by letters dated May 18, 2005 and August 16, 2005; that construction of all off-site sewer and upgrades must be completed prior to any sewer connections occurring; that the developer has previously provided the contribution toward the treatment upgrade and that requirement is complete; that if the layout of a project proposal differs significantly from the original shown of the approved concept, it will be required that a revised concept plan for the proposed project be submitted for review and approval prior to the submittal of any construction plans; that the proposed development will require a developer installed collection system in accordance with Sussex County standard requirements and procedures; that the County Engineer must approve the connection point; that the plan is different from the approved concept plan and a revised concept is required; and that the previously approved concept plan shall also be submitted with all future plan submittals.

The Commission found, based on comments received from the Delaware Agricultural Lands Preservation Foundation, that at the urging of agricultural interest in the immediate area and in addition to comments already supplied to the PLUS process the Foundation would like to raise concerns about serious traffic problems which may arise; that agricultural operations in the area will be adversely affected by significant increases in traffic volume and resulting congestion; that like other residents, farmers are impacted in their daily lives as traffic congestion increases causing serious safety issues, time delays, increasing energy consumption and air pollution; that more importantly traffic congestion seriously impacts the movement of farm machinery between parcels of land which farmers rent or own; that these movements of farm machinery have increased since modern farming conditions dictate that farmers must utilize more parcels of land, separated by greater distance than before; that farmers busiest times of the year coincide with peak traffic volumes at resort areas; that the combination of events has made such areas more and more dangerous for farmers and the traveling public; and that the Foundation urges the County Council to consider the traffic impacts on the health and safety of all concerned before reaching a final decision on this project.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Downer sandy loam, Fort Mott loamy sand, Greenwich loam, Hammonton sandy loam, Hurlock sandy loam, Manahawkin muck, and Transquaking and Mispillion soils; that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain

vegetation; that the site has an area of hydric soils and that the developer will be required to follow all State and Federal wetlands requirements; that a storm flood hazard area is affected since some flood zones exist on the site; that it may not be necessary for any off-site drainage improvements; that the developer shall be required to follow State sediment and stormwater requirements; and that no tax ditches are affected. Attached to the memorandum were copies of a soil map, map legend, and map information on the soils of the area, a soils interpretation report, and a report on Prime and other important farmlands.

The Commission found that the letters received in opposition referenced concerns about the lack of any upgrades to the road system; that the traffic situation is getting unbearable during summer months; the number of units and the size of the commercial project; the lack of green space; that the project should not be considered by the County until studies have been completed by DelDOT, the City of Lewes and the Delaware River and Bay Authority who are responsible for public services; the overcrowding on Kings Highway and Gills Neck Road; that single family residential use is more appropriate on Gills Neck Road; the protection of Indigenous burial grounds on and/or surrounding this property as well as the potential disastrous impact on the environment, wildlife, infrastructure and citizen quality of life; the lack of support from area residents on the continuation of unchecked urban sprawl; that Gills Neck Road is presently impacted by rapid development by projects and the bike trail and have led to a constant flow of construction; that additional projects have already been approved and the traffic from those undeveloped projects have not yet been experienced; that safety concerns need to be addressed; that the Cape Henlopen High School is directly across Kings Highway from the site; that all of the Cape May –Lewes Ferry traffic travels this road segment; that having a commercial use along the road will be distracting to the students; that the commercial use will be an unsafe situation as the students will walk or drive to it; that groundwater pollution is a concern on the public water wells of the City of Lewes; that water quality and quantity are a concern; that the County needs to look at the cumulative impact that this project and the already approved projects will generate; that projects of this size impact schools, the hospital, police and fire infrastructure; that the amount of traffic generated impacts pedestrians, bikers, runners and joggers; that volunteer fire, ambulance, EMTs, paramedics and any member of the public who needs their services will be jeopardized; that emergency evacuations may be difficult since there are only three roads leading out of Lewes; and that flooding should be a concern.

The Commission found that Paul Townsend of L.T. Associates, LLC was present with Dennis Schrader, Attorney, of Wilson, Halbrook and Bayard, Tom Ford of Land Design, Inc., Stephen McCabe of George, Miles & Buhr, LLC, Derick Kennedy of Orth-Rodgers Traffic Group, Tucker Moorshead of Earth Data, and Jeremy Combine of Tidewater Utilities, Inc. and that they stated in their presentations and in response to questions raised by the Commission that the site is adjacent to the Senators Subdivision and a part of the same tract; that the site is across from the Cape Henlopen High School; that the site contains 68.3 acres; that they are proposing to develop the site with 520,000 square feet of commercial retail and associated uses; that the site is located within the Environmentally Sensitive Developing Area according to the Comprehensive Plan

Update; that the site is located within Investment Level 2 and Investment Level 3 according to the State Strategies; that according to the PLUS report the Delaware Department of Agriculture and DelDOT had no objections; that they started planning for this project in 2003 and 2004; that they met with DelDOT in 2005; that since their proposal exceeds 75,000 square feet they will comply with the provision of the Zoning Ordinance for Large Scale uses; that the site has been farmed by the Townsend family for over 100-years; that they started developing portions of the site in the 1980s; that they have developed the Wolfe Runne Subdivision, the Wolfe Pointe Subdivision, the Hawkseye Subdivision; that they are proposing the Senators Cluster Subdivision, the Governors Multi-family project, and this project; that this application is for a zoning change on a principal major highway, Kings Highway, where a mix of commercial/retail uses exists; that the project will be served by County sewer and public water; that there are no woodlands on the site; that there are no wetlands on the site; that interconnectivity is provided between this site, through the Governors project and the Senators cluster subdivision, to the Hawkseye subdivision; that the projects will be walkable and bikeable; that Hite Consultants have reviewed the site for archaeological and found three areas of concern, and that these areas will not be disturbed; that the conservation lands have been included in the calculations for the Governors project; that a Traffic Impact Study has been prepared and submitted to DelDOT; that DelDOT has not yet responded to the Study; that traffic counts were performed in the Summer of 2005; that DelDOT is doing a regional study for the area; that changes are planned for Gills Neck Road, which include widening, flattening out a curve, traffic improvements, plantings, and a multi-modal path; that the letter from the Office of State Planning Coordination references that: the State has no objections to the development of this property; the State appreciates that no wooded area or wetlands will be disturbed for the stormwater management areas; and that DNREC had concerns regarding the impervious surface calculations; that tidal wetlands are at least 600-feet from this site; that at least 25-foot wide setbacks are proposed from any non-tidal wetlands; that Best Management Practices will be utilized in maintenance of the site; that agricultural wells already exist on the site; that Tidewater Utilities, Inc. will provide central water and that wells to the site are not to be located on the site, therefore, there will be no competition with the City of Lewes; that no rare or endangered species were found on the site; that a 60-foot wide landscape buffer is proposed along Kings Highway and Gills Neck Road; that the streets and driveways will be built to County specifications; that the site is not located within a Flood Zone; that the area has a mix of uses, including, but not limited to churches, banks, funeral homes, doctors offices, attorneys offices, stores and shops; that access standards will be met; that entrances will be shared; that pedestrian and transit accommodations will be provided; that water recharge maps and State Resource maps have been reviewed; that 5,900 linear feet of multi-modal paths are proposed; that 11,000 linear feet of sidewalks are proposed; that the project will meet all County height and bulk requirements; that the County Phase IV Service Area map of 1999 allocated 4 EDUs per acre; that this project will not exceed 2 EDUs per acre; that the sewer force main installed can handle up to 3,000 units; that all stormwater management facilities will be on site; that the project should have no negative impact on the City of Lewes sewer or water services; that the project is located in a high recharge area; that on-site irrigation wells limit recharge; that farming puts a lot of nitrates into the groundwater; that development of this project will eliminate competition

for water, since the project will not be utilizing on-site water; that the City of Lewes wells are starting to see high levels of nitrates; that the net impact will be a decrease in water needed; that the project conforms to Livable Delaware; that they are looking for quality retailers; that they have commitments from a grocery, sporting goods, banks, and restaurants; that the bikepaths and pedestrian improvements improve the site; that they cannot comment on the Traffic Impact Study since DelDOT has not responded yet; that it is extremely difficult to farm in this area; that it is their intent to serve a regional shopping need and not to impact the City of Lewes; that a performing arts center is not a part of this application; that theatres may be permitted; that parking has been designed to relate to the large scale use by proposing 2,970 parking spaces; that the site could be developed as a 280-lot subdivision; that the site is adequate to meet the demand; that a minimum setback of 60-feet is proposed from the front property line to any parking; that DelDOT has agreed to the location of entrances and the scheme of improvements to Gills Neck Road; that DelDOT is scheduled to meet with Orth-Rodgers Traffic Group on Friday, January 11, 2008; that underground infiltration can be provided; that stormwater management outfall will drain into Pot Hook Creek; and that they have not done a marketing study and that they have deferred offers for over 20-years.

The Commission found that Joe Hocker, Ted Nowakowski, Jr. and Kevin Klabe were present in support of this application and stated that the use would create a convenience to shopping to take pressure off of downtown Lewes; that the developers do a good job on all of their projects; that the use would be an economic benefit to the area by the creation of jobs; and that the use will enhance and serve the homes in the area eliminating the need to travel on Route One.

The Commission found, by a show of hands, that 3 people were present in support and that 56 people were present in opposition.

The Commission found that James L. Ford, III, Mayor of the City of Lewes, was present and submitted and read comments relating to this application and Conditional Use #1772. In summary Mr. Ford pointed out the opportunity to gather information regarding stormwater management and the monitoring of the water recharge area for the City of Lewes; that upon approval of prior subdivisions and developments fronting Gills Neck Road, known as Breakwater and Cadbury of Lewes, part of the conditions of stormwater management were dictated by an agreement to collect and resupply the area with as much water as possible pertaining to impervious surfaces; that data should be available as to the success or failure of this engineered stormwater management system; that this information, as well as the soon to be released Traffic Impact Study for the entire area, should be reviewed and evaluated prior to any final decision on this request, particularly since this request pertains to a consideration for a Conditional Use and a zoning change; that coupled with the fact that the City and the County are embarking on discussions regarding land use, the City respectfully requests that final consideration and any formal decision regarding any of these projects be considered after the information is gathered and dialogue and discussion can take place.

The Commission found that John Sergovic, Attorney, was present representing the “Citizens Advocating Livable Lewes”, the “Managing Growth Around Lewes Coalition” and the “Citizens Coalition, Inc.” and stated that the Commission must consider all the uses within CR-1 zoning; that the proposed use contains 520,000 square feet which exceeds the 75,000 range of a shopping center in a B-1 Neighborhood Business District; that this square footage is almost 7 times greater; that the Applicant has not shown that the CR-1 zoning can come into compliance with the existing Comprehensive Plan or the proposed Comprehensive Plan Update; that this rezoning should not have been expedited; that a Traffic Impact Study has not been available for review and the application should not been taken without one; that the site is located within an Environmentally Sensitive Developing Area according to the Comprehensive Plan Update; that the Update calls for neighborhood shopping, not a large scale shopping center, to serve the rapidly growing population; that the Commission should consider the proposed Comprehensive Plan Update prior to acting on this application; that the existing Comprehensive Plan does not show any commercial zoning in this area; and that 520,000 square feet of retail shopping center is not a neighborhood business center, it is a regional shopping center.

The Commission found that John Mateko, was present representing the “Managing Growth Around Lewes Coalition”, and stated that the Coalition is a community growth organization of Lewes area residents; that traffic is the major concern of everyone; that the existing retail merchants in Lewes and along Route One will be negatively impacted; that this application impacts historic Lewes; that there is a safety concern due to the close proximity to the Cape Henlopen High School; that students will be crossing Kings Highway; that a regional shopping center should not be located across from a high school; that the proposal is not in compliance with the Comprehensive Plan; that Kings Highway is a major evacuation route; that Kings Highway is also an ambulance route to Beebe Hospital; that the current traffic congestion is bad enough and that this plan will only add to the congestion; that an Agricultural Preservation District exist across Gills Neck Road; that a 520,000 square foot retail center is not a neighborhood village type shopping center; that the overall project could be a good project without the regional shopping center; that Lewes is a destination area and this project will impact that designation; and that a neighborhood is considered within ¼ mile for neighborhood shopping.

The Commission found that Mr. Mateko submitted a letter from Randall Arendt which references that rezonings are discretionary matters, not entitlements, and require the Commission to weigh the facts of each case and to render decisions consistent with its established policies, in the public interest; that rezoning should always be consistent with officially adopted Comprehensive Plan policies; that this application could take months to thoroughly review in a professional manner, in the public interest; that the DelDOT cumulative traffic analysis has not yet been completed by that agency, and has not been made publicly available to date; that only after that highly relevant traffic data is in hand, and time has been provided for its review, can one definitively determine what kind of transportation improvements should be required of the Applicant; that without access to basis traffic data to inform and guide the public decision-making process, it seems to be extremely premature to consider an application for such a large-scale development, which

can be reasonably expected to produce very significant long-term effects; that the County should focus particular attention on the Comprehensive Plan wording concerning the provision of village-scaled convenience shops; that if this proposed development would encompass more than a half-million square feet of commercial floorspace, is it not logical to conclude that it has been designed to attract destination shoppers from a wide catchment area around the country; if so, one might ask whether this is an appropriate land use for this particular location; and that his comments are raised in the public interest, as the Commission weighs the merits of the current application and its consistency with established, official land use policies of the County.

The Commission found that David Ennis was present representing the "Citizens Advocating Livable Lewes" and stated that the citizens are concerned about overgrowth around Lewes; that the Blue Hen Mall ruined up-town Dover; that the Dover Mall ruined the Blue Hen Mall; that regional shopping centers cause public safety issues; that some Del State students have been killed by traffic; that the citizens are concerned that high school students will cross Kings Highway to get to this project; that he has concerns about the proffer ordinance; that run-off and drainage are major concerns; that the citizens are already having problems with drainage on New Road and Pilot Town Road; and that the ten heaviest rains in the area should be modeled to establish criteria for development of this site, if it were to be approved.

The Commission found that Michael Lenhart of Lenhart Traffic Consulting, Inc. was present, submitted written comments, and stated that he could not obtain a copy of the Traffic Impact Study from Orth-Rodgers Traffic Group or DelDOT; that he has been unable to provide an assessment of the traffic impacts that would occur as a result of this rezoning; that one of the primary tests of rezoning is that the proposed change in land use will not be detrimental to the general health, safety, and welfare of the citizens, environment, traffic, etc. in the surrounding area; that lacking this information, it would be premature for the Commission to recommend approval or the County Council to approve any rezoning of this magnitude; that the site is located in the Environmentally Sensitive Developing Area; that the Comprehensive Plan provides: that the purpose of the Environmentally Sensitive Developing Area is to recognize that the Inland Bays are a major resource of the County and must be protected from insensitive development; that the Environmentally Sensitive Developing Area is defined as a developing district with special environmental design and protection requirements; that development has increased traffic congestion and caused roadway system inadequacies; that Route One primarily serves the coastal developing area and is already subject to seasonal traffic congestion, and that transportation improvements will be required to accommodate future growth; that non-residential uses should be limited to neighboring shopping and businesses to serve the rapidly expanding population; that village scale shopping centers are the preferred location for these services; that the Institute for Transportation Engineers defines shopping centers into four categories depending upon the size of the center; that neighborhood shopping centers are typically +/- 50,000 square feet; that community shopping centers are typically +/- 150,000 square feet, but could range up to 450,000 square feet; that regional shopping centers are typically +/- 450,000 square feet, but could range up to 850,000 square feet; that super regional centers are typically +/-

800,000 square feet, but could range upward to 1 million square feet; that the Institute for Transportation Engineers has conducted studies for shopping centers in each category and that the data shows that neighborhood centers have a large percentage of pass-by traffic; that pass-by trips are existing trips that are already on the road network, thereby supporting that center which serves the existing neighborhoods and do not draw a significant number of new trips to the site from outside the area; that as the size and scale of the shopping center increases, the pass-by rates decrease indicating that the center no longer serves the neighborhood, and has a draw from a much larger area, bringing new traffic into the area from a much larger region; that development of the site with residential units at a rate of 2 dwelling units per acre would generate approximately 1,380 trips per day; that the proposed rezoning would generate approximately 12,843 more trips or an increase of approximately 931% over the current zoning of AR-1; that the residential projects planned along Gills Neck Road will generate additional traffic trips; that the Zoning Ordinance identifies B-1 as the appropriate zoning category for this type of development and states that B-1 should not exceed 75,000 square feet of commercial development; that this zoning definition matches the definition in the Comprehensive Plan as well as the definitions of neighborhood shopping centers, as defined by the Institute of Transportation Engineers; that a neighborhood shopping center would generate only 20% of the traffic that would be generated by a regional center; that CR-1 zoning is not appropriate at this location; that the CR-1 also contains language that requires a 20% increase in parking and results in an additional detrimental impact on the environment by increasing the impervious area; that the PLUS reports confirmed that the impervious area for this project would be a minimum of 61% and that the Applicant stated that this could increase to as much as 80%; that this does not conform to the goals of the Comprehensive Plan; that B-1 zoning would be more appropriate and allows for uses that would serve the existing and proposed residential uses surrounding the neighborhood; that the approval of this rezoning will result in dramatic impacts to traffic congestion along Route 9 and particularly at the intersection of Route One, which is already experiencing severe congestion as confirmed and acknowledged in the Comprehensive Plan; that rezoning is not a matter of right and that the Applicant must prove that the rezoning will not be detrimental to the health, safety, and welfare of the public; that the rezoning will have a detrimental impact on traffic and to the environment that cannot be adequately mitigated; and that no recommendation for approval should be issued until the impact studies have been completed and released for review since it would be impossible to evaluate the impact on health, safety, and welfare until this information is completed and fully understood by the public and approving agencies.

The Commission found that Michael Tyler, President of Citizens Coalition, Inc. was present, submitted written comments, and stated that in 1994 he was present before the Commission with petitions containing 1,700 signatures in opposition to an outlet center at Route One and Kings Highway; that that application was denied; that this application will have a serious negative impact on Lewes and its important gateway; that the use goes against the Comprehensive Plan as well as the revision still in draft form; that the current Plan references that commercial uses should be limited to neighborhood shopping and businesses to serve the rapidly expanding population and that village shopping centers are the preferred location for these services; that the wording is weak as written; that the

location is still environmentally sensitive and a commercial development of this scale cannot benefit the environment or the people who are also a part of this environment; that Kings Highway is not a major arterial road; that Route 9 from its intersection with Route One to the southwesterly limits of the City of Lewes is in reality the gateway, not only to historic Lewes but the Cape Henlopen State Park and the Cape May-Lewes Ferry; that such a gateway road requires extra protection from massive commercial intrusions in order to maintain traffic flow and carrying capacity; that millions of vehicles use Kings Highway every year; that the Village of Five Points, exactly one mile from it's entrance to this proposed entrance already serves local and regional customers with a supermarket and other services; that another commercial hub will be no benefit; that the cumulative impact of the Village of Five Points and the Vinyards project on Route 9 will create commercial gridlock in the area; that this site will not serve the community; that the 2003 State Route One Land Use and Transportation Study group had an emphatic comment not to permit any commercial town center east of Route One; that Lewes was already considered a town center at that time; that it was noted in that Study that commercial development would develop according to current zoning; that impervious surface of pavement and buildings pose an imminent threat to well head protection and jeopardizes water resources for Lewes and the entire area; that we cannot afford to continue to cover critical recharge land and expect the water supply to continue as if nothing has occurred; that traffic is another key concern; that traffic already backs up with ferry traffic and school traffic year round; that traffic creates air pollution and reduces the quality of life; that traffic creates dangerous driving conditions; that a large commercial complex in this area runs counter to good planning and long range vision for the well-being of the residents of the County; and that this application should be denied.

The Commission found that Richard Anthony was present representing "Plan Delaware", "Save Our Coastal Communities", and the "Sierra Club", submitted written comments and stated that he supports the comments made by the City of Lewes, and that he is concerned about the density trade ordinance. In summary Mr. Anthony's comments included, but were not limited to, that regulations shall be uniform for each class or kind of buildings throughout any district; that regulations shall be in accordance with the approved Comprehensive Plan and shall be designated and adopted for the purpose of promoting the health, safety, morale, convenience, order, prosperity, or welfare of the present and future inhabitants of the County, and shall include the lessening of congestion in the streets or roads or reducing the waste of excessive amounts of roads, securing safety from flood, promoting such land use as will tend to facilitate and provide adequate provisions for transportation, water and air pollution abatement, protection of the tax base, and securing economy in governmental expenditures; that the regulations shall be made with reasonable consideration of the character of the particular district involved, its particular suitability for particular uses, and the conservation of property values and natural resources; that no development shall be permitted except in conformity with the land use map or map series and with land development regulations enacted to implement the other elements of the Comprehensive Plan; that in reference to the consistency with the Comprehensive Plan any proposed intensive use should be required to provide a rigorous environmental study; that Route One is already subject to seasonal traffic congestion between Nassau and Dewey Beach; that the use should be limited to

neighborhood shopping; that prior to approval of any preliminary plan for a major subdivision or development a report detailing required public facilities and environmental impacts must be submitted and approved; that such uses shall be located where adequate infrastructure is existing, planned or funded, and shall be completed prior to the issuance of a certificate of compliance; that the Code references that the site plan should relate to existing and proposed adjoining land uses; that it shall show the general plan for the ultimate development of the property, including as much of the surrounding area as may be necessary for an adequate consideration of the land to be subdivided and shall be adequately drawn to scale; and that at a minimum, because of the application's general insufficiency and inadequacy, it is respectfully suggested, that the Commission return this application and instruct the Applicant to resubmit same in accordance with the requisites established in the governing authorities including, without limitation, the presence of all supplemental and supporting studies and reports, e.g. Traffic Impact Study, Water Drawn Down, Total Maximum Daily Loads compliance data, and in rescheduling any future public hearings provide sufficient time after the submission of all documentation into the public record, for a public examination of the cumulative record thereby assuring due process and substantial justice; and that because of the applications cumulative fatalities it is submitted that this application should be denied.

The Commission found that Ronal Smith, Tom Owen, Michael Kraus, Rick Renalty, Gavin Braithwaite, Patricia Hammond, Roy Fitzgerald, Amy Norgate, Sandra Phelan, Robert Hyberg, Carol Dobson, Dan Fendler, Jules Jackson, Louder Mitchell, Christy McEvilly, and Jenny Keith were present in opposition and expressed concerns about the negative impact on natural resources; that the project doubles the size of Lewes; that the area does not need more shopping centers; that adequate shopping is available; that traffic is a major concern; that the volume of traffic on Kings Highway will be the same as on Route One; that the size and length of the buildings appear to create a Berlin wall; that the number of traffic trips per day will impact Lewes; that the full-time population of Lewes is 3,100 people; 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 City of Lewes was designated by the National Park Service as a "Preserve America Community" in 2006 and was named by the National Trust as one of the USA's Top Dozen Historic Destinations in 2007 and is a premier tourist destination; that it would be inexcusable to turn the town into an eyesore of empty commercial buildings and small-town urban blight; that it is not in the public interest to permit such large scale development in the location proposed to the detriment of an existing historic municipality; that the County must preserve the integrity of its highly successful destinations, such as Lewes; that the streets will be full and the sidewalks empty; that Lewes has a village quality with people walking, biking, etc.; that Freeman Highway and Kings Highway are evacuation routes and must be protected; that in perspective the buildings in this application exceed the square footage of the combined square footage of the Tanger Outlets; that the opening and closing of dumpsters and the parking lot lights will impact all residents in the area; that approval of this size project will impact residents and merchants in the area; that it is questionable if DelDOT has the wherewithal to properly approve the use; that Lewes has unique shops, not retail centers; that additional retail centers do not create a livable

lifestyle; 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 County and State historic staff are understaffed; that approval of this project will eliminate a beautiful farm; that farms are needed to create agricultural products; that roads need historic and scenic designations; that this application does not comply with the Lewes Comprehensive Plan or Livable Delaware; and that they have heard no compelling reasons for this rezoning.

The Commission found at the conclusion of the public hearing that 66 additional letters were submitted into the record in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Johnson stated that he would move that the Commission defer action on C/Z #1630 for L. T. Associates, LLC and that the record be left open to receive DelDOT's comments on the Applicant's Traffic Impact Study and to receive comments from DelDOT about proposed regional traffic improvements to serve the Kings Highway and Gills Neck Road area, and then to leave the record open for 20 days on only the DelDOT information. If this DelDOT 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. Finally, any party shall have until the close of business on January 18, 2008 to submit comments relating to the County's PLUS comments that were inadvertently omitted from the State's April 23, 2007 PLUS letter.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action for the reasons stated. Motion carried 5 – 0.

C/U #1772 - application of **L. T. ASSOCIATES, LLC** to consider the 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 lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 186.56 acres, more or less, lying south of Road 267 (Gills Neck Road) approximately 1,000 feet southeast of Road 268 (Kings Highway).

The Commission found that prior to the meeting the Applicants had submitted an Exhibit Booklet which contains a listing of the project team, a project overview and photo review, a copy of the Office of State Planning Coordination final response with copies of the Applicants responses to the concerns raised by the agencies during the PLUS review, a copy of the application for rezoning with a Development Report, Subdivision considerations, and a report on compliance with zoning, a series of maps, survey, and a site data report, a stormwater conceptual plan and approach, traffic and site circulation information, letters from utility providers offering service, and a copy of the Code of Regulations for the Governors Condominium, and an open space management plan.

Mr. Lank advised the Commission that the copies of correspondence in reference to this application (C/U #1772) were attached to the correspondence relating to Change of Zone #1630 and were received prior to the meeting. The correspondence included comments

from the County Engineering Department Utility Planning Division, comments from the Delaware Agricultural Lands Preservation Foundation in reference to both applications, comments from the Sussex Conservation District in reference to both applications, and an E-mail in opposition to the application from Dr. Peter J. Coveleski.

The Commission found that the comments received from the County Engineering Department Utility Planning Division, the Delaware Agricultural Lands Preservation Foundation, the Sussex Conservation District, and Dr. Coveleski were the same as the comments relating to Change of Zone #1630 and are a part of the record for this application.

The Commission found that the written comments submitted by James L. Ford, III, Mayor of the City of Lewes on Change of Zone #1630 also related to this application and are considered a part of the record for this application.

Mr. Lank advised the Commission that Richard Anthony had submitted written comments along with his comments on Change of Zone #1630 and that his written comments will be a part of the record for this application. In summary Mr. Anthony's comments included, but were not limited to, that regulations shall be uniform for each class or kind of buildings throughout any district; that regulations shall be in accordance with the approved Comprehensive Plan and shall be designated and adopted for the purpose of promoting the health, safety, morale, convenience, order, prosperity, or welfare of the present and future inhabitants of the County, and shall include the lessening of congestion in the streets or roads or reducing the waste of excessive amounts of roads, securing safety from flood, promoting such land use as will tend to facilitate and provide adequate provisions for transportation, water and air pollution abatement, protection of the tax base, and securing economy in governmental expenditures; that the regulations shall be made with reasonable consideration of the character of the particular district involved, its particular suitability for particular uses, and the conservation of property values and natural resources; that no development shall be permitted except in conformity with the land use map or map series and with land development regulations enacted to implement the other elements of the Comprehensive Plan; that in reference to the consistency with the Comprehensive Plan any proposed intensive use should be required to provide a rigorous environmental study; that Route One is already subject to seasonal traffic congestion between Nassau and Dewey Beach; that the use should not increase the density permitted in the zoning district; that prior to approval of any preliminary plan for a major subdivision or development a report detailing required public facilities and environmental impacts must be submitted and approved; that the maximum density shall be the allowable density of the underlying zoning district; that the subdivision plat shall take into account proposals of the adopted Comprehensive Plan as appropriate in the area of proposed development and should relate to existing and proposed adjoining land uses; that it shall show the general plan for the ultimate development of the property, including as much of the surrounding area as may be necessary for an adequate consideration of the land to be subdivided; that such plat shall be drawn to scale; and that at a minimum, because of the application's general insufficiency and inadequacy, it is respectfully suggested, that the Commission return this

application and instruct the Applicant to resubmit same in accordance with the requisites established in the governing authorities including, without limitation, the presence of all supplemental and supporting studies and reports, e.g. Traffic Impact Study, Water Drawn Down, Total Maximum Daily Loads compliance data, and in rescheduling any future public hearings provide sufficient time after the submission of all documentation into the public record, for a public examination of the cumulative record thereby assuring due process and substantial justice; and that because of the applications cumulative fatalities it is submitted that this application should be denied.

The Commission found that Paul Townsend of L.T. Associates, LLC was present with Dennis Schrader, Attorney, of Wilson, Halbrook and Bayard, Tom Ford of Land Design, Inc., Stephen McCabe of George, Miles & Buhr, LLC, Derick Kennedy of Orth-Rodgers Traffic Group, Tucker Moorshead of Earth Data, and Jeremy Combine of Tidewater Utilities, Inc. and that they stated in their presentations and in response to questions raised by the Commission that Mr. Moorshead's testimony from C/Z #1630 be made a part of the record for this application; that this application consists of 186.56 acres and is proposed to be developed with 472 multi-family units to be sold as condominiums; that they are proposing to develop the site through Ordinance No. 1920, the Proffer Ordinance; that according to the Comprehensive Plan Update the site is located in the Environmentally Sensitive Developing Area; that according to the State Strategies the site is located in an Investment Level 3; that streets will be private with sidewalks and street lighting; that the County will provide public sewer service; that Tidewater Utilities, Inc. will provide central water; that this site is the remaining lands from the original tract after creation of Wolfe Runne Subdivision, Wolfe Pointe Subdivision, Hawkseye Subdivision, the proposed Senators Cluster Subdivision, and the proposed Townsend Village Centre; that this site includes lands to be set aside as Conservation Lands; that the Conservation Lands have been used as part of the calculation for the density of this project as allowed in Ordinance No. 1920; that the proposed 472 units are designed to be contained within 53-six unit buildings and 14-eleven unit buildings; that the project seeks 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% of the property; that the Proffer Ordinance only requires 40% open space; 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 active and passive recreational amenities will be created; that the project should be a walkable, bikeable and livable community; that the site is across from the Cadbury project; that natural and archaeological features will be preserved; that a contribution is proposed from each unit sale to emergency medical services; that stormwater will be engineered and treated for stormwater quality through primarily infiltration methods and secondly through wetponds, bio-swales, and forest buffers prior to discharge; that Best Management Practices will be utilized; that water shall be available through Tidewater Utilities, Inc. and shall meet or exceed all Fire Marshal requirements; that wastewater shall be serviced by the County and will be treated prior to disposal; that it is the developers intent to abide by all stipulations of DelDOT in regards to entry improvements and potential off-site improvements and/or agreements; that a review by the Delaware Natural Heritage and Endangered Species database indicates that

there are currently no records of State-rare or Federally listed plants, animals or natural communities at this site; that the site abuts State and Federal wetlands; that no buildings and/or roads have been platted in any wetland areas; that the average forested buffer setback is greater than 100-feet from the wetland edge to the rear portion of the improvements; that the 472 units along with travelways and parking consume 34.18 acres or 18.32% of the total acreage; that the remaining 81.68% of land is open space, active and passive amenities, stormwater management facilities, forest buffers or conservation lands; that roads and travelways will be built to County specifications and remain private; that the plan helps create the opportunity for the regional bikeway connection; that on-site recreational opportunities have been provided for by way of paths, parks, trails, pool and tennis; that property and transfer tax benefits and sewer usage fees will benefit the County; that there are no existing historic structures located on the site; that the developer shall contact the State Historic Preservation Office should any evidence of significant artifacts be revealed in the course of land planning, engineering, investigations, permitting and construction of the project; that they affirm that the preliminary site plan conforms to the provisions of the AR-1 District with Density Trade option and to the Comprehensive Plan in all regards; that the plan is subject to further investigation and development; that the plan represents a realistic and feasible project readily capable of being engineered and in keeping with the provision of the Comprehensive Plan; that they assert that the plan is a superior living environment that is environmentally and socially accommodating by utilization of green site planning concepts; that the compact multi-family concept affords opportunity to the designer to define and designate the inherent qualities and features of the land characteristics best suited for buffers, home sites, open space, drainage basins, archaeological protection, etc.; that the application meets the objectives of the Zoning Code by providing a contiguous Greenway Riparian Conservation Zone along the Pot Hook Creek preserving floodplains, forest, wildlife habitat area, historic sites, and by creating a corridor for natural wildlife and biological reserves, and by the extension of the regional bikeway system connecting the sought after access of Lewes and Rehoboth Beach areas by pedestrian and non-vehicular transportation modes; that the plan benefits efficient use of infrastructure, expanding buffering of the riparian edge, large expanse of lands placed into conservation, enhanced opportunity for open space and passive recreation; that off-site sewer improvements will allow additional lots currently with individual septic disposal systems to connect into sewer thus reducing nutrient loading into the Inland Bay system; that the project will generate almost 2 million dollars for the purchase of open space; that the Cadbury project has a density of 3.71 units per acre; that the Breakwater project has a density of 2.5 units per acre; that the Bay Crossing project has a density of 3.4 units per acre; that they have met with the Cape Henlopen School District in reference to bus shelters; that 23,604 linear feet of sidewalk are proposed; that 5,550 linear feet of multi-use paths are proposed; that natural paths/trails may also be developed; that the Conservation Lands are better suited to be cared for by a conservation group; that all street names have been approved by the County; that the Code of Regulations for the Governors project includes an open space management plan; that the number of units is less than the assumed capacity of the County Sewer Concept Plan; that the site has more recharge area and open space; that the Code of Regulations have been submitted to Mr. Robertson for review; that proposed Findings and Conditions have been submitted to Mr. Robertson; that the

site could be developed with a standard subdivision containing 373 lots; that Ordinance 1920 provides for increasing density for dollars into this watershed area only; that a report is being prepared on the number of students that may impact the school system from this project; that sidewalks will be built on both sides of all streets; that multi-use paths will be 10-feet wide; that prices for homes are estimated at \$350,000.00; that no direct connection to the Cadbury project is proposed; that the Senators Subdivision, this project, and the Village Centre will create a benefit for drainage improvements for all of Gills Neck Road; that no units are planned in flood plain areas; and that the entrance locations are per DeIDOT recommendations.

The Commission found that there were no parties present in support of this application.

The Commission found that John Sergovic, Attorney, was present representing the "Citizens Advocating Livable Lewes", the "Managing Growth Around Lewes Coalition" and the "Citizens Coalition, Inc." and stated that his comments were basically the same as the comments he made on Change of Zone No. 1630; that the lack of a Traffic Impact Study and the Ordinance 1920 expeditious action process creates opposition; that procedural problems affect all, the County, the Applicant and the opposition; that the Comprehensive Plan has not been looked at properly; that regional development causes problems; and that Mr. Lenhart's report should be made a part of the record for this application.

The Commission found that John Mateko, David Ennis, Michael Tyler, and Ronal Smith also opposed this application and expressed concerns that a Traffic Impact Study is necessary to be able to review this type of project; questioning if the road system can carry the traffic for the project; that this project is in the Environmentally Sensitive Developing Area and it is questionable if it complies with the Comprehensive Plan guidelines and the Zoning Ordinance; that National Realtor literature references that growth is OK if it's "Smart"; that people want mass transit, not new roads; that people are less optimistic about their community's ability to provide practical and convenient transportation and manage growth and development; that people have a fear of strip-mall mania; that people prefer redevelopment over building new development; that the City of Lewes has engaged a consultant to study and review the "Showfield" project in Lewes; that the City also needs to review the Traffic Impact Study for this project; that they have concerns about stormwater management, drainage and storm surge; that the cumulative number of homes along Gills Neck Road is a problem; that the developers should consider creating no stormwater ponds and the use of infiltration and bio-filtration; that stormwater ponds can be a nuisance and attract geese and children; that there is a concern about oversaturation; that the Cadbury project is out of character; that the suggested contribution to infrastructure is low; that the Lewes area may need to have a full-time paid fire company; that nitrogen will still be a problem whether the site is farmed or not since developments use a lot of fertilizers to keep things green; questioning why the application was expedited when there was not a Traffic Impact Study; and that the community needs to work together.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Johnson stated that he would move that the Commission defer action on C/U #1772 for L. T. Associates, LLC and that the record be left open to receive DelDOT's comments on the Applicant's Traffic Impact Study and to receive comments from DelDOT about proposed regional traffic improvements to serve the Kings Highway and Gills Neck Road area, and then to leave the record open for 20 days on only the DelDOT information. If this DelDOT 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. Finally, any party shall have until the close of business on January 18, 2008 to submit comments relating to the County's PLUS comments that were inadvertently omitted from the State's April 23, 2007 PLUS letter.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action for the reasons stated. Motion carried 5 – 0.

Meeting adjourned at 11:30 p.m.