

MINUTES OF THE REGULAR MEETING OF APRIL 23, 2015

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 23, 2015 in the County Council Chambers, Sussex 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. Rodney Smith, Mr. I.G. Burton, III, Mr. Michael Johnson and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Shane Abbott – Assistant Director and Ms. Janelle Cornwell – Planning and Zoning Manager.

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of April 9, 2015 as amended. Motion carried 5 – 0.

OLD BUSINESS

Conditional Use #2013 TBHM, LLC

Application of **TBHM, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a meadery microbrewery for the manufacturing of honey wine and tasting to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred and Broadkill Hundred, Sussex County, containing 2.99 acres, more or less, land lying north of Route 9 (Lewes Georgetown Highway) 600 feet east of Coolspring Road and south of Railroad (911 Address: None Available) (Tax Map I.D. #334-4.00-34.00 (Part of) and 235-31.00-15.00).

The Chairman referred back to this application, which has been deferred since the March 12, 2015 meeting.

Mr. Abbott advised the Commission that at the April 9, 2015 there was a consensus of the Commission to leave the record open for public comment on the revised site plan that was submitted by the Applicant and that the staff has not received any written comments to date and that the record may be closed.

Mr. Johnson stated that he would move that the Commission recommend approval of CU #2013 for TBHM, LLC for a meadery microbrewery for the manufacturing of honey wine and tasting based upon the record made during the public hearing and for the following reasons:

1. This site is appropriate for a small and limited business use. It is an irregular shaped parcel bordered by Route 9, a railroad and a B-1 property. As a result, it is not reasonable to be used as a residential property. However, it is appropriate for a conditional use, with conditions and limitations that can be included with a conditional use approval.

2. The use will be consistent with neighboring and adjacent properties and uses, including a B-1 property to the east. There are also other small conditional use businesses in the vicinity of this property.
3. The use is of an agricultural nature, producing wine from locally produced honey, fruit and spices. As a result, it supports local agriculture.
4. The use will promote the growing culinary and winery tourist industry in Sussex County.
5. This use will be regulated by the Delaware Alcoholic Beverage Control Commission and Title 4 of the Delaware Code regarding production requirements, sales, hours of operation and all other aspects of the mead production and sales.
6. This recommendation is subject to the following conditions:
 - A. Because this property is divided by Cool Spring Branch, a wetlands delineation must be obtained, with all State and Federal wetlands shown on the Final Site Plan. No wetlands may be disturbed without an appropriate permit.
 - B. The use shall be subject to all regulations of the Delaware Alcoholic Beverage Control Commission and Federal Brewery or Winery requirements.
 - C. The use shall be subject to all DelDOT requirements for entrance and roadway improvements.
 - D. There may be one lighted sign permitted on the property, not to exceed 32 square feet per side.
 - E. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried 3 votes to 1, with Mr. Smith opposed and Mr. Wheatley not voting, to forward this application to the Sussex County Council with the recommendation that it be approved, for the reasons, and with the conditions stated. Motion carried 3 – 1. Mr. Wheatley was not at the public hearing.

Conditional Use #2014 Jay Beach

Application of **JAY BEACH** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a landscaping and site work business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 5.2594 acres, more or less, land lying west of Beaver Dam Road (Road 285, aka Route 23) 700 feet south of Hopkins Road (Road 286) (911 Address: None Available) (Tax Map I.D. #234-5.00-44.06).

The Chairman referred back to this application, which has been deferred since the April 9, 2015 meeting.

Mr. Johnson stated that he would move that the Commission recommend approval of CU #2014 for Jay Beach for a landscaping and site work business based upon the record made during the public hearing and for the following reasons:

1. The Applicant has proposed a relatively limited use on this property. With the conditions and limitations placed upon it, it will not adversely affect neighboring properties or roadways.

2. The use as a landscaping business is a benefit to Sussex County residents and property owners.
3. The use will not adversely affect traffic on area roadways.
4. The use, with the conditions proposed by this approval will maintain a residential character consistent with surrounding properties.
5. The Applicant has stated that he will reside upon the property at all times and maintain the property in a neat and orderly conditions.
6. This recommendation is subject to the following conditions:
 - a. The residence must be located in front of all accessory buildings on the property. No accessory buildings or storage areas shall be located forward of the rear wall of the residence.
 - b. As stated by the Applicant, he will reside on this property during the operation of this use. The Applicant provided testimony that it will be operated much like a home occupation. As a result, the Conditional Use shall expire if the Applicant no longer resides at the property.
 - c. All equipment, machinery and vehicles associated with the business must be kept inside a wood or vinyl fenced and locked area so that it is screened from view of neighboring or adjacent properties and roadways.
 - d. In addition to being located behind the residence, all equipment, storage and service buildings shall be constructed in the middle and northeast corner of the property away from the neighbors to the South as illustrated by the Applicant and be at least 200 feet from Beaver Dam Road. These structures must also be enclosed within the fenced area.
 - e. There shall not be any dirt, tree stumps, stones, mulch, or other materials stored on the property.
 - f. There shall not be any retail sales conducted from the property.
 - g. One unlighted sign, not to exceed 32 square feet per side, shall be permitted.
 - h. There shall not be any storage of junked, inoperable, unregistered or untitled vehicles or equipment on the property.
 - i. Any security lighting on the property shall be downward screened so that it does not shine on neighboring properties or roadways.
 - j. All equipment repairs and maintenance must be performed inside of a structure on the premises.
 - k. All parking areas for employees shall be shown on the Final Site Plan and clearly marked on the site.
 - l. All areas for parking equipment must be shown on the Final Site Plan and clearly marked on the site within the fenced in area.
 - m. All oils, fluids, hazardous substances, etc. associated with the business must be stored inside of a structure and disposed of in accordance with applicable laws and regulations.
 - n. The project shall be subject to all DelDOT entrance and roadway improvement requirements.
 - o. A revised Preliminary Site Plan must be submitted to the Planning and Zoning Commission depicting these conditions of approval or noting them upon it.
 - p. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried 4 votes to 1, with Mr. Smith opposed, to forward this application to the Sussex County Council with the recommendation that it be approved, for the reasons, and with the conditions stated. Motion carried 4 – 1.

Change of Zone #1767 Adel M. Baghouli

Application of **ADEL M. BAGHOULI** to amend the Comprehensive Zoning Map of Sussex County 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, containing 2.867 acres, more or less, land lying south of U.S. Route 9 (Lewes Georgetown Highway) and 1,000 feet west of Road 282 (Arabian Acres Road) (911 Address: 28990 Lewes Georgetown Highway, Lewes, DE) (Tax Map I.D. #334-10.00-31.05 and 31.06).

The Chairman referred back to this application, which has been deferred since the March 26, 2015 meeting.

Mr. Johnson stated that he would move that the Commission recommend denial of CZ #1767 for Adel M. Baghouli, for a change of zone from AR-1 to B-1 based upon the record made during the public hearing and for the following reasons:

1. Mr. Johnson does not believe this site is appropriate for B-1 zoning and the permitted uses that are allowed in that zoning district, which includes banks, laundries, gas stations, restaurants, retail shopping centers, and other uses.
2. The rezoning is incompatible with the surrounding zoning, which is all AR-1, subject in some cases to limited conditional uses. While there is some commercial or business zoning in the area, it is all on the north side of Route 9. There is no commercial or business zoning on the south side of Route 9 in the vicinity of this parcel. As a result, rezoning the property to B-1 would be inconsistent with the surrounding properties on the south side of Route 9.
3. Mr. Johnson does not believe the Applicant made an adequate record to support the change in zone. The Applicant stated that he desires the B-1 zoning because he currently lives on the property and would like to operate his business there. He has requested the additional property next to his house to be rezoned to B-1 without any real justification for the request. Because the location of the property does not support a B-1 use and the Applicant has not created an adequate record to justify the rezoning, it should be denied.
4. This property is part of a prior application that was also denied by the Planning and Zoning Commission and County Council in CU #1790. Many of the reasons for that denial still apply today such as poor traffic visibility along this section of Route 9.
5. The traffic that could be generated at this location after a rezoning to B-1 is not compatible with existing roadways and traffic conditions on Route 9.
6. The application does not promote the health, safety and general welfare of the neighborhood or community.

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

Change of Zone #1764 Coastal Club, LLC

Application of **COASTAL CLUB, LLC** an Ordinance to Modify Condition Number 1, 4, 13, and 17 imposed on Ordinance No. 1770 for Change of Zone No. 1554, the application of Marine Farm, LLC for the Coastal Club, a MR-RPC Medium Density Residential District – Residential Planned Community, and to amend the Comprehensive Zoning Map of Sussex County from a MR – RPC Medium Density Residential District – Residential Planned Community to a MR Medium Density Residential District, for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, for 13.425 acres, more or less, portion of the property (911 Address: None Available) (Tax Map I.D. #334-11.00-5.00, 395.00, and 396.00).

The Chairman referred back to this application, which has been deferred since the April 9, 2015 meeting.

Mr. Robertson advised the Commission that this application is a request to modify conditions 1, 4, 13, and 17 of Ordinance No. 1770, which include eliminating a portion of the RPC where wastewater water disposal was to be located; that the project will now be served by Sussex County sewer; that there are issues relating to sidewalks being installed within the Jimtown community; whether streetlights should be installed in the Jimtown community; other issues such as the bald eagle nesting area being an undisturbed wildlife area since the eagle no longer nests in the area; that this is unusual in how the Commission typically handles applications; that typically there is one recommendation to the County Council; that this application presents so many different and unrelated issues and that the best way to handle this application is to do a separate motion and vote for each topic so that the County Council has a more clear understanding what the Planning and Zoning Commission's recommendations are as well as the community members and the developer.

Mr. Johnson stated that he would move that the Commission recommend a modification of Conditions #4 and #17A of Ordinance #1770 regarding sewer provided to the Coastal Club project and Jimtown Road based upon the record made during the public hearing and for the following reasons:

1. The original Application contemplated sewer service via an on-site wastewater treatment and disposal system operated by a private utility.
2. Since the time of approval, the sewer provider has changed so that the Coastal Club development will now be served as part of a Sussex County Sanitary Sewer District. As a result, condition Number 4 of Ordinance #1770 should be modified to state "The development shall be served by central sewer as part of a Sussex County Sewer District."
3. The developer has also proposed revised language for Condition #17A regarding the means of providing wastewater treatment and disposal to properties along Jimtown Road now that County sewer service is available. The revisions proposed by the developer have been modified by the Sussex County Engineering Department for conformity with its sewer requirements.
4. There must be a timeframe under which the developer is required to connect Jimtown properties to the Sussex County sewer system pursuant to the original Condition #17A without cost to those property owners choosing to connect. This must be clarified in the modified condition #17A.

5. No property owner within Jimtown between Beaver Dam Road and the existing bridge at Goslee Creek should be required by Sussex County or the developer to connect to the County sewer system, but sewer is available for connection if they choose or if necessary.
6. It is Mr. Johnson's recommendation that Condition #17A be modified to state as follows, based upon the developer's request and the County Engineering Department's recommendations:

A. Sewer

At its sole cost and expense, Developer will provide the properties of Jimtown with lateral and gravity connections to a Sussex County Sewer District, whereby capacity is allocated in accordance with the Goslee Creek Planning Study. The Jimtown service area is described as those properties with frontage on Jimtown Road that are located between the existing bridge at Goslee Creek and the intersection of Beaver Dam Road

At its sole cost and expense, the Developer will complete construction of a sanitary sewer transmission system of sufficient size to convey the Jimtown sewerage through the Coastal Club sanitary sewer system to the Sussex County sewer system within three (3) years of the commencement of construction on the Coastal Club site. Based upon the established date of construction commencement (May 23, 2014), the Developer must complete the Jimtown transmission system by May 22, 2017.

At its sole cost and expense, Developer will engineer and construct a sanitary sewer collection system within Jimtown Road from the bridge to the intersection of Jimtown and Beaver Dam Roads, and connect it to the Coastal Club transmission system. The home, lot or parcel owners will not be responsible for any System Connection Charges (SCC's) if connected to the Central Sewer within three (3) years from the date of substantial completion of the Sewer System. The Developer shall be responsible for paying the SCC for any existing home connecting during the three (3) year period. No home, lot or parcel owners of Jimtown shall be required by Sussex County to hook up to the central sewer unless they choose to do so.

Each resident of Jimtown that chooses to hook up to the Coastal Club sanitary sewer system, with such hookup being solely at the discretion of each individual property owner, will pay the use rates set by Sussex County.

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

Mr. Johnson stated, that concerning CZ #1764, he would move that the Commission recommend an amendment to Conditions #17C of Ordinance #1770 for the Coastal Club Development regarding the streetlights within the Jimtown Community based upon the record made during the public hearing and for the following reasons:

1. Condition number 17C of the original approval required streetlights, but only “if desired by the residents of Jimtown”.
2. The applicant, with the assistance of First State Community Action Agency, has sought input from as many people as possible through various forms of outreach, including mailings, meetings, visits, ballots and phone calls. There is no clear consensus that streetlights are not wanted, and many people from Jimtown in attendance at the public hearing stated that they desire to have streetlights installed along Jimtown Road.
3. There is also a significant amount of development occurring along Beaver Dam Road and Robinsonville Road. Many of these developments were not yet approved or in existence in 2005 when the Coastal Club project was first approved. Jimtown Road connects between these two roads, and will continue to see increased traffic as these developments progress. For this reason, requiring the developer to install streetlights along Jimtown Road as proffered by the original developer promotes the health, safety and welfare of the Jimtown Community and traffic safety along Jimtown Road.
4. There was also testimony from the Jimtown Community during the public hearing that streetlights are not necessary every 100 feet as required by Ordinance Number 1770. Instead, as one member of the public stated, it is appropriate for them to be installed on the existing poles along the street.
5. Finally, the original approval required the streetlights to be installed within 1 year of the start of construction of the Coastal Club project, which occurred on May 23, 2014. Since the 1 year deadline will be impossible to make, Mr. Johnson recommends that it be amended to state 2 years from the start of construction, giving the developer and the residents until May 22, 2016 for the streetlights to be installed.
6. For these reasons, it is Mr. Johnson’s recommendation that Condition 17C of Ordinance Number 1770 be modified to state:

Within two (2) years of the commencement of construction (May 23, 2014), Coastal Club, LLC at its sole cost and expense will provide for the installation of all streetlights required by DelDOT together with streetlights on each telephone pole along Jimtown Road between the existing bridge at Goslee Creek and the intersection with Beaver Dam Road. Additionally, all street light rental or service charges (for these streetlights only) will be borne by Coastal Club, LLC, its successors or assigns.

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

Mr. Johnson stated that concerning CZ #1764 he would move that the Commission recommend an amendment to Condition 17D of Ordinance #1770 for the Coastal Club Development regarding sidewalks within the Jimtown Community based upon the record made during the public hearing and for the following reasons:

1. Conditions number 17D of the original approval required sidewalks but only “if desired by the residents of Jimtown”. It also stated that they should be installed either within the right of way of Jimtown Road or outside of the right of way on Jimtown lots. This requirement was proffered by the original developer of the Coastal Club project.

2. The Applicant, with the assistance of First State Community Action Agency, has sought input about sidewalks from as many people as possible through various forms of outreach, including mailings, meetings, visits, ballots and phone calls. There is no clear consensus that sidewalks are not wanted, and many people from Jimtown in attendance at the public hearing stated that they desire to have sidewalks installed along Jimtown Road.
3. The applicant has stated its willingness to install sidewalks.
4. It is not reasonable to require easements from property owners for the installation of sidewalks on their properties, especially if there is not 100% agreement about them. Also, many of the homes along Jimtown Road are very close to the right of way and there is very little room in some cases to put in a sidewalk outside of the right of way.
5. There is a significant amount of development occurring along Beaver Dam Road and Robinsonville Road. Many of these developments were not yet approved or in existence in 2005 when the Coastal Club project was first approved. Jimtown Road connects between these two roads, and will continue to see increased traffic as these developments progress. For this reason, requiring the developer to install sidewalks along Jimtown Road promotes the health, safety and welfare of the Jimtown Community.
6. There was also testimony during the public hearing that most of the homes are on the northeast side of Jimtown Road, so if sidewalks are going to be installed on just one side of the road as required by the original condition 17D, it should be on the northeast side of Jimtown Road.
7. The developer must consult with DelDOT, the Sussex Conservation District and any other agencies that can be of assistance to design and construct the sidewalks within the road right of way on the northeast side of Jimtown Road between the bridge over Goslee Creek and the intersection with Beaver Dam Road.
8. Because construction work will need to occur on Jimtown Road to install the sewer and roadway improvements required by Conditions 17A and 17E, the sidewalks should be installed at the same time as this work is underway. Condition 17A requires the sewer to be installed in Jimtown Road within three years of May 23, 2014, so the same timeframe should apply to the sidewalk installation.
9. For these reasons and the record made during the public hearing, Condition #17D of Ordinance #1770 should be modified to state as follows:

Within three (3) years of the commencement of construction (May 23, 2014), Coastal Club, LLC at its sole cost and expense shall provide a sidewalk within the Jimtown Road right of way on the northeast side of Jimtown Road from the existing bridge over Goslee Creek to the intersection of Jimtown Road and Beaver Dam Road in accordance with the approval of DelDOT and the Sussex Conservation District.

Mr. Ross raised a question of what would happen if the sidewalks are not constructed within the specified timeframe.

Mr. Robertson advised the Commission that the County could withhold the issuance of building permits or could seek Court remedies.

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

Mr. Johnson stated that he would move that the Commission recommend approval of the portion of CZ #1764 for the Coastal Club, LLC to amend and correct Condition Number 1 of Ordinance #1770 regarding the number of units within the development based upon the record made during the public hearing and for the following reasons:

1. Condition #1 concerns the number of units within the development. The original Condition #1 stated that “the maximum number of dwelling units shall not exceed 630 of which at least 432 shall be located on single family lots. The 20 lots with roadway connection to Jimtown Road shall also be eliminated.”
2. Although the 20 Jimtown Road single family lots were eliminated, the total number of single family lots in the entire development was not reduced by 20 lots. As a result, the first sentence of Condition #1 should have referenced 412 single family lots instead of 432 so that Condition #1 states as follows; “The maximum number of dwelling units shall not exceed 630 of which at least 412 shall be located on single family lots. The 20 lots with roadway connection to Jimtown Road shall be eliminated. The roadway connection to Jimtown Road shall be eliminated.”
3. In summary, Mr. Johnson’s motion is to approve this corrective measure to Condition #1.

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

Mr. Johnson stated that he would move that the Commission recommend denial of part of CZ #1764 relating to the removal of the Residential Planned Community overlay from 13.4 acres of land that was originally part of the Coastal Club RPC based upon the record made during the public hearing and for the following reasons:

1. The area of the request to delete the RPC Overlay was originally part of the Coastal Club RPC, and the acreage was used to calculate the overall density of the project.
2. There has been no justification for the removal of the RPC designation, other than the fact that the land is no longer needed for the on-site wastewater treatment facility that was originally proposed for the project. The project is now going to be part of the Sussex County Sanitary Sewer District.
3. The original RPC approval limited density to 1.74 units per acre on all of this land rezoned to MR from AR-1 as part of the application.
4. As stated in the original Findings of Fact for Ordinance Number 1770, it was noted that the RPC kept the density to an appropriate level less than what was permitted under the surrounding AR-1 Zoning. By removing the RPC Overlay, the density could rise to up to 4 units per acre under the MR Zoning. Mr. Johnson does not believe this possible density would have been approved at the time the Coastal Club application was originally presented and the necessary change in zone to MR was permitted primarily as a result of the RPC Overlay limiting the density of the project.

5. MR zoning without an RPC Overlay allowing up to 4 units per acre is not appropriate in this location.
6. For all these reasons, it is Mr. Johnson's motion that the property should remain subject to the MR/RPC as originally contemplated for the Coastal Club residential project.

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

Mr. Johnson stated that this is his final motion concerning the Coastal Club and CZ #1764, that he is recommending several additional changes that are needed to clarify Ordinance No. 1779 based on the requests of the applicant and reasons presented during the public hearing, and that his recommendations are as follows:

1. Throughout all of Ordinance #1770, there is reference to the developer being "Marine Farm, LLC." Since that LLC is no longer involved in the project, all references to it should be updated to refer to Coastal Club, LLC.
2. The applicant has stated that Condition #13, regarding the "Eagle Wildlife Habitat Conservation Area" is no longer necessary, as there is not an eagle nest on the property. It is appropriate to modify this condition under the circumstances, but it should still remain as open space. Mr. Johnson recommends that it be modified to state:

The former 42-acre "Wildlife Habitat Area" shall remain an open, natural area in perpetuity, with uses limited to trails and other passive recreational uses. There shall not be any residences, structures, pool, clubhouses, or similar amenities constructed within this area.

3. Finally, as part of the adoption of these recommendations by County Council, Mr. Johnson recommends that Council include a restatement of all of the Conditions of Ordinance #1770, as modified by CZ #1764 in their entirety, so that there is one document containing all of the current conditions of approval.

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

OTHER BUSINESS

Route Nine, LLC Preliminary Commercial Site Plan – Route 9 and Road 249

Mr. Johnson advised the Commission that he would not be participating in the review of this item and left the room.

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for two, 2,916 square foot Cape Cod style office buildings and a 240 square foot shed located on a 1.50 acre parcel; that the site is zoned C-1; that the average front yard setback for building 1 is 20.64 feet and the average front yard setback for building 2 is 28.51 feet; that building 1 is setback 56.72 feet from the front and that building 2 is setback 58.72 feet; that the Commission needs to determine if the property is considered a corner lot or a through lot; that the staff feels that the site is a through lot; that the engineering firm feels that it should be considered a corner lot; that 20 parking spaces are required and 36 spaces are proposed; that septic and water are proposed to be on-site septic and well; that there is a pending application for a special use exception for an off-premise sign; that if preliminary approval is granted, provided the property is considered a corner lot, final site plan approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the preliminary site plan.

Mr. Abbott advised the Commission that the definition of a through lot is a lot having a frontage on two approximately parallel streets.

It was the consensus of the Commission that this site is a corner lot and not a through lot.

Motion by Mr. Smith, seconded by Mr. Burton, and carried 4 votes to none, to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 4 – 0. Mr. Johnson did not participate.

Yoder Commercial Project

Preliminary Commercial Site Plan – U.S. Route 13

Mr. Abbott advised the Commission that this is a preliminary commercial site plan for a 9,600 square foot wholesale/manufacturing business located on an 11.289 acre parcel and a 9,600 square foot retail building for sales of outdoor equipment located on a 2.11 acre parcel; that both parcels are zoned LI-2 Light Industrial; that the setbacks exceed the minimum requirements of the zoning code; that 14 parking spaces are required and 14 spaces are proposed; that 66 plantings are required and provided for the 20-foot highway corridor overlay zone landscape buffer; that water and sewer will be on-site well and septic; that one ingress/egress serves as access to both of the parcels; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the preliminary site plan.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to approve the site plan as a preliminary with the stipulation that final site plan approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Rommel Office and Warehouse

Final Commercial Site Plan – Nassau Commons Boulevard

Mr. Abbott advised the Commission that this is the final site plan for a 1,780 square foot office and a 6,380 square foot warehouse located on 0.92 acres; that the site is zoned C-1; that the final site plan is the same as the preliminary site plan that was approved by the Commission on May

22, 2014; that the Board of Adjustment granted variances for the setbacks in the area and the parking design was presented at that time; that all agency approvals have been received and that final approval may be granted; and that the Commission was previously provided a copy of the final site plan.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the site plan as a final. Motion carried 5 – 0.

PUBLIC HEARING

Change of Zone #1770 TD Rehoboth, LLC

Application of **TD REHOBOTH, LLC** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 114.4821 acres, more or less, land lying on the northeast side of Route One (Coastal Highway) across from Route 88 (Cave Neck Road) (911 Address: None Available) (Tax Map I.D. #235-23.00-1.00).

Mr. Abbott advised the Commission that this application was filed on December 22, 2014; that the Applicants submitted an Exhibit Booklet on April 10, 2015 which contains Applicant Information, Overbrook Town Center Concept Plan, a wetlands letter from Environmental Resources, Inc., an Economic Impact Summary, a DeIDOT letter dated August 21, 2001 regarding CZ #1461 Paynter's Purchase, Minutes of Sussex County Planning and Zoning Commission hearing on CZ #1461 Ocean Atlantic Association V, LLC (Paynter's Purchase), March 21, 2002, Investment Area Maps for Strategies for State Policies and Spending, Sussex County Comprehensive Plan Pages 2-2, 3-7, 3-8,3-9, 3-15, 3-16 and Future Land Use Map, Sussex County Zoning Ordinance Section 115-83.1 and 115-83.3, Sussex County Subdivision Ordinance Section 99-5, Planning and Zoning Commission's Recommendation on CZ #1690 L.T. Associates, October 14, 2009, a Market Need Analysis Summary, and Artesian Resources ability to provide wastewater service dated March 24, 2015; that on April 13, 2015 the Applicants submitted a Soil Reconnaissance Report for Stormwater Management, a Stormwater Report and Stormwater Assessment Study and an Environmental Assessment and Public Facility Evaluation Report.

Mr. Abbott provided the Commission copies of letters received from DeIDOT on September 9, 2014 in reference to the Traffic Impact Study and on August 8, 2014 in reference to a Traffic Signal Justification and advised the Commission that the letters have been in the file and are a part of the record for this application.

Mr. Abbott provided the Commission a copy of the PLUS comments and the applicant's response to the comments and advised the Commission that they are a part of the record for this application.

Mr. Abbott advised the Commission that Delaware Electric Co-Op provided a willing and able to serve letter dated March 24, 2015.

Mr. Abbott advised the Commission that the office has received 6 letters in support, 454 letters in opposition with some of those letters being duplicates in opposition, a petition with 21 signatures opposed and a petition with 167 signatures opposed to the application.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum on April 15, 2015 referencing that the site contains for (4) soil types; that the Applicants will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after completion of any construction that no storm flood hazard area is affected; that it would be highly likely that the project will necessitate off-site drainage improvements and on-site drainage improvements; and that no tax ditch is affected.

James Fuqua, Attorney, Lou Di Bitonto, Developer, Steve Gorski, P.E. with Duffield Associates, and Wes Guekert, Traffic Engineer were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they have submitted an Exhibit Booklet; that this is an application to rezone a 114.48 acre parcel from AR-1 to CR-1; that the intended use of the property is for an 850,000 square foot shopping center; that the project would be known as the Overbrook Town Center; that this would be a shopping center with individual access to each store and not a mall or outlet stores; that the developer is proposing national anchor stores and pad sites for restaurants; that the design of the project is in concept form only; that this is an application to address whether the site should be rezoned and is not to discuss a specific site plan at this time; that if the property is rezoned, site plan approval will be required which will address uses, setbacks, parking and buffers; that 6 pad sites from 1 to 3 acres are proposed; that if approved, the project would be built in three phases; that the application is not a popularity contest; that the Commission needs to determine whether the site is appropriate for CR-1 zoning; that the developers have to follow the Comprehensive Land Use Plan and Zoning Ordinance; that the site is located on the northeast side of Route One across from Cave Neck Road approximately 1.5 mile north of the Nassau Bridge; that the applicants have a contract to purchase the site from the Chappel family who has owned the property since the 1950's; that the site has been used for agriculture in the past; that there is approximately 1,800 feet of road frontage on a major arterial roadway; that the site borders agricultural lands; that the area is a mixture of farmland, residential and commercial uses; that there are other C-1 zoned lands in the immediate vicinity; that there is a commercial shopping center to the south of the site; that the site contains approximately 6 acres of woodlands to the rear; that a wetland delineation has been performed and there are no wetlands on the site per a letter which is Exhibit C in the Exhibit Booklet; that there are no known historic sites, rare or endanger species or plants on the site; that Delaware Electric Cooperative provided a letter indicating that they are willing and able to provide electricity to the site; that Artesian Resources will provide central sewer to the site; that the site is located with the Delaware State Police Troop 7 jurisdiction area; that on site security will also be provided; that the site is located with the Lewes Fire Department fire protection area; that the developers will be required to follow DelDOT's Corridor Capacity Preservation Program; that improvements will be required; that an interchange is anticipated; that DelDOT called for an interchange in a letter from 2001 when the Paynter's Purchase project was going through the rezoning process; that the developers are willing to pay \$8,000,000.00 for the proposed interchange; that DelDOT has no objections to the interchange; that the interchange will be constructed whether the project is approved or not; that the rezoning has to comply with

the State Strategies for Spending, the Comprehensive Land Use Plan, the Zoning Ordinance and the Subdivision Ordinance; that the State Strategies for Spending was developed in 1999 and has been updated periodically; that according to the State's Level Investment Map, the site is located in a Level 3 as depicted in Exhibit G of the Exhibit Booklet; that the State supports growth in Levels 1, 2 and 3; that the applicants went through the PLUS process and the State acknowledged that the site is in a Level 3 and supports this application; that areas to the south of this site are in Investment Level 1; that according to the 2008 Comprehensive Land Use Plan Update, the site is located in an Environmentally Sensitive Developing Area which permits growth; that the land use plan encourages economic growth; that the zoning regulations are intended to carry out the future land use plan; that the land use plan designates which areas are to be considered growth areas; that this application encourages tourism and commercial and industrial job providers to locate and invest in the County' that planning areas provide the logic and rationale for the County's zoning, which is one of the primary purposes of a comprehensive plan; that this plan seeks to direct the County's most concentrated forms of new development to Growth areas, including most higher density residential development and most business development; that this site is located in the northern most portion of the Environmentally Sensitive Developing Area; that the parcel to the north of this site is not in a growth area; that the Environmentally Sensitive Developing Area are areas that can accommodate development provided special environmental concerns are addressed; that retail and office uses are appropriate but larger shopping centers and office parks should be confined the selected locations with access to arterial roads; that Route One is a major arterial roadway as defined in the Subdivision Ordinance; that the project will be served by central sewer and water; that this application complies with the Comprehensive Land Use Plan; that the project will be constructed following the 2014 stormwater management regulations; that the application conforms to the Conservation Element of the Comprehensive Plan; that buffers will be provided; that there are not any wetlands on the site; that the application conforms to the Water and Sewer Element of the Comprehensive Plan; that this application will conform to economic growth and provide tourism; that there are no sales tax in Delaware; that if approved, the project will create \$100,000,000.00 in taxes, jobs, etc.; that approximately 400 construction jobs would be created; that there would be 1,500 jobs when the project becomes operational; that jobs would be held by the unemployed, retirees, new workers and second jobs; that the State Economic Development Office supports the application; that the project has gone through intergovernmental coordination; that the project will not have any negative impacts on the towns of Lewes and Milton; that with respect to the Mobility Element of the Comprehensive Plan, the site is located in a Corridor Preservation Program; that the site can be accessed by public transportation; that a variety of travel means will be provided; that the purpose of the CR-1 zoning district is to provide sufficient space in appropriate locations for a wide variety of commercial service activities serving a wide area and located along certain existing major thoroughfares where a general mixture of commercial and service activity now exists; that large scale uses are permitted in the CR-1 zoning district; that these uses exceed 75,000 square feet; that these uses must be located next to a major arterial roadways; that Route One is a major arterial road; that road improvements will be required; that the project will be served by central sewer and water; that Route One is a major arterial roadway from the Kent County line to Maryland; that the Commission recommended denial of Change of Zone #1690 from AR-1 to CR-1; that that application did not serve a large area; that Route One is more appropriate for large scale uses than Route 9; that this site will serve a wide range of people; that a traffic impact study was performed and reviewed and approved by DelDOT; that

the site is currently served by a driveway; that the site slopes to the east; that a Stormwater Assessment Study was performed and submitted into the record; that the site is not impacted by wetlands, tax ditches or the 100 year flood; that there is a subaqueous ditch to the east of this site; that the site is in an excellent groundwater recharge area; that stormwater will utilize bio-retention areas; that several wet ponds will be sized accordingly; that the project will be constructed under the 2014 stormwater regulations and the developers will not be seeking any variances; that the site is located in a Source Water Protection Area; that there will not be any negative impacts to the Great Marsh; that a traffic impact study was performed in May of 2014; that the scope of work was established in 2013; that access to the site will be limited by the Corridor Capacity Preservation Program; that a grade separation interchange will be required to be constructed; that the applicants will contribute to the interchange; that a temporary traffic signal will be permitted until the grade change is completed; that the applicants will follow all of DelDOT's rules and regulations; that certain impacts will be required to be mitigated; that this application complies with the State's Policy for Spending, the Comprehensive Plan and Map, the Zoning Code and the Subdivision Code; that the applicants have addressed the Commission and Council's concerns regarding CZ #1690; that this site is suitable for CR-1 zoning and submitted proposed findings of fact which state:

1. This is an application to amend the Sussex County Zoning Map from AR-1 to CR-1 for a 114.48 acre parcel of land located on the Northeast side of Delaware Route 1 across Route 1 from the intersection of Route 1 and Cave Neck Road (SR-88).
2. Under the Sussex County Comprehensive Land Use Plan, the parcel is located in the Environmentally Sensitive Developing Area (ESDA). The ESDA is one of the designated "growth areas" created by the plan (Comp. Plan p. 3-8). The plan recognizes under the permitted uses section, that retail and office uses are appropriate in the ESDA but larger shopping centers should be confined to selected locations with access to arterial roads, and central water and sewer facilities are strongly encouraged (Comp Plan p. 3-16). The Applicant's parcel is located in the ESDA growth area, adjacent to Route 1, a major arterial road and will be served by central water and sewer facilities. Based on substantial evidence in the record the Applicant's proposal is in conformity with the Comprehensive Plan.
3. The purpose of the CR-1 Zoning District (Zoning Ord. Sec. 115-83.1) is to provide sufficient space in appropriate locations for a wide variety of commercial and miscellaneous service activities serving a wide area and located particularly along certain existing major thoroughfares where a general mixture of commercial and service activity now exists, but which uses are not characterized by extensive warehousing, frequent heavy trucking activity, open storage of materials or the nuisance factors of dust, odor and noise associated with manufacturing. Based on substantial evidence in the record the Applicant's proposal is in conformity with the purpose to the CR-1 Zoning District.
4. The CR-1 Zoning District provides that "large scale" commercial uses generally serving a regional area are limited as to their location (Zoning Ord. 115-83.3). Such uses must be adjacent to a major arterial roadway, as defined in Sec 99-5 of the Subdivision Ordinance and be located where adequate infrastructure is existing or planned. Based on substantial evidence in the record the Applicant's proposal is in conformity with the requirements of the Large Scale Use Section.

5. The Sussex County Subdivision Ordinance defines “major arterial roadways” (Sec.99-S, Subdivision Ordinance). In Eastern Sussex County, the only identified major arterial roadways are A) Delaware Route 1 from the Kent County Line to the Maryland Line, B) US Route 9 from its intersection with US Route 13 to Delaware Route 1 and C) US Route 9 from Delaware Route 1 to the Lewes Town limits. Based on substantial evidence in the record the Applicant’s parcel is located adjacent to and with access to Delaware Route 1 and is in accordance with the requirement of the Large Scale Use Section as to location to a major arterial road.
6. The proposed location is appropriate for CR-1 Zoning and large scale use as compared to other locations on major arterial roads in Eastern Sussex County. Route 9 west of Route 1 is a two lane road which would be inadequate for traffic, Route 9 east of Route 1 to the Lewes Town limit has been found inappropriate for the proposed use in a prior rezoning request due to the nature of the area and the location in that area of the Cape Henlopen High School, Route 1 south of the Five Point intersection is highly developed or environmentally restricted providing no adequate location for the proposed use, and Route 1 north of the proposed site is designated by the Comprehensive Plan Future Land Use Map as being either a rural area or protected lands where the proposed use would not be permitted. As a result the area adjacent to Route 1, from the Five Points intersection to just north of the proposed site, being in a designated growth area under the Comprehensive Plan, is the only location in Eastern Sussex County where the proposed use would be appropriate and the Applicant’s parcel is located within that area.
7. The parcel will be served by central water for domestic use and fire protection by Tidewater Utilities, Inc.
8. The parcel will be served by central sewer facilities.
9. The parcel is located adjacent to an existing major road (Route 1) where a general mixture of commercial and service activities currently exists including auto repair, a self-storage facility, a farm market, a real estate office, a daycare facility, a guidance service facility, an antique store, a tire and bike business, a piano and keyboard store, a medical equipment store, a mortgage company office and a medical clinic. In addition, a significant number of properties in the area are zoned Commercial (C-1) or Business (B-1) along both sides of Route 1.
10. The parcel is appropriate for CR-1 Zoning since it is located in an Investment Level 3 area as designated by the State of Delaware, Strategies for State Policies and Spending, where growth is anticipated by local, county and state plans in the longer term future. Additionally, the entire west side of Route 1 and a significant portion of the east side of Route 1 from Five Points to the Route 1 – Cave Neck Road Intersection is designated as Investment Level 1.
11. DelDOT reviewed the Traffic Impact Study prepared by The Traffic Group, Inc. and DelDOT’s Corridor Capacity Preservation Program Manager had no objection to the proposed development provided the Applicant enter into agreements with DelDOT prior to entrance plan approval for the construction of intersection and roadway improvements as set forth in DelDOT’s letter dated September 9, 2014 to the Traffic Group, Inc.
12. The proposed CR-1 Zoning will permit a use which will have a beneficial economic impact on Sussex County through the creation of significant employment opportunities both during construction of the facility and operation of the shopping center, as well as secondary economic impact.

13. The parcel is predominately cleared and was historically in agriculture use. The site contains no State or Federal wetlands and will be required to comply with the current DNREC Stormwater Management Regulations which became effective on January 1, 2014 resulting in no adverse environmental impact. The proposed CR-1 and proposed use does not adversely impact any historical sites or threatened or endangered species.
14. The proposed CR-1 Zoning classification is in accordance with the purposes and requirements of the Sussex County Zoning Ordinance, the Sussex County Comprehensive Land Use Plan and 9 Del.Code Sec.6904 in that it promotes the health, safety, morale, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County by providing among other benefits, retail and service business at an appropriate location consistent with the direction of the Sussex County Comprehensive Plan and State Strategies Policy, a significant employment opportunities in both the construction and operation of the business, substantial economic benefit as a result of County Government revenue, salaries to employees and the secondary impact on the Sussex County economy, utilization of water and sewer service from regulated public utility companies, contribution of Eight Million dollars to the redesign of the Route 1/Cave Neck Road intersection which was planned by DelDOT to preserve corridor capacity, promoting the use of public transit to access the site, environmentally appropriate site design to address storm water management and ground water recharge, protection of the tax base through real estate and transfer tax revenue and job creation, reduction in government expenditure through the contribution of Eight Million dollars toward road improvements, creation of business that provides shopping opportunities that may not currently exist, protection of non-urban areas by location in a designated "Growth Area" under the Comprehensive Plan and establishing a large scale shopping center is an appropriate location accessible to local residents, county residents, summer residents and visitors and travelers passing through the area.
15. Any future use of the property shall be subject to site plan review by the Sussex County Planning and Zoning Commission and compliance with all applicable State and County laws, regulations and requirements.

William Brockenbrough of DelDOT was present and advised the Commission that he does not have any prepared comments; that DelDOT is working with the applicants on the required improvements; that there is not a definite timeline for the grade separation; that the developers have agreed to pay an \$8,000,000.00 fee towards the cost of the grade separation; and that DelDOT would prefer to see the applicants start to build the grade separation and that DelDOT would finish the improvements.

The Commission found that no parties appeared in support of this application.

The Commission found that Rich Holtkamp, Ross Kruglak, Gary Norris; AICP, Mike Irise, Bob Billmyre, Kenny Hopkins, Mabel Granke, Michael Tyler, Richard Moore, John Gallis, John Vincent, Karen Rudo, James Welu, Leslie Vincent, Richard Pallack, Kay Rudo, Mark Rudo, John Mateyko, Joseph Incalcaterra, and Jeff Stone were present in opposition to this application and stated in their presentations that they have a short power point presentation and submitted the power point presentation in the form of a booklet into the record; that the project will cause negative impacts if it is built as planned; that the project will have negative effects on

surrounding property values; that the proposed plan is only in concept and that they could build whatever is permitted in the CR-1 zoning; that an overpass is needed due to all of the traffic fatalities at the Route 1 and Cave Neck Road intersection; that an overpass is better than a traffic signal; that the proximity of Route One will not reduce traffic congestion; that the opposition has formed a coalition that represents over 30 communities; that the coalition was formed in January 2015; that they have developed a website that is constantly updated regularly; that they have concerns about what could be built if the rezoning is approved; that a majority of the residents in the area are new to the Cape area; that the purpose of the coalition is to inform, educate, enroll and engage the public in this matter; that an 850,000 square foot regional shopping center does not fit with the present character of the area; that there is not a need for more retail to serve the commercial needs of Eastern Sussex County residents; questioned if the proposed shopping center is consistent with or in conflict with the Comprehensive Plan; questioned how public safety will be impacted, i.e., traffic congestion, accidents, crime, emergency response times; questioned how the fresh water aquifers, recharge, storm water runoff, wetlands and the coastal ecosystem will be impacted; questioned what is the future tax burden on Sussex County property owners; that the area contains Paynter's Mill, Red Fox Run developments, the Great Marsh; that the project is being billed as a Town Center but the closest town is five miles away; questioned if the developer has provided the County with an analysis, i.e., total population by number of businesses, questioned if the developer has provided an analysis of retailer goods and services currently available in the marketplace; that without proper analysis, the County runs the risk of repeating what has happened throughout the state with examples like the Vineyards on Route 9 and The Blue Hen Mall in Dover or the River Front in Wilmington; that 15% of current malls will fail or be converted to non-retail space within the next 10 years; that two years ago, this estimate was 10%; that Goldman Sachs predicts a decline for Target and Walmart and reports that Super Stores are struggling; that the Commission has to act on what has been presented; that the project has to be a benefit to the community; that the Commission has to consider the rights and needs of the developers, property owners and the public; that the residents are not being asked what is needed or wanted; that the coalition polled area residents and only 2 said the project is good for the County; that the residents in the area are not against development but want balanced development; that the project at 850,000 square feet with over 5,000 parking spaces is greater than all of the outlet stores combined; that only 22 stores are proposed; that Whole Foods requires 200,000 people within a 20 minute drive and prefers a stand-alone facility; that the total population of Sussex County is 210,000, about 210 people per square mile; that Wegmans has no plans for opening any stores in Delaware; that Kohl's requires 87,000 square feet on 7 acres and wants to be located in a major market area; that they prefer to own the real estate, not lease; that they also require 200,000 residents in the area as well as proximity to national and regional retailers; that Target's requirements are a median age of 40, income of \$64,000, 43% of families with children at home, and 57% of residents with college degrees; that they are naming national retailers as examples; that the most recent Sussex County census report shows that the County does not meet these requirements; that according to Forbes, Target has smaller stores as priority; that they are selecting 20,000 square foot stores and opening them in urban areas; that big box stores are losing market share to Dollar Stores and they are closing more stores than they are opening; that there is a large amount of new Dollar General stores in the area; that JC Penny and Sears stores are closing; that there are currently 31 shopping centers in the County each having one or more vacancies; that the Five Point project built as a "town center" has an 18% vacancy rate; that the Rehoboth Mall has 84% vacancy' that Paynter's Mill directly across Route 1 has

50% vacancy; that 2 of those retail spaces have never been occupied since the development was constructed in 2004; that there are 159 properties currently available for lease; that the developers claim 1,500 new jobs generating \$53 million of annual compensation; that this equates to \$17.40 per hour or \$35,000 per year; that actual retail wage in the County is approximately \$8.00 per hour generating \$7,000.00 of annual compensation; that most of the current jobs are seasonal and part time; that the likely annual compensation will be \$10 million not the developer's projected \$53 million; that Delaware is last out of the 50 states in wage growth; that CR-1 uses permit manufacturing facilities, industrial warehousing self-storage facilities and car dealership; that the project does not meet the demographics for large box retailers; that the application is not in the best interest of the County; that the area proposed to be rezoned is not an appropriate area for regional shopping; that the proposal is not consistent with the Sussex County Comprehensive Plan and the Future Land Use Map and the State Strategies for Spending; that the plan does not have capacity and services sufficient to accommodate this use without compromising the health, safety and welfare of the residents; that the proposed rezoning is a detriment to the environment; that a rezoning request is not a right; that the County needs to guard against spot zoning; that farmland, residences and small shops make up the immediate area; that the site is located in an Investment Level 3 area; that the proposed use would require extensive warehousing, frequent heavy trucking activities; that the project has more than 25 loading spaces proposed; that the project is designed as a 1950's shopping center; that the site is located within a Highway Corridor Overlay Zone and the Environmentally Sensitive Developing Area; that the Highway Corridor Overlay Zone is to preserve and enhance the aesthetic and visual character of land uses contiguous to certain roadways and to provide for orderly development in the County; that the Overlay zone also encourages a positive visual experience of development of lands along the corridors and to provide safe access and turning movements for vehicular and pedestrian traffic, especially during an emergency evacuation; that the rezoning does not conserve the County's agricultural economy and the value of farmland; that it does not protect critical natural resources; that it does not encourage tourism and other responsible job providers; that it does not ensure new developments incorporate usable open space and best design practices; that on Saturdays, 35,764 vehicles will enter and exit the regional shopping center; that there is already enough traffic on Route 1 during the summer months; that this will lead to more congestion; that a study indicated that there were 94 accidents at the Route 1 and Cave Neck intersection within the last year; that the proposed project will more than double that amount; that the development will negatively impact response time for fire, police and EMS services; that in comparison to the Dover Mall, there were 673 calls for service over the past year ranging from assaults and robbery to shoplifting, with the addition of the Overbrook Town Center, that adds another burden to the State Police and their availability; that the tax payers will have to pay for more police protection; that there is a need for properly designed ramps for the overpass; that the traffic impact study looked at 14 different intersections and found that 9 of them are operating inadequately; that the traffic impact study was conducted in 2013; that there are long traffic delays on Saturdays; that the locals avoid Route 1 on Saturdays; that the Overbrook Town Center would add 2,000 to 3,000 more vehicles per hour; that the proposed overpass has small radius turns; that overpasses are expensive; questioned who will pay for the maintenance of the overpass; that improvements will be required for Route 9 also; that they have concerns about DelDOT regulations; that the project proposes a site design that is 78% of impervious surface; that the site plan indicates that storm water management ponds and a significant amount of impervious cover will fall within the area of excellent

groundwater recharge; that maintenance of water levels through clean recharge in this unconfined aquifer is critical to the coastal communities due to long term risks of saltwater intrusion in the event that head levels decline in the freshwater aquifer; that State regulated wetlands are adjacent to this property based on a review of the State wetland maps; that run-off to the Great Marsh has the potential to disrupt the balance of fresh and brackish waters that supports the plants and wildlife in this area; that it is the health of the environment that contributes to the stability of the marsh that reduces erosion and protects the shoreline; that if the project is approved, this would be the largest and costliest project in the history of the County; that approval will require public service increases; that the project will be a burden and on the area residents and taxpayers; that public funding will be required; that there is a large number of letters that have been received in opposition to this application to date; that the area is a farming community; that the County should preserve farmland; that there will be a loss of wildlife habitat; that there will be negative impacts to the towns of Milton, Lewes and Rehoboth Beach; that there is enough commercial areas from the intersection of Five Points to Dewey Beach; that there will be negative impacts to the Great Marsh; that the County should consider the cumulative economic impact on the County; that if the project is approved, it will only create minimum wage jobs; that the developers should build this back in Maryland; that approval of this application will change the character of the County; that there are already commercial area in the vicinity and questioned the need of this project; that the application does not promote the safety, health and welfare of the County; that no one uses shopping malls anymore; that this site is located within the Coastal Zone; that sea level rise are major concerns; that the project will impact the City of Lewes since there are only three ways into Lewes; that there is already grid lock on Route 1 during summer months; that Route 1 is an evacuation route; that the best interests of the community needs to be considered; that there will be year round congestion if the project is approved; questioned what the true cost of the interchange will be; that the project will have negative effects on resident's quality of life; that Route 1 already contains over 7 miles of commercial uses; questioned the amount of storm water run-off; that there will be a loss of riparian buffers; that a water analysis has not been performed; that it is hard for farm vehicles to traverse Route 1 already, and that this approval will only increase the problem that farmers have; that the County needs to follow the Comprehensive Plan and Zoning Ordinance; that the County Land Use Plan is ready for the required update; that this area needs more protection; that the traffic impact study area should be expanded; that traffic will increase in the Town of Milton; that people are trying to get out of retail jobs now; that sewer lines will need to be run and constructed which will impact existing residences; that the project could lead to a sales tax; that there are still other open, undeveloped areas in Sussex County; expressed safety concerns for bicyclists in the area; that the project does not support orderly growth of the County; that the City of Lewes cannot handle any more capacity; that there is no guarantee that the project will be built if the rezoning is approved; that the rezoning does not meet the goals of the Comprehensive Land Use Plan and questioned what is the County's vision for this area.

Mr. Brockenbrough advised the Commission that the roads will be required to be built to DelDOT specifications; that Cave Neck Road will be extended into the shopping center site; that the grade change design is under discussion; that the developers have submitted 3 different options to DelDOT; that the final design is far from being decided; that DelDOT has a concept that will work; that DelDOT needs to answer when funding can be matched; that DelDOT cannot

deny reasonable access to the site; and that the developers are limited to an amount to spend until a decision is made.

The Commission found by a show of hands that no one was present in support of this application and that there were 58 people present in opposition.

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

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

Meeting adjourned at 10:58 p.m.