



# PLANNING & ZONING

## AGENDAS & MINUTES

### MINUTES OF THE REGULAR MEETING OF SEPTEMBER 10, 2009

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 10, 2009, in the County Council Chambers, County Administrative Office Building, in 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. Michael Johnson, Mr. I.G. Burton, III, and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

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. Burton, and carried with 4 votes to approve the Minutes of August 19, 2009 as circulated. Motion carried 4 – 0 – 1, with Mr. Johnson abstaining.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to defer action on the Minutes of August 27, 2009 for further consideration by the staff and legal counsel. Motion carried 5 – 0.

### PUBLIC HEARINGS

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

**C/Z #1689** – application of **O.A. NEWTON & SON CO. AND PERDUE AGRIBUSINESS, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a LI-2 Light Industrial District for a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, land lying east of Road 583 (Adams Road), ½ mile southeast of Road 584 (Newton Road), to be located on 2.702 acres, more or less.

Mr. Lank provided the Commission with copies of a Miller-Lewis, Inc. survey of the parcels showing the proposed rezoning boundaries, and a copy of an aerial photograph of the site showing improvements on the site.

Mr. Lank advised the Commission that DelDOT comments were not requested since this rezoning is a correction of the boundaries from previous rezoning applications of O.A. Newton & Son Co. and Perdue Agribusiness, Inc.

The Commission found, based on comments received from the Sussex Conservation District, that there are two (2) soil types on this property; that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas and no tax ditches are affected; that it will not be necessary for any off-site drainage improvements; and that it may not be necessary for any on-site drainage improvements.

The Commission found that on September 10, 2009 the County Engineering Department provided comments and advised that the site is located in the Western Sussex Planning Area #1; that the Applicants propose on-site septic; that the site adjoins the Town of Bridgeville and is not in an area where the County has a schedule to provide sewer service; that the Applicants should contact the Town of Bridgeville for questions regarding future central sewer service; and that a concept plan is not required.

The Commission found that Robert F. Rider, President of O.A. Newton & Son Co., was present and stated in his presentation and in response to questions raised by the Commission that their intent is to bring the entire parcel into one zoning classification; that the use will support local agricultural businesses; that the site is served by rail; that the site is surrounded by Perdue Agribusiness and other O.A. Newton properties; that the aerial photograph presented shows that feed mill tanks already exists on the property; that traffic should not change; that there should be no negative impact on neighboring properties; that the larger feed tank has been on the site since prior to 1968; that the entrance location will not change and is not adjacent to any residential lots; that approximately 1/3 of the site is already zoned LI-2 Light Industrial; that the site may be used for warehousing or a small assembly operation; that no nuisance uses will be created; and that the majority of the adjoining properties are zoned LI-2 Light Industrial.

The Commission found that Betty L. Murray, an adjoining property owner, was present, not in opposition, but with some concerns about the intended use and the effect on property values on her longtime family owned parcel.

The Commission discussed this application.

Mr. Ross stated that he would move that the Commission recommend approval of Change of Zone #1689 for O. A. Newton & Son Co. and Perdue Agribusiness, Inc. based upon the record made at the public hearing and for the following reasons:

1. The property is surrounded by other LI-2 zoned properties and this will be consistent with the adjacent zoning.
2. The purpose of this zoning is to bring the zoning lines consistent with the property lines.
3. The change in zone will not adversely affect neighboring and adjacent properties or traffic.
4. The change in zone is consistent with the purpose of the LI-2 District and the County's Comprehensive Land Use Plan.

Motion by Mr. Ross, seconded by Mr. Smith, 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.

**C/Z #1690** – 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 Road 268 (Kings Highway) and Road 267 (Gills Neck Road), to be located on 45.77 acres, more or less.

The Commission found that on August 31, 2009 the Applicants provided an Exhibit Booklet for the Commissions' review and that the Booklet contains a Table of Contents; an Executive Summary; a copy of a Cover Letter from the Applicants' Attorney; a copy of the Application Form; a series of surveys and maps of the site; a March 31, 2009 letter from George, Miles & Buhr, LLC (GMB) to the Delaware Office of State Planning Coordination in reference to a Preliminary Land Use Service (PLUS) application and a copy of the application to PLUS; a May 18, 2009 letter from the Office of State Planning Coordination to GMB in reference to PLUS comments; a May 6, 2009 letter from the Office of State Planning Coordination to the City of Lewes in reference to the application; an April 21, 2009 letter from the Honorable Joseph W. Booth, State Representative, in reference to a traffic impact study for the Lewes area; an April 27, 2009 letter from the City of Lewes to the Office of State Planning Coordination in reference to the application; a July 28, 2009 letter from GMB to the Office of State Planning Coordination in response to the PLUS comments; an August 25, 2009 letter from the Office of State Planning Coordination voicing no objections to the rezoning; a Statement of Conformity with the June 2008 Comprehensive Plan Update; reference to Land Use Surrounding Zoning and Site Location with a series of maps in reference to Existing Land Use, the Future Land Use Plan, Potential Municipal Annexation Areas and Areas of Concern, Strategies for State Policies and Spending, Developed and Protected Lands, County Water Service Areas, Water Supply, Wellhead and Excellent Recharge Areas, County Wastewater Service Areas, Wastewater Service Areas that have received Certificates of Public Convenience and Necessity, County Zoning, a Proximity Map, a Site Plan Rendering, and a Boundary Survey; reference to Additional Economic, Site Information and Maps with a Tax Map of the area, Economic Considerations with a Market Analysis and Economic Impact Analysis, a Cape Gazette News Article, dated February 5, 2007, a reference to developing an MOU between the City of Lewes and The Office of State Planning Coordination, City of Lewes Comprehensive Plan Data with reference to an Annexation Plan and an Open Space Report, a USGS Quad Map, a State Resource Areas Map, an Earth Data Report on Water and Well Field Considerations and the City of Lewes Water Usage Report, an Archaeological Sites Exhibit Map with a Management Summary of Phase I Investigations at the Townsend Site prepared by Heite Consulting, Inc., a portion of the Sussex County School District Map showing the site, a School Impact Report prepared by David Brandenberger dated January 9, 2008, with age profiles of the Lewes area, an Emergency Evacuation Plan for the Lewes area with a map, an Emergency Vehicle Route Map and Response Routes contact list, and Design Considerations and Architectural Character Renderings; references to Environmental Assessment with an Environmental Assessment and Public Facility Evaluation Report, a memorandum, dated August 26, 2009, referencing a pre-design meeting with the Sussex Conservation District, Water Balance Calculations, a Design Assumption Memorandum for Preliminary Stormwater Management, a Floodplains and Wetlands Map, a Storm Surge Map, a FEMA Map of the Area, a Flood Map, a Lewes Flood Mitigation Plan, a Soils Investigation E-mail and Report from Atlantic Resources Management, Inc. with related Tax Map, Soils Map,

USGS Topographical Map, USGS Hydrologic Atlas Map, Tax Information, Soil Test Photographs, Soils Exhibit Map, and a Custom Soil Resource Report; references to Traffic and Transportation with related McCormick Taylor letter, dated January 15, 2008, on Traffic Impact Study Review Services, a DelDOT letter, dated January 16, 2008, on completion of the Study, an Orth-Rodgers Associates, Inc. Preliminary Response letter, dated January 21, 2008, on the Traffic Impact Study Review, an Orth-Rodgers Associates, Inc. Public Comments Review letter, dated January 23, 2008; and Proposed Findings of Fact for consideration.

Mr. Lank provided the Commission with a copy of the April 27, 2009 letter from the City of Lewes to the Office of State Planning Coordination with copies of a Power-point presentation referencing the Greater Lewes Vision Plan.

Mr. Lank provided the Commission with copies of a memorandum from the Sussex Conservation District, dated August 31, 2009, and a memorandum from the Sussex County Engineering Department Utility Planning Division, dated September 10, 2009. These comments were not a part of the Applicants Exhibit Booklet.

Mr. Lank provided the Commission with a copy of an E-mail from Josh Mastrangelo in support of the application.

Mr. Lank provided the Commission with copies of all letters, memorandums, and E-mails from interested parties in opposition to this application as received to date. The copies included letters from Ted Ferragut of Breakwater, Andrew Thomas, Jim and Wanda Berrigan, Betsy Farlow, Wanda Berrigan, Ted Ferragut, Julia and Russell Morey, Raymond F. Book, III, of Port Lewes, Mrs. David Heebner, Flo Councill, Vivian and Bob Barry, Lee and Sally Van Metre of Wolfe Pointe, Frank Jornlin of Cape Shores, Jack and Denise Emery, Elaine Glisson, Ernest and Patty Soffronoff, Vernon and Margaret Gehris, Marsha Davis, Jon A. Reynolds, Charles and Judith Carpenter, Andrew Thomas, Neil A. Hansen, William F. O'Connor, Mrs. Heebner, Kathleen O'Hanlon, Lou and Margie Manfredo, Lynne Cardwell, Dorothy Ramjattansingh, Patricia B. O'Hanlon, Thomas S. Panetta and Richard W. Scalenghe, David and Diane Weber, Mr. and Mrs. Ralph W. Richardson, David Herbert of Wolfe Pointe, Patrick Gaffney, Jeane Wampler, Carol Wzorek, Jon A. Reynolds, Brian and Eva Jefferis, Jeff Swanson, John Gilbert and Ruth Hobbs Kaufman of Bay Crossing, Marsha Shull, and Jules Jackson.

Mr. Lank read the E-mail submitted by Jules Jackson since it was requested that it be read into the record.

The Commission found that Dennis Schrader, Attorney with Wilson, Halbrook & Bayard, P.A., was present on behalf of the Applicants with Frank M. Kea of Frank M. Kea Communities, LLC, Jack W. Hollon, AIA, of MV+A, Tucker Moorshead of Earth Data Incorporated, James H. Willey, Jr., Professional Engineer for George Miles & Buhr, Laf P. Erickson, Soil Scientist and President of Atlantic Resource Management, Inc., Thomas W. Martens, Senior Associate with Economics Research Associates, and Derrick Kennedy, Traffic Consultant with Orth-Rodgers & Associates, Inc. and that they stated in their presentations and in response to questions raised by the Commission that a larger portion of this property was considered for rezoning in January 2008; that that application was withdrawn with the approval of the County Council in December

2008; that the current owners of the property are J.G. Townsend and Sons, Inc.; that the Applicant is L.T. Associates, LLC; that they have reduced the acres of the application from 68.3 acres to 45.77 acres; that the site is currently a farming operation; that they are requesting a rezoning to CR-1 Commercial Residential and propose 300,000 square feet for commercial use and 20,000 square feet for office space; that they are proposing a 38% reduction from the previous application for the site; that the site is located in a Growth Area, the Environmentally Sensitive Developing District, according to the Comprehensive Plan Update, and specifically allows CR-1 zoning; that the Strategies for State Policies and Spending designates the site in Investment Levels 2 and 3 and is in accordance with Livable Delaware policies; that connector streets are proposed to adjoining parcels; that sidewalks, street lighting and street landscaping are proposed; that Sussex County will provide sewer service; that Tidewater Utilities, Inc. will provide central water; that there are no mapped wetlands on the site; that the site is at least 500-feet from any wetlands; that they realize that this is not a site plan review and that it is a rezoning request, but they may have to make reference to a conceptual site plan to response to some comments; that the site is appropriate for CR-1 zoning; that the Preliminary Land Use Service (PLUS) creates a problem since the PLUS process identifies site technical requirements from different agencies; that the Office of State Planning Coordination and DelDOT have no objections to the rezoning; that the site is located on a "Principal Arterial Roadway" according to the Comprehensive Plan Update and a "Major Arterial Roadway" according to the Subdivision Code; that the site is virtually surrounded by previously approved commercial, single-family and multi-family residential development; that the site is surrounded by existing and future commercial, educational, business and residential areas; that the parcel could be considered an "orphaned" farm producing the attendant odors, dust and noise from the farming operation making it a "bad neighbor" to nearby residents; that farming this site, surrounded by development will make it more difficult and unprofitable to farm; that there is a demand for over 350,000 square feet of commercial space in the area; that the health, safety and welfare of the citizens of the County will be served by the application of this land use to the property as it relates to health: 1) nutrients will be reduced; 2) localized, shallow, unconfined aquifer will be recharged through the use of Green Technologies; 3) use of ground water will be reduced by elimination of agricultural water wells or conversion of them to residential/commercial irrigation purposes; 4) multi-modal transportation choices will allow non-vehicular access to the site thus reducing local vehicular trips; 5) providing shopping/entertainment venues closer to nearby residents will reduce and shorten vehicular trips thus reducing carbon dioxide output; safety: 1) transportation improvements, at the cost of the developer, will greatly improve traffic flow and safety; 2) traffic signals will improve vehicular, cyclist, and pedestrian safety; 3) because traffic movement will be improved at intersections, evacuation in case of emergency will be improved; 4) incompatible farm vehicle traffic will be reduced when the on-going farming operation relocates thus improving safety; welfare: 1) temporary and permanent jobs will be created; 2) there will be tax benefits to State and County governments; 3) anchor stores will provide benefit to other commercial uses in the area; 4) the commercial center will serve the needs of the citizens of the County and the City of Lewes and will serve the needs of tourists attracted to the area; 5) the proposed 100 space parking lot for potential future shuttle use will benefit the merchants of Lewes and shuttle users; 6) the proposed 25 space cyclists parking area will benefit those using the bike trail and will add convenience; 7) sewer and water service can be made available to the surrounding parcels; that with the development of this property, the Applicant will purchase other property for its other agricultural businesses, thereby conserving the County's agricultural

economy and the value of farmland; critical natural resources will be protected since no disturbance of wetlands will occur; the development of this property will encourage tourism and other responsible job providers; that construction related employment will vary from 359 to 504 jobs; that on-going annual employment will vary from 709 to 910 jobs; that the Applicants will be providing infrastructure services to the site; that all improvements required by DelDOT to mitigate impacts on the existing transportation system will be completed; that it is clear that the County has governing jurisdiction since the City of Lewes did not annex the property when it had the opportunity; that the Comprehensive Plan Update encourages appropriate types of development in compatible locations; that the County government encourages economic growth and strongly protects private property rights; that the developer has agreed to fund or build \$8.55 million in traffic improvements including the intersection of Gills Neck Road/Kings Highway/Cape Henlopen High School, contribution to the cost of the Route One and Dartmouth Drive intersection, Clay Road and the Town Centre site entrance, right of way dedications along Jones Farm/Clay Road frontage, Gills Neck Road and the Town Centre entrance, right of way dedication along Kings Highway, bike trails and sidewalks throughout the project, 25 parking spaces for bike trail users, and a 100 space future parking area for shuttle service to downtown Lewes; that natural resources will be protected since run-off nutrients will be reduced in accordance with State Pollution Control Strategies; that surface run-off will be allowed to percolate back into the shallow aquifer in quantities that meet or reduce the amount of percolation existing; the use of agricultural wells will be significantly reduced thus the withdrawal of water from the aquifer from which the City of Lewes draws will be reduced; that no wetlands or woodlands will be disturbed; that no endangered species will be disturbed; that no archaeological features will be disturbed; that no home sites, grave sites, Native American burial sites, etc. were found on the site; that offices, homes, apartments, banks, a bakery, doctors offices, a funeral home, stores and shops, and a window and door facility are all in close proximity; that the large (approximately 215,000 square foot) high school is directly across Kings Highway from the site; that although Lewes cannot be seen from the site and the architecture of the high school has little in common with downtown Lewes, the Applicant has gone to great lengths to develop architectural character for the village center that is in context with both the architecture of 2<sup>nd</sup> Street in Lewes and the high school; that the site is located very near Pot Hook Creek; that tourism will be enhanced by providing additional shopping venues to visitors; that suggestions have been made by Lewes associated special interest groups that the property should be preserved as open space or a park even though the Comprehensive Plan Update and the State Strategies for Policies and Spending clearly drive land uses of this kind to the area; that aside from the fact that the property is private and not for use by the public under any circumstance, the reasoning seems to be that more nearby park land is somehow needed; that the DNREC Division of Parks and Recreation manages 5 State parks, 7 nature preserves, and other recreation lands for a total of 14,265 acres; that the Junction and Breakwater Trail has been continued across Wolfe Glade by the Applicant alone and will also be continued across the Senators and Governors residential projects and this site, also at the cost of the Applicant; that the Trail attracts tourism; that the City of Lewes wants to attract tourism; that no archaeological sites of any kind are located on the site of this application, but have been marked on adjoining sites; that the project was designed toward area architecture; that they propose to create a street grid for easier pedestrian and vehicular access; that the site is proposed to be divided into 2 sections: a streets and green section similar to the City of Lewes and an anchor district for larger buildings to the rear; that the streets and green section will be seen first from Kings Highway

with street lighting, sidewalks, curb cuts proposed with parallel parking, street trees and is planned to be pedestrian friendly; that the streets and greens section buffers the anchor district; that the anchor district will be buffered to the rear by landscaping; that the artistic renderings of the village centre were provided to illustrate the presentation and concept of the project proposed, to show the possibility of pedestrian connectivity, public spaces and parks, planning and traffic circulation, streets and green planning features, anchor district features, and the overall architectural concept of the project; that a mix of retail with 2<sup>nd</sup> floor office space may be established; that no building or small group of buildings will exceed the size of the new high school building; that the comprehensive plans of the County and several municipalities reflect the importance and intent to coordinate with DelDOT in planning future developments; that many of those plans lack a coordinated regional approach to planning and evaluating impacts to other communities or developments; that the cumulative effect of development on the regional transportation system needs to be better defined when many different planning jurisdictions are involved; that understanding the transportation-land use connection in a local, multi-municipal, and county-wide context is critical in determining the extent to which DelDOT will be able to provide future transportation facilities and services to ensure mobility and economic viability; that Orth-Rodgers Associates, Inc. started working with DelDOT on the concept of a traffic impact study in May 2006; that roadway and intersection improvements are based on the highest land uses and PM Peak Hour/Land Use; that internal connector roads are proposed to be created to local road standards; that intersection and roadway improvements relate to the ten (10) roadways previously referenced; that six (6) of the intersection/roadway improvements will be totally funded by the Applicant; that four (4) of the intersection/roadway improvements will be a joint project of DelDOT, the Applicant, and other developers; that it is the intent of the proposed improvements to maintain a Level of Service "D"; that the intersection of Kings Highway and Gills Neck Road, even with the proposed improvements, may remain at Level of Service "E"; that Gills Neck Road is an evacuation route along with Savannah Road, which is a major evacuation route; that the site plan submitted will comply with all regulations; that the site will be adequately served by an existing public utility for water service and is designed to protect the neighboring public water supply system; that it is important to note that one of the referenced wells on site currently withdraws between 9 and 14 million gallons per month on an annual basis and the other withdraws 18.8 million gallons per month on average; that the abandonment or reduction in use of the existing agricultural irrigation wells (from agriculture to ordinary irrigation) will greatly reduce the usage of water from the local aquifer further insuring adequate drinking water supplies for the City of Lewes; that wastewater will be collected and transmitted to the Wolfe Neck Wastewater Treatment Plant owned and operated by the County; that County Engineering has already approved a Sewer Concept Plan for all of the L.T. Associates projects along Gills Neck Road, and the Applicant has already expended \$2.8 million to install the County requested headworks improvements and wastewater transmission infrastructure, including 15" and 24" force mains across Pot Hook Creek discharging at the Wolfe Neck facility; that the Applicants have proactively worked to conserve the critical habitat areas along Pot Hook Creek on the adjoining projects; that stormwater management facilities will meet or exceed all regulations; that bio-filtration swales and underground infiltration systems are proposed; that the soils on the site are suitable for infiltration; that no wet ponds are proposed subject to the Sussex Conservation District; that there will be no direct discharge into Pot Hook Creek; that the Applicant is dedicating 63.27 acres along Pot Hook Creek into a conservation easement; that securing a retail draw that does not currently exist in the region will substantially

change the ability of the site to attract shoppers-goods spending; that assuming that the site is successful in attracting a major draw the site could support from 260,000 to 320,000 square feet of retail space by 2013 and between 350,000 and 410,000 square feet of retail space by 2018; that there should be no negative impact on downtown in the City of Lewes; that approximately 900 employees could be anticipated at buildout; that the Exhibit Booklet relates to the record presented; that it would be naïve to believe that the site will never be developed; that if farming continues complaints about noise, dust, odors, etc. will be non-stop; that economic benefit will be generated by this application; that the application is not a popularity contest; that the Commission must consider the application to determine if this site is an appropriate location for CR-1 zoning; that land use cases, i.e. Gibson vs Sussex County Council, reference that an application must comply with the Comprehensive Land Use Plan and the Zoning Ordinance; that the southernmost portion of the site is located in a wellhead protection area; that a quality stormwater management system is proposed similar to the Harris Teeter along Route 54; that ambulance services from the south, i.e. Rehoboth Beach, Millville, Bethany Beach, Roxana, and Selbyville, probably use Kings Highway to access the Beebe Hospital, rather than going to Wescoats Corner and then Savannah Road.

The Commission found, by a show of hand in the audience, that 17 parties were present in support of the application and that 114 parties were present in opposition.

The Commission found that David Horsey was present in support and stated that jobs are needed in the County; that most of the opposition appear to be retirees that do not have to work; that the project should be located next to homes and proposed homes.

The Commission found that Terry Rasberry, Executive Director of the YMCA of Delaware, stated that he is here in a neutral capacity, not for or against the project; the Sussex Family YMCA is operating at its capacity in their present facility; that they have been exploring opportunities to expand their services to the community; that over the last 5 years they have looked at multiple sites within a 20-mile radius of their current location; that among those sites presently under consideration is a portion of the property on Kings Highway; that they believe that YMCA programming on the site would be a marvelous asset to the coastal area; that they have had multiple conversations with representative of L.T. Associates, LLC regarding a potential collaboration; that both parties are working on a formal agreement for YMCA acquisition of the property; that the YMCA's ability to expand their programming on the site is consistent upon an approved agreement between L. T. Associates project proposal, securing YMCA partnerships with other community organizations for new facilities, and a successful YMCA capital campaign.

The Commission found that Karen Masone, a 17 year resident of the area and school teacher, was present in support and stated that the application appears to conform to the Comprehensive Plan and Ordinances; that the use will create jobs; that tax revenues will be generated by the project; that she heard no objections from PLUS for Livable Delaware; and that decisions should be made in accordance with current laws.

The Commission found that James Ford, Mayor of the City of Lewes, was present with Ken Mecham, General Manager of the City of Lewes Board of Public Works, and Bruce Galloway of



Fox Services, Consultant to the City, submitted his comments and copies of power-point exhibits from the Greater Lewes Foundation Annual Board Meeting and the Greater Lewes Subarea Plan Request, copy of a letter, dated April 27, 2009, from the City to the Office of State Planning Coordination in reference to this application and stated that he invites the Commission to visit Lewes and personally view the concerns of residents and citizens of the area; that he is speaking on behalf of the City and his constituents in opposition to this application; that 22.53 acres of the site is not being considered in this application and the residents have a fear of the reference to future development of that acreage and that a precedent may be established if this application is approved; that this acreage is detached from the application site; that land use by change of zone would be regulated by the County Ordinances; that the list of permitted uses adds 45 to 50 potential commercial land uses; that without condition or contingency for the proposed development attached to the zoning change, one of the permitted uses could be applied to the entire 68 acres under consideration, so where is the need to rezone the property; that they have well head protection area and recharge area concerns; that concerns can be mitigated, but have not been mitigated by the Applicant; that they are concerned about failed promises; that the City and Board have no control outside of their jurisdiction; that the Board is opposed to this application and asked that the County protect the City recharge area and protect the City services; that the City has been giving consideration to some annexation areas and recently annexed the Savannah Place project off of Savannah Road; that since the last application in January 2008, the Delaware River and Bay Authority has presented plans for improvement of the Freeman Highway Bridge and plan to begin work this winter; that plans do not include widening of the bridge or approaches; that a bottleneck will occur as one approaches Lewes from the south and will complicate access to the City, negatively impacting transportation services, such as EMS response, ambulance approach to the hospital, police and fire services by Lewes, as well as, support and backup from other agencies; that this will negatively impact the business community as frustrated drivers cannot get to the Lewes downtown area; that the proposed anchor grocery store is yet another threat to the small town quality of life services provided by local businesses, and everyday traffic for residents is degraded; that since the last application, Lewes has received designation for Historical & Scenic By-Ways classification recognized by DelDOT; that Gills Neck Road and Kings Highway are 2 of the roads recognized for this special and unique quality, the first in Sussex County; that the City is under contract with the Renaissance Group for a study to review carrying capacity of approaching corridors and potential shuttle jitney service to offset some vehicular travel and parking demands; that the jitney service would utilize existing parking areas thru partnership agreements, not create additional parking lots and impervious surfaces; that final results of the study are pending; that preliminary studies indicate failing capacity at times; that additional commercial zoning and widening of roads is not the solution; that the City in conjunction with the Greater Lewes Foundation and the University of Delaware Sea Grant Advisory Program has conducted a data survey for the Future Scan project, and that the City is moving forward towards a proposed sub-regional planning concept with the City, the County, the State and adjacent property owners; that there seems to be no cooperation plan between the Towns and the County; that Future Scan is a public/private project to create cooperation between communities; that the City, the County and the State need to be thinking the same way; that the City recognizes the need for managed, orderly growth; that the City has entered into a MOU with the County and has, and will continue to attempt to strengthen this agreement thru intergovernmental cooperation; that the City will be exploring local mass transit options using green energy sources; that development should proceed following all best practices, sustainable

methods to produce the utmost quality product that is beneficial to the City, the County, and State residents of today and tomorrow, while offering economic recovery and employment opportunities for now and in the future; that Lewes' recent history of prudent, appropriate and successful use of land development can be reflected in both the Canalfront Park project and the Canary Creek Development; that the historic special sense of place provided by the community is not only appreciated each day by the residents, it is reflected by the outpouring of concern, involvement and testimony presented; that many times in the past the people of Lewes have stood up for what they believe is what they want Lewes to be, stay and become; that we are here again to voice concerns of preservation for the First City in the First State, seeking to maintain the quality of life; that this zoning change is not in the best interest of Lewes; and it is respectfully requested that the application be denied.

The Commission found that John A. Sergovic, Jr., Attorney, of Sergovic & Carmean, P.A. was present on behalf of Managing Growth Around Lewes, Inc. and the Citizens Coalition, Inc. with Mike Lenhart, Professional Engineer, of Lenhart Traffic Consulting, Inc., William Moyer of Moyer Environmental Consulting, Charles A. Hewlett, Managing Director of RCLCO Real Estate Advisors, Mike Tyler, President of Citizens Coalition, Inc., Gail Van Gilder, Chairperson of the Lewes Scenic Byway Committee, and John Mateyko, Principal of John Mateyko Architect, LLC in opposition to this application and stated in their presentations and in response to questions raised by the Commission that his clients are opposed to approval of the applied for upzoning; that there are two (2) procedural challenges to the consideration of this application by the Commission and County Council: 1) no cause to allow withdrawal of C/Z #1630 in December 2008; that the Applicants failed to withdraw the prior application per Code; that the County Council improperly granted the request of the Applicant to withdraw and to permit expedited review of a new and substantially similar application; 2) no ordinance provision exists to give C/Z #1690 expedited treatment; that the Applicant should have been required to go through the regular procedure for a change of zone and any expedited review of the application is unauthorized, inappropriate and unlawful; that this application fails to comply with the 2008 Comprehensive Plan Update or the Zoning Code; that the project size is unknown; that the alleged reduction from 500,000+/- square feet to 320,000+/- square feet is a smoke screen; that the existing 46 acres can be developed at 500,000 +/- square feet or greater through a simple Special Use Exception process before the Board of Adjustment, without State PLUS review, or County Council review; that the Comprehensive Plan identifies preferences between growth areas; that development is encouraged first in the Municipalities, then in the Town Centers, then in the Developing Areas, and lastly in the Environmentally Sensitive Developing Areas; that the Land Use Element for the Environmentally Sensitive Developing Areas provides guidelines for non-residential uses; that while the Comprehensive Plan recognizes that additional commercial uses may be needed, the Comprehensive Plan provides that retail and office uses are appropriate, but larger scale shopping centers and office parks should be confined to selected locations with access to arterial roads; that the Comprehensive Plan directs that large intense shopping centers are encouraged in Highway Commercial areas and identifies the location on the maps; that the Comprehensive Plan's Land Use Map does not support this large scale development at the proposed location; that once the County Council adopted the Comprehensive Plan the Land Use Map has the force of law; that the Land Use Map does not designate the site for Highway Commercial development; that there is no Highway Commercial shown along Kings Highway; that our conclusion that the Land Use Map controls and approving this

application despite its not being mapped as a Highway Commercial area is legally impermissible and is confirmed by the Court of Chancery in the case of O'Neill vs the Town of Middletown; that in the Applicants "Statement of Conformity with the June 2008 Comprehensive Plan Update" report continually repeats itself that they conclude that the property is within a designated Growth Area, the Environmentally Sensitive Developing Area, with a designation of Low to Medium Density, which specifically allows the Commercial Residential District; that it is obvious that the Table 8 reference from the Comprehensive Plan is designed to allocate the intensity of residential densities to those zoning districts permitting residential use; that the application violates the Zoning Code since the site is not on Arterial Route 9; that the purpose of the Commercial Residential District is to provide sufficient space in appropriate locations for a wide variety of commercial and miscellaneous service activities generally serving a wide area and located along major thoroughfares where a general mixture of service activities now exist; that the Code provides that such uses shall be adjacent to a major arterial roadway, as defined by the Subdivision Ordinance to be located where adequate infrastructure is existing, planned or funded and shall be completed prior to the issuance of a certificate of compliance; that only Savannah Road meets the Zoning Code location for large scale uses; that the Subdivision Code provides that the Major Arterial Roadway Route 9 is Savannah Road and not Kings Highway, therefore this project will not be located on a Major Arterial Highway and will therefore be inconsistent with both the Comprehensive Plan and the Zoning Code; that the application is not only incompatible with the current Comprehensive Plan and the Zoning Code, but is actually diametrically opposed to the principles avowed in those mandates governing legal permissible rezonings; that an updated Traffic Impact Study has not been performed for this application; that in reference to the trip generation characteristics of shopping centers, pass-by trips are existing trips that are already on the road network, thereby supporting that neighborhood centers serve the existing area and do not draw a significant number of new trips to the site from outside the area; that the size of this project is more than twice the size of the average community shopping center as defined by the International Council of Shopping Centers; that the current AR zoning would allow for a density of 2 units per acre, resulting in 90 units that generate approximately 944 trips per day on an average weekday; that the proposed project would generate a total of 16,336 trips per day on an average weekday; that a shopping center does not have a short peak period that tapers off quickly; that shopping centers begin to generate significant traffic around 11:00 a.m. to Noon and then generate significant and fairly consistent traffic volumes throughout the afternoon and beyond the evening peak period; that these extended periods can have a significant impact on a community and should be considered in the context of a rezoning and the resulting impacts on the health, safety, and welfare of a community; that an average community shopping center would have a trade area range from 3 to 6 miles from the site; that depending of the ultimate tenant mix, this site could be considered a regional shopping center with a trade area range of up to 10 to 15 miles from the site, which could extend to Bethany Beach and Georgetown; that the 23 acres area reduction from the original application could easily be considered in the future for rezoning if this application is approved; that the current concept plan even shows drive aisles and parking in the southern portion of the property that would provide access to the 23 acres in the future; that DelDOT has even commented that they will grant an additional right-in and right-out access to serve the future portion; that the majority of the site is located in an Investment Level 3 according to the Strategies for State Policies and Spending; that the site has been identified as within an Area of Concern near the City of Lewes on the Potential Municipal Annexation Areas and Areas of Concern Map in the Comprehensive Plan; that the Comprehensive Plan references

that the challenge in the Environmentally Sensitive Developing Areas is to safeguard natural areas and mitigate roadway congestion without stifling tourism and the real estate market; that it is obvious on the Land Use Map that there are numerous locations along Route 1 that are intended to be developed with Commercial Residential zoning; that the DelDOT review indicates that 3 of the study intersections will fail under the total traffic conditions with full build-out of the project; that the Kings Highway/Gills Neck Road intersection is projected to fail without the dualization of Kings Highway; that in consideration of the evidence, it would not be prudent to approve this application when it is acknowledged and proven that significant traffic deficiencies will result, and that future public funds will be needed to address the deficiencies created by this application; that it is clear that the application is simply not appropriate at this location, does not conform to the Comprehensive Plan, and will have significant impacts to traffic that cannot be adequately mitigated; that the application contains insufficient detail on any meaningful comments on the environmental impacts of the application; that the Environmental Assessment is incomplete; that the project could have adverse and irreversible impacts on the Inland Bays Watershed and the tributaries of the Inland Bays; that water supply protection is a concern; that DNREC representatives have expressed serious reservations regarding the adequacy of the County Source Water Protection Ordinance; that DNREC representatives have stated that one of the best ways to avoid contamination of important water supply wells is to avoid intensive industrial and commercial development that uses hazardous material; that the ideal type of land use around water supply wells is preserved open space, and that agricultural uses are beneficial for groundwater recharge, because the water used for irrigation returns to the ground; that the project is directly over the City of Lewes' well recharge area; that run-off from impervious areas could contaminate the wells or reduce the amount of recharge leading to saltwater intrusion; that the Dover office of the Corps. of Engineers does not have any record of any wetlands delineation being submitted for this application; that it is possible that farmed or prior converted cropland wetlands are present; that examples of contaminants from such a shopping center include potentially hazardous material, nutrients, suspended sediments, road salt, oil and grease; that all of those contaminants could reach Pot Hook Creek either by flowing over the surface of the land or through the unconfined groundwater aquifer or as a result of storm runoff; that the location of a shopping center over a municipality's wellhead recharge area is not in the best interest of the City, its residents or the residents of the County; that it is difficult to comprehend why the Director of State Planning would sent a letter voicing no objection to the development of this property after the PLUS process raised so many red flags for the proposed development and after the Applicants consultant failed to adequately response to the red flags; that the residents should be concerned that if the rezoning is approved a site plan is then reviewed by the Commission during a public meetings that is not considered a public hearing and that the Commission will decide if they will consider public testimony on the site plan since it is then considered a permitted use; that the existing retail market conditions in the beach area indicated that approximately 2.1 million square feet of retail exist; that 90% of it exist along Route 1; that there is a vacancy rate of approximately 30%; that most centers have at least one vacancy; that the current retail market is already 324,000 square feet in oversupply; that there should be a 24 year supply of retail space based on existing, project under construction, and planned and proposed projects; that super stores have a dramatic negative impact on smaller stores; that super stores will draw from larger areas in the 10 to 15 mile radius range; that a 1994 application was considered in close proximity to this site and was denied because no need was established, the application was not in compliance with the then Comprehensive Plan, other sites were available,

job opportunities were only speculative, safety concerns were voiced such as emergency access, infrastructure was inadequate, and the project would not enhance the site; that this application will have serious negative effects on Lewes, the First Town in the First State, and its historic legacy where people can see firsthand in restored homes, historic buildings and museums; that the project could impact the Cape Henlopen State Park and the Cape May – Lewes Ferry traffic; that the use could impact the Cape Henlopen High School and its students, teachers, and buses; that the use could impact ambulance and other emergency services that use Kings Highway to access the Beebe Hospital; that Lewes is already a town center and does not need to be expanded; that the Village of Five Points, only 1 mile from the site, already serves local and regional customers with a supermarket and many other shops and services; that the Vinyards at Nassau project is under construction and will provide more space for retail and offices; that this site will not serve the community; that seasonal traffic swells in the summer creating back-ups that emit exhaust fumes; that traffic blocks access and strains the infrastructure; that the site sits at the crossroads of 2 roads recently designated by DelDOT as State Scenic and Historic Byways; that the roads included are Kings Highway, Gills Neck Road, Savannah Road, Pilottown Road, New Road and Cape Henlopen Drive; that these roads are some of the most scenic and significant in the State based upon their vast scenic and historic resources; that the Comprehensive Plan references that the purpose of the Byways program is to identify, preserve and enhance roadways that possess outstanding visual qualities and that it is required that a corridor management plan be developed to outline strategies to preserve and enhance the roadways; that the Byways program is a program of both the Federal Highway Administration and DelDOT; that the State program meets federal guidelines and allows the State to designate roads to be eligible to apply for federal funding; that new development built out of scale and context poses an enormous risk to the tourism economy and the real estate market for vacation and retirement homes on which this area depends; that this project could overwhelm the Byway and seriously jeopardize Lewes' appeal as a tourism destination; that this rezoning is un-needed, injurious to public safety, public mobility, use of public facilities, operation of emergency responders and not sustainable economic development; that it is not the orderly growth that the Comprehensive Plan requires for current and future generations; that the rezoning would degrade public safety of pedestrians, bicyclists, and drivers by over-loading the limited carrying capacity of the existing small-scale historic streets in Lewes, and in doing so would degrade the property values, business investment, and tax base of the City and the County; that Lewes is known throughout the nation as part of America's historic heritage; that the rezoning sets up a public safety confrontation between out-of-town shopping center traffic and the pedestrian orientation in Lewes; that the site across from the new Cape Henlopen High School and the City drinking water well sites is unsuitable since such location is not orderly growth; that the rezoning is not compatible with access to the State Park or the Cape May – Lewes Ferry which is a Intermodal Connector, is part of the Interstate Highway System, and represents a public investment of hundreds of millions of dollars; that local needs cannot support the use; and that the rezoning is directed toward a 3 to 15 mile radius, not local need, not Lewes, not Gills Neck growth, and is an unacceptable location to service regional needs.

The Commission found that Mr. Sergovic provided the Commission with an Opponents Booklet which contained the comments and reports of the referenced speakers; that Mr. Tyler submitted a pamphlet titled "STOP THE LEWES REGIONAL SHOPPING CENTER" and a flyer titled "STOP THE LINGO-TOWNSEND REGIONAL SHOPPING CENTER"; and that Mr. Mateyko

submitted a copy of his statement, a copy of “The Role of Coastal Zone Management Programs in Adaptation to Climate Change”, a copy of a booklet “Greetings from Smart Growth America”, a copy of a booklet “Active Living Builds Healthy Communities”, a pamphlet “Summary of Policy Makers”, a pamphlet “Development of a Sea Level Rise Adaption Plan for Delaware”, an article “Green Infrastructure”, an article “Green Infrastructure: Smart Conservation for the 21<sup>st</sup> Century”, a news article from the Washington Post on “Scientists Issue Dire Prediction on Warming”, an AIA Delaware report on “Greening Delaware’s Coastal Cities”, a copy of an agenda for AIA Delaware, December 11, 2007, conference on “Sustainable Solutions to Climate Change in Delaware”, a report on “Climate change may make part of Delaware disappear”, a pamphlet on the “Focus on Livable Communities”, a report on “Leed for Neighborhood Development”, a Nemours Health and Prevention Services report on “The Built Environment and Health”, a report on “Potential for Shoreline Changes Due to Sea-Level Rise Along the U.S. Mid-Atlantic Region”, a booklet titled “Choosing Our Community’s Future”, and a booklet titled “Getting to Smart Growth II”.

The Commission found that the Honorable Gary Simpson, State Senator, was present and advised the Commission that DelDOT does not have an agreement with the Delaware River and Bay Authority to dualize Kings Highway; that there are no monies in the State Bond Bill for any construction, except for Route 9 at Five Points; and that he is speaking in opposition to this application on behalf of the residents in opposition.

The Commission found that Ronald Smith, Eve Aldred, Ruby Cage, Betsy Farlow, Nadine Wicks, Thomas Panetta, David Herbert, Henry Glowiak, and Richard Anthony of the 114 people present in opposition expressed concerns that every type of retail outlet is presently available within 3 miles of the site, except for a major sporting goods outlet; that there is no need for any additional tourism east of Route 1; that there is no need for any additional traffic signals; that the residents of Gills Neck Road will see nothing but the back of large buildings; that if the application is denied the site will become residential, which no one will object to; that children attending the Cape Henlopen High School do not need another temptation to cross Kings Highway; that the High School has approximately 200 young drivers; that the Jules Jackson comments should be given consideration; that it is difficult now to walk along Kings Highway and Gills Neck Road; that the DelDOT proposed roundabout will create more traffic problems and impact traffic; that the petition being submitted contains 1,200 signatures in opposition; that no one is trying to take away the owners right to develop the property; that the residents are concerned about all of the uses permitted in the CR-1 zoning; that Route 1 already contains enough commercial character for the entire area; that Route 1 and Route 9 already have the infrastructure; that the shopping center and similar uses will negatively impact the Lewes area in terms of its’ historic, resort and seacoast ambience, negatively affect traffic safety and traffic flow and service on Kings Highway, negatively affect environmental factors including water supply and water pollution, noise, light and odor pollution, and negatively affect public safety particularly for pedestrians, joggers and bicyclists, of which there are many; that the hostility toward Senator Simpson was not appreciated; that the developers could make intersection and roadway improvement, but once completed they do not maintain the improvements and therefore it cost the citizens of the State of Delaware to pay for such maintenance; that there is a lack of substantial evidence in support of this application; that conditional uses could also overlay the site and a casino could be built on the site.

The Commission found that Nadine Wicks submitted a petition in opposition to this application containing 1,200 signatures in opposition.

Mr. Lank summarized a letter in opposition submitted by Sandra L. Phelan of Lewes, a resident and small business owner, which referenced that if endorsed, the application would significantly and negatively impact Kings Highway and thereby the flow of traffic into and out of historic Lewes and the very nature of a vibrant and attractive downtown that is a major draw for visitors to the community; that Lewes citizens, its business owners and city management have worked tirelessly to maintain an environment that nourishes the historic nature of the City and enhances the quality of life that brought most of us to Lewes; that Lewes is a recognized and preferred destination for those seeking respite from over development, which needs to be encouraged and protected, not buried under uncontrolled growth; that an Applicant must show a benefit to the surrounding community to be granted rezoning; and as a resident and merchant of Lewes, this will degrade the quality of life and destroy the business environment that the merchants work daily to sustain and enhance.

The Commission found that the representatives of the Applicant, in response to questions raised by the Commission, stated that they have not calculated the actual build-out of the project since they have not determined the final use, the parking and loading and infrastructure requirements necessary to prepare a final site plan; that DelDOT did, in the granting of approval, require the developers of Wolfe Runne, Wolfe Pointe, Hawkseye, Cadbury, Breakwater, The Senators, and The Governors to contribute funds to make future improvements to Kings Highway, Gills Neck Road and other intersections and roadways; that some of the required improvements have already been completed; that a small percentage of the site is located in an Investment Level 2 Area; that the majority of the site is located in an Investment Level 3 Area; that road and intersection improvements will be required when work on the site commences; that infrastructure on site will be completed prior to a Certificate of Compliance/Occupancy being issued; that DelDOT installs traffic signals based on traffic demands; that DelDOT wants to construct the roundabout at Route 1 and Dartmouth Drive; that it will cost the developer 8.5 million in overall cost for the DelDOT required improvements; that the Applicants realize that there is a need for intergovernmental coordination; that the current Memorandums of Understanding between the County and the Towns are for the purpose of notification and comments on rezoning applications; that there are no commercial sites of this size along Kings Highway; that The Senators project, The Governors project, and this project, along with other projects on Gills Neck Road, will make scheduled improvements per agreement with DelDOT, once an agreement is signed; that the roundabout will be a part of the scheduled phasing; that the first phase is likely to be the anchor store, depending on the market; and that there seems to be some confusion as to whether Kings Highway is considered to be a major arterial highway.

Mr. Robertson stated that he would like to review the Zoning Ordinance and the Subdivision Ordinance as they relate to arterial roadways.

Mr. Lank stated that DelDOT determines and changes the designation of roadways based on their Functional Classification Map, and the map should be reviewed to determine the current designations.

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

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

Meeting adjourned at 12:25 a.m.