

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 2, 2015**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 2, 2015, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:**

<b>Michael H. Vincent</b>	<b>President</b>
<b>Samuel R. Wilson, Jr.</b>	<b>Vice President</b>
<b>George B. Cole</b>	<b>Councilman</b>
<b>Joan R. Deaver</b>	<b>Councilwoman</b>
<b>Robert B. Arlett</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>J. Everett Moore, Jr.</b>	<b>County Attorney</b>

**The Invocation and Pledge of Allegiance were led by Mr. Vincent.**

**Call to  
Order**

**Mr. Vincent called the meeting to order.**

**M 199 15  
Amend  
and  
Approve  
Agenda**

**A Motion was made by Mr. Wilson, seconded by Mr. Cole, to amend the Agenda by deleting “Executive Session – Pending/Potential Litigation pursuant to 29 Del. C. §10004(b)” and “Possible Action on Executive Session Items”, and to approve the Agenda, as amended.**

**Motion Adopted: 5 Yeas.**

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

**Minutes**

**The minutes of May 5 and 12, 2015 were approved by consent.**

**Corre-  
spondence**

**Correspondence:**

**CHILDREN OF THE DELAWARE NATIONAL GUARD.  
RE: Letter in appreciation of grant.**

**LOVE, INC., SEAFORD, DELAWARE.  
RE: Letter in appreciation of grant.**

**WEST SIDE NEW BEGINNINGS, INC., WEST REHOBOTH CHILDREN  
AND YOUTH PROGRAM, REHOBOTH, DELAWARE.  
RE: Letter in appreciation of grant.**

**Public  
Comments**

**Public Comments:**

**Dan Kramer commented on the Greenwood Public Library.**

**Chris Pollinger, a resident of Heron Bay, commented on the problems in the Heron Bay Development.**

**Procla-  
mation**

**A Proclamation entitled “PROCLAIMING THE MONTH OF JUNE AS *HOME OWNERSHIP MONTH* IN SUSSEX COUNTY” was presented to representatives of the Sussex County Association of Realtors.**

**Wastewater  
Agreement**

**Mr. Lawson presented a wastewater agreement for the Council’s consideration.**

**M 200 15  
Execute  
Wastewater  
Agreement/  
Forest  
Landing**

**A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, for Sussex County Project No. 81-04, Agreement No. 343-9, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Forest Landing Communities for wastewater facilities to be constructed in Forest Landing – Phase 3B, located in the Miller Creek Sanitary Sewer District.**

**Motion Adopted: 5 Yeas.**

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

**Sheriff’s  
Department/  
Constable  
Certification**

**Mr. Lawson presented the Constable Certification of Sheriff Robert Lee and each of the Sheriff Deputies in the office. In Delaware, the Department of Safety and Homeland Security through the State Police oversees professional licensing and regulates all Certified Constables. All Constable Commissions are reviewed and approved by the Board of Examiners of Constables, per State Code. Mr. Lawson reported that it was determined that the Board needs an updated request letter from Sussex County Council for their files. Sheriff Lee was in attendance to answer questions.**

**M 201 15  
Approve  
Constable  
Commission**

**A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, that the Sussex County Council approves the Constable Commission by the State Board of Examiners for Sheriff Robert T. Lee, Chief Deputy Eric D. Swanson, and Sheriff Deputies Patricia Allegro-Smith, Martin B. Gordy, and George H. Wilson.**

**Motion Adopted: 5 Yeas.**

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

**Adminis-  
trator's  
Report**

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

**1. Woodland School House Building Public Meeting**

**On Thursday, June 4, 2015, Sussex County will hold a public meeting to gather community input on the future of the historic Woodland School House.**

**The structure is located on the grounds of the former Woodland Golf Park property, now owned and being repurposed by Sussex County into a low-impact park southwest of Seaford. As part of the redevelopment project, Sussex County is seeking the public's feedback on how best to utilize the building, including the potential to move it to a location where it could be put to use by interested civic groups or private citizens.**

**The meeting will be held at 6:00 p.m. at the Woodland United Methodist Church, 5123 Woodland Church Road, near Seaford. Representatives from County government will give a presentation about the history of the building and the acquisition process. The public is invited to attend the meeting to provide feedback and ask questions. The County also will provide an update on the summertime construction of the Woodland Park project.**

**For more information, please contact County Engineer Michael Izzo at (302) 855-7718.**

**2. Delaware State Police Activity Report – April 2015**

**Per the attached Delaware State Police activity report for April, there were 94 violent crime arrests with 71 clearances; 883 property crimes with 318 clearances; and 15,347 total traffic charges with 10,613 corresponding arrests. Of those traffic arrests, 279 were for DUI. Finally, there were 1,481 total vehicle crashes investigated in April. In total, there were 195 troopers assigned to Sussex County for the month of April.**

**[Attachments to the Administrator's Report are not attachments to the minutes.]**

**Public  
Hearing/  
Proposed  
Route 54  
Expansion  
of the  
Fenwick  
Island SSD**

**A Public Hearing was held on the Proposed Route 54 Expansion of the Fenwick Island Sanitary Sewer District.**

**John Ashman, Director of Utility Planning, reported that on January 6, 2015, he came to Council to request permission to prepare and post notices for the Route 54 Expansion of the Fenwick Island Sanitary Sewer District to include parcels along Route 54 (Lighthouse Road) primarily from Zion Church Road to Williamsville Road. A Public Hearing was held on February 10, 2015 at which time several landowners requested inclusion into the proposed expansion. On that date, the Engineering**

**Public  
Hearing/  
Proposed  
Route 54  
Expansion  
of the  
Fenwick  
Island SSD  
(continued)**

Department was tasked to see if inclusion was possible and to report back to Council on February 17, 2015. On February 17, 2015, County offices were closed due to inclement weather and the County Council meeting was cancelled. This forced the matter outside of a 30-day time period requirement, in accordance with State Law. For this reason, the Engineering Department had to repost the project.

Mr. Ashman reported that petitions were received from many landowners in the proposed expansion area as well as others. He noted that there was strong support from the people. He also noted that not all requesting service can be served by this expansion at this time; however, the remainder may be able to be annexed in the future. The project will install a main trunk line for sewer in Route 54 and serve the parcels on both sides of Route 54.

Mr. Ashman reported that, after they missed the 30-day window, the Department took some time to look at adjacent parcels and are now able to include several additional parcels. The new parcel owners will share in the cost of the infrastructure. Additionally, they have been able to roll the System Connection Charge (SCC) fee into the financing. The revised user cost will be \$7.06 per front foot with an annual service charge of \$294.00/EDU, and any additional SCC fees required would be \$5,500.

Mr. Ashman reviewed the boundaries of the new proposal for expansion which includes 3 additional parcels that requested inclusion, a commercial parcel that also requested inclusion, and additional parcels to get the expansion contiguous to the commercial property. Mr. Ashman reported that Bay View Estates has agreed to allow Engineering a connection through their property.

Mr. Ashman reviewed the general user rate information, estimated user charges, and proposed schedule. He reported that construction will mostly likely start in August 2016 with the system operational by May 2017 (proposed).

Mr. Ashman and Michael Izzo, County Engineer, responded to questions raised by the Council regarding payment plans, front foot costs for the commercial property, extending sewer to farmland, and where sewage will be treated and disposed of.

Mr. Ashman reported that a request was received on this date for inclusion of another parcel of land. Mr. Ashman stated that, with Council's approval, the parcel could be included in the expansion with the understanding that the Department cannot guarantee service. Mr. Izzo stated that the Engineering Department's recommendation would be to include it and if they can serve it, they will.

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

**M 202 15**  
**Adopt**  
**Proposed**  
**Resolution**  
  
**(No Action)**

**A Motion was made by Mr. Arlett to Adopt the Proposed Resolution entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE FENWICK ISLAND SANITARY SEWER DISTRICT (FISSD) TO INCLUDE ALL THOSE CERTAIN LOTS, PIECES OR PARCELS OF LAND SITUATED ALONG COUNTY ROAD 54 (LIGHTHOUSE ROAD) PRIMARILY FROM ZION CHURCH ROAD TO WILLIAMSVILLE ROAD, AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE”.**

**No action was taken on this Motion.**

**Council discussed the inclusion of the additional parcel of land (Tax Map #533-18.00-27.00).**

**M 203 15**  
**Reopen**  
**Public**  
**Hearing**  
**Record**

**A Motion was made by Mr. Cole, seconded by Mr. Arlett, to reopen the Public Hearing record.**

**Motion Adopted: 5 Yeas.**

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

**Public**  
**Comment**

**John Lauer confirmed he requested that his parcel (Tax Map #533-18.00-27.00) be included in the proposed expansion.**

**The Public Hearing was closed.**

**M 204 15**  
**Amend**  
**Proposed**  
**Resolution**

**A Motion was made by Mr. Arlett, seconded by Mrs. Deaver, to amend the Proposed Resolution by adding Parcel #533-18.00-27.00 to the proposed expansion of the Fenwick Island Sanitary Sewer District.**

**Motion Adopted: 5 Yeas.**

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

**M 205 15**  
**Adopt**  
**Resolution**  
**R 007 15**

**A Motion was made by Mr. Arlett, seconded by Mr. Cole, to Adopt Resolution No. R 007 15 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE FENWICK ISLAND SANITARY SEWER DISTRICT (FISSD) TO INCLUDE ALL THOSE CERTAIN LOTS, PIECES OR PARCELS OF LAND SITUATED ALONG COUNTY ROAD 54 (LIGHTHOUSE ROAD) PRIMARILY FROM ZION CHURCH ROAD TO WILLIAMSVILLE ROAD, AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE”, as amended by adding Parcel #533-18.00-27.00. (Route 54 Expansion)**

**Motion Adopted: 5 Yeas.**

**M 205 15  
(continued)**

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

**Woods at  
Walls  
Creek/  
Bond  
Payment  
and  
Release**

Vince Robertson, Assistant County Attorney, referenced the authorization that Council gave several months ago to call bonds for The Woods at Walls Creek development. There were two bonds, one for stormwater work and one for road work. Since both were not completed by the original developer, the Bonds were called to complete the work. The County has been in negotiations since the bonds were called with the bonding company (West Chester Fire Insurance Company). The County Engineering Department has performed estimates for the stormwater management work which relates to the same amount as the bond and West Chester has now agreed to pay the full amount of the bond to Sussex County so that the work can be bid out and completed. One of the conditions of the payment is that Sussex County would release the bonding company from any further obligations under the bond. Mr. Robertson reported that it is the opinion of legal staff that the Release should be authorized by the Council.

In regard to the bond for road work, Mr. Robertson reported that the amount exceeds the amount of the road work that needs to be completed so they are working with West Chester to come up with a means whereby the County would bid out the work, get it completed, and West Chester would pay for it.

**M 206 15  
Execute  
Release of  
Insurance  
Company  
and Bond**

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to authorize the President of the Sussex County Council to execute a Release of Westchester Fire Insurance Company and its Bond No. K07046480 for the stormwater management work in a development known as The Woods at Walls Creek; the Release shall be held by the Assistant County Attorney pending release of the bond payment, at which time it shall be transmitted to Westchester Fire Insurance Company along with the original bond.

**Motion Adopted:     5 Yeas.**

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

**Mayor's  
Challenge  
to end  
Veterans  
Home-  
lessness  
Program**

Brad Whaley, Director of Community Development and Housing, presented information on the Mayors Challenge to End Veterans Homelessness and reported that the County has been approached by federal, state and local officials regarding this initiative. This initiative is a joint effort combining forces from the U.S. Department of Veterans Affairs, Department of Housing and Urban Development, the U.S. Interagency on Homelessness, the National League of Cities, and state and local governments. The goal is to eliminate veteran homelessness in 2015.

**Mayor's  
Challenge  
to end  
Veterans  
Home-  
lessness  
Program  
(continued)**

**Brandy Nauman, Housing Coordinator & Fair Housing Compliance Officer, advised that by signing on, Sussex County will join several other local jurisdictions. Governor Markell recently signed on to the initiative on behalf of the State of Delaware; also signing on are New Castle County, Kent County, City of Dover, City of Wilmington, City of Newark, City of Seaford and Town of Georgetown. Mrs. Nauman stated that the County would join with Seaford and Georgetown to establish a Sussex County working group and join forces with the existing statewide working group. She stated that their role would be to help facilitate the coordination of existing resources so that local homeless veterans obtain housing as quickly and efficiently as possible. This year, it was determined that 950 people experienced homelessness in Delaware; of the 950, there were 102 identified as having served in the United States Armed Forces. She noted that this is probably not the true count of the County's homeless population.**

**M 207 15  
Adopt  
Resolution  
R 006 15**

**A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to Adopt Resolution No. R 006 15 entitled "A RESOLUTION PLEDGING SUSSEX COUNTY COUNCIL'S SUPPORT OF THE MAYORS CHALLENGE TO END VETERAN HOMELESSNESS IN 2015".**

**Motion Adopted: 5 Yeas.**

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

**Inland Bays  
Regional  
Wastewater  
Facility/  
Design  
Contract/  
Class "A"  
Sludge  
Dryer**

**Michael Izzo, County Engineer, presented a proposed Design Contract Amendment with Whitman, Requardt & Associates for the North Coastal Planning Area. The scope of services would include the development of bid documents (plans and specifications) and bid phase assistance for the new sludge dryer facility at the Inland Bays Regional Wastewater Facility. This project would convert the sludge from a Class B product to a Class A product. The proposed contract amendment is \$391,880.00. The estimated construction cost is between \$4.8 million and \$5.8 million. Mr. Izzo noted that there are still variables to consider which will affect cost.**

**Mr. Wilson commented on a steel frame versus a wood frame. Mr. Izzo responded that the Department will look into building material options.**

**M 208 15  
Execute  
Contract  
Amend-  
ment/  
Design  
Contract**

**A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based upon the recommendation of the Engineering Department, that the Sussex County Council President be authorized to execute a contract amendment with Whitman, Requardt & Associates, LLP for the North Coastal Planning Area for the design of the Class A sludge dryer facility at the Inland Bays Regional Wastewater Facility at a cost not to exceed \$391,880.00.**

**Motion Adopted: 4 Yeas, 1 Abstention.**

**M 208 15**

**(continued)**      **Vote by Roll Call:**      **Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Arlett, Yea; Mr. Wilson, Abstained;  
Mr. Vincent, Yea**

**Deerbrook Off-Site Infrastructure Agreement/Long Neck SSD**      **John Ashman, Director of Utility Planning, presented the Deerbrook Off-site Infrastructure Agreement between Sussex County and Alpaco V, LLC for the installation of regional infrastructure to connect the project known as Deerbrook to the Long Neck Sanitary Sewer District. The developer will construct infrastructure improvements. As part of this Agreement, a timeline has been submitted based on final recordation of the subdivision; the Agreement also outlines the establishment of an escrow account to cover the cost of the regional infrastructure and the reimbursement of the oversizing costs for the regional facilities. Mr. Ashman noted that, if Council approves this Agreement, the Engineering Department will present an annexation request in the near future.**

**M 209 15 Execute Deerbrook Off-Site Infrastructure Agreement/Long Neck SSD**      **A Motion was made by Mr. Arlett, seconded by Mr. Wilson, that the Sussex County Council President is authorized to execute the Deerbrook Off-Site Infrastructure Agreement between Sussex County and Alpaco V, LLC for a regional pump station, force main, and gravity collection system, as presented on June 2, 2015.**

**Motion Adopted:      5 Yeas.**

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

**Old Business/ CU 2013**      **Under Old Business, the Council considered Conditional Use No. 2013 filed on behalf of TBHM, LLC.**

**The Planning and Zoning Commission held a Public Hearing on this application on March 12, 2015 at which time action was deferred for receipt of a revised preliminary site plan. The Commission discussed the application on April 9, 2015, at which time the application was deferred again and the record was left open for 10 days to allow any interested parties to review and comment on the revised site plan. On April 23, 2015, it was reported that no comments were received; on that date the Commission recommended approval of the application, with conditions.**

**The County Council held a Public Hearing on this application on April 21, 2015 at which time action was deferred.**

**M 210 15 Adopt Ordinance No. 2398/ CU 2013**      **A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to Adopt Ordinance No. 2398 entitled “AN ORDINANCE TO GRANT A 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**



**M 210 15**  
**Adopt**  
**Ordinance**  
**No. 2398/**  
**CU 2013**  
**(continued)**

**LEWES AND REHOBOTH HUNDRED AND BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.99 ACRES, MORE OR LESS” (Conditional Use No. 2013) filed on behalf of TBHM, LLC, with 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 Adopted: 5 Yeas.**

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

**Grant**  
**Requests**

**Andrea Wall, Manager of Accounting, presented grant requests for the Council’s consideration.**

**M 211 15**  
**Council-**  
**manic**  
**Grant**

**A Motion was made by Mr. Arlett, seconded by Mr. Cole, to give \$1,000.00 from Mr. Arlett’s Councilmanic Grant Account to the Indian River High School for the Business Professionals of America Team’s attendance at a national conference.**

**Motion Adopted: 4 Yeas, 1 Nay.**

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

**M 212 15**  
**Council-**  
**manic**  
**Grant**

**A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$4,500.00 (\$2,000.00 from Mr. Wilson’s Councilmanic Grant Account, \$1,000.00 from Mr. Vincent’s Councilmanic Grant Account, \$500.00 from Mr. Cole’s Councilmanic Grant Account, \$500.00 from Mr. Arlett’s Councilmanic Grant Account and \$500.00 from Mrs. Deaver’s Councilmanic Grant Account) to the Georgetown – Ellendale VFW Post 2931 for the Veteran’s House Build Project.**

**Motion Adopted: 5 Yeas.**

**M 212 15**  
**(continued)**

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

**M 213 15**  
**Council-**  
**manic**  
**Grant**

**A Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to give \$750.00 (\$500.00 from Mr. Wilson's Councilmanic Grant Account and \$250.00 from Mrs. Deaver's Councilmanic Grant Account) to the Auxiliary of Milford Memorial Hospital for the proposed new health campus.**

**Motion Adopted: 5 Yeas.**

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

**M 214 15**  
**Council-**  
**manic**  
**Grant**

**A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$500.00 from Mr. Wilson's Councilmanic Grant Account to the Milford New Century Club for civic projects.**

**Motion Adopted: 5 Yeas.**

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

**M 215 15**  
**Council-**  
**manic**  
**Grant**

**A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$500.00 from Mr. Wilson's Councilmanic Grant Account to the Greenwood Volunteer Fire Company for a truck housing ceremony.**

**Motion Adopted: 5 Yeas.**

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

**M 216 15**  
**Council-**  
**manic**  
**Grant**

**A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to give \$1,000.00 (\$250.00 each from Mr. Arlett's, Mr. Cole's, Mr. Wilson's and Mr. Vincent's Councilmanic Grant Accounts) to Delaware Hospice for the annual 5K fundraising event.**

**Motion Adopted: 5 Yeas.**

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

**M 217 15**  
**Grant**

**A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$250.00 from Mr. Wilson's Councilmanic Grant Account to the Friends of the Georgetown Public Library for the annual 5K fundraising event.**

- M 217 15**  
**(continued)**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Arlett, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea**
- Defer  
Action**
- Action was deferred for one week on the grant requests from the Lewes Historical Society and Coastal Concerts.**
- M 218 15**  
**Council-  
manic  
Grant**
- A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$1,000.00 (\$500.00 each from Mr. Wilson's and Mr. Cole's Councilmanic Grant Accounts) to The Home of the Brave Foundation for the homeless women veterans program.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Arlett, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea**
- M 219 15**  
**Council-  
manic  
Grant**
- A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$1,500.00 from Mr. Wilson's Councilmanic Grant Account to the Milford Museum for their fundraising campaign.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;  
Mr. Arlett, Yea; Mr. Wilson, Yea;  
Mr. Vincent, Yea**
- Introduction  
of Proposed  
Ordinances**
- Mrs. Deaver introduced the Proposed Ordinance entitled "AN ORDINANCE 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 BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.53 ACRES, MORE OR LESS" (Conditional Use No. 1777) filed on behalf of Michael Makowski (Tax Map I.D. No. 235-30.00-56.00) (911 Address: None Available).**
- Mrs. Deaver introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MINI-STORAGE UNITS, AND BOAT AND RV STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 8.93 ACRES, MORE OR LESS" (Conditional Use No. 2020) filed on behalf of Charles Auman. (Tax Map I.D. No. 330-11.17-18.00 and 330-15.05-6.00) (911 Address: None Available).**

**(continued) The Proposed Ordinances will be advertised for Public Hearing.**

**Council Members' Comments**      **Council Members' Comments**

**Mr. Cole commented on the "Waters of the United States" Rule that was recently released by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers. Mr. Lawson stated that he would provide an update on the Rule at the June 9th meeting.**

**Mrs. Deaver commented on Slaughter Beach being named Delaware's third National Wildlife Federation-certified Community Wildlife Habitat. This designation was celebrated on May 30th with the unveiling of a new kiosk installed at the town's pavilion.**

**Mr. Arlett commended Mrs. Lisa Ashman, the Mentoring Coordinator for the John M. Clayton Elementary School, on being recognized as a State winner.**

**Mr. Arlett commented on Sussex County's Annual Emergency Services Awards Banquet and he commended everyone committed to public safety in Sussex County.**

**Mr. Arlett commented on the Memorial Day services held in Sussex County.**

**M 220 15      At 11:53 a.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to recess until 1:30 p.m.**  
**Recess**

**Motion Adopted:      5 Yeas.**

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

**M 221 15      A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to reconvene at 1:36 p.m.**  
**Reconvene**

**Motion Adopted:      5 Yeas.**

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

**Rules      Mr. Moore read the Rules of Procedure for Public Hearings.**

**Public Hearing/  
CZ 1770      A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL**

**Public  
Hearing/  
CZ 1770  
(continued)**

**HUNDRED, SUSSEX COUNTY, CONTAINING 114.4821 ACRES, MORE OR LESS” (Change of Zone No. 1770) filed on behalf of TD Rehoboth, LLC.**

**The Planning and Zoning Commission held a Public Hearing on this application on April 23, 2015 at which time the Commission deferred action for further consideration.**

**(See the minutes of the Planning and Zoning Commission dated April 23, 2015.)**

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

**An Exhibit Book and Exhibit Booklet were provided by the Applicant and distributed to the Council members.**

**Mr. Lank reported that the following correspondence has been received: 7 letters of support, 2 neutral letters, and 1,890 petitions, letters and emails in opposition (with duplication).**

**Mr. Lank distributed 3 booklets in opposition, which were received on June 1, 2015.**

**James Fuqua, Attorney, was present on behalf of the application. Also present on behalf of the application were Lou Di Bitonto, Management Partner of TD Rehoboth; Steve Gorski with Duffield Associates, Inc., the Project Manager and Engineer; and Wes Guckert of The Traffic Group, the Traffic Engineer’s consultants.**

**Mr. Fuqua stated that they submitted a number of exhibits and documents for the record, including a letter of support from the Sussex Economic Development Action Committee (SEDAC).**

**Mr. Fuqua addressed two items:**

- **On the Sussex County Comprehensive Plan 2008 Update, the Future Land Use Map, the site is located in a hatched area in the Environmentally Sensitive Development Area (ESDA), one of the designated growth areas. This site was added to the growth area as part of the 2008 Update. The Zoning Ordinance provides that the ESDA is as designated on the Comprehensive Plan. The entire 114 acre parcel is in the growth zone. The zoning map on the County’s website has not been updated to include these lands that were added to the ESDA; it is showing the District as it existed under the 2002 Plan. The Zoning Map on the website has a note indicating that the map should only be used as a general representation and it is not legally binding. In summary, the Zoning Map on the County’s website is incorrect and the land is in the ESDA, which is a growth**

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- zone. It is Mr. Fuqua's opinion that the County's attorneys agree.
- DelDOT issued its reply letter to the Applicant's Traffic Impact Study on September 9, 2014. Page 9 of the letter, under the heading Comprehensive Plan, referred to the County's 2007 Plan Update and it stated that the site was located in the Low Density Area and that the proposed use was not consistent with the County's Comprehensive Plan. This is incorrect and he emailed Troy Brestel of DelDOT informing him of the error. He acknowledged the error and corrected Page 9 of the DelDOT letter and the corrected version was issued to all of the people on the distribution list. The revised Page 9 correctly referred to the 2008 Update, it stated that the site was in the Environmentally Sensitive Development Area, which is a growth zone, and that the requested zoning was appropriate under the Plan and consistent with the Plan. The Applicant thought this was the end of the issue; however, on Friday, the Cape Gazette published an article that was based on DelDOT's original letter and indicated the original representation that this was not consistent with the Plan. The Cape Gazette was not aware of the corrected Page 9. Mr. Fuqua contacted the paper and the paper investigated and immediately posted a retraction and correction to the article on its website. Further, on June 1st, Mr. Fuqua reviewed the exhibits submitted by the opponents and found that one of the exhibits is the September 9, 2014 DelDOT letter with the incorrect Page 9.

Mr. Fuqua submitted copies of the cover email from DelDOT and the correct Page 9.

The following was reported in the Applicant's presentation: that this application is 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 One across Route One from the intersection of Route One and Cave Neck Road (SR-88) for the construction and operation of retail shopping center with a building area of approximately 852,000 square feet (Overbrook Town Center); that the shopping center would be designed as a traditional shopping center with outside entrances to the various stores and not as a mall; that the shopping center would include quality department stores, national anchor stores, national brand smaller stores, along with a mix of local retailers, restaurants and entertainment venues; that a conceptual site plan was submitted for informational purposes only; that the purpose of this Hearing is only to address the CR-1 zoning change; that if the application is approved, the developer will be required to obtain preliminary and final site plan approval from the Planning and Zoning Commission; that at the time of site plan review, all of the details of the plan (parking, setbacks, buffers, landscaping, stormwater management, etc.) will be reviewed by the Commission and will also include the review of the Combined Highway Corridor Overlay Zone and any other aspects of the Zoning Code that apply; that final site plan also requires approval of all regulatory agencies having jurisdiction over the various aspects of the site plan, including DelDOT's approval of the design of entrances and the

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reconfigured Route 1 / Cave Neck Road intersection and overpass; that three main buildings are proposed containing 790,000 square feet of floor area; that there will be pad sites ranging in size from 1.5 acres to 3 acres and will front along Route 1; that construction of the main area would occur in three phases, corresponding to the three buildings; that each phase would be comprised of between 250,000 to 300,000 square feet of floor area; that the timing of the construction of the buildings would be based upon demand and it is anticipated that the construction would be over an approximate 6 year period; that under the Sussex County Comprehensive Land Use Plan, the parcel is located in the Environmentally Sensitive Developing Area (ESDA); that the ESDA is one of the designated “growth areas” created by the Comprehensive Plan; that 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 (Comprehensive Plan – pages 3-16); that 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; that based on substantial evidence in the record, the Applicant’s proposal is in conformity with the Comprehensive Plan; that the purpose of the CR-1 Zoning District (Zoning Ordinance Section 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; that based on substantial evidence in the record, the Applicant’s proposal is in conformity with the purpose of the CR-1 Zoning District; that the CR-1 Zoning District provides that “large scale” commercial uses generally serving a regional area are limited as to their location (Zoning Ordinance Section 115-83.3); that such uses must be adjacent to a major arterial roadway, as defined in Section 99-5 of the Subdivision Ordinance and be located where adequate infrastructure is existing or planned; that based on substantial evidence in the record, the Applicant’s proposal is in conformity with the requirements of the Large Scale Use Section; that the Sussex County Subdivision Ordinance defines “major arterial roadways” (Section 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; that 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 adjacent to a major arterial road; that 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; that 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

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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; that 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; that the parcel will be served by central water for domestic use and fire protection by Tidewater Utilities, Inc.; that the parcel will be served by central sewer facilities; that 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; that, 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; that the parcel is appropriate for CR-1 Zoning since it is located in an Investment Level 3 Area as designated by the Strategies for State Policies and Spending, where growth is anticipated by local, county and state plans in the longer term future; that 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; that 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 an agreement 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.; that 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; that the parcel is predominantly cleared and was historically in agricultural use; that 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; that the proposed CR-1 and proposed use does not adversely impact any historical sites or threatened or endangered species; that the proposed CR-1 zoning classification is in accordance with the purposes and requirements of the Sussex County Zoning Ordinance; that the Sussex County Comprehensive Land Use Plan and 9 Del.C. 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,



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retail and service business at an appropriate location consistent with the direction of the Sussex County Comprehensive Plan and State Strategies Policy, 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 services from regulated public utility companies, contribution of \$8 Million 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 stormwater 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 \$8 Million 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 in an appropriate location accessible to local area residents, County residents, summer residents and visitors and travelers passing through the area; and that 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.

Questions were raised by Council members regarding the proposed construction of intersection and roadway improvements and the Applicant’s \$8 million contribution for the improvements. Mark Coté and Bill Brockenbrough of DelDOT were in attendance and responded to questions.

Public comments were heard.

Doug Brown and Christian Hudson (representing Hudson Management) spoke in support of the application and they gave the following reasons for support:

- CR-1 zoning is appropriate for this parcel.
- There is a need for traditional retail that the project proposes.
- The site is along a major highway and located in a growth zone.
- The project will be a benefit to the local economy as it will support jobs and local contractors. The County depends on agriculture and tourism to support the economy.
- Traffic problems will be alleviated with developer funding/private developer dollars. Most improvements on highways are funded by developer projects. The Developer is getting the blame for something DelDOT did more than a decade ago. The plans have been on DelDOT’s books since 2001.
- One of the top two reasons for people staying at hotels is shopping.
- The project will increase property values.

**M 222 15**      **At 4:32 p.m., a Motion was made by Mr. Arlett, seconded by Mr. Cole, to**  
**Recess**      **recess for 10 minutes.**

**Motion Adopted:      5 Yeas.**

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

**M 223 15**      **A Motion was made by Mr. Wilson, seconded by Mr. Cole, to reconvene at**  
**Reconvene**      **4:46 p.m.**

**Motion Adopted:      5 Yeas.**

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

**Public**      **Public comments were heard in opposition to the application.**  
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**CZ 1770**      **Rob Witsil, Attorney, spoke on behalf of the Overbrook Town Center**  
**(continued)**      **Coalition, consisting of over 100 members.      Mr. Witsil presented the**  
                                 **following in his presentation:**

**If the Council approves the rezoning, there will be no Final Site Plan before the County Council; the Planning and Zoning Commission has that ultimate determination; there is no public hearing before the Planning and Zoning Commission; there will be no public comments; and this is the Council's last chance to determine whether or not this type of commercial zoning is appropriate.**

**The Applicant has not met the requisite burden of proof and the application does not comply with all of the mandatory regulations of 9 Delaware Code Section 6904 (a) and (b); the requested change of zone will not, as indicated by the Applicant and as stated by DelDOT and the opponents, lessen congestion in the streets and highways or reduce the excessive amounts of roads in the area of the application; the Traffic Impact Study provided by the Applicant and the DelDOT PLUS comments indicated that the proposed rezoning for 857,000 square feet of commercial space will generate 27,438 daily vehicular trips on average weekdays and 35,764 on average Saturdays; this level of additional traffic is unacceptable and is neither a "lessening of congestion" or "reducing the waste of excessive amounts of roads"; DelDOT stated to the Planning and Zoning Commission that it was "working with the Developer" on required improvements, that there is "not a definitive timeline for grade separation" and that DelDOT would "finish the improvements"; DelDOT acknowledges that the developer has agreed to contribute \$8 million towards the construction of "grade separation" lanes over Route 1 at Cave Neck Road; however, DelDOT neither suggests nor guarantees that traffic flows on Route 1, Cave Neck Road or other nearby**

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roadways will be lessened or improved as a result of the Developer's or DelDOT's proposed efforts; DelDOT's Level of Service determinations for Route 1 and Cave Neck Road vary between Levels C and D on weekdays to Level F on Saturdays; no evidence from the Applicant or DelDOT suggests that traffic congestion will be improved or lessened by the proposal; DelDOT has made no assurances that the State of Delaware will fund expenditures for the improvement of the Route 1 and Cave Neck Road interchange in the near future; it is admitted by the Developer's engineers, Duffield Associates, that "In order to provide temporary interim access to Route 1, a temporary traffic signal may be installed, if the overpass design and construction falls behind schedule. The temporary signal would be fully funded by the developer. It is feasible that the overpass design and construction may be completed concurrent with the grand opening of the first phase of the project. If this occurs, no signal would be needed."; in a recent interview, DelDOT's Secretary stated that there are too many variables to speculate on the estimated cost of the overpass, but that the cost could be in line with a similar \$29 million dollar overpass in South Frederica (Cape Gazette article, dated 5/28/15); the DelDOT Capital Transportation Program for Fiscal Years 2016 through 2021 does not reference the Route 1 – Cave Neck Road overpass/road improvement program in its list of 98 proposed improvements; DelDOT funding for the necessary highway improvements proposed by the Applicant are not available at any time in the foreseeable future, that the Applicant's offer to contribute \$8 million is insufficient to fund necessary overpass and right of way expenditures, that the proposed commercial center does not present a safe, reasonable or appropriate vehicular plan, and that more likely than not a traffic light will be installed for an unsatisfactory length of time on Route 1 at Cave Neck Road to control the additional traffic created by the proposed use; this traffic scenario would endanger the health and safety of drivers and occupants of vehicles on Route 1 and Cave Neck Road in the vicinity of the site; the proposed site of the application is located in the Strategies for State Policies and Spending Investment Level 3 Area; pursuant to the Office of State Planning Coordination's PLUS Review Report, dated December 20, 2012, "State investment may support future growth in these areas, but please be advised that the State has other priorities for the near future"; that the proposed rezoning will not lessen or reduce traffic congestion, but will cause additional traffic congestion on Route 1, Cave Neck Road, and at intersections north and south of the proposed site; any future plans of DelDOT to provide funding for overpass construction is speculative and cannot be relied upon by Council in its determination of the traffic impact of the proposal; the application fails to comply with the following requirements of 9 Delaware Code Section 6904, to provide adequate provisions for public transportation, protection of the tax base and securing economy in governmental expenditures; the application does not secure safety from fire, flood and other dangers; there is an increased risk of vehicular accidents on Route 1 and intersecting roadways and within the deceleration lanes and interior roadways; the health, safety and welfare of drivers and pedestrians in the area will be at risk from the proposed use; there have been no assurances from the

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**Delaware State Police, the Milton or Lewes fire departments, or the Sussex County Emergency Medical Department that police, fire and EMT services can adequately serve the 114 acre project containing approximately 850,000 square feet of commercial space with over 5,100 parking spaces, an area approximately the size of all three Tanger Outlet shopping centers combined; without such assurances, the health and safety of visitors, shoppers and employees at the proposed facilities are at risk; the Preliminary Land Use Service Map produced by the Delaware Office of State Planning Coordination clearly depicts the agricultural lands, the preserved/protected agriculture average and the natural resources and recreational priority areas surrounding the proposed commercial development; the “highest value” agricultural lands surround the proposed site; the proposed use is not in character with the particularly agricultural and residential nature of the area, despite the several existing small and limited commercial businesses in the vicinity that have developed over the past three decades and the development of residential communities across Route 1 and north of the proposed site; the presently agricultural-residential zoned site is not particularly suitable for a change of zone for a particular commercial large scale “box store” shopping center; the buffer areas proposed by the developer are the minimal areas required by the Zoning Code and are not sufficient to conserve the natural resources of the adjacent areas; the general agricultural and appropriate small business trend and character of the land and building development in the vicinity is not in character with large-scale commercial development; it is apparent that only a portion of the Applicant’s proposed site is described on the Zoning Map as within the Environmentally Sensitive Developing Area Overlay; in regard to the Future Land Use Plan and the Sussex County Zoning Map (2008 Comprehensive Plan Update), there is a discrepancy; the Zoning Map is the official zoning map of Sussex County, it is on the website and it hangs in the Planning and Zoning Office, which clearly indicates that the overlay zone only covers a portion of the southwest corner; perhaps the Zoning Map was not updated; Council must determine if a mistake has been made on the Zoning Map; the opponents believe that it was a mistake to include the 3 or 4 large pieces of agricultural farmland in the ESDA; even if the Council determines that the entire parcel is subject to the Environmentally Sensitive Development District (ESDD) guidelines and regulations, the proposed use is not appropriate in the ESDD; the proposed expansive commercial use is not appropriate in a Delaware Strategies for State Policies and Spending Level 3 Area; the proposed use presents a risk to the natural areas and marshlands so proximate to the proposed site; the Applicant’s proposed stormwater management methods will not limit the amount of runoff from the site; the high amount of impermeable surface and the proximity of the site to critical natural areas should convince the Council that the rezoning is not appropriate; the proposed use is a risk to the nearby environment; there are various and scattered commercial and non-conforming business uses in the vicinity between Cave Neck Road and Red Mill Pond adjacent to Route 1 as mixed commercial uses in an area of AR-1 Agricultural Residential Zoning that is predominantly residential and farmland; the subject 114 acre parcel has always been farmland, as are the**

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surrounding parcels on the east side of Route 1; the two parcels of farmland north of the proposed commercial site have been dedicated to Protected Lands and Agricultural Preservation Districts by owners; the lands to the east and south are actively farmed and the owners of the farms have protested the application stating that the proposed use will detrimentally affect their agricultural operations, and the proposed use is not in character with the general agricultural and residential nature of the area; that a letter was received and submitted from Allen Chorman & Sons, Inc. stating that the Overbrook Town Center will completely ruin their aerial application and waterfowl survey business in a 2 mile radius of the proposed area; that civil aircraft is not permitted to operate below 1,000 feet above ground level over a densely populated area and 500 foot above a sparsely populated area; the Economic Development elements are at risk; the proposed commercial use is not appropriate in Level 3 or Level 4 areas in the Delaware Strategies for State Policies and Spending Investment; the proposed use is not in compliance with Economic Development Element Recommendations of the 2008 Plan Update; the overwhelming economic interests, goals and strategies of the Economic Development Element are to preserve and maintain agricultural based business and the proposed commercial rezoning from AR-1 Agricultural Residential classification is not in compliance with the intent of the Plan; the proposed use will endanger agricultural goals; permitted uses within the C-1 General Commercial District include automobile and truck sales, service and repair, tire sales and service, hotels, motels or motor lodges, garages for parking or storage, enclosed material storage yards, in addition to numerous other commercial enterprises; once zoned C-1, the commercial land could be used for any permitted use; another permitted use is increased density of residential development; additionally, with the approval of a special use exception, other uses such as an asphalt batching plant or a cement batching plant could be approved; DelDOT's Corridor Capacity Preservation Program indicates that the Department does not intend to focus its infrastructure investment in State Spending Level 3 Areas unless State and local governments agree that such actions are necessary to address unforeseen circumstances involving public health, safety and welfare; regarding the ordinance that adopted the 2008 Comprehensive Development Plan and the Zoning Ordinance, an application for rezoning of land within the ESDD requires that all rezonings, subdivisions, business industrial site plans, and conditional use applications involving any development containing 75,000 square feet or more of commercial area, are subject to the process and performance requirements of submitting an environmental assessment and public facilities evaluation report and sketch plan to the Director of Planning and Zoning; that has been done; what has not been done is "a copy of which will be forwarded to the Office of State Planning Coordination and members of the Technical Advisory Committee for review and comment"; no one is forcing the owner to keep this site in agricultural use or in farmland preservation; there are options other than the intense commercial use that is proposed; and because the site is in the ESDD does not require Council to approve such an intensive commercial application. [Mr. Witsil distributed in excess of 25 Exhibits.]

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**Lawrence Lank, Director of Planning and Zoning, commented on the Zoning Map discrepancy and he stated that there were at least 3 properties that asked to be extensions at the time of the adoption of the Comprehensive Plan and to be included in the ESDA. The properties were included by approval of the Commission and the Council with the adoption of the Comprehensive Plan. The Zoning Map on the website and in the Planning and Zoning Department are incorrect (as it pertains to this area) as it shows the original 2003 map, as adopted, and not the amended version of the ESDA as adopted in 2008. Mr. Lank noted that he ESDA is an overlay zone.**

**Also present on behalf of the Opposition was Tom Ford, Owner and Principal of Land Design; Neil Parrott, Traffic Solutions, Inc.; Rich Holtkamp of Milton and member of the Overbrook Town Center Coalition; Rusty Kruglak of Milton and member of the Overbrook Town Center Coalition; Mike Irise of Milton and member of the Overbrook Town Center Coalition; Bob Billmyre of Milton and member of the Overbrook Town Center Coalition; Steve Britz of Lewes and member of the Overbrook Town Center Coalition; and Rich Borrasso of Milton and member of the Overbrook Town Center Coalition.**

**Mr. Ford presented information including a comparison between the existing AR-1 zoning and the proposed CR-1 zoning, the results of the rezoning, and other options for the location of the proposed project. Mr. Ford submitted his comments, in writing, for inclusion in the record of the Public Hearing.**

**Mr. Parrott commented on the Traffic Impact Study Review, including Route One summer traffic counts, the fact that Route 1 is a primary evacuation route, crash history and increased crash risks, roundabout design, temporary traffic signal, proposal of new signals, north bound traffic on Route 1 near the proposed project, and cost. Mr. Parrott submitted a packet of information for inclusion in the record of the Public Hearing.**

**Mr. Holtkamp presented the public's concerns on the proposed rezoning including public safety risks, traffic concerns, environmental risks, home values, future tax burdens, appropriate maintenance of the "in-character" nature of the local area; the necessity for appropriate increases in public service resources; and the desire and demand for more comprehensive land use planning and implementation. Mr. Holtkamp submitted his comments, in writing, along with an Exhibit Book, for inclusion in the record of the Public Hearing.**

**Mr. Kruglak commented on the petition drive in opposition to the application and the negative effects of the proposed development including safety, environment, traffic, and emergency response times. He also commented on demographics and large retailers, vacancies in existing shopping centers along the Route One Corridor, and the exaggerated**

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**financial benefits of the proposed project.**

**Mr. Irise commented on public safety risks, i.e. accidents due to increased traffic, emergency services response time, additional stress on the public safety system with additional calls; and additional tax funding to cover additional personnel, equipment, vehicles and training. Mr. Irise submitted his comments for inclusion in the record of the Public Hearing.**

**Mr. Billmyre commented on property values, impact on lifestyle, the residential character of the area, road improvement costs, and safety and traffic concerns. Mr. Billmyre submitted his comments, in writing, with exhibits for inclusion in the record of the Public Hearing.**

**Mr. Britz commented on the environmental impact and risks of the proposed development: impact on wetlands and the Great Marsh, impervious surface and rain events, stormwater management, and pollutants from runoff. Mr. Britz submitted his comments, in writing, for inclusion in the record of the Public Hearing.**

**Mr. Borrasso thanked the Council on behalf of the Coalition.**

**Mr. Witsil advised that Tab 22 in his handout was incorrectly collated; he would like the opportunity to submit the CR-1 zoning information rather than the C-1 zoning information; and that he would submit them to the County on the next business day.**

**Additional public comments were heard from Mabel Granke, John Vincent, Kenny Hopkins, Jeff Stone, Tara Pride, Marion Jones (Mayor of Milton), Rosemary Hurst, and Jay Koenig:**

- **this monstrosity of an application is dangerous to the area because of its impact**
- **the surrounding area and the cumulative impact have to be taken into consideration**
- **the reasons that there was a Corridor Conservation Project between Route 16 and Five Points was because of the recognition by DelDOT that Five Points South to Dewey Beach was lost in terms of proper corridor conservation**
- **there is no extra transportation funding**
- **public good and public safety need to be considered**
- **environmental concerns**
- **traffic concerns / increased traffic accidents**
- **impact on farming in the area**
- **wastewater treatment and groundwater recharge**
- **concern about flooding**
- **amount of impervious area**
- **preserving farmland**
- **wildlife habitat will be compromised**

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- farming practices will have to change
- impact on hunting in the area
- many detrimental impacts
- the role of the governing body is to protect the interests of all citizens and the community
- impact on area businesses
- impact on the Town of Milton
- all main arteries into Milton are State maintained roads and already need infrastructure attention
- Route 5 could become a connector road and shortcut to the proposed project
- traffic studies should be expanded outside of the perimeter of the required PLUS review
- impact on Milton and its quality of life
- questions regarding the \$8 million payment for road improvements
- public safety concerns

Council asked Bill Brockenbrough and Mark Coté of DelDOT to comment on the Applicant's negotiations with DelDOT in regard to the \$8 million and the proposed improvements. Mr. Brockenbrough stated that he is not aware of a written agreement between DelDOT and the Applicant and that it is typical to not have an agreement at this stage. Mr. Coté stated that the \$8 million (up to \$8 million) is contained in the Traffic Impact Study letter as a condition; that it would be a requirement for the Applicant to enter into an agreement with DelDOT; and that no one would sign an agreement to give DelDOT \$8 million when they do not know if their project will be approved.

The Public Hearing was closed.

Mr. Arlett commented that additional information may be needed on traffic impact, the Environmentally Sensitive Development Area designation, and the discrepancy on the Zoning Maps and in the Comprehensive Plan.

**M 224 15  
Defer  
Action  
on  
CZ 1770**

A Motion was made by Mr. Cole, seconded by Mr. Arlett, to defer action on Change of Zone No. 1770 filed on behalf of TD Rehoboth, LLC, and to leave the record open for a period of 30 days for written comments or questions from Council and/or responses from agencies; thereafter, once comments received have been introduced to the Council and into the public record, the record will remain open for a period of 15 days for anyone to respond to the comments submitted.

**Motion Adopted: 5 Yeas.**

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



**Hearing/  
Audio  
Recording**

**(An audio recording of this Public Hearing is available on the County's website. The recording is part of the audio recording for the June 2, 2015 Council meeting.)**

**M 225 15  
Adjourn**

**A Motion was made by Mr. Cole, seconded by Mr. Arlett, to adjourn at 8:38 p.m.**

**Motion Adopted: 5 Yeas.**

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

**Respectfully submitted,**

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