

ORDINANCE NO. 2751

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PUBLIC UTILITY ELEVATED STORAGE TANK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.32 ACRE, MORE OR LESS

WHEREAS, on the 18th day of August 2020, a conditional use application, denominated Conditional Use No. 2240 was filed on behalf of Tidewaters Utilities, Inc; and

WHEREAS, on the 8th day of October 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 22nd day of October 2020, said Planning and Zoning Commission recommended that Conditional Use No. 2240 be approved with conditions; and

WHEREAS, on the 10th day of November 2020, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article VI, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2240 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the southeast side of John J. Williams Highway (Route 24) approximately 1.52 miles southwest of Coastal Highway (Route 1) and being more particularly described in the attached legal description prepared by Beacon Engineering, LLC, said parcel containing 0.32 acre, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

This Ordinance was adopted subject to the following conditions:

- a. The maximum capacity of the tower shall not exceed 1,000,000 gallons.**
- b. The maximum height of the tower shall be 160 feet.**
- c. The lighting at the tower shall be limited to normal security lights which shall be shielded from nearby neighbors and roadways and safety lights required by the Federal Aviation Administration on the tower.**
- d. The tower shall be painted white or a sky neutral color and may include signage for both Tidewater and the Cape Henlopen School District or Beacon Middle School.**
- e. The water facilities shall be surrounded by a security fence at least eight (8) feet in height.**
- f. Structural design and operation of the water facility shall comply at a minimum with industry standards such as The American Water Works Association.**
- g. The Applicant will allow placement of antenna on the tower by the Cape Henlopen School District, and other government and public safety agencies.**
- h. One lighted ground-level sign shall be permitted identifying the owner and providing emergency contact information**
- i. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all applicable agency approvals.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2751 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 10TH DAY OF NOVEMBER 2020.

**ROBIN A. GRIFFITH
CLERK OF THE COUNCIL**

The Council found that the Conditional Use was appropriate legislative action based on the following Findings of Fact:

- A. This is the application of Tidewater Utilities, Inc. for a Conditional Use of land in an AR-1 Agricultural Residential District for a public utility elevated storage tank to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.32 acres more or less. The property is lying on the southeast side of John J. Williams Highway (Rt. 24) approximately 1.52 miles southwest of Coastal Highway (S.R. 1) (911 Address: 19483 John J. Williams Highway, Lewes) (Tax Parcel No. 334-12.00-107.00 (portion of).**
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that James Fuqua, Esquire, of Fuqua, Willard, Stevens & Schab, P.A., was present on behalf of the Applicant, Tidewater Utilities, Inc., along with Brian Carbaugh, Director of Engineering with Tidewater Utilities, Inc. and Robert Palmer, Senior Engineer with Beacon Engineering; that the application is a request for a Conditional Use for an elevated**

water storage tank to be located on lands owned by the Cape Henlopen School District in the rear of Beacon Middle School located on Route 24; that Tidewater Utilities, Inc. is a public water provider regulated by the Delaware Public Service Commission and was established in 1964; that it operates a combination of wells, water treatment plants and storage facilities; that under the 2020 Delaware Strategies for State Policies and Spending, this site and a large area surrounding it, is designated as being in Investment Level 2; and that under Investment Level 2, a wide range of residential and commercial uses are encouraged and are growing areas in the County which will have public water and wastewater systems and utilities.

- C. Council also found that under the 2019 Sussex County Comprehensive Plan, this site is totally surrounded by the Coastal Area and the Commercial Area which are two of the growth areas under the Plan; that the Plan encourages most concentrated forms of new development in these growth areas including higher density residential and most commercial development and central water and sewer are highly encouraged in these areas; that Chapter Seven of the Comprehensive Plan addresses utilities and the Plan explains that the Delaware Public Service Commission reviews and approves requests for water utilities to serve an area; that the utility company is required to receive a Certificate of Public Convenience and Necessity (CPCN); that the Public Service Commission encourages compact and contiguous service territories in order to provide efficient delivery of water without redundancy in infrastructure; that in the Plan, Map 7.2-1 shows a map of the water service of Sussex County and shows the area serviced by Tidewater Utilities which is where the proposed tank will be located; and that one of the stated goals of Chapter Seven of the Comprehensive Plan is to support the availability of a safe and adequate water supply that can meet the needs of future demand.
- D. Council further found that the County Ordinance states that a conditional use provides for certain uses which are not permitted uses in certain zoning districts, conditional uses are generally of a public or semi-public character; they are essential and desirable for the public convenience and welfare but because of the nature of the use, its relationship to the Comprehensive Plan and its possible impact, it requires the review of the Planning and Zoning Commission and approval of County Council; that this application is of a true public character for a water utility storage facility; that the proposed location on a centrally located site in an approved service area where growth is anticipated and is occurring now is appropriate by both the State Plans and County Plans; that when Beacon Middle School was constructed, Tidewater Utilities, Inc. entered into a water service agreement with Cape Henlopen School District for an easement to place a water storage facility on the site when the need would arise; that the proposed tank will provide a second water pressure center in the southern portion of the service area to complement the northern tank and ensure water availability well into the future; that the location of the tank will be on a 14,125 square foot easement area located to the rear of the school building; that the easement site borders the west side of Mulberry Knoll Road and access to the facility will be from that road; and that the entrance will be designed and built in accordance with DelDOT regulations.
- E. Council also found that the water tower is a water spheroid design and it's appearance will be similar to the Rehoboth Beach water tank; that the circular base is approximately 52 feet in diameter and the elevated water tank is approximately 74 feet in diameter; that the capacity of the tank is one million gallons; that the height from the ground to the top of the tank is approximately 150 feet; that the tank will meet the design standards of the American Water Works Association; that the cost of the facility will be approximately four million dollars; that the tank will be built on pilings that will be driven to a depth of between 50 – 100 feet depending on soil conditions; that there will be no outside ladders or stairs and all access will be internal; that antennas will be located on the tank for Tidewater Utilities to monitor their equipment and for the Cape Henlopen School District for communications; that the color of the tank will be sky neutral (light blue); that there will be two logos on the tank, one for Tidewater Utilities, Inc. and one for the Cape Henlopen School District or Beacon Middle School; that lighting will be security lights at the base of the facility and lighting on the tank as required by the Federal Aviation Agency (FAA); that the easement area will be enclosed with a six-foot security fence; that no wells, water treatment facilities or pumps will be located at this facility; that there are

no odors or noise associated with this use; that there is no use of chemicals; that there will be no sewer connection or water hookup; that there is negligible traffic impact, as there is one employee who will inspect the facility three times per week; that maintenance is minimal and the outside has a twenty-year life before repainting; and that there are letters of support from the Cape Henlopen School District and the Office of Social Services for the State of Delaware.

F. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 6) and Conditions (a – i), Council found that:

- 1. This project benefits the health, safety and welfare of the residents in the area.**
- 2. The elevated water storage tower will provide for water supply to the Love Creek Elementary School, Beacon Middle School and current and future area residents.**
- 3. Fire protection capabilities will be further enhanced to the area.**
- 4. The project will not have an adverse impact on neighboring properties or the community.**
- 5. Water utility operations like those in this project are subject to substantial regulation by the Public Service Commission, DNREC, Public Health, State Fire Marshall, and FAA, among others.**
- 6. There was no opposition to this application, and the record contains letters of support from the Cape Henlopen School District and the Office of Social Services of the State of Delaware.**
- 7. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Sussex County Council, the Conditional Use is approved subject to the following nine (9) conditions (a – i) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**