

June 19, 2014

ELECTRONIC TRANSMISSION AND FEDERAL EXPRESS OVERNIGHT

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Chief
Attn: DJ #175-15-46
Housing and Civil Enforcement Section
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United States Department of Justice
1800 G Street NW
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Re: Third Semi-Annual Compliance Report Under the Sussex County
Voluntary Compliance Agreement (HUD) and Consent Decree (USDOJ)

Dear Ms. Delaney and Ms. Wagner:

This correspondence serves as Sussex County's third semi-annual compliance report ("Third Semi-Annual Compliance Report") as required under Section V(A)(1) of the Voluntary Compliance Agreement ("VCA") executed between Sussex County and the U.S. Department of Housing and Urban Development ("HUD") on November 28, 2012, and Section VI(18) the Consent Decree ("CD") executed between Sussex County and the U.S. Department of Justice ("USDOJ") on November 28, 2012, entered by the Court on December 19, 2012 (Civil Action No. 12-1591-MPT). By email dated May 20, 2014, from Ms. Delaney to Stephanie Hansen, an extension until June 19th, 2014, to submit this Third Semi-Annual Compliance Report with HUD was granted. No extension was required under the CD because submission of

the Third Semi-Annual Compliance Report to USDOJ on or before June 19th is timely. Exhibits are attached as noted.

This correspondence expressly incorporates by reference all of the previous reporting information submitted to HUD and USDOJ in the County's correspondences dated December 28, 2012; March 28, 2013; May 28, 2013; July 2, 2013; July 23, 2013; August 5, 2013¹; September 30, 2013; October 30, 2013; November 7, 2013; November 27, 2013; January 6, 2014; March 19, 2014; and May 9, 2014².

I. Requirements Under the Consent Decree

The compliance status of each requirement under the CD is addressed below in the numerical order in which the requirement is found.

A. **Section I(8)(a) through (d) – General Injunction.** The County believes it is in compliance with the continuing obligations of the general injunction as set forth in this section.

B. **Section II** – Development of New Horizons by Diamond State Community Land Trust (“Diamond State CLT”). With the exception of Subsection II(11)(a), the requirements of this section become active only upon submission of an application by Diamond State CLT. Since no application has been received, the requirements have not been activated. Additionally, Sussex County has recently learned that Diamond State CLT will not be pursuing the development of the New Horizons project on the land that was the subject of the original application. Attached as **Exhibit 1** is a letter dated March 26, 2014, from Diamond State CLT to Sussex County (which the County did not receive until May 5, 2014) stating that Diamond State CLT has terminated its previous land contract and is now requesting the assistance of the County in identifying other land parcels upon which to build. Attached to this letter from Diamond State CLT is a letter dated June 18, 2013 from Diamond State CLT to the landowner, Doris West, Trustee. Attached as **Exhibit 2** is the County's response letter back to Diamond State CLT, dated May 15, 2014, offering assistance.

With regard to Subsection II(11)(a), the County affirmatively states that it is in compliance with the requirements of this subsection which prohibit public disparagement of

¹ The August 5, 2013 correspondence was sent solely to HUD in response to HUD's July 30, 2013 email request from Ms. Sharese Paylor for additional information on the County's interaction with DSHA and the Delaware Office of State Planning Coordination in drafting the AI Evaluation and Proposed Priority Fair Housing Plan.

² The May 9, 2014 correspondence was sent solely to HUD in partial response to the HUD Review Letter (hereinafter defined).

Diamond State CLT, the New Horizons development project, or the viability of the community land trust model for affordable housing development.

C. **Section III(12)** – Additional Provisions Related to Affordable and Fair Housing. This section requires certain notice to an applicant should the County decline, reject, or deny any type of request or application for zoning or land use approval related to an Affordable Housing proposal or a proposal processed under the Moderately Priced Housing Unit (“MPHU”) program or the Sussex County Rental Program (“SCRPP”). The County believes it has not declined, rejected, or denied any such request and, therefore, believes it is in compliance with this section.

D. **Section III(13)(a) through (d)** - Additional Provisions Related to Affordable and Fair Housing. This section requires the County to submit to USDOJ a draft Affordable and Fair Housing Marketing Plan (“Marketing Plan”) inclusive of specific items within one hundred (100) days of the adoption of the CD. The one-hundred-day deadline was April 1, 2013. The County submitted its draft Marketing Plan in its correspondence to USDOJ and HUD dated March 28, 2013. USDOJ provided comments to the draft Marketing Plan by letter dated April 29, 2013, and the County submitted a revised Marketing Plan to USDOJ by letter dated May 13, 2013. The County submitted a second revised Marketing Plan in its correspondence to USDOJ on July 2, 2013 to incorporate “gender identity” as a new protected class in accordance with a new law recently enacted in Delaware. Subsequently, the County requested a date change for one of the items in the Marketing Plan (the date by which to hold the Homebuyer Fair) in its correspondence to USDOJ dated July 23, 2013, and with that correspondence, submitted another revised Marketing Plan showing the date change.

Under the provisions of this section, the County must proceed to implement the Marketing Plan within five (5) days upon its approval by USDOJ. Although the County is still awaiting USDOJ’s formal notice of approval on the Marketing Plan, the County has proceeded to implement the elements of the Marketing Plan as those elements have come due. For a full listing of those elements and the County’s actions, please see the County’s correspondences to you dated July 2, 2013; September 30, 2013; and January 6, 2014. In its Second Semi-Annual Compliance Report, the County again asked that USDOJ approve its Marketing Plan, but has not yet heard back.

With this Third Semi-Annual Compliance Report, the County would like to request two extensions of time under the revised Marketing Plan submitted to USDOJ via correspondence dated July 23, 2013. First, the Homebuyer Fair was to have occurred on or before June 30, 2014. However, the County recently met with the stakeholders on May 6, 2014, to discuss planning the Homebuyer Fair and the group preferred a tentative date of September 27, 2014. At this time, the County is outlining a budget and pursuing various venues at which to hold the event. With this in mind, and taking into account the tentative nature of the late September event date, **the County is requesting an extension of time until December 31, 2014, in which to hold the Homebuyer Fair.** Secondly, under Section V of the revised Marketing Plan, the County stated that it would develop flyers and/or posters outlining the County’s housing outreach efforts and mail/distribute the flyers/posters to various entities by early 2014. **The County has begun development of the flyers/posters, but would like to request an extension to September 30,**

2014 in order to mail/distribute them. Please contact me with any questions about these requests. Unless the County is informed otherwise, we will consider the extensions granted.

E. **Section IV(14)** – Fair Housing Compliance Officer. This section required the County to designate a Fair Housing Compliance Officer (“FHCO”). As set forth in its correspondence to USDOJ and HUD dated December 28, 2012, the County believes it is in compliance with this requirement.

F. **Sections IV(15) and (16)** - Fair Housing Compliance Officer. These sections require the FHCO to receive and review all complaints of housing discrimination made against the County, to keep a written record of verbal complaints, and to provide HUD and USDOJ with a copy of the complaints received and the County’s response. Since the County’s Second Semi-Annual Compliance Report dated November 27th, 2013, the County has not received any complaints of housing discrimination.

G. **Section IV(17)** - Fair Housing Compliance Officer. This section requires the FHCO to maintain copies of the CD, the Fair Housing Policy, the HUD Complaint form and HUD pamphlet entitled “Are you a victim of housing discrimination?” (HUD official forms 903 and 903.1, respectively) and make these materials freely available to anyone, upon request, without charge, including all persons making fair housing complaints to the FHCO. The required materials continue to be freely available, upon request, without charge, to anyone at the County’s office of Community Development and Housing and on the County’s website. As a result, the County believes it is in compliance with this section.

H. **Section IV(18)** - Fair Housing Compliance Officer. This section requires the FHCO to report to the County every six months on activities taken in compliance with this CD. Since the Second Semi-Annual Compliance Report, the FHCO reported to the County at the County Council meeting held on December 10, 2013, and the County Council meeting held on June 10, 2014, in compliance with this section. Attached as **Exhibit 3** are the agendas from those two County Council meetings showing the FHCO’s presentation on the agenda.

I. **Section V(19)** – Fair Housing Policy. Among other things, this section requires the County to adopt a Fair Housing Policy with the text as set forth in the CD at Attachment A. The policy was so adopted and notice of the fulfillment of this requirement was sent to USDOJ and HUD in the County’s correspondence dated December 28, 2012. The Fair Housing Policy has subsequently been revised to reflect new protected class status for gender identity in Delaware and to include the County’s Anti-NIMBY language. Notice of each revision was sent to your office via correspondences dated July 2, 2013, and July 23, 2013.

This section also requires the County to include the Fair Housing Policy in all literature and information or application materials provided to residential developers, including developers of affordable housing. The County affirmatively states that it is inserting the Fair Housing Policy in its land use application material. Lastly, this section requires the County to include the Fair Housing Policy as a readily accessible link on the County’s website. This link is currently active

and can be found on the County's website and under the Community Development & Housing webpage. As a result, the County believes it is in compliance with this section.

J. Section V(20) – Fair Housing Policy. This section requires the County to place the "Equal Housing Opportunity" or fair housing logo on the County's website and on all future published notices and advertisements related to housing or residential development. The County states affirmatively that this requirement continues to be fulfilled.

K. Section VI(21) – (23) – Training. As set forth in the County's correspondence to USDOJ and HUD dated March 19, 2014, the County has fulfilled all of the requirements for the second annual in-person training and submission of training certificates as required under Sections 21 through 23. Additionally, the County has hired one new employee since the Second Semi-Annual Compliance report whose employment position is covered under these sections (Ms. Daune Hinks). Ms. Hinks was hired on May 12, 2014 and under Section VI(21)(c) had 30 days in which to receive the required training. Her training was completed in a timely manner on June 9, 2014, and her training certificate is attached hereto as **Exhibit 4.**

L. Section VII(24)(a) through (c) – Reporting and Recordkeeping. The requirements of this section do not become active until Sussex County acts upon Diamond State CLT's preliminary subdivision plat application for New Horizons. Since no such application has been submitted as of this time, the requirements of this section have not been activated. Additionally, as mentioned above regarding Section II, Sussex County has recently learned that Diamond State CLT will not be pursuing the development of the New Horizons project on the land that was the subject of the original application.

M. Section VII(25) – Reporting and Recordkeeping. This section requires the submission to USDOJ of contact information for the FHCO, the adopted Fair Housing Policy, a printout of the County's website showing the "Equal Opportunity Logo," the name of the fair housing trainer, and other information required by section 21(a). As set forth in the County's previous correspondences, the County has fulfilled the requirements of this section.

N. Section VII(26) – Reporting and Recordkeeping. This section required the County to submit the executed Certificates of Training and Receipt of Consent Decree for the initial in-person training, and the proposed Marketing Plan, to USDOJ by April 1, 2013. These documents were submitted to USDOJ and HUD in the County's correspondence dated March 28, 2013. As a result, the County believes it has fulfilled the requirements of this section (also please see the County's response to Section VI(21) – (23) above).

O. Section VII(27)(a) through (f) – Reporting and Recordkeeping.

Webpage: This section requires the County to develop an Affordable Housing webpage and update the webpage twice annually with certain information. The County was required to post its first compliance report and notify USDOJ of such posting within six (6) months after entry of the CD (by June 19, 2013). The County launched the webpage on June 19, 2013, and the content of the webpage conforms to the requirements of this section and to the

draft Marketing Plan. However, the County has gone above and beyond the requirement to update the webpage twice annually and, instead, updates the webpage on a continuous basis whenever new materials related to affordable housing are generated. For your reference, the web address to the County's Affordable Housing webpage is:

<http://www.sussexcountyde.gov/affordable-and-fair-housing-resource-center>

Compliance Report Postings: This section also sets forth the information that should be posted on the webpage as part of the compliance report postings. In particular, the compliance report postings on the webpage should include: (a) copies of any letters of support by the County for New Horizons; (b) a summary of each zoning or land-use request or application related to Affordable Housing or housing being processed under the MPHU or SCRP programs and certain information related to those requests or applications; (c) representative copies of any published notices or advertisements containing the phrase "Equal Housing Opportunity" or the fair housing logo; (d) copies of any Certifications of Training and Receipt of Consent Decree signed since the preceding compliance report; (e) copies of any materials previously submitted to USDOJ if such materials have been substantially altered or amended since they were last submitted; and (f) copies of any changes to the County's zoning or land use laws, regulations, policies or procedures addressing the construction of or approval process for Affordable Housing or housing being processed under the MPHU or SCRP programs enacted since the previous compliance report was submitted.

The County states affirmatively that the above required information has been posted on the Affordable Housing webpage. Since the County's submission of the Second Semi-Annual Compliance Report, the County states the following with respect to the items required above, each in the order as presented above:

(a) The County has not issued any letters of support for New Horizons and there is no active application for New Horizons in front of the County. However, please see the County's response earlier in this correspondence to the requirements of Section II of the consent decree.

(b) With one possible exception, there have been no zoning or land-use requests or applications related to Affordable Housing or housing being processed under the MPHU or SCRP programs. As stated in the County's Second Semi-Annual Compliance Report, USDOJ and the County have agreed that the phrase 'A summary of each zoning or land-use request or application related to Affordable Housing' refers to zoning or land use requests or applications for housing development projects intended or designed for households earning less than 80% of the Area Median Income ("AMI") as calculated by the U.S. Department of Housing and Urban Development. Such projects do not include requests or applications from individual homeowners seeking variances or special use exceptions from the County's Board of Adjustment. Instead, this provision is interpreted as applying to requests and applications from developers of residential housing projects. A residential housing project is interpreted as a project to

construct housing in which more than one family is intended to be served and in which some portion of the project is specifically proposed by the developer as intended to serve households earning less than 80% AMI.

The one possible exception was the special use exception application by Amen Ministries seeking approval for a transitional home for homeless men and recovering addicts. On December 9, 2013, the Sussex County Board of Adjustment heard the application and voted to approve the special use exception. The Findings of Fact from the hearing including the vote of the Board is attached as **Exhibit 5**.

(c) Attached are representative copies of published notices containing the phrase "Equal Housing Opportunity" (**see Exhibit 6**). These notices are the agendas of County Council, the Planning and Zoning Commission, and the Board of Adjustment.

(d) As mentioned earlier in this correspondence, the County has hired one new employee since the Second Semi-Annual Compliance report whose employment position is covered under Sections VI(21) to (23) of the CD (Ms. Daune Hinks). Ms. Hinks was hired on May 12, 2014, and her training certificate will be posted on the County's website.

(e) There have been no materials altered or amended since such materials were last submitted to USDOJ.

(f) There have been no changes to the County's zoning or land use laws, regulations, policies or procedures addressing the construction of or approval process for Affordable Housing, or housing being processed under the MPHU or SCRIP programs since the previous compliance report was submitted.

P. **Section VII(28)** – Reporting and Recordkeeping. This section requires the County to send to USDOJ any proposed change to the County's zoning or land-use laws, regulations, policies or procedures addressing the construction of or approval process for Affordable Housing or housing being processed under the MPHU or SCRIP programs prior to the County's consideration. There have been no such proposed changes since the County's submission of the Second Semi-Annual Compliance Report. As mentioned in the Second Semi-Annual Compliance Report, USDOJ and the County understand that this section is meant to address proposed changes to laws, regulations, policies, or procedures that are intended to specifically address the construction of or approval process for Affordable Housing programs, or housing being processed under the MPHU or SCRIP programs, not changes which implicate residential development in general.

However, the County introduced an ordinance on June 10, 2014, to revise certain definitions in the County Code to further comply with the federal and state Fair Housing Acts. This is an action that was identified in the Analysis of Impediments to Fair Housing Choice,

prepared for the Delaware State Consortium, dated July 2011, and that the County committed to doing in the Priority Plan (hereinafter defined). The draft ordinance and explanatory memorandum is attached hereto as **Exhibit 7**. Prior to introducing the ordinance, the County solicited comments on the draft ordinance from the Delaware State Housing Authority and the Delaware Office of State Planning and Coordination. By emails dated May 30, 2014, and June 4, 2014, respectively, both entities expressed their support and offered no amendments. Although the consideration of this ordinance by the County does not fall within the parameters of this provision in the CD, for the sake of efficiency, the County wanted to make USDOJ and HUD aware of this ordinance and has chosen to do so by its inclusion within this Third Semi-Annual Compliance Report. The County has not voted on this ordinance at this time, but anticipates doing so no sooner than July 10th, 2014.

Q. Section VII(29) – Reporting and Recordkeeping. This section requires the County to retain all records relating to any provision of the CD and gives USDOJ the opportunity to inspect and copy any such records. The County affirmatively states that it is in compliance with this section.

R. Section VIII(30) – (31) – Compensation of Aggrieved Persons. These sections require compensation to Diamond State CLT and set forth a procedure whereby, once the compensation is received, a release from Diamond State CLT (“Release”) is obtained and sent to the County. The compensation has been received by Diamond State CLT and the Release has been received by the County via correspondence from USDOJ dated January 3, 2013. As a result, the County believes the requirements of these sections have been fulfilled.

S. Section IX(32) – (33) – Jurisdiction and Scope of Decree. These sections set forth the jurisdiction of the court in this matter and state that the CD is in effect for four (4) years. Nothing in these sections requires compliance on the part of the County.

T. Section IX(34) – Jurisdiction and Scope of Decree. This section states that modifications to the CD, other than a time limit for performance, will be effective upon the filing of a written agreement between the County and USDOJ with the Court. In order to modify the CD to include the agreement between USDOJ and the County regarding certain training provisions, calculations of deadlines, and posting of Certificates of Training and Receipt of Consent Decree, the County submitted to USDOJ a draft Stipulation and Order for review with the First Semi-Annual Compliance Report. As per communication from USDOJ, it is the County’s understanding that all of the terms in that Stipulation and Order were acceptable to USDOJ. Additionally, even though the Stipulation and Order have not been filed with the Court, the County and USDOJ are proceeding as though the Stipulation and Order have been properly filed. With this correspondence, the County again renews its request that USDOJ execute the Stipulation and Order. The Stipulation and Order is enclosed herein as **Exhibit 8** and has now been revised to include paragraphs 5 and 6 to capture the County’s and USDOJ’s current understanding regarding the interpretation of Sections VII(27)(b) and VI(28) of the CD.

U. Sections X (Enforcement of This Decree), XI (Costs and Fees) and XII (Termination of Litigation Hold)– Nothing in these sections require compliance on the part of the County.

II. Requirements Under the Voluntary Compliance Agreement

The County received a letter dated April 21, 2014, from HUD which sets forth HUD's evaluation of the County's corrective actions to date under the VCA and provides recommendations to the County which would, in HUD's opinion, ensure compliance with the VCA (the "HUD Review Letter"). This Third Semi-Annual Compliance Report will serve as the County's response to the HUD Review Letter.

A. **Section II** – General Provisions. The only provision in this section requiring compliance on the part of the County is Section II(7). This section requires that the County make a copy of the VCA available for review to any person, in accordance with the law. The County affirmatively states that it continues to be in compliance with this section. The HUD Review Letter did not require any additional corrective actions to address compliance with this section.

B. **Section III(1)** – Corrective Actions. This section references the training requirements as set forth in Section VI(21)(a) through (c) of the CD. Note: The reference to Section VI(d) is in error. The proper notation is Section VI(21), and there is no Section VI(21)(d). As mentioned in the First Semi-Annual Compliance Report, the County has fulfilled all of the requirements for the initial, in-person training session required under sections 21 through 23 of the CD. As set forth in the County's correspondence to USDOJ and HUD dated March 19, 2014, the County has also fulfilled all of the requirements for the second, annual in-person training and submission of training certificates as required under Sections 21 through 23 of the CD. As a result, the County believes it is in compliance with this section of the VCA. Additionally, the HUD Review Letter states that these provisions of the VCA have been met.

C. **Section III(2)** – Corrective Actions. Under this provision in the VCA, the County is required to address the decision to deny the New Horizons Cluster Subdivision proposal and reimburse Diamond State CLT as agreed upon in Sections II(10) and VIII of the CD. The requirements of Section II (including Section II(10)) become active upon submission of an application by Diamond State CLT. The County has reimbursed Diamond State CLT as required under the CD, but because Diamond State CLT has not submitted a new or revised application for New Horizons, it cannot reconsider such application until such time. Additionally, as mentioned above regarding Section II of the Consent Decree, Sussex County has recently learned that Diamond State CLT will not be pursuing the development of the New Horizons project on the land that was the subject of the original application.

HUD's comment in the HUD Review Letter is that "the completion of this provision is contingent upon the submission of [Diamond State CLT's] application." The County would like

to clarify that the completion of this provision is contingent upon either the submission of Diamond State CLT's application and the County's consideration of the application under the terms of the CD or the termination of the CD, whichever comes first. As a result, at this time, the County believes it is in compliance with this provision of the VCA.

D. Section III(3) – Corrective Actions. This section requires the County to limit the evaluation of future land use proposals to compliance with the County Code and State law. The County affirmatively states that it is in compliance with this section. Additionally, the HUD Review Letter states that this provision of the VCA has been met.

E. Section III(4) – Corrective Actions. This section requires the County to comply with guidance and instructions provided by the State of Delaware to affirmatively further fair housing, to the greatest extent feasible or practicable, contingent upon funding and the County's authority. The County believes it is in compliance with this section. The County sent its draft Sussex County AI Evaluation and Proposed Priority Fair Housing Plan ("Priority Plan") to the Delaware State Housing Authority ("DSHA") and HUD on March 28, 2013, and received comments back from the DSHA. In response to the comments from DSHA, the County revised the Priority Plan and sent the revised Priority Plan back to DSHA for any further comments. The County received a request for additional information from HUD (Ms. Sharese Paylor) regarding the County's interaction with DSHA and the Delaware Office of State Planning Coordination in drafting the Priority Plan via email on July 30, 2013, and responded back to HUD with the additional information by correspondence dated August 5, 2013. The County has received no further instructions from DSHA to date. The HUD Review Letter states that this provision of the VCA has been met.

F. Section III(5) – Corrective Actions. This section requires the County to hire or appoint the FHCO and to notify HUD of the appointment within 30 days. As set forth in the County's correspondence to HUD and USDOJ dated December 28, 2012, the County is in compliance with this requirement. Additionally, the HUD Review Letter states that this provision of the VCA has been met.

G. Section III(6) – Corrective Actions. This section only becomes active if the FHCO resigns or is otherwise terminated prior to the expiration of the VCA. That situation has not arisen, so there is nothing in this section that requires compliance by the County at this time. Additionally, the HUD Review Letter states that this provision of the VCA is not applicable at this time.

H. Section III(7) – Corrective Actions.

1. **Section III(7)(a)** requires that the County review and evaluate the 1998, 2003, and 2011 Analysis of Impediments ("AI's"), develop a proposed priority fair housing plan to address the identified impediments that continue to exist, and submit the plan to DSHA and HUD for review and approval within 120 days of the effective date of the VCA (by March 28, 2013). In response, the County performed the required review and evaluation, drafted the

Priority Plan, and submitted the Priority Plan to HUD and DSHA for review and approval (see the discussion above regarding Section III(4)).

In the HUD Review Letter, HUD does not dispute that the County reviewed and evaluated the required AI's, determined the identified impediments, developed a proposed Priority Plan, and submitted the Priority Plan to DSHA and HUD for review and approval. However, upon its review of the Priority Plan, HUD listed eight separate recommendations that it believes the County needs to address in order to be in compliance with the VCA.

The County raises a general objection to all of HUD's recommendations mentioned below as being outside of the requirements of the VCA. The County believes that all of the requirements of Section III(7)(a) have been met. HUD's recommendations (which are couched as requirements for compliance under the VCA) are, in actuality, related to proposed elements mentioned in the Priority Plan or elements that HUD wants to see incorporated into the Priority Plan, not provisions of the VCA that the County and HUD agreed upon when the VCA was executed. In the spirit of cooperation, the County will respond to each of the recommendations raised by HUD, but does not agree that compliance with the VCA is implicated and, in some instances, raises specific objections to certain recommendations where noted.

a. HUD Recommendation No. 1: "The County must provide a strategy for how it plans to expand housing opportunities for persons with disabilities."

County's Response to HUD Recommendation No. 1: The County provides, and will continue to provide, annual funding to support DelawareHousingSearch.org. This is a new, free, and real-time online service that lists all of the State's public and private rental units, as well as publicly funded for-sale units. This program is specifically geared towards the disabled through various search features. Also, the County agrees to meet with housing advocates to explore options for increasing the supply of accessible, affordable housing in the County. In addition, members of the County's Community Development and Housing department served on the Universal Design Coalition, which played an integral role in the creation and signing into law of a bill requiring that the application process for public funding for the development of new dwelling units now incorporates a point scale for Universal Design features.

b. HUD Recommendation No. 2: "The County will provide a strategy for funding to expand housing opportunities for persons with disabilities."

County's Response to HUD Recommendation No. 2: The County objects to this recommendation and believes its inclusion as a HUD requirement for compliance with the VCA is overreaching on the part of HUD. The VCA does not require the County to reallocate current funding from other programs or raise additional funding to expand housing opportunities for persons with disabilities. Such activity would be outside of the four corners of the VCA and

would represent a material change to the requirements of the VCA to which the County has not agreed. As mentioned in the County's response above to HUD Recommendation No. 1, the County provides, and will continue to provide, annual funding to support DelawareHousingSearch.org.

c. HUD Recommendation No. 3: "The County documented strategies to address this impediment ['to address Fair Housing issues in Sussex County, with particular attention to the rapidly growing Hispanic Population']; however it recommended that the County should increase its efforts in the areas of outreach to create a more inclusive environment. For example, the County can post Board and Commission vacancy announcements in Hispanic newspapers throughout Sussex County and coordinate outreach events targeted at the Hispanic population in Georgetown or other areas in which there is an increasing Hispanic population."

County's Response to HUD Recommendation No. 3: Vacancies on boards and commissions are not publicly advertised. However, the County is interested in increasing its outreach efforts to the Hispanic community. With this in mind, the County has been a sponsor of the annual Festival Hispano held in Millsboro, Delaware, in the past and has reached out to the festival coordinator to discuss continued sponsorship and the possibility of the County providing a table display with information that is available from the County's Community Development and Housing Department.

d. HUD Recommendation No. 4: "The County should explore collaborative opportunities with United States Department of Agriculture (USDA) regarding its rural homeownership programs as a means to increase lending and credit opportunities to LMI residents."

County's Response to HUD Recommendation No. 4: The County will agree to meet or otherwise have a discussion with a representative of the USDA to explore collaborative opportunities involving USDA's rural homeownership programs.

e. HUD Recommendation No. 5: "The County shall reduce and waive its respective sewer, water, and/or public facilities and services impact fees for area developers and non-profits organizations seeking to build affordable housing units. The Recipient shall make developers aware that the cost offset allocations and density bonuses can defray the cost of creating affordable housing units." This HUD recommendation immediately followed the HUD comment: "Under 'increase the supply of affordable housing in the Balance of the State available to households making 80% or less of the median household income,' the County failed to make developers 'aware that the cost offset allocations and density bonuses can defray the cost of

creating the required affordable units.' The County states that it will 'consider' expanding incentives offered to developers to participate in the [MPHU] and [SCRIP] programs."

County's Response to HUD Recommendation No. 5 and HUD Comment:

The County objects to this recommendation and believes its inclusion as a HUD requirement for compliance with the VCA is overreaching on the part of HUD. The VCA does not require the County to reduce and waive its respective sewer, water, and/or public facilities and services impact fees for area developers and non-profits organizations seeking to build affordable housing units. The County believes that the inclusion of such a requirement is a violation of the covenant of good faith and fair dealing in the negotiation of the VCA because such a requirement goes far beyond the four corners of the VCA and would obligate the County to accept a material change to the terms of the VCA.

Although the 2011 DSHA/Balance of State Fair Housing Action Plan (which was approved by HUD)(the "Balance of State Plan") mentions that Sussex County "should continue to offer the SCRIP and the MPHUI Programs to provide incentives to property owners and investors to build affordable housing"³ and that the County "should expand other incentives [] to build new affordable rental and owner units in non-impacted areas of the County, including the reduction or waiver of impact and planning fees and streamlined approval of development projects that feature affordable housing components,"⁴ the language regarding the reduction or waiver of certain fees is permissive, not mandatory. Having already concluded negotiations with the County on the requirements of the VCA, HUD cannot now institute this as a new requirement in the Priority Plan under the guise of compliance with the set terms of the VCA.

The County provided to you in its correspondence dated September 30, 2013, the County's Affordable Housing Support Policy and the Template Support Letter that would be given to developers of affordable housing. These were both new efforts on the County's part and the County considers those efforts to be the first steps in expanding incentives to build new affordable housing. At this time, the County would like to see how these first steps are received by the development community prior to initiating additional steps. The County will also be communicating with leaders in the affordable housing community to identify and discuss other incentives.

In addition, the County objects to HUD's comment that it has failed to make developers aware that the cost offset allocations and density bonuses can defray the cost of creating the required affordable units. On January 17th, 2006, the County passed Ordinance No. 1821 (the "MPHUI Ordinance") (see Exhibit 9). The MPHUI Ordinance was publicly noticed and was the subject of public hearings before both the Sussex County Planning and Zoning

³ 2011 Analysis of Impediments to Fair Housing Choice, page 487.

⁴ 2011 Analysis of Impediments to Fair Housing Choice, page 475.

Commission and Sussex County Council with much public comment and discussion. The language within the MPHU Ordinance specifically states:

"The Sussex County Council hereby declares it to be public policy of the County to: ...D. Encourage the production of moderately priced housing by allowing increases in density to reduce land and development costsF. Provide incentives for private developers to construct moderately priced housing through tools such as the density incentive (defined below). G. Allow developers who are building qualified projects an expedited review period."

The language of the MPHU Ordinance quoted above was codified into the Sussex County Code as part of Section 72-4. In response to the passage of the MPHU Ordinance, **six** applications from developers for developments to be considered under the MPHU Ordinance were received by the County. Given this set of facts, it cannot be reasonably concluded that the County has failed "to make developers aware that the cost offset allocations and density bonuses can defray the cost of creating the required affordable units."

f. HUD Recommendation No. 6: "The County shall conduct the four-factor analysis."

County's Response to HUD Recommendation No. 6: The County conducted the four-factor analysis on June 27, 2013.

g. HUD Recommendation No. 7: "The County shall review the [April 2012, Community and Choice: Housing Needs for People with Disabilities in Delaware] and explore other options to assist it in addressing the impediment [increasing the supply of accessible, affordable housing in the County]. The County shall collaborate with other housing advocates, such as, State Council for Persons with Disabilities and Delaware Housing Coalition."

County's Response to HUD Recommendation No. 7: The County will agree to review the identified document and meet with housing advocates to explore options for increasing the supply of accessible, affordable housing in the County.

h. HUD Recommendation No. 8: "The County will provide timeframes for actions it will take under the fair housing plan." This HUD recommendation immediately followed the HUD comment: "The County needs to also "...support legislation protection for borrowers to assist them in meeting housing costs."

County's Response to HUD Recommendation No. 8 and HUD Comment:

The County is unclear regarding which document HUD is referring to as the "fair housing plan". The County's previously submitted Affordable and Fair Housing Marketing Plan does contain timeframes. If HUD is referring to the Priority Plan, the County respectfully requests that HUD and the County come to an agreement upon the elements of the Priority Plan prior to attempting to assign timeframes to each element. As shown by the County's responses above, there is currently significant disagreement on what should be included in the Priority Plan.

The County is unclear as to what, if anything, HUD is recommending regarding supporting legislation and, to the extent that HUD is requiring the County to pass certain legislation, raises a specific objection that any such recommendation is far outside the four corners of the VCA. The County is unaware of any such pending legislation.

2. **Section III(7)(a)(i)** requires the Priority Plan to incorporate a strategy to increase housing opportunities throughout the County, taking into account the housing needs of African-Americans and Hispanic residents and it will develop mechanisms in which Sussex County will use CDBG and other funding to affirmatively further fair housing. In order to meet this requirement, the County proposed in its draft Priority Plan to "formalize a package of incentives to be offered to developers of affordable housing communities that can provide a guarantee to the County of the ultimate affordability of the units."

The draft Priority Plan was sent to HUD for comments on March 28, 2013. It has been over a year since the County sent the Priority Plan to HUD for comment and for HUD's approval that the County's approach to meeting this requirement of the VCA was acceptable. HUD's comment in the HUD Review Letter that the County has "not presented a guide or draft for the incentives package or a timeframe for completion of the package" is premature if it is intended to point out a flaw in the Priority Plan or some failing by the County since the County has never received back from HUD its approval of the Priority Plan and this HUD recommendation is a step in the implementation of the Priority Plan, not the approval of the Priority Plan.

HUD's recommendation on page 6 of the Review Letter states: "A guide or incentive packages [sic] with timeframes should be submitted to HUD/DOJ for approval." The County generated its Affordable Housing Support Policy and the Template Support Letter less than one year ago. These were both new efforts on the County's part and the County considers those efforts to be the first steps in expanding incentives to build new affordable housing. At this time, the County would like to see how these first steps are received by the development community prior to initiating additional steps. The County will also be communicating with leaders in the affordable housing community to identify and discuss other incentives. At this time, the County does not believe it has enough information to identify which incentives would be most effective and supportable by the County. As a result, commitment to a timeframe for completion of a guide or incentive package is premature. In addition, the County would like to point out that HUD's requirement to send this guide or incentive package to DOJ for approval is

outside of the requirements of the VCA or the Consent Decree and, as a result, the County respectfully requests that this requirement be reconsidered.

3. **Section III(7)(a)(ii)** requires, in future planning efforts, Sussex County to collaborate with DSHA and the Office of State Planning and Coordination (“OSPC”) to identify the County’s priority actions to develop a strategy to integrate affordable housing that is fully available without regard to race or ethnicity into all communities throughout the County. To the extent that the County approves development outside designated growth areas, the provision of affordable housing shall be a consideration. In accordance with the discussion above regarding Sections III(4) and III(7), the County believes that it is in compliance with this section. In addition, the HUD Review Letter states that this provision of the VCA has been met.

4. **Section III(7)(a)(iii)**. In an effort to Affirmatively Further Fair Housing, under section 7(a)(iii) of the VCA, the County agreed that its Fair Housing Compliance Officer (“FHCO”) would identify successful models of affordable housing strategies used in other states, counties or localities similar in jurisdiction and authority to Sussex County to recommend to County Council, to assist the County in formulating an affordable housing policy as prescribed in the Consent Decree. In order to meet this requirement, the FHCO presented six strategies to County Council on March 26, 2013, and Council adopted Strategy #1 (the Anti-NIMBY policy). As a result, the County believes it is in compliance with the requirements of this section. In the HUD Review Letter, HUD requested that the County provide to HUD copies of the six strategies presented to County Council. Attached hereto as **Exhibit 10** are the six strategies.

5. **Section III(7)(b)** requires the County to amend the MPHU ordinance to include provisions that create access to persons that are between 50% and 120% of the County’s median household income and to post the revised provisions on the County’s website. The County amended the MPHU ordinance on April 23, 2013, and subsequently posted the revised provisions of the MPHU ordinance on its website and on the County’s Community Development and Housing webpage. As a result, the County believes it is in compliance with the requirements of this section. In addition, HUD states in the HUD Review Letter that this provision of the VCA has been met.

6. **Section III(7)(c)** requires the County to perform an internal evaluation of the Impacted Communities through the Strong Communities Initiative in order to determine investment strategies, priority designation of infrastructure and/or community development for those elements of infrastructure over which the County has primary governing authority. This section also requires the County to evaluate its past participation in providing secondary elements of infrastructure in the Impacted Communities with the goal of prioritizing the funding for such infrastructure improvements and formalizing an approval process for continued County participation in such infrastructure projects. The County issued a Request for Proposals (“RFP”) to perform work related to the Strong Communities Initiative and received five (5) proposals back in response. HUD provided comments to this section in the HUD Review Letter and the County provided a response to those comments in a response letter to HUD dated May 9, 2014. The substance of the County’s response letter is incorporated by reference herein.

However, since responding to HUD, the County has decided to reject all of the proposals received in response to the RFP and re-bid a smaller scope of work. As a result, the County believes that it can now release those proposals to HUD without violating State procurement laws regarding confidentiality. If HUD would still like to see the five proposals, please let me know.

I. **Section III(8)** – Corrective Actions. Following the internal evaluation and drafting of an approval process for future primary and secondary infrastructure projects, this section requires the County to provide such improvements and services so long as such assistance is consistent with the County's available resources, and is consistent with relevant statutes, rules, regulations and policies. The evaluation of the Impacted Communities, the approval process, and the approvals granted will be made publicly available on Sussex County's website on an on-going basis. Since the internal evaluation has not been completed and no approval process is yet in place, the requirements of this section have not yet been activated. As mentioned by HUD in the HUD Review Letter, this provision of the VCA is open and ongoing.

J. **Section III(9)** – Corrective Actions. Under this provision in the VCA, the County is required to revise its methodology, as currently proposed by DSHA, to target minorities with disproportionate housing needs to ensure that minorities are benefiting from all affordable housing programs supported by the County. Under the current system that exists in Delaware, Sussex County does not have the ability to determine CDBG allocations. The County applies for funding on behalf of incorporated communities and rural residents and DSHA makes the funding determinations. The County then administers the projects resulting from those determinations. As a result, changes by DSHA to the methodology for allocating CDBG funding automatically are applied to applications for such funding from the County.

However, within the HUD Review Letter, HUD is requiring that the County provide additional information and documentation to show its process and procedures used to identify incorporated and rural residents for funding submissions to DSHA. In addition, the County must ensure that its methodology aligns with DSHA's and its duty to affirmatively further fair housing.

Attached as **Exhibit 11** is the County's policy for identifying incorporated and rural residents for funding submissions to DSHA.

K. **Section IV** – Public Notice. Under this section, the County must publish a Notice in a newspaper of general circulation and on its website regarding the VCA within 30 days of the effective date of the VCA or the CD, whichever is later. As mentioned in the County's correspondence to USDOJ and HUD dated December 28, 2012, the requirements of this section have been satisfied. Additionally, HUD mentions in the HUD Review Letter that this provision of the VCA has been met.

L. **Section V** – Reporting and Compliance Requirements. Under Section A(1), the County must submit semi-annual reports to HUD for the duration of the CD. Under Section A(2) the reports must contain information on each corrective action (progress made, work remaining, reasons for any delay, dates of completion or proposed completion), and must be signed and certified as accurate by the FHCO. This correspondence from the County is meant to satisfy the requirements of these sections for the Third Semi-Annual Compliance Report.

M. **Section VI** – Recordkeeping Requirements. This section requires the County to maintain adequate files along with all materials relating to the County's implementation of the VCA. The County asserts that it is in compliance with this section.

Lastly, as Attachment A to the HUD Review Letter, HUD had several questions related to the County's Marketing Plan. In particular, the questions related to the County's advertisements in the Hispanic newspaper, Hoy en Delaware. Each question is repeated and answered in turn below.

HUD Question #1: How long before the actual public hearing/pre-bid meeting does the advertisement go in the newspaper? If the newspaper is only published on a monthly basis, is the advertisement placed in the newspaper during the previous month to allow sufficient time?

County's Response to HUD Question #1: The County provides notice to the newspaper on a quarterly basis of the meetings scheduled and requests that the advertisement for an upcoming meeting be placed in the newspaper the previous month before the meeting.

HUD Question #2: How long before the actual public hearing/pre-bid meeting does the advertisement go on the website? How long does the advertisement stay on the website?

County's Response to HUD Question #2: The County sends notice of the meetings at least several weeks in advance. Notice of meetings planned through May 31st were sent to Hoy en Delaware the previous December 31st. As to the length of time the meeting notice stays on the Hoy en Delaware website, the County cannot speak on behalf of Hoy en Delaware, but it appears to the County that the meeting notices stay on the website indefinitely. The link to the Hoy en Delaware calendar showing the upcoming meetings and past meetings since 2010 is:

<http://www.hoyendelaware.com/events.php?y=2014>

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Ms. Barbara Delaney
Lori Wagner, Esq.
June 19, 2014; Page 19

HUD Question #3: Is the location of these public hearings/pre-bid meetings accessible for persons with disabilities?

County's Response to HUD Question #3: Yes.

HUD Question #4: In addition to the advertisement in the Hoy en Delaware and on their website, is outreach conducted to other Hispanic organizations in the County? If so, where?

County's Response to HUD Question #4: No. Efforts have been made by the County to provide outreach to another local Hispanic organization, but the organization has been unresponsive.

HUD Questions Regarding a Citizen Participation Plan: HUD mentions that federal recipients are required to develop and implement a Citizen Participation Plan, and requests certain information regarding the County's Citizen Participation Plan. The County respectfully points out that it is not a federal recipient and, as a result, is not required to develop or implement a Citizen Participation Plan.

This concludes the County's Third Semi-Annual Compliance Report. Please feel free to contact me with any questions or comments.

Sincerely yours,



Stephanie L. Hansen

cc: Alice Hung (via email at Alice.Hung@usdoj.gov)
Ms. Melody Taylor-Blancher (via email at Melody.C.TaylorBlancher@hud.gov)
Ms. Sharese Paylor (via email at Sharese.C.Paylor@hud.gov)
Mr. Todd Lawson (via email at tlawson@sussexcountyde.gov)
Mr. Brad Whaley (via email at bwhaley@sussexcountyde.gov)

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Ms. Barbara Delaney
Lori Wagner, Esq.
June 19, 2014; Page 20

I attest that the material presented in this Third Semi-Annual Compliance Report is accurate to the best of my knowledge as the Sussex County Fair Housing Compliance Officer.



Brandy A. Nauman
Sussex County Fair Housing Compliance Officer

Exhibit List

- 1. Exhibit 1** - Email from Ken Leson to Brandy B. Nauman and Amy Walls, dated May 5, 2014, attaching letter dated March 26, 2014, from Amy Walls to Brandy B. Nauman, and letter dated June 18, 2013, from Amy Walls to Doris West.
- 2. Exhibit 2** – Letter dated May 15, 2014, from Brandy B. Nauman to Amy Walls.
- 3. Exhibit 3** - Agendas for the December 10, 2013, and June 10, 2014, meetings of Sussex County Council.
- 4. Exhibit 4** - Certificate of Training and Receipt of Consent Decree for Daune M. Hinks.
- 5. Exhibit 5** – Sussex County Board of Adjustment Findings of Fact for Amen Ministries (Case No. 11298).
- 6. Exhibit 6** – Agendas for meetings of the Sussex County Council, Planning and Zoning Commission, and Board of Adjustment.
- 7. Exhibit 7** – Memorandum from Vince Robertson to Sussex County Council explaining the attached draft “Ordinance to Amend Chapter 115, Article I by Amending the Definitions of ‘Dwelling’, ‘Dwelling, Single Family’, ‘Dwelling, Multifamily’ and ‘Family’”.
- 8. Exhibit 8** - Stipulation and Order.
- 9. Exhibit 9** – Ordinance No. 1821 (“An Ordinance to Adopt Chapter 72 of the Code of Sussex County Relating to Moderately Priced Housing Units.”).
- 10. Exhibit 10** – Memorandum from Brandy Nauman to Sussex County Council, March 22, 2013, Re: Affordable Housing Strategies for Consideration.
- 11. Exhibit 11** – Sussex County Community Development Block Grant (CDBG) Application Methodology.

Exhibit 1

From: ken.leson@gmail.com [mailto:ken.leson@gmail.com] On Behalf Of Ken L Smith
Sent: Monday, May 05, 2014 1:20 PM
To: Brandy B. Nauman; Amy Walls
Cc: Lawrence Lank; Jeannine Knight; kensmith@diamondstateclt.org
Subject: Letter RE: New Horizons in Laurel

Brandy,
Attached is the letter we had intended to send to you. I am not sure what happened. It is from Amy and has our letter from last year to the land owner as an attachment.

--

Kind regards, Ken
-oo0oo-
Ken Smith | Director
Delaware Housing Coalition
PO Box 1633, Dover, Delaware 19903-1633
[302/678-2286](tel:3026782286) | [302/678-8645](tel:3026788645) fax
DHC United Way# 09294 | DHC SECC# 50137

The Housing Wage in Delaware is \$20.09! (For New Castle County it is \$21.83!)
This is the amount a full time worker (at 40 hours per week) must earn per hour in order to afford a two-bedroom unit at the Fair Market Rent. ~ Out of Reach, nlihc.org

HousingForAll.org!
@whynimby, [WhyNOT inMyBackYard?](http://WhyNOTinMyBackYard?)
-oo0oo-



DIAMOND STATE COMMUNITY LAND TRUST
9 E. Loockerman Street, Suite 205
Dover, DE 19901
Telephone 800-282-0477
www.diamondstateclt.org

March 26, 2014

Brandy B. Nauman
Housing Coordinator & Fair Housing Compliance Officer
Sussex County Community Development & Housing
22215 DuPont Boulevard, P.O. Box 589
Georgetown, DE 19947

Subject: Laurel Land Development

Dear Ms. Nauman,

This letter is to confirm that the Diamond State CLT has terminated its contract for land with the West estate in Laurel, just east of Trapp Pond, due to new development requirements which would make a low-income home ownership community impractical.

At this time we have a land development committee very actively engaged in exploring new partnerships and possible new sites.

We would like the assistance of the County in identifying appropriate land parcels and are very interested in any public information on unfinished, approved sub-divisions which might be worth our investigation.

Please contact me, if you need any further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy M. Walls". The signature is fluid and cursive.

Amy M. Walls
President
Board of Directors

cc: Lawrence Lank, Planning & Zoning; Todd Lawson, Administration

BOARD OF DIRECTORS

Dave Buches, Kim Elliott, Denise Freeman, Dawn Poczynek-Holdridge, Ken Smith, Amy Walls, Bill Ward

Our mission is to strengthen Delaware communities by creating and stewarding forever affordable housing while promoting the sustainable use of the land.



DIAMOND STATE COMMUNITY LAND TRUST, INC.

363 Saulsbury Road
Dover, DE 19904
Telephone 800-282-0477
www.diamondstateclt.org

June 18, 2013

Doris West, Trustee
c/o Mike Procino, Home Team Realty
9599 Norman Eskridge Highway
Seaford, DE 19973

Dear Ms. West:

I am writing on behalf of the board and membership of Diamond State CLT and the members of the New Horizons group, to thank you again for your patience and forbearance during the lawsuit process with Sussex County. As you know, it was only recently resolved in late November 2012, thankfully in our favor.

Since resolution we have begun looking at our options for moving forward with the development of this property. We met with the engineers who originally evaluated the site preliminarily to determine what would need to be done to move forward with our original plan for 50 affordable home sites in a community setting with a community water treatment facility.

We have recently been advised by the engineers that, since the original agreement was executed in 2007, DNREC has implemented significant changes to water, waste water and storm water regulations. Those changes have increased the cost of installing community water treatment facilities to such an extent that the cost of a home built on the site would be prohibitive for the families we serve according to our mission. If we were to consider the alternative of on-site septic systems, we would only be able to build 25 homes to accommodate required lot sizes for such an installation. As you know, our agreement called for us to be able to build a minimum of 35 affordable homes in order to move ahead with the purchase of the land.

Furthermore, the significant changes will require extensive revisions to our plan from an engineering perspective. These changes will result in added expense and an undetermined extension in the timeframe for us to have a plan that is ready for preliminary approval at Sussex County Planning & Zoning. It is our understanding from communications with our real estate agent that you wish to move to settlement quickly. We are simply not prepared to do so as our plan will require significant changes to reach approval as is outlined in the conditions for settlement.

As a result of the above mentioned challenges, we do not see a path forward to creating the affordable home community on your land, as we had originally envisioned when we entered into the agreement with you.

Therefore, I regretfully inform you that we will not be able to finalize the purchase of your land. We will follow up to arrange for the return of our initial \$25,000 deposit. We are dismayed that after a long struggle (during which you have faithfully supported our mission and desire to build a much needed affordable development on your land) that this turn of events has prevented us from developing the New Horizons community on your land.

Sincerely,

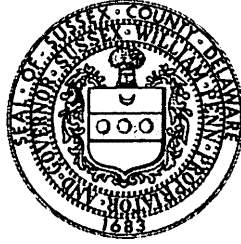
A handwritten signature in cursive script that reads "Amy Walls".

Amy Walls, Board President

Cc: Ms. Beth Webb, ReMax by the Sea
300 Ocean View Parkway, Bethany Beach, DE 19930

Exhibit 2

BRANDY BENNETT NAUMAN
HOUSING COORDINATOR &
FAIR HOUSING COMPLIANCE OFFICER
(302) 855-7777 T
(302) 854-5397 F
bnauman@sussexcountyde.gov



Sussex County
DELAWARE
sussexcountyde.gov

May 15, 2014

Amy M. Walls, President
Diamond State Community Land Trust
9 E. Loockerman Street, Suite 205
Dover, DE 19901

RE: Future Land Development

This letter confirms receipt of your letter dated March 26, 2014, received by Sussex County on May 5, 2014, regarding the termination of the Diamond State CLT contract for land in Laurel originally designated for the New Horizons project.

Sussex County gladly accepts the opportunity to assist Diamond State CLT with identifying potential land parcels available for development. While we do not have or maintain a list of land or projects currently available for acquisition, we are more than willing to discuss the status of approvals, bonding, inspections, etc. of any development or parcel of land the Diamond State CLT is considering. Also, if we do learn of projects that may be available as part of our ongoing regulation of land development in the County, we will endeavor to pass that information along to your organization. Please provide us with additional details regarding the information you desire and we will do our best to assist you.

Thank you,

Brandy B. Nauman

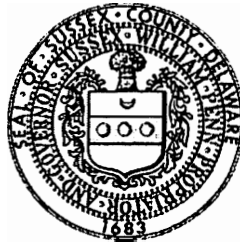
cc: Todd Lawson, Sussex County Administrator
Brad Whaley, Sussex County Community Development & Housing
Ken Smith, DSCLT Board Member



COUNTY ADMINISTRATIVE OFFICES WEST COMPLEX
22215 DUPONT BOULEVARD | PO BOX 589
GEORGETOWN, DELAWARE 19947

Exhibit 3

MICHAEL H. VINCENT, PRESIDENT
SAMUEL R. WILSON JR., VICE PRESIDENT
GEORGE B. COLE
JOAN R. DEEVER
VANCE PHILLIPS



2 THE CIRCLE | PO BOX 589
GEORGETOWN, DE 19947
(302) 855-7743 T
(302) 855-7749 F
sussexcountyde.gov

Sussex County Council

A G E N D A

DECEMBER 10, 2013

10:00 A.M.

Call to Order

Approval of Agenda

Approval of Minutes

Reading of Correspondence

Todd Lawson, County Administrator

1. Administrator's Report

Gina Jennings, Finance Director

1. Pension Committee Report

A. Actuarial Assumption Recommendation

B. Quarterly Financial Review

C. Annual Required Contribution Recommendation

D. Additional services offered by Pierce Park Group

Hal Godwin, Deputy County Administrator

1. Wastewater Agreement – Deep Valley Farm, Phase 1

Brandy Nauman, Housing Coordinator & Fair Housing Compliance Officer

1. Fair Housing Update



Lawrence Lank, Director of Planning and Zoning

1. Subdivision No. 2004-8 - Spring Breeze Associates

A. Request to Amend Conditions

John Ashman, Director of Utility Planning

1. Bethel Sewer Study – Memorandum of Agreement

Old Business

“AN ORDINANCE TO AMEND CHAPTER 52, SECTION 52-18C. AND E. OF THE CODE OF SUSSEX COUNTY IN REGARD TO THE SEALING OF DRAWINGS, SPECIFICATIONS, ETC. BY AN ARCHITECT AND/OR ENGINEER”

Grant Requests

- 1. Centenary Food Pantry to serve the Laurel community.**
- 2. Greater Georgetown Chamber of Commerce for parade expenses.**
- 3. Nanticoke Health Services Foundation for the Prescription Drug Fund.**

Introduction of Proposed Zoning Ordinances

Any Additional Business Brought Before Council

Executive Session – Personnel, Pending/Potential Litigation, and Land Acquisition pursuant to 29 Del. C. §10004(b)

Possible Action on Executive Session Items

Sussex County Council meetings can be monitored on the internet at www.sussexcountyde.gov.

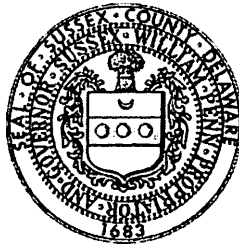
In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on December 3, 2013 at 4:50 p.m., and at least seven (7) days in advance of the meeting.

This Agenda was prepared by the County Administrator and is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Meeting.

Agenda items listed may be considered out of sequence.

###

MICHAEL H. VINCENT, PRESIDENT
SAMUEL R. WILSON JR., VICE PRESIDENT
GEORGE B. COLE
JOAN R. DEEVER
VANCE PHILLIPS



2 THE CIRCLE | PO BOX 589
GEORGETOWN, DE 19947
(302) 855-7743 T
(302) 855-7749 F
sussexcountyde.gov

Sussex County Council

A G E N D A

JUNE 10, 2014

10:00 A.M.

Call to Order

Approval of Agenda

Approval of Minutes

Reading of Correspondence

Todd Lawson, County Administrator

1. Proclamation – Laurel High School Girls' Softball Team
2. Administrator's Report

Brad Whaley, Director of Community Development & Housing

1. FEMA Grant Update and Discussion

Vince Robertson, Assistant County Attorney

1. Discussion and possible introduction of a Proposed Ordinance relating to the definition of a dwelling and the definition of a family in County Code

Hal Godwin, Deputy County Administrator

1. Legislative Update
2. Wetlands Advisory Committee Update and Possible Action

Brandy Nauman, Housing Coordinator & Fair Housing Compliance Officer

1. Fair Housing Update



Jim Hickin, Director of Airport & Industrial Park Operations

1. PATS – Lease Amendment, Lot 10

Patti Deptula, Assistant Director of Public Works

1. Sussex Shores Proposed Chapter 96 Sussex Community Improvement Project

Grant Requests

1. Coolspring Civic Association for community event expenses
2. CHEER for the Annual Car-Truck & Bike Show fundraiser
3. Pathways to Success for mentoring and after-school programs
4. City of Milford for the museum fundraising campaign
5. Town of Delmar for a community improvement project

Introduction of Proposed Zoning Ordinances

Any Additional Business Brought Before Council

Executive Session – Job Applicants' Qualifications and Land Acquisition pursuant to 29 Del. C. §10004(b)

Possible Action on Executive Session Items

Sussex County Council meetings can be monitored on the internet at www.sussexcountype.gov.

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on June 3, 2014 at 4:20 p.m., and at least seven (7) days in advance of the meeting.

This Agenda was prepared by the County Administrator and is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Meeting.

Agenda items listed may be considered out of sequence.

###

Exhibit 4

ATTACHMENT B

CERTIFICATION OF TRAINING AND RECEIPT OF CONSENT DECREE

On 6/9/14, I attended training on the federal Fair Housing Act. I have had all of my questions concerning these topics answered to my satisfaction.

I also have been given and I have read a copy of the Consent Decree entered in United States v. Sussex County, Delaware, et al., Case No. 12-1571-MPT (D. Del.). I understand my legal responsibilities and will comply with those responsibilities. I further understand that the Court may impose sanctions on Sussex County or the Planning and Zoning Commission of Sussex County if I violate any provision of this Decree.

I declare, under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dawn M. Hinks
Signature

Dawn M. Hinks
Print Name

6/9/14
Date

Building Inspector
Position with Sussex County

[REDACTED]
Home Street Address

[REDACTED]
City, State, Zip

[REDACTED]
Home Telephone Number

"I was unable to attend the live-training session due to:

 I was a member of the 25% of my department's staff that was required to report to work on the day of training.

 Traveling either out of State, or out of the Country

 Illness

☒ I was hired by the County, or transferred departments, after the date of the training."

Exhibit 5

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: AMEN MINISTRIES

(Case No. 11298)

A hearing was held after due notice on December 9, 2013. The Board members present were: Mr. Dale Callaway, Mr. Jeffrey Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception for a transitional home.

Findings of Fact

The Board found that the Applicant was requesting a special use exception for a transitional home. The Applicant has requested that the aforementioned requested special use exception be granted as it pertains to certain real property located northeast of Myrtle Avenue 147 feet northwest of Delaware Street (Road 297A) and being Lots 27,28, and 32 of Bookhammer Addition to Oak Orchard; said property being identified as Sussex County Tax Map Parcel Number 2-34-34.08-67.00. After a hearing, the Board made the following findings of fact:

1. The Board found that the Office of Planning and Zoning received statements from the tenants of the transitional home, three (3) letters in support of the Application, a petition in support with thirty-two (32) signatures, and one (1) letter in opposition to the Application.
2. Raymond Perry was sworn in and testified requesting a special use exception for a transitional home.
3. The Board found that Mr. Perry testified that, in 2007, he took in a homeless man.
4. The Board found that Mr. Perry testified that he was once homeless and understands the difficulties homeless men face.
5. The Board found that Mr. Perry testified that he provides a place for the men to stay and help them get back on their feet.
6. The Board found that Mr. Perry testified that he uses the Property as a place for recovering addicts to start over.
7. The Board found that Mr. Perry testified that he works with local churches and agencies and was not aware a special use exception was required for this type of use.
8. The Board found that Mr. Perry testified that he understands the complaint was filed by the local fire department due to concern that many people are living in the residence.
9. The Board found that Mr. Perry testified that he is a member of the fire department.
10. The Board found that Mr. Perry testified that he contacted the State Fire Marshal and was told there were no regulations for a transitional home.
11. The Board found that Mr. Perry testified that the State Fire Marshal suggested that he limit the number of people to four (4).
12. The Board found that Mr. Perry testified that more than four (4) people living in the house would require substantial updates to the dwelling.
13. The Board found that Mr. Perry testified that the current tenants that live in the home with him are mentally challenged or unable to live on their own.
14. The Board found that Mr. Perry testified that the crime rate in the neighborhood has dropped since he has lived in the area and that he works closely with Delaware State Police Troop 4.
15. The Board found that Mr. Perry testified that the police will often contact him to see if he can provide shelter to someone.

16. The Board found that Mr. Perry testified that his property at times has been an eyesore to the community but the Property has been cleaned up.
17. The Board found that Mr. Perry testified that the neighborhood is residential.
18. The Board found that Mr. Perry testified that a six (6) unit apartment building is located nearby.
19. The Board found that Mr. Perry testified that he rents the Property.
20. The Board found that Mr. Perry testified that the dwelling has four (4) bedrooms.
21. The Board found that Mr. Perry testified that his wife works upstate through the week and lives at the dwelling on weekends.
22. The Board found that Mr. Perry testified that additional people may stay a few nights until he is able to find them another place to stay.
23. The Board found that Mr. Perry testified that the use does not substantially adversely affect the neighborhood.
24. The Board found that Mr. Perry testified that the use will provide housing for no more than eight (8) tenants at one time.
25. The Board found that Mr. Perry testified that four (4) people live in the house now (exclusive of his wife who lives there on weekends).
26. The Board found that Mr. Perry testified that the house is very big.
27. The Board found that Mr. Perry testified that he has room for three (3) additional people to stay a few nights.
28. The Board found that Mr. Perry testified that he has been using the house in this manner for the past three (3) years.
29. The Board found that Mr. Perry testified that he will install the required smoke and carbon monoxide detectors.
30. The Board found that Mr. Perry testified that he is aware the State Fire Marshal may require more updates to the home and that there may be other agency approvals needed to operate the home.
31. The Board found that Gary Knapp was sworn in and testified in support of the Application.
32. The Board found that Mr. Knapp testified that he is a pastor at a local church and that he fully supports the work being done by the Applicant.
33. The Board found that Mr. Knapp testified that the Property is in keeping with the neighborhood as there are other similar structures in the neighborhood.
34. The Board found that Mr. Knapp testified that the home has a positive effect to the neighborhood and that the Applicant has been an asset to the community.
35. The Board found that Calvin Miller was sworn in and testified in support of the Application.
36. The Board found that Calvin Miller testified that he is an elder at a local church.
37. The Board found that Calvin Miller testified that the Applicant has helped lessen crime in the neighborhood.
38. The Board found that Calvin Miller testified that the use is not detrimental to the community.
39. The Board found that Matthew Miller was sworn in and testified in support of the Application.
40. The Board found that Matthew Miller testified that he is an elder at a local church and that he teaches bible study at the home on Tuesdays.
41. The Board found that Matthew Miller testified that he has seen men go on to succeed in the neighborhood due to the help provided by the Applicant and that the Applicant is serving a great benefit to the County.
42. The Board found that Charles Minter was sworn in and testified in support of the Application.
43. The Board found that Mr. Minter testified that he has been to the Property for bible study and that the residents must live by certain rules or they are required to leave the house.

44. The Board found that Bryan Miller was sworn in and testified in support of the application.
45. The Board found that Bryan Miller testified that he has personally participated in helping with the house and that he aided by having eight (8) fire extinguishers donated to the home.
46. The Board found that fourteen (14) parties appeared in support of the Application.
47. The Board found that no parties appeared in opposition to the Application.
48. Based on the testimony presented at the public hearing and the public record, the Board determined that the Application met the standards for granting a special use exception because the proposed use does not substantially affect adversely the uses of neighboring and adjacent properties. The use was approved for up to eight (8) people to reside in the dwelling.

The Board approved the special use exception application for up to eight (8) people to reside in the dwelling finding that it met the standards for granting a special use exception

Decision of the Board

Upon motion duly made and seconded, the Application was approved with conditions. The Board Members voting to approve the Application with conditions were Mr. Dale Callaway, Mr. Jeffrey Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Member voted against the Motion to Approve the Application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY

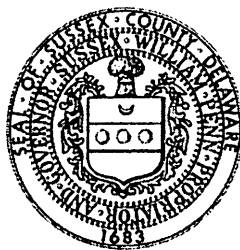

Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date January 28, 2014

Exhibit 6

MICHAEL H. VINCENT, PRESIDENT
SAMUEL R. WILSON JR., VICE PRESIDENT
GEORGE B. COLE
JOAN R. DEAVER
VANCE PHILLIPS



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Sussex County Council

A G E N D A

JUNE 17, 2014

10:00 A.M.

**AMENDED ON June 13, 2014 at 12:15 P.M.!

Call to Order

Approval of Agenda

Approval of Minutes

Reading of Correspondence

Todd Lawson, County Administrator

1. Planning and Zoning Commission Appointment(s)
2. Administrator's Report

Hal Godwin, Deputy County Administrator

1. Wastewater Agreement – The Landings at Pepper Creek, A/K/A The Marina at Pepper's Creek, Phase 3
2. Legislative and Committee Action Update

10:15 a.m. Public Hearings

“AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2015”

Assessment Rolls for Sewer and Water Districts



“AN ORDINANCE ESTABLISHING ANNUAL SEWER CHARGES, ANNUAL ASSESSMENT RATES FOR COLLECTION AND TRANSMISSION AND/OR TREATMENT, AND CONNECTION CHARGES FOR ALL SUSSEX COUNTY WATER AND SEWER DISTRICTS”

Julie Cooper, Project Engineer

- 1. Bid Award – Oak Crest Farms Revised Stormwater Management Phase 1, Project No. 01-04**

Michael Izzo, County Engineer

- 1. Millville Expansion of the Bethany Beach Sanitary Sewer District**
 - A. Whitman, Requardt & Associates, LLP**
 - 1. Revised Amendment 38 – Construction Inspection Services for SR 26**

Grant Requests

- 1. Town of Millsboro for welcome signs.**
- 2. Town of Laurel for the Independence Day Celebration.**
- 3. Delmarva Council – Boy Scouts of America – Troop 249 for Eagle Scout project expenses.**
- 4. Seaford Historical Society for programs and special events.**
- 5. March of Dimes Foundation for The Farmer & The Chef South event.**
- 6. Greater Millsboro Chamber of Commerce for festival expenses.**

Introduction of Proposed Zoning Ordinances

Any Additional Business Brought Before Council

****Executive Session – Pending/Potential Litigation and Land Acquisition pursuant to 29 Del. C. §10004(b)**

Possible Action on Executive Session Items

1:30 p.m. Public Hearings

Conditional Use No.1986 filed on behalf of Castaways Bethany Beach, LLC

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 11.56 ACRES, MORE OR LESS” (Tax Map I.D. 134-9.00-21.00) (Part of) (land lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) and north of Ocean View) (no 911 address available)

Change of Zone No. 1746 filed on behalf of Castaways Bethany Beach, LLC

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.45 ACRES, MORE OR LESS” (Tax Map I.D. No. 134-9.00-21.00) (Part of) (land lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) and being north of Ocean View) (no 911 address available)

Change of Zone No. 1747 filed on behalf of Castaways Bethany Beach, LLC

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 17.80 ACRES, MORE OR LESS” (Tax Map I.D. No. 134-9.00-21.00) (part of) (land lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) and being north of Ocean View) (no 911 address available)

Sussex County Council meetings can be monitored on the internet at www.sussexcountyde.gov.

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on June 10, 2014 at 4:20 p.m., and at least seven (7) days in advance of the meeting.

This Agenda was prepared by the County Administrator and is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Meeting.

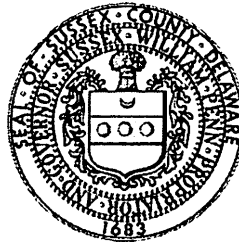
Agenda items listed may be considered out of sequence.

#

¹ Per 29 Del. C. § 10004 (e) (5) and Attorney General Opinion No. 13-IB02, this agenda was amended under Executive Session to include Pending/Potential Litigation listed therein.

The Council intends to discuss public business in Executive Session. The agenda amendment was required to address these matters which need immediate Council attention and which arose after the initial posting of the agenda but before the start of the Council meeting.

ROBERT C. WHEATLEY, CHAIRMAN
IRWIN G. BURTON III
MICHAEL B. JOHNSON
MARTIN L. ROSS
RODNEY SMITH



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Sussex County Planning & Zoning Commission

AGENDA

JUNE 26, 2014

6:00 P.M.

Call to Order

Approval of Agenda

Approval of Minutes – June 12, 2014

Old Business

Subdivision #2007-43 Cool Spring Equities, LLC

MJ

Application of COOL SPRING EQUITIES, LLC to consider the Subdivision of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred, Sussex County, by dividing 45.05 acres into 67 lots, (Cluster Development) located east of Road 290, 520 feet south of Road 262 (Tax Map I.D. # 3-34-10.00-67.00).

Final –Spring Town Farms Subdivision

Change of Zone #1751 Peninsula at Long Neck, LLC

MJ

Application of PENINSULA AT LONG NECK, LLC an Ordinance to modify Condition No. 10 (C) imposed on Ordinance No. 2180 for Change of Zone No. 1697, the application of Peninsula at Long Neck, LLC for “The Peninsula”, a MR-RPC Medium Density Residential District – Residential Planned Community, to extend the time to construct and open for use the golf clubhouse facility (911 Address: None Available) (Tax Map I.D. # 2-34-30.00-1.00 and others).

Change of Zone #1753 Cadbury at Lewes, Inc.

MJ

Application of CADBURY AT LEWES, INC. to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned community to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 5.00 acres, more or less, land lying northeast of Road 267 (Gills Neck Road) 1,100 feet east of Road 268 (Kings Highway) (911 Address: 17028 Cadbury Circle, Lewes, Delaware) (Tax Map I.D. # 3-35-8.00-37.00 (Part of)).



Subdivision #2013-3 Rocks Bethany, LLC

RS

Application of **ROCKS BETHANY, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Baltimore Hundred, Sussex county, by dividing 2.33 acres into 5 lots, and a waiver from the Forested Buffer requirement, located on the east side of Delaware Route One, north of Gum Road, a private road within Sussex Shores Subdivision (911 Address: None Available) (Tax Map I.D. 1-34-13.00-142.00 & 143.00).

Final – Vista Del Mar Subdivision

Public Hearings

Change of Zone #1754 Bayshore Plaza Associates, LLC

RS

Application of **BAYSHORE PLAZA ASSOCIATES, LLC** to amend the Comprehensive Zoning Map of Sussex County from an B-1 Neighborhood Business District to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 0.52 acres, more or less, land lying north of Route 54 (Lighthouse Road) 800 feet east of Road 381 (Old Mill Road) (911 Address: 14614 Coastal Highway, Lewes, Delaware) (Tax Map I.D. # 2-35-16.00-64.00).

Change of Zone #1752 TD Rehoboth, LLC

IGB

Application of **TD REHOBOTH, LLC** to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 114.4821 acres, more or less, land lying northeast side of Route One (Coastal Highway) across from Route 88 (Cave Neck Road) (911 Address: None Available) (Tax Map I.D. 235-23.00-1.000).

WITHDRAWN 6/19/14

Other Business

Joseph & Cynthia Black

MJ

4 Parcels & 50' Right of Way – Road 249

Gerald Baldi

IGB

3 Lots & 50' Easement – Road 88

Helen Street & Others

MJ

3 Parcels & 50' Easement – Road 308

Black Creek Cove

MJ

Amend Condition – Sidewalks – Road 317

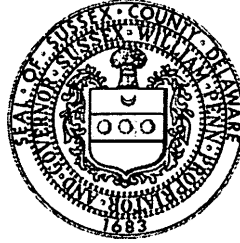
In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on June 16, 2014, at 3:00 p.m., and at least seven (7) days in advance of the meeting.

This Agenda is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Meeting.

Agenda items listed may be considered out of sequence.

####

DALE A. CALLAWAY, CHAIRMAN
JEFFREY M. HUDSON
JOHN M. MILLS
NORMAN C. RICKARD
E. BRENT WORKMAN



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Sussex County Board of Adjustment

AGENDA

JULY 7, 2014

7:00 P.M.

Call to Order

Approval of Agenda

Public Hearings

Case No. 11413 Cheryl M. McDermott & Eileen R. Welsh

north of Route 54 (Lighthouse Road) and being southeast of Blue Teal Road 0.35 mile north of Swann Drive and being Lot 45-B in Swann Keys Subdivision (911 Address: 37078 Blue Teal Road, Selbyville, Delaware)(Tax Map I.D. 5-33-12.16-472.00).

A variance from the side yard setback requirement.

Case No. 11414 A & A Farms, Inc.

northwest of Road 525 (Coverdale Road) 1.1 mile southwest of Route 18 (Seashore Highway) (911 Address: None Available) (Tax Map I.D. 4-30-23.00-82.02).

A special use exception for a concrete batch plant.

Case No. 11415 Delmarva Broadcasting Company

northwest of Road 626 (Appel's Road) 0.6 mile northwest of Road 594 (Webb Farm Road) (911 Address: 9078 Appel's Road, Lincoln, Delaware) (Tax Map I.D. 1-30-8.00-36.05).

A variance from the height requirement for a radio/television tower.

Case No. 11416 Louis J. Travalini

west of Road 347 (White's Neck Road) 240 feet south of Road 349 (Old Mill Road) (911 Address: None Available) (Tax Map I.D. 1-34-8.00-420.00).

A special use exception to place two (2) accessory structures for personal use on less than one (1) acre.



Board of Adjustment meetings can be monitored on the internet at www.sussexcountypa.gov.

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on June 3, 2014, at 3:00 p.m., and at least seven (7) days in advance of the meeting.

This Agenda is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Meeting.

Agenda items listed may be considered out of sequence.

####

Exhibit 7


GRIFFIN & HACKETT, P.A.
ATTORNEYS AT LAW

JAMES D. GRIFFIN
19264 MILLER ROAD, UNIT A
REHOBOTH BEACH, DELAWARE 19971

VINCENT G. ROBERTSON

(302) 226-8702

FAX: (302) 226-8704
robertson@griffinhackettllaw.com

TO: SUSSEX COUNTY COUNCIL
FROM: VINCE ROBERTSON 
RE: DEFINITIONS OF "DWELLING", "DWELLING, SINGLE
FAMILY", "DWELLING, MULTIFAMILY" AND FAMILY
DATE: JUNE 6, 2014

As a result of several factors, including the recent Consent Decree between Sussex County and HUD and a review of federal and state law, it has been determined that the Sussex County Zoning Code needs an update with regard to the definitions of "dwelling" and who can reside in such a unit. Attention was also drawn to this issue in a pending campground rezoning application, where it was observed that the definition of "dwelling" specifically excluded "manufactured homes" in regard to the proximity between campgrounds and "dwellings". The information that led to this proposed change was also discussed at length during the recent Fair Housing Training sessions.

At the outset, it should be pointed out that there was no apparent intention to imply that a manufactured home is not a dwelling under the current Code. They are simply defined differently and dealt with differently throughout the Code. In any event, this proposed change eliminates that confusion, especially as it relates to the proximity of a manufactured home to a campground.¹ At the same time, there are other existing provisions of the Code governing manufactured homes that are unaffected by this change. For example, in the MR Zone, permitted uses include "Detached single family dwellings but not manufactured homes." So, although

¹ This proposed revision would not have any effect on pending applications, including specifically the two pending campground applications.

manufactured homes are dwellings, they are still separated out for certain zoning purposes.

Under State and Federal law, the definition of “family” has given way to a more broad definition of who can live together in a single dwelling. Under principles of fair housing, groups should be entitled to reside together in a single dwelling, including families, single parents with natural, adopted or foster children, a group of people not related by blood or marriage, a licensed group residential facility; elderly and/or disabled people along with their extended family, and so on. Under Federal and State law, as reiterated in the Consent Decree, it is illegal to discriminate against these types of protected classes in the administration of the County’s zoning, land use or building ordinances.

Finally, legal staff has reviewed the proposed Ordinance Amendment to eliminate any unintended consequences. These revisions were also prepared with the cooperation of Brandy Nauman and Brad Whaley, who forwarded them to the Delaware State Housing Authority. The DSHA has approved the proposed wording of “dwelling”, “dwelling, multifamily” and “dwelling, single family”. The Office of State Planning Coordination has commended Sussex County’s efforts with this Ordinance, as well.

The proposed ordinance addresses the following:

- A manufactured home is no longer excluded from being a dwelling. However, under other existing and unaffected provisions of the Code, manufactured housing still has specific provisions that apply (such as minimum property requirements in the AR-1 District; where they are permitted uses, etc.)
- The definition of “Dwelling” is revised to conform to what is contained in Title 42 of the United States Code and also the language of the Consent Decree that Sussex County agreed to.
- “Dwelling, Single Family” is revised to define that only 1 of several listed types of protected groups can reside within a dwelling.
- “Dwelling, Multifamily” is revised to define that 2 or more of several listed types of protected groups can reside within a building.

- The definition of “family” has been eliminated from the Code as a separate item. This definition was previously required to further define what was a single family or multifamily dwelling. Since that information is now supplied within the definition of those specific items, a separate definition of “family” is no longer required for zoning purposes.

I will be available at the June 10, 2014 County Council meeting to address any questions that you may have regarding this issue. Keep in mind that if the proposed Ordinance is introduced, it will have to go through public hearings before both the Planning and Zoning Commission and County Council.

cc: Mr. Todd Lawson
Mr. Lawrence Lank
Mr. Shane Abbott
Mrs. Brandy Nauman
Mr. Brad Whaley
Mr. J. Everett Moore, Esquire
Ms. Stephanie Hansen, Esquire,

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE I BY AMENDING THE DEFINITIONS OF "DWELLING", "DWELLING, SINGLE FAMILY", "DWELLING, MULTIFAMILY" AND "FAMILY",

WHEREAS, Sussex County Code, Chapter 115, Article I, Sec. 115-4 currently includes definitions of "Dwelling", "Dwelling, Single Family", "Dwelling, Multifamily" and "Family"; and

WHEREAS, in order to further comply with the Federal Fair Housing Act and State Law, the definitions of "Dwelling", "Dwelling, Single Family", "Dwelling Multifamily" and "Family" are being revised to allow more than four unrelated individuals to reside together and affirmatively address protected classes of persons or individuals with disabilities; and

WHEREAS, items that have been deleted are shown in [brackets] and items that have been added are shown underlined.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. Amend Sussex County Code, Chapter 115, Article I, Section 115-4, Definitions, by deleting the definition of "Dwelling" in its entirety, as shown below:

[DWELLING – A building or portion thereof containing cooking and housekeeping facilities, designed or used exclusively for residential occupancy, but not including manufactured homes, hotels, motels, motor lodges boarding- and lodging houses, tourist houses, or similar structures.]

Section 2. Amend Sussex County Code, Chapter 115, Article I, Section 115-4, Definitions, by inserting the following:

DWELLING – Any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence; and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof. "Dwelling" shall not include hotels, motels, motor lodges, boarding- and lodging houses, tourist houses, or similar structures.

Section 3. Amend Sussex County Code, Chapter 115, Article I, Section 115-4, Definitions, by deleting the definition of "Dwelling, Single Family" in its entirety, as shown below:

[DWELLING, SINGLE FAMILY -- A detached dwelling designed for or occupied exclusively by one family.]

Section 4. Amend Sussex County Code, Chapter 115, Article I, Section 115-4, Definitions, by inserting the following:

DWELLING, SINGLE FAMILY -- A detached dwelling designed or occupied by not more than one (1) of the following as a single housekeeping unit with single culinary facilities:

1. One (1) family, which may consist of one (1) person or two (2) or more persons related by blood or marriage with any number of natural children, foster children, step children or adopted children.
2. Two (2) single parents or guardians with any number of their natural children, foster children, step children or adopted children, functioning as a single housekeeping unit.
3. A group of not more than four (4) persons not necessarily related by blood or marriage functioning as a single housekeeping unit.
4. A group residential facility licensed and approved by the appropriate state agencies serving 10 or fewer persons with disabilities on a 24 hour-per-day basis.
5. One (1) person or two (2) persons one of whom shall be elderly and/or disabled, and one (1) or both of who own the dwelling unit, plus one (1) family, which may consist of one (1) person or two (2) persons related by blood or marriage, and with any number of natural children, foster children, step children or adopted children.
6. For the purpose of this Section, "disabled" or "persons with disabilities" includes any person or persons with a handicap or disability as those terms are defined in the Delaware Fair Housing Act, Title 6, Chapter 46 of the Delaware Code, as may be amended.

Section 5. Amend Sussex County Code, Chapter 115, Article I, Section 115-4, Definitions, by deleting the definition of "Dwelling, Multifamily" in its entirety, as shown below:

[DWELLING, MULTIFAMILY – A dwelling designed for or occupied exclusively by two or more families living independently of each other. "Multiple-family dwellings" shall be considered as apartments, garden apartments, condominiums, duplexes or similar structures.]

Section 6. Amend Sussex County Code, Chapter 115, Article I, Section 115-4, Definitions, by inserting the definition of "Dwelling, Multifamily" as follows:

DWELLING, MULTIFAMILY -- A dwelling designed or occupied exclusively by two (2) or more of the following living independently of each other, each with single culinary facilities:

1. One (1) family, which may consist of one (1) person or two (2) or more persons related by blood or marriage with any number of natural children, foster children, step children or adopted children.
2. Two (2) single parents or guardians with any number of their natural children, foster children, step children or adopted children, functioning as a single housekeeping unit.
3. A group of not more than four (4) persons not necessarily related by blood or marriage functioning as a single housekeeping unit.
4. A group residential facility licensed and approved by the appropriate state agencies serving 10 or fewer persons with disabilities on a 24 hour-per-day basis.
5. One (1) person or two (2) persons one of whom shall be elderly and/or disabled, and one (1) or both of who own the dwelling unit, plus one (1) family, which may consist of one (1) person or two (2) persons related by blood or marriage, and with any number of natural children, foster children, step children or adopted children.
6. For the purpose of this Section, "disabled" or "persons with disabilities" includes any person or persons with a handicap or disability as those terms are defined in the Delaware Fair Housing Act, Title 6, Chapter 46 of the Delaware Code, as may be amended.

"Multi-family dwellings" shall be considered as apartments, garden apartments, condominiums, duplexes or similar structures.

Section 7. Amend Sussex County Code, Chapter 115, Article I, Section 115-4, Definitions, by deleting the definition of "Family" in its entirety, as shown below:

[FAMILY -- An individual or two or more persons who are related by blood or marriage living together and occupying a single housekeeping unit with single culinary facilities or a group of not more than four persons living together by joint agreement and occupying a single housekeeping unit with single

culinary facilities on a non-profit, cost sharing basis. Domestic servants employed and residing on the premises shall be considered as a part of the family.]

Section 8. Effective Date. This Ordinance shall become effective upon its adoption by Sussex County Council.

Draft

SYNOPSIS

This Ordinance amends the definitions of Family, Single Family Dwellings and Multifamily Dwellings to avoid unintended discrimination under State and Federal Law. It confirms that a family may include one or two people living together and not only their natural or adopted children but also step-children and foster children. It also clarifies that children are permitted to reside with legally appointed guardians. It permits licensed and approved residential houses or no more than ten persons with disabilities as defined in the Delaware Fair Housing Act. Lastly, it recognizes that it is appropriate for 2 families to reside in a single unit when the owner(s) of the unit are elderly and/or disabled.

Exhibit 8

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

SUSSEX COUNTY, DELAWARE, AND
PLANNING AND ZONING COMMISSION OF
SUSSEX COUNTY,

Defendants.

Civil Action No. 12-1591-MPT

CONSENT DECREE

STIPULATION AND ORDER

WHEREAS, the parties in the above-captioned action have agreed to certain
modifications the Consent Decree; and

WHEREAS, some of these modifications do not implicate a time limit for performance;
and

WHEREAS, the Consent Decree states that modifications which do not implicate a time
limit for performance will be effective upon filing of the written agreement with this Court.

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto,
through their respective counsel and subject to the approval of the Court, that the modifications
of the Consent Decree which do not implicate a time limit for performance are as follows:

1. When the in-person training required by the Consent Decree would cause any given
County department to operate with less than 25% of its regular employees for the duration of the
training, then up to 25% of that department's staff may be considered to have good cause to be
trained by video instead of in-person, provided that no individual asserts this basis for good

cause in any two consecutive years.

2. Training will be scheduled so as to maximize the number of required individuals who can attend in person.

A. Any elected, appointed, or hired individual who, for good cause, cannot attend the initial, in-person training may satisfy the initial training requirement by viewing the videotape of the live training within 90 days of entry of the decree, provided that any person who completes the video training in lieu of live training will report the reason on his/her training certification form (Attachment B of the Consent Decree) that will be submitted to the Department of Justice.

B. Any elected, appointed, or hired individual who, for good cause, cannot attend the annual, in-person training may satisfy the annual training requirement by viewing the videotape of the live training within 90 days after the live training, provided that any person who completes the video training in lieu of live training will report the reason on his/her training certification form (Attachment B of the Consent Decree) that will be submitted to the Department of Justice.

3. The parties will adhere to Federal Rule of Civil Procedure 6(a) in calculating deadlines in the Consent Decree.

4. The parties agree that home addresses and home telephone numbers of the trainees required to be trained under Section VI of the Consent Decree that appear on the Certifications of Training and Receipt of Consent Decree ("Certifications") may be redacted before the Certifications are posted on the County's website.

5. The parties agree that under Section VII(27)(b) of the Consent Decree, the phrase 'A summary of each zoning or land-use request or application related to Affordable Housing' refers

to zoning or land use requests or applications for housing development projects intended or designed for households earning less than 80% of the Area Median Income (“AMI”) as calculated by the U.S. Department of Housing and Urban Development. Such projects do not include requests or applications from individual homeowners seeking variances or special use exceptions from the County’s Board of Adjustment. Instead, this provision is interpreted as applying to requests and applications from developers of residential housing projects. A residential housing project is interpreted as a project to construct housing in which more than one family is intended to be served and in which some portion of the project is specifically proposed by the developer as intended to serve households earning less than 80% AMI.

6. The parties agree that under Section VII(28) of the Consent Decree, the phrase “any proposed change to the County’s zoning or land-use laws, regulations, policies, or procedures addressing the construction of or approval process for Affordable Housing or housing being processed under the Moderately Priced Housing Unit Program or the Sussex County Rental Program” means proposed changes to laws, regulations, policies, or procedures that are intended to specifically address the construction of or approval process for Affordable Housing or housing being processed under the Moderately Priced Housing Unit Program or the Sussex County Rental Program, not changes which implicate residential development in general.

IT IS SO ORDERED:

This _____ day of _____, 2014.

United States Magistrate Judge

The undersigned hereby consent to the entry of this Stipulation and Order:

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

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Dated: _____

Exhibit 9

ORDINANCE NO. 1821

AN ORDINANCE TO ADOPT CHAPTER 72 OF THE CODE OF SUSSEX COUNTY RELATING TO MODERATELY PRICED HOUSING UNITS.

WHEREAS, Council believes that the health, safety and welfare of the citizens of Sussex County will be better served by revising the Code of Sussex County to adopt an Ordinance that will promote the creation of housing units for moderate income citizens of the County; and

WHEREAS, Council believes that a housing shortage exists within the County with respect to housing for residents with moderate incomes; and

WHEREAS, Council believes that this Ordinance will address the housing shortage for residents with moderate incomes.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

§72-1 TITLE AND SCOPE

This Chapter shall be known as the Moderately Priced Housing Unit Program (the "MPHU Program" or the "Program") and establishes mechanisms to stimulate the production and sale of housing for residents with moderate incomes.

§72-2 INTENT

This Chapter seeks to better protect the health, safety and welfare of Sussex County's residents and workforce by stimulating the provision of housing for residents with moderate incomes.

§72-3 GOVERNMENTAL FINDINGS

The Sussex County Council hereby finds that a severe shortage exists within the County for housing for residents with moderate incomes. Specifically, the Council finds that:

- A. The County is experiencing rapid population growth. From 1990 to 2000, the County's population increased by 38.3% from 113,229 persons to 156,638 persons. Most of these new residents are classified as the "young elderly", defined as people entering pre-retirement or early retirement that are financially well off.
- B. This influx of affluent new households has created significant new demand for public utilities, health and human services, government services and retail and other commercial services, thereby increasing the need for persons of moderate income employed in the stated capacities and for the housing to accommodate those employees.
- C. In turn, the supply of moderately priced housing has decreased over the past 10 years as housing costs have escalated due to the influx of affluent households. The most recent real estate data suggests that households earning 80% to 125% of the area median income have very few choices for modern, modest quality housing except in the most western areas of the County and, even there, choices and supply are limited.
- D. Based on the most recent Department of Labor data, a significant portion of the Sussex County workforce earns less than 125% of the area median income.
- E. Based on this information, Council finds that new development is not adequately addressing the housing needs of the County's moderate income residents and workforce. Continuation of this trend will have a negative

effect upon the ability of local employers to maintain an adequate workforce.

- F. The inadequate supply of housing for the County's workforce is increasing the commuting distance to employment, to include commuting outside the County. This imbalance between jobs and housing has undesirable transportation and environmental consequences. Longer commuting overtakes existing roads and transportation facilities and significantly contributes to air and noise pollution and traffic congestion. It also produces stress for affected employees and creates greater than normal personnel turnover in the private businesses and public agencies of the County. These circumstances adversely affect the health, safety and welfare of County residents.
- G. Projections suggest that the high level of demand for higher priced housing will continue, driven by macro-population factors, low county taxes and the proximity of the resort areas in eastern Sussex, discouraging developers from offering a more diverse range of housing in areas where the demand for housing and the workers to support associated residents is strong. The production of moderately priced housing is further deterred by the high cost of materials and labor.
- H. Housing industry experts advise that if land and development costs can be reduced, modern, quality houses can be built and sold at prices affordable to households of moderate income.
- I. Given the proper incentives, the private sector possesses the necessary resources and expertise to provide the type of moderately priced housing needed in the County.

§72-4 DECLARATION OF PUBLIC POLICY.

The Sussex County Council hereby declares it to be public policy of the County to:

- A. Encourage the creation of a full range of housing choices, conveniently located in suitable living environments, for all incomes, ages and family sizes.
- B. Encourage the production of moderately-priced housing to meet the existing and anticipated future employment needs in the County.
- C. Assure that moderately-priced housing is dispersed throughout the County consistent with the Comprehensive Plan.
- D. Encourage the production of moderately-priced housing by allowing increases in density to reduce land and development costs.
- E. Encourage developments in Town Centers, Developing Areas and Environmentally Sensitive Developing Areas with 35 or more total dwelling units to include a minimum number of moderately-priced units of varying sizes on public water and sewer systems.
- F. Provide incentives for private developers to construct moderately priced housing through tools such as the Density Incentive (defined below).
- G. Allow qualified projects to fully utilize the density permitted by the zoning district in which the property is located.
- H. Allow developers who are building qualified projects an expedited review period.

§72-5 DEFINITIONS

The following words and phrases have the following meaning:

A. **Applicant.** Any person, firm, partnership, association, joint venture, corporation, or other entity or combination of entities owning or controlling via contract Qualified Land (defined below) and any transferee of all or part of the Qualified Land that, after this Chapter takes effect:

1. Submits to the County for approval or extension of approval a plan of housing development for any type of site review, subdivision plan or development approval (hereinafter, a "Development Plan") that provides for the development of at least thirty-five (35) dwelling units on Qualifying Land in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of development; or
2. With respect to land in zones not subject to subdivision approval or site plan review, applies for building permits for the construction of thirty-five (35) or more dwelling units on Qualifying Land.

B. **Approved Resale Price.** The resale MPHU sale price established by the Department pursuant to Section 72-11.A.

C. **At One Location.** All land of the applicant if:

1. The property lines are contiguous; and/or
2. The property lines are separated only by a public or private right-of-way at any point; and/or
3. The property lines are separated only by other land of the Applicant not subject to this Section at the time of the submission of a permit or Development Plan by the Applicant.

D. **Control Period.** The time a MPHU is subject to resale price controls and owner occupancy requirements. The Control Period is 20 years and begins on the Date of Sale for new or resale MPHU's.

E. **Date of Sale.** The date of settlement for purchase of a new or resale MPHU.

F. **Density Incentive.** Any increase in density pursuant to Section 72-7.A that allows a residential development to achieve a density greater than would have been possible under the applicable provisions of current and future zoning ordinances and the County's subdivision regulations.

G. **Department.** The Sussex County Department of Community Development & Housing unless a DDE is the Applicant or has provided any funding, in which case Department will refer to the DDE.

H. **Department-designated entity (DDE).** Any agency, authority or political subdivision of the State of Delaware or any other public housing development agency or nonprofit housing corporation, land trust or similar entity designated by the Department and approved by Council.

I. **Director.** The head of the Sussex County Department of Community Development & Housing or head of a DDE, as applicable.

J. **Dwelling Unit.** A building or part of a building that provides complete living facility for one family, including, at a minimum, facilities for cooking, sanitation and sleeping.

K. **Eligible Buyer.** Person(s) (1) whose household is of Moderate Income, (2) who has been found eligible to purchase an MPHU and (3) who holds a valid certificate of eligibility from the Department. Eligible Buyers of equal Moderate Income may qualify for different Maximum Sale Prices (defined below) based on the size of the Eligible Buyer's household.

L. **Excess Proceeds.**

1. For sale of a new MPHU in the open market without deed restrictions pursuant to Section 72-10.A.7, Excess Proceeds means ninety-five percent (95%) of the sale price to the open market buyer less Applicant's actual out-of-pocket closing costs as shown on the HUD-1 settlement sheet less the applicable Maximum Sales Price.
2. For sale of a resale MPHU in the open market without deed restrictions, Excess Proceeds means the resale price to the open market buyer less seller's actual out-of-pocket closing costs as shown on the HUD-1 settlement sheet less a market rate third party sales commission (if a broker is used) less the Approved Resale Price.
3. For sale of an MPHU as the result of a Foreclosure Event, Excess Proceeds means the accepted bid at the foreclosure sale less the Approved Resale Price, provided that the accepted bid exceeds the sum of the outstanding principal balance, interest, taxes, insurance, fees provided for in the mortgage and any foreclosure-related expenses including, but not limited to, expenses of marketing the property due to the first mortgagee and any other costs associated with the foreclosure sale payable to junior lien holders.

Seller is obligated to discharge any mortgages or other debt associated with the MPHU out of the Maximum Sales Price or Approved Resale Price.

M. **Foreclosure Event.** A foreclosure, deed-in-lieu of foreclosure or other court-ordered sale.

N. **Maximum Sale Price.** The new MPHU sale price established by the Department pursuant to Section 72-9.

O. **Minimum Standards of Eligibility.** The criteria required to obtain a certificate of eligibility as enumerated in Section 72-6 below.

P. **Moderate Income.** Those levels of income established by the County Council which prohibit or severely limit the financial ability of persons to buy housing in Sussex County. Initially, Moderate Income is established as 80-125% of Area Median Income adjusted for household size as defined by the U.S. Department of Housing and Urban Development (HUD). Income includes salary, wages, dividends, interest and all other sources recognized by HUD from the Eligible Buyer and all other adults who will occupy the MPHU. Further, for persons or households with significant assets that do not produce income, the Department will establish criteria for imputing income to such assets.

Q. **Moderately Priced Housing Unit (MPHU).** A dwelling unit which is:

1. Offered for sale and sold to Eligible Buyers through or pursuant to regulations promulgated by the Department and approved by the County Council; or
2. Sold under another government program designated by the County Council designed to assist in the construction or occupancy of moderately priced housing.

R. **Priority Marketing Period.** The period during which an MPHU must be offered for sale exclusively to an Eligible Buyer as established in Section 72-10.A.6.

S. Qualifying Land. All land:

1. Owned by or under contract to the Applicant; and
2. In a Town Center, Developing Area or Environmentally Sensitive Developing Area and zoned for any type of residential development to which a density provision applies; and
3. Requires the submission of a Development Plan or, where a Development Plan is not required, a building permit; and
4. Is served by a public sewer and water system; and
5. Is At One Location.

§72-6 MINIMUM STANDARDS OF ELIGIBILITY FOR ELIGIBLE BUYERS

Eligible Buyers must:

- A. Be of Moderate Income as defined in 72-5.J and K above.
- B. As of the date of application to purchase an MPHU, be a permanent resident of Sussex County.
- C. For one year immediately preceding the date of application to purchase an MPHU, have been a permanent resident of Sussex County.
- D. At of the date of application to purchase an MPHU, have been employed in Sussex County for at least the immediately preceding year and be currently employed in Sussex County as of the Date of Sale.
- E. Maintain the MPHU as their primary residence throughout the period of participation in the MPHU Program, except as provided for in Section 72-12.D.

Where necessary or advisable to achieve the objectives of this Ordinance or to comply with state or federal housing laws, the Department may propose changes to these standards for approval by the County Council.

§72-7 DENSITY INCENTIVE AND OTHER INCENTIVES

A. Subject to meeting the requirements outlined in Sections 72-8, 72-9 and 72-10 of this Ordinance, a proposed development on Qualifying Land At One Location may achieve the following Density Incentives:

	<u>Tier A</u>	<u>Tier B</u>	<u>Tier C</u>
MPHU's Required	15%	15%	15%
Density Incentive	20%	25%	30%

Tier A: Greater than 100% and less than or equal to 125% of the Area Median Income as established by the U.S. Department of Housing and Urban Development, adjusted for family size and updated annually.

Tier B: Greater than 80% and less than or equal to 100% of Area Median Income as established by the U.S. Department of Housing and Urban Development, adjusted for family size and updated annually.

Tier C: Less than or equal to 80% of Area Median Income as established by the U.S. Department of Housing and Urban Development, adjusted for family size, and updated annually.

For Applicants proposing a mix of Tiers, the Density Incentive will be the weighted average reflecting the number of units in each Tier. For example, if a project has one-third each of Tier A, Tier B and Tier C MPHU's, the weighted average Density Incentive will be 25%. If a project has 90% Tier A and 10% Tier C, the weighted average Density Incentive will be 21%.

In planned development zones and mixed use zones containing flexible development standards, the number of MPHU's will be 15% of the total number of dwelling units.

In either single family detached or townhouse subdivisions, each MPHU must have at least two bedrooms. One bedroom MPHU's are permitted in condominiums provided that the number of one bedroom condominium MPHU's is equal to or less than the number of market rate one bedroom units in the subdivision.

B. Other incentives will include:

- a. Expedited Review. A project entering the MPHU Program through execution of an MPHU Agreement will receive expedited review. The expedited review is provided to the Applicant to assist Applicant in managing, to the extent possible, the risk of changes to cost, interest rates, schedule and other factors that the Applicant is taking on by virtue of participation in the MPHU Program. If Applicant, at any time during processing, elects to withdraw from the MPHU Program, any approvals granted for the development through the date of withdrawal will be vacated and the Applicant will have to resubmit the project in the normal County process.
- b. Fee Waivers. In consultation with the Department of Planning and Zoning and subject to Council approval, the Department may waive some or all County fees. Any such waivers will be stated in the MPHU Agreement.

C. Council is authorized to modify the provisions of the County's Zoning Ordinance and the County's planning and zoning regulations and processes as needed to achieve the Density Incentives and the specific design elements (e.g., minimum lot sizes, setbacks, building heights, parking requirements, etc.) of approved MPHU projects.

§72-8 MPHU AGREEMENTS

To participate in the MPHU Program and to secure a Density Incentive, an Applicant must execute an MPHU Agreement negotiated with the Department and the County Attorney. Each agreement must include, at a minimum, the following information and/or evidence the following agreements and any others deemed necessary by the Department and the County Attorney to properly implement the Ordinance:

A. The specific number of MPHU's to be constructed in each price level meeting the Maximum Sale Prices established by the Department. An amendment to the MPHU Agreement will be made to incorporate approved Development Plans once the plans are available.

B. The schedule pursuant to which the MPHU's will be constructed marketed and delivered and the relationship between the delivery of market rates units and the delivery of MPHU's (i.e., a stated number of MPHU's to be created for each non-MPHU created).

C. Any economic risk created by changes, whether within or outside of the Applicant's control, in development and construction costs, interest rates, processing and construction schedules, permitting and any other factor impacting the Applicant's economics are borne solely by the Applicant.

D. The County may withhold building permits until Applicant is, in the sole discretion of the Department, in full compliance with the MPHU Agreement.

E. Be signed by the Applicant, by other parties having an interest in the property and by all other parties whose signatures are required by law for the effective and binding execution of contracts conveying real property. MPHU Agreements must be executed in a manner that will enable them to be recorded in the land records of the County. If the Applicant is a corporation, the principal officers of the corporation must sign the agreements individually and on behalf of the corporation.

F. Partnerships, associations and corporations may not evade the requirements of the MPHU Agreement through voluntary dissolution.

G. The MPHU Agreement may only be assigned with the written approval of the Department and only if the proposed assignee agrees to fulfill and demonstrates the financial ability to fulfill the Applicant's obligations under the MPHU Agreement.

H. Applicants are responsible for marketing and selling the MPHU's. During Priority Marketing Periods, Applicant will work with the Department to screen Eligible Buyers and to receive any specific selection criteria or directions promulgated by the Department.

I. If the Applicant is not also the builder, disclosure of the relationship between Applicant and builder as soon as the relationship is established. Further, acknowledgement by Applicant and builder that any deed transferring lots to builder will be encumbered by covenants described in 72-8.K below.

J. MPHU's must be fully integrated into the communities of which they are a part. The planning and design of individual MPHU's must be consistent with the planning and design of market rate units within a single project.

K. Applicant will execute and record covenants confirming that:

1. The restrictions of this Ordinance run with the land; and
2. The covenants will bind the applicant, any assignee, mortgagee, or buyer and all other parties that receive title to the property with the exception of the first lien mortgage holder. In the event the first lien mortgagee acquires the property through a foreclosure or acceptance of deed-in-lieu of foreclosure, the resale restrictions will be extinguished. The covenants must be senior to all instruments securing financing with the exception of the first lien mortgagee.
3. In any later deed or instrument conveying title to an MPHU, the property remains subject to the restrictions contained in the covenants required under the Ordinance during the Control Period until the restrictions are released. The source of the deed restrictions must be included in the public land records so that they are readily identifiable in a routine search.

L. Where Applicant is a DDE, covenants will be negotiated between the Department and the DDE so as to be consistent with the mission, strategies, business plans and operating procedures of the DDE and may, with Council approval, deviate from the requirements of this Ordinance.

§72-9 MAXIMUM SALE PRICES OF NEW MPHU'S

A. The Department will establish the Maximum Sale Price for each tier of Moderate Income and for each household size within each tier. The Maximum Sale Price applies to new MPHU's. The Maximum Sale Price for any level of Moderate Income and household size is established by:

1. Calculating the maximum conventional, 30 year amortizing first mortgage supportable by the Council-approved Moderate Income levels based on prevailing interest rates, amortization schedules and allowable debt burdens provided by mortgage lenders approved by the Department to make loans to Eligible Buyers; then
2. Deducting from the calculated maximum first mortgage the good faith estimate of a typical Eligible Buyer's out-of-pocket closing costs as shown on a HUD-1 settlement sheet to purchase the MPHU; and finally
3. Multiplying the result by 0.95, or such other factor promulgated by the Department and approved by County Council from time to time, to provide a minimum financial cushion for Eligible Buyers for routine maintenance, emergencies and other unplanned financial circumstances.

B. The Department will establish new Maximum Sale Prices whenever there are, in the Department's sole opinion, material changes in Moderate Income as defined and/or in market terms for interest rates, amortization schedules and debt burdens.

C. Maximum Sales Prices are solely income and mortgage-related and are not tied to the Applicant's actual cost of producing and selling MPHU's, or, in the case of resales, sale price expectations based on the Sussex County real estate market. Applicants must carefully consider the risks associated with fluctuations in both Maximum Sales Prices and in the cost of producing MPHU's prior to participating in the MPHU Program. Once an Applicant enters the Program, all such risks are borne solely by the Applicant and Applicant will have no cause to seek relief from the Department or the County.

§72-10 INITIAL SALE OF NEW MPHU'S

A. Sale to Eligible Buyers

1. Every MPHU constructed under this Program must be offered to all Eligible Buyers for purchase as the Eligible Buyer's principal residence. Notification of MPHU availability will be made through legal notices in area publications meeting public notice criteria. At the time the Department accepts an application from an Eligible Buyer, it will secure written confirmation from such person that Eligible Buyers are solely responsible for monitoring legal notices for the availability of MPHU's and for information on the MPHU program.
2. Before formally offering any MPHU's, the Applicant must notify the Department of the date on which the Applicant will be ready to begin the marketing to Eligible Buyers. The notice must set forth, for each MPHU, its address, floor area, room mix, delivery date, estimated homeowners' association charges (if any), estimated annual property taxes and estimated annual utility expenses for sewer, water, electric and, if available, gas. The notice will also include floor plans and elevations for each MPHU or model of MPHU.
3. After receiving the offering notice, the Department must notify the Council of the offering. If the Department finds that the offering notice is complete, it will provide the Applicant with the Maximum Sale Price for each unit and authorize the Applicant to offer the MPHU's to Eligible Buyers during the Priority Marketing Period pursuant to rules established by the Department.
4. The Department will, with Council Approval, establish a selection system that considers household size, length of county residency, length of employment in the County and length of time since the person was certified for the MPHU program. The Department will coordinate with

5. the Applicant in the selection of specific Eligible Buyers identified by
6. Applicant during Applicant's marketing. If there are multiple, equally qualified Eligible Buyers seeking to buy the same MPHU, the purchaser will be selected by a lottery run by the Department.
7. The Department, with the approval of the County Council, may establish special selection criteria or MPHU allocations to address certain specific housing needs such as target workforce sectors or economic development initiatives.
8. The Priority Marketing Period for new MPHU's begins on the earlier to occur of (1) when the Department declares the offering notice complete, or (2) fifteen (15) days after submission of the offering notice to the Department and ends one-hundred eighty (180) days thereafter.
7. Any units available after expiration of the Priority Marketing Period will, upon written approval from the Department, be released to the Applicant for sale as market rate units without deed restrictions pursuant to the MPHU Agreement and subject to the Department's rights pursuant to the next section 72-10.B.

B. Sale to the Department

If no Eligible Buyer is found for an MPHU during the applicable Priority Marketing Period, the Department may:

1. Buy the MPHU, or allow a DDE to buy the MPHU, for the purpose of reselling it to an Eligible Buyer at a later date, or
2. Authorize Applicant to sell the MPHU in the open market without deed restrictions and to deliver any Excess Proceeds to the Department.

§72-11 RESALE OF MPHU's

A. Except for foreclosure proceedings (Section 72-13), MPHU's produced under the MPHU Program may only be resold during the Control Period at the following prices (the "Approved Resale Price"):

1. If the current Maximum Sale Price for an MPHU in the same tier as the MPHU to be sold is equal to or less than the prior price paid for the MPHU, including closing costs, then the Approved Resale Price is the prior price paid including closing costs.
2. If the current Maximum Sale Price for an MPHU in the same tier as the MPHU to be sold is greater than the prior price paid for the MPHU, including closing costs, then the Approved Resale Price is the original purchase price, including closing costs, plus three percent (3%) annual escalation from date of purchase to date of sale, but in no event more than the current Maximum Sale Price.

B. Resale requirements during the Control Period

1. Any MPHU offered for resale during the Control Period must first be offered to the Department at the Approved Resale Price. The Department will have sixty (60) days to exercise this option and, if exercised, closing will take place sixty (60) days thereafter. The Department may buy an MPHU when funds are available and the
2. Department finds that buying and reselling the MPHU will increase opportunities for Eligible Buyers to buy the MPHU.

3. If the Department does not buy the MPHU, the Department will notify seller of that fact and the Approved Resale Price and a ninety (90) day Priority Marketing Period will commence. During that period, the seller will market the MPHU to Eligible Buyers as described for new MPHU's in Section 72-10.A.
4. If no Eligible Buyer is identified, a resale MPHU may be offered for sale as a market rate unit without deed restrictions and free of any Approved Resale Price limitation after expiration of the Priority Marketing Period. Any Excess Proceeds from such a sale will be distributed to the Department.
5. The seller will submit to the Department for approval at least thirty (30) days prior to closing;
 - i. A copy of the proposed sales contract, including a list and the price of any personal property included in the sale, which contract will be contingent on Department approval.
 - ii. Draft of the settlement sheet.
 - iii. An affidavit signed by the seller and buyer attesting to the accuracy of all documents and conditions of the sale.
5. A signed copy of the settlement sheet is to be provided to the Department immediately upon execution via facsimile from the settlement agent's office.
6. A transfer of an MPHU that does not comply with this Chapter and the Department will not release deed restrictions or provide any consents or estoppels until all required documents and affidavits have been submitted to and approved by the Department.
7. If the unit is resold during the Control Period, then a new Control Period begins.

C. There are no sale restrictions after expiration of any Control Period.

§72-12 RESTRICTIONS ON MPHU OWNERS

A. Every owner of an MPHU must occupy the MPHU as the owner's principal residence during the Control Period. Each owner must certify before taking occupancy that the owner will occupy the MPHU as owner's principal residence during the Control Period. The Director will require an owner who does not occupy the MPHU as the Eligible Buyer's principal residence to offer the MPHU for resale to another Eligible Buyer under the resale provisions of Section 72.12. Annual certification of principal residency from each owner will be required.

B. Except as provided in Section 72-12.C following, during the initial Control Period after the Date of Original Sale, and, if the MPHU is resold, the subsequent new Control Period, no liens other than the first mortgage will be permitted on an MPHU other than statutory liens for unpaid real estate taxes or assessments for infrastructure improvements and any liens validly recorded for unpaid homeowner association fees.

C. If an Eligible Buyer has owned an MPHU for five years or more, the Eligible Buyer may request permission from the Department to place a second mortgage on

the MPHU to provide for necessary capital improvements or for other purposes permitted by rules to be promulgated by the Department. The Department may approve the request if:

1. The Eligible Buyer provides evidence that it has an approved lender ready to make the requested loan; and
2. The Eligible Buyer provides evidence of approval from the first mortgagee that mortgagee approves the subordinate financing; and
3. The Department determines that the total of the first and second mortgages does not exceed 90% of the then prevailing Maximum Sale Price for an equivalent MPHU.

D. An owner of an MPHU, except the Department, may only rent the MPHU to any other party in certain limited and extraordinary circumstances approved by the Department (e.g., death of an owner).

1. The Department may allow rental of the MPHU for a period not to exceed twelve (12) months at rents set by the Department. Any approved rental will automatically amend the applicable MPHU covenants to extend the Control Period for a time equal to the approved rental period.
2. Any unapproved rental is a violation of this Ordinance and will result in a fine payable to Sussex County equal to (1) the full amount of any illegal rental received plus (2) five hundred dollars (\$500) per each month of illegal rental. Any amount unpaid after ninety (90) days is grounds for a lien against the MPHU and Sussex County may obtain a judgment and record the lien. If an illegal rental continues for more than six (6) months, Sussex County may sue to force a sale pursuant to the provisions of this Ordinance.

E. An owner may only sell an MPHU after first (1) notifying the Department of the proposed sale and (2) obtaining a current certificate of eligibility issued by the Department from the proposed buyer.

F. A person may own only one MPHU at any given time. If an MPHU owner is buying a different MPHU pursuant to this Ordinance, the Department, in its sole discretion, may authorize an overlapping ownership period of up to sixty (60) days.

G. If an MPHU owner dies, at least one heir, legatee, or other person taking title by will or by operation of law must be an Eligible Buyer and must occupy the MPHU as his or her principal residence during the Control Period. If these conditions cannot be met, the new owner(s) must sell the MPHU to an Eligible Buyer pursuant to Section 72.12 of this Ordinance.

§72-13 DEFAULTS AND FORECLOSURES

A. MPHU mortgages will include the following provisions.

1. The Department will request that approved lenders providing mortgages to Eligible Buyers provide a copy of any mortgage default notification to the Department no earlier than the forty-fifth (45th) day following delinquency and no later than the sixtieth (60th) day following delinquency. The Department will require that all approved lenders have the Eligible Buyer sign an authorization form permitting the loan servicer to give such notice to the Department.
2. The MPHU owner must provide a copy of any mortgage default notification immediately upon receipt.

3. In such event, the Director shall make every effort to work with the owner to reconcile the delinquency/default, including a deed in lieu of foreclosure, referral to an agency skilled in mortgage default counseling, sale to another Eligible Buyer or Department-designated entity (if no Eligible Buyers are interested in the MPHU). The Department will have sixty (60) days from date of notification to assist the homeowner in curing the default.

4. If the Director determines that the waiting list of Eligible Buyers warrants retaining the MPHU in inventory and if funding is available, the Director is authorized to notify the mortgagee that the Department or DDE guarantees payoff of the outstanding principal balance, interest, taxes, insurance, fees provided for in the mortgage and any foreclosure-related expenses including, but not limited to, expenses of marketing the property within sixty (60) days in return for cancellation of foreclosure actions. Prior to making such notification, the Department will secure the MPHU owner's consent to sell the property and will coordinate with mortgagee or its servicing agent. Should the MPHU owner not consent to a sale and should the default not be cured, the foreclosure could proceed. The Department reserves the right to purchase the MPHU at the foreclosure sale, thereby ensuring a renewed Control Period. The Department will take into consideration the possible legal costs associated with eviction in determining whether or not to bid at the foreclosure sale. If the mortgagee is the successful bidder at the foreclosure sale, the Department will have the option to pursue purchase of the property from the lender within thirty (30) days of the foreclosure sale. The Department assumes recourse for any necessary eviction proceedings. In the event the Department purchases the MPHU, the Department will pay the principal, interest and other costs outlined above to the mortgagee up to, but not exceeding, current market value (without deed restrictions) as determined by mortgagee's appraiser. Title to the MPHU property will then pass to the Department. The Department will thereupon re-offer the property in accordance with the MPHU program to Eligible Buyers, with the requirement that the Department is, to the extent possible, made whole for monies spent in the process of obtaining the property in the MPHU program.

B. MPHU mortgages and covenants will provide that, if an MPHU is sold through a Foreclosure Event, a payment must be made to the Department as follows:

1. If a Foreclosure Event occurs during the Control Period and if the accepted bid at the foreclosure sale exceeds the Approved Resale Price, Excess Proceeds will be paid to the Department in lieu of the former MPHU owner. The Department is responsible for monitoring Foreclosure Events and ensuring recapture of any excess funds.
2. If the accepted bid at the foreclosure sale is less than the Approved Resale Price, no payment is due to the Department.
3. If the Foreclosure Event occurs after the 20-year Control Period, then no payment is necessary to the Department.

74-14 PHASED IMPLEMENTATION OF ORDINANCE

A. To assist the Council in assuring that the Program achieves the objectives outlined in the Ordinance, Council will establish a test period during which Council, supported by the Departments of Community Development and Housing and Planning and Zoning, will test the effectiveness of the Ordinance and its associated rules and regulations. The test period will be long enough for the initial MPHU projects to be processed, developed and sold to Eligible Buyers, which period shall be 24 months. Improvements to concepts, processes and rules and regulations identified during the test period will be incorporated into future amendments of the

Ordinance. Council views this Ordinance as a "living document" that will be modified as needed to respond to economic, housing, development, land use and other trends in the County and to best practices in MPHU programs. The Ordinance will not be fully implemented until the test period is completed and the Ordinance hereafter amended to include any additional provisions Council determines are needed prior to the expiration of the test period.

B. The section further establishes a Request for Proposal ("RFP") process to select Program participants during the test period. The RFP process will:

1. Allow the County to manage the number of potential development projects participating in the Program until Program guidelines related to administration, land use, zoning and public processing are tested and finalized.
2. Allow the County to manage the number of potential MPHUs created until the actual market for MPHUs is better understood and quantified and until Program guidelines related to marketing, sale, financing, resale and ownership are tested and finalized.
3. Allow Applicants to present alternative approaches to lot sizes, housing types, density incentives and other Program features to encourage better overall land use, creation of MPHUs in high land cost areas or similar potentially desirable outcomes. Alternative approaches deemed successful by the Council will be incorporated in the amendment to the Ordinance prior to full implementation.
4. Ensure that the letter of the Ordinance produces results that are consistent with the spirit of the Ordinance by allowing Council to amend the Ordinance as needed based on actual experience prior to final promulgation and full adoption.

C. During the Phased Implementation period, Council directs the Director, Planning & Zoning to exploring existing zoning classifications, to consider new zoning classifications and to consider overlay designations that can be modified or created to encourage the creation of MPHUs, particularly in the coastal area of the County. The findings of this study will be used by Council in considering changes to the County's Comprehensive Plan during its next scheduled update.

§72-15 GOVERNMENT REGULATIONS, ENFORCEMENT

1. The Department must maintain a list of all MPHUs constructed and sold under this Program, and the Sussex County Council may, from time to time, adopt regulation necessary to administer this program.
2. The Director may, with Council approval, waive or modify the provisions of the MPHU Program if the Director finds that the Program in conflict with state or federal housing laws.
3. This Program applies to all agents, successors, and assigns of an applicant. A building permit must not be issued, and a preliminary plan of subdivision, development plan, or site plan must not be approved unless it meets the requirements of this program. The Director of Planning and Zoning may deny, suspend, or revoke any building or occupancy permit upon finding a violation of this Program. Any prior approval of a preliminary plan of subdivision, development plan or site plan may be suspended or revoked upon the failure to meet any requirement of this Chapter. An occupancy permit must not be issued for any building to any applicant, or a successor, or assign of any applicant, for any construction that does not comply with this Program.
4. The Director is authorized to pursue any available remedy, legal, or equitable in

nature, to enforce the requirements of this Program or to prevent or abate a violation of this Program.

5. The Director may take legal action to stop or cancel any transfer of an MPHU if any party to the transfer does not comply with all requirements of this Program. The Director may recover any funds improperly obtained from any sale or rental of an MPHU in violation of this Chapter.

6. In addition to or instead of any other available remedy, the Director may take legal action to:

- a. Enjoin an MPHU owner who violated this Program, or any covenant signed or order issued under this Program, from continuing the violation, or
- b. Require an owner to sell an MPHU owned or occupied in violation of this Program to an eligible buyer.
- c. The Director may take action if the MPHUs are illegally rented or lease.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY ORDINANCE NO. 1821 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 17TH DAY OF JANUARY 2006.



ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

Exhibit 10

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HOUSING COORDINATOR &
FAIR HOUSING COMPLIANCE OFFICER
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Sussex County
DELAWARE
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MEMORANDUM

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Samuel R. Wilson, Vice President
The Honorable George B. Cole
The Honorable Joan R. Deaver
The Honorable Vance Phillips
Todd Lawson, County Administrator

FROM: Brandy Nauman, Fair Housing Compliance Officer

RE: **Affordable Housing Strategies for Consideration**

DATE: March 22, 2013

On Tuesday, March 26, 2013, I present successful affordable housing strategies in other locales which may be similar in jurisdiction and authority to Sussex County. These strategies are items for consideration as a means to expand our existing affordable housing programs to improve their access and impact to residents. Below is a summarized listing of the items that will be discussed.

1. Anti-NIMBY Policy
 - a. Expand the County's Fair Housing Policy to include an Anti-NIMBY policy
 - i. Clarify the County's position on affordable housing
 - ii. Require that all public speakers at County public hearings sign an acknowledgement that "Sussex County, in its zoning and land use decisions, does not discriminate against persons based on race, color, religion, national origin, disability, familial status, or sex."
2. Inclusionary Zoning
 - a. Option 1: Amend the existing Moderately Priced Housing Unit (MPHU) and Sussex County Rental Program (SCRIP) Ordinances from voluntary participation to mandatory in Levels 1 & 2.
 - b. Option 2: Amend the existing Moderately Priced Housing Unit (MPHU) and Sussex County Rental Program (SCRIP) Ordinances to improve bonuses and incentives offered to developers.
 - i. Waive or reduce impact/permitting fees for affordable units or;

- ii. Defer payment of impact/permitting fees for affordable units until developer receives Certificate of Occupancy or;
 - iii. Allow for design flexibility of affordable units (i.e. setbacks, variances)
3. Training
 - a. Offer periodic fair housing training to municipal officials/staff, lenders, and Realtors.
4. Foreclosed Subdivisions
 - a. Identify projects for developers to purchase foreclosed subdivisions for the provision of affordable housing.
5. Affordable Housing Outreach
 - a. The County will consider drafting a letter to affordable housing developers supporting affordable housing located in areas identified by DSHA as appropriate for affordable housing.
 - b. Develop a team of County employees from various departments (i.e. CD&H, P&Z, Economic Development, Administration) to connect affordable housing developers with existing incentive programs available from the State and non-profit organizations.
6. Brownfields
 - a. County would agree to explore the possibility that Brownfields redevelopment in the County may provide a mechanism to develop additional affordable housing.

Thank you.



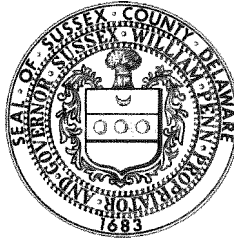
COUNTY ADMINISTRATIVE OFFICES WEST COMPLEX
22215 DUPONT BOULEVARD | PO BOX 589
GEORGETOWN, DELAWARE 19947

Exhibit 11

**COMMUNITY
DEVELOPMENT & HOUSING**

BRAD D. WHALEY
DIRECTOR

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Sussex County
DELAWARE
sussexcountyde.gov

Sussex County Community Development Block Grant (CDBG)
Application Methodology

For over twenty years the Community Development & Housing Department (“the Department”) has administered the Community Development Block Grant (“CDBG”) & HOME Investment Partnership Program (HOME) as a sub-recipient of the Delaware State Housing Authority (“DSHA”). Through these programs, the County has worked with every municipality and numerous rural low and moderate income communities in Sussex County.

In addition to municipalities, the rural communities the County works with, or has worked with, are as follows: Coverdale Crossroads, Greentop, Sam Lucas, Pinetown, Concord, Cool Spring, Mount Joy, Rural Selbyville/Polly Branch, West Rehoboth, Diamond Acres, Cedar Creek, Oak Orchard, Rural Ellendale, several rural Seaford areas, Hollyville Road, Forrest Road, Rural Milton, Belltown, Colombia, Way Cross Road, Possum Point, Dog Patch, and Forrest Green.

The above-listed communities are all low- to moderate-income communities and the majority of these are composed primarily of minority residents. The communities of Cedar Creek and Diamond Acres are a 50%/50% percent mix of minorities and non-minorities. The Possum Point area is predominately white. The Department keeps lists of the residents of these communities that have requested assistance for owner-occupied rehabilitation and demolition.

For the annual CDBG grant application, the Department follows the CDBG grant and Target Area guidelines established by DSHA. These guidelines allow for incorporated municipalities to receive CDBG funding; however, in accordance with the guidelines, the Department applies for and manages the funding on their behalf. Further, the Department submits and administers the County Application. The County Application covers rural communities, scattered sites (households outside of municipal boundaries, and not in the various rural communities), and program administration costs.

The process of applying on behalf of the municipalities begins several months prior to the grant submission. The Department sends letters to every municipality with a request to hold a public hearing at the municipality regarding the CDBG program. Interested municipalities will then schedule a public hearing, and the Department will present the CDBG guidelines and eligible uses of funding. The municipalities will then direct the Department Director on the eligible use of funding for which to apply.



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The methodology the Department uses to determine which rural communities will be targeted for assistance in a given CDBG funding year is as follows:

- The Department maintains lists of residents in the rural communities. We also have pre-applications from residents that list housing rehabilitation needs. The size of the waiting lists are monitored, as is the past funding levels received by the communities. This monitoring is used to determine which rural communities to target for funding.
- The Department attends First State Community Action Agency's Strong Communities meetings. In these meetings, residents of many rural communities present the needs of their communities and act as a contact and informational person. The Department uses this input to identify and prioritize the housing needs of the rural communities.
- The Department Director serves on First State Community Action Agency's Board of Directors and has direct access to their Executive Director and staff regarding rural community needs. In many cases the Executive Director will ask for or suggest funding for specific communities.
- As required by the State CDBG Guidelines, the Department has an Advisory Committee made up of local community leaders. After reviewing the Department's proposed rural targeted areas for the current grant cycle, this group provides input and guidance and makes the final determination.

The process used by the Department to determine which rural areas to request funding in starts with the internal evaluation of the waiting lists and recent funding allotments. This information is combined with the input from the Strong Communities meetings and suggestions from the Executive Director of First State Community Action. The resulting list of proposed targeted areas is then presented to the Advisory Board. The Board reviews the list, makes any changes they think are appropriate and approves the target areas.

The approved list is submitted to DSHA for their approval prior to the grant submission and the DSHA-approved list of targeted areas is then included in the County's CDBG grant request. The Sussex County Council approves the application and gives permission for the grant application to be submitted to DSHA.

After the application is submitted, DSHA forms a panel that reviews the submitted grant applications. The DSHA CDBG Program Administrator submits the panel's recommendation to the DSHA Director for ultimate approval regarding allocation of funding and the areas to be served. The County has no input on the final allocation determinations.

The County is planning to fuse the results of the Impacted Communities Study into the targeting process. We believe this will allow for a more systematic approach to directing funds into the rural communities.