

BOARD OF ADJUSTMENT

DR. LAUREN A. HITCHENS
NATHAN KINGREE
SHAWN LOVENGUTH
CHUCK McCLURE
JOHN WILLIAMSON



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7878

AGENDA

September 28, 2026

6:00 PM

Call to Order

Pledge of Allegiance

Approval of Agenda

Approval of the Minutes for July 20, 2026

Approval of the Findings of Fact for July 20, 2026

Approval of the Minutes for August 3, 2026

Approval of the Findings of Fact for August 3, 2026

Public Hearings

Case No. 12734 - Julian Karpoff

~~seeks an appeal of a determination by the Planning and Zoning Director (Sections 115-208 and 115-209 of the Sussex County Zoning Code). The property is located in the western portion of the parcel located at 16762 Old Orchard Road. 911 Address: 16762 Old Orchard Road, Lewes. Zoning District: AR-1. Tax Parcel: 335-11.00-57.00~~
TO BE RESCHEDULED

Additional Business

-MEETING DETAILS-

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on September 21, 2026, at 4:30 p.m. and at least seven (7) days in advance of the meeting.

The Agenda was prepared by the Director of Planning and Zoning and is subject to change to include the additional or deletion of items, including Executive Sessions, which arise at the time of the meeting.

Agenda items may be considered out of sequence.

The meeting will be streamed live at <https://sussexcountyde.gov/council-chamber-broadcast>

The Board of Adjustment meeting materials, including the “packet” are electronically accessible on the County’s website at: <https://sussexcountyde.gov/>.

If any member of the public would like to submit comments electronically, these may be sent to pandz@sussexcountyde.gov. All comments are encouraged to be submitted by 4:30 P.M. on Thursday, September 25, 2026.

####

RECEIVED

MAY 26 2022

SUSSEX COUNTY
PLANNING & ZONING**Board of Adjustment Application**
Sussex County, DelawareSussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

Case # _____

Hearing Date 9/12/22202207820**Type of Application: (please check all applicable)**Variance ☐Special Use Exception ☐Administrative Variance ☐Appeal ☒Existing Condition ☐Proposed ☐

Code Reference (office use only)

Site Address of Variance/Special Use Exception:**Variance/Special Use Exception/Appeal Requested:**DIRECTOR'S 4-29-22 DETERMINATION LETTER SHOULD BE
REVERSED OR MODIFIED TO REFLECT THAT SUBJECT
CONCRETE RECYCLING OPERATION IS A ZONING VIOLATION.Tax Map #: 335-11.00-57.00Property Zoning: AR-1

But see attached Explanation to Tax Map #

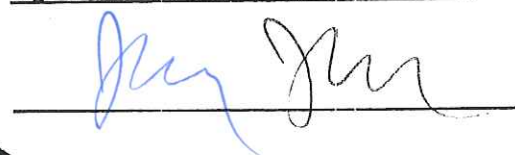
Applicant InformationApplicant Name: Julian Karpoff, AppellantApplicant Address: 33026 W. Falling Creek StreetCity Lewes State DE Zip: 19958Applicant Phone #: 703-509-5811 Applicant e-mail: Captainkarpoff@outlook.com**Owner Information**Owner Name: Atlantic Concrete Co., Inc.Owner Address: C/o Mr. David Jones, Pres., 812 NE Front Street Ext.City Milford State DE Zip: 19963 Purchase Date: May 31, 2001Owner Phone #: 302-422-8017 Owner e-mail: unknown**Agent/Attorney Information**

Agent/Attorney Name: _____

Agent/Attorney Address: _____

City _____ State _____ Zip: _____

Agent/Attorney Phone #: _____ Agent/Attorney e-mail: _____

Signature of Owner/Agent/Attorney AppellantDate: May 26, 2022

Sussex County, DE - BOA Application

Criteria for a Variance: (Please provide a written statement regarding each criteria).

You shall demonstrate to the Board of Adjustment that the property meets all of the following criteria for a Variance to be granted.

In granting any variance the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Zoning Ordinance or Code. The Board is empowered in no case, however, to grant a variance in the use of land or structures thereon.

1. Uniqueness of property:

That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the exceptional practical difficulty is due to such conditions and not to circumstances or conditions generally created by the provisions of the Zoning Ordinance or Code in the neighborhood or district in which the property is located.

2. Cannot otherwise be developed:

That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance or Code and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

3. Not created by the applicant:

That such exceptional practical difficulty has not been created by the appellant.

4. Will not alter the essential character of the neighborhood:

That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located and nor substantially or permanently impair the appropriate use of development of adjacent property, nor be detrimental to the public welfare.

5. Minimum variance:

That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

Sussex County, DE - BOA Application

Criteria for a Special Use Exception: (Please provide a written statement regarding each criteria)

You shall demonstrate to the Board of Adjustment that the property meets all of the following criteria for a Special Use Exception to be granted.

1. Such exception will not substantially affect adversely the uses of adjacent and neighboring property.

2. Any other requirements which apply to a specific type of special use exception as required by the Sussex County Code. (Ex. Time limitations – 5 year maximum)

Basis for Appeal: (Please provide a written statement regarding reason for appeal)

See attached Statement of Grounds for Appeal. (8 pp. with
5 exhibits)

Sussex County, DE - BOA Application

Check List for Applications

The following shall be submitted with the application

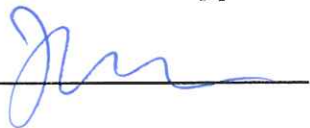
- ☒ • Completed Application
- n/a ☐ • Provide a survey of the property (Variance)
 - Survey shall show the location of building(s), building setbacks, stairs, deck, etc.
 - Survey shall show distances from property lines to buildings, stairs, deck, etc.
 - Survey shall be signed and sealed by a Licensed Surveyor.
- n/a ☐ • Provide a Site Plan or survey of the property (Special Use Exception)
- ☒ • Provide Fee \$400.00
- n/a ☐ • Provide written response to criteria for Variance or Special Use Exception (may be on a separate document if not enough room on the form)
- ☐ • Copy of Receipt (staff)
- ☐ • Optional - Additional information for the Board to consider (ex. photos, letters from neighbors, etc.)
- ☐ • Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearing for the application.

**Please be advised that the decision of the Board of Adjustment is only final when the written decision is filed with the Board's secretary. To determine whether the written decision has been filed, you may call the Planning & Zoning Department at 302-855-7878. The written decision is generally completed within thirty (30) to sixty (60) days following the Board's vote on the application or appeal. Please include the case number when calling about the decision.*

**Please be advised that any action taken in reliance of the Board's decision prior to the filing of the written decision and the expiration of any applicable appeal period is taken at the Property Owner's Risk.*

The undersigned acknowledges that that he or she has read the application completely and that if the appellant / applicant is unable to convince the Board that the standards for granting relief have been met, the appeal / application will be denied.

Signature of Owner/Agent/Attorney Appellant



Date: May 26, 2022

For office use only:

Date Submitted: _____

Fee: \$400.00 Check #: _____

Staff accepting application: _____

Application & Case #: _____

Location of property: _____

Subdivision: _____

Lot#: _____

Block#: _____

Date of Hearing: _____

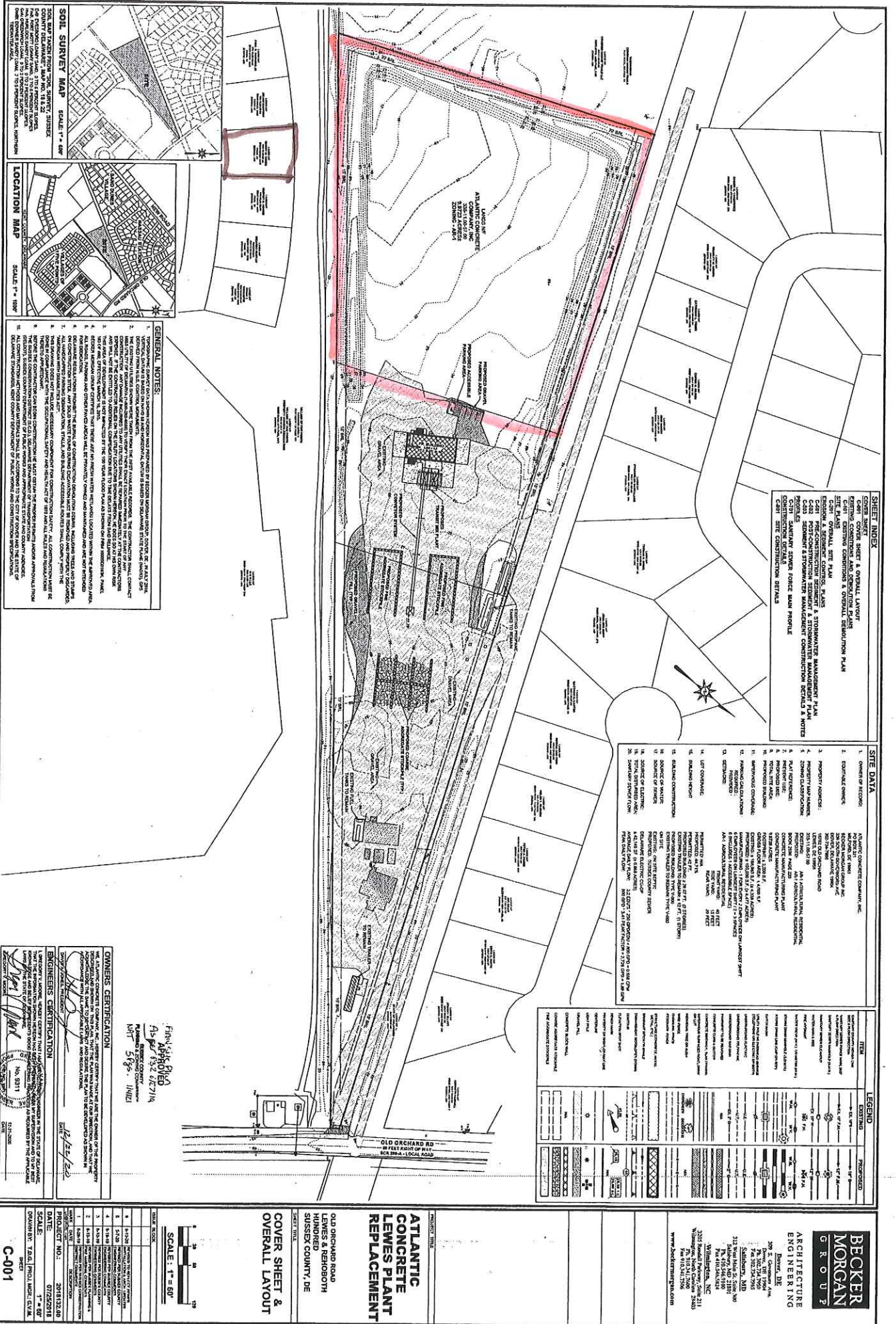
Decision of Board: _____

EXPLANATION TO TAX MAP #

The Appellant's initiating March 4, 2022 letter referenced "Atlantic Concrete Company, Inc. concrete dumping and breaking operations on westernmost portion of Old Orchard site" and stated that the land in question was purchased by a 2001 deed, with a copy enclosed. This land is outlined in pink on the site plan copy attached hereto. In the responding April 29, 2022 determination letter, the Director imposed the stated tax map #, which relates to the Atlantic Concrete's entire Old Orchard Road parcel. The Appellant, however, is focused on the stated westernmost portion, per the 2001 deed, as outlined in pink on the site plan copy.

Attachment

F:202



SHEET INDEX

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PROPOSED CONSTRUCTION SCHEDULE & STORMWATER MANAGEMENT PLAN	29
PROPOSED CONSTRUCTION SCHEDULE & STORMWATER MANAGEMENT PLAN	30

SITE DATA

1. OWNER OR RECORD	ATLANTIC CONCRETE COMPANY, INC.
2. EXISTING CONDITIONS	EXISTING CONDITIONS AND DEVELOPMENT PLAN
3. PROPOSED DEVELOPMENT	PROPOSED DEVELOPMENT PLAN
4. PROPOSED CONSTRUCTION SCHEDULE & STORMWATER MANAGEMENT PLAN	PROPOSED CONSTRUCTION SCHEDULE & STORMWATER MANAGEMENT PLAN
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LEGEND

EXISTING	PROPOSED
1. EXISTING BUILDING	1. PROPOSED BUILDING
2. EXISTING PARKING	2. PROPOSED PARKING
3. EXISTING DRIVEWAY	3. PROPOSED DRIVEWAY
4. EXISTING EASEMENT	4. PROPOSED EASEMENT
5. EXISTING FENCE	5. PROPOSED FENCE
6. EXISTING UTILITY	6. PROPOSED UTILITY
7. EXISTING ROAD	7. PROPOSED ROAD
8. EXISTING RAILROAD	8. PROPOSED RAILROAD
9. EXISTING WATERWAY	9. PROPOSED WATERWAY
10. EXISTING WETLAND	10. PROPOSED WETLAND
11. EXISTING TREES	11. PROPOSED TREES
12. EXISTING LANDSCAPE	12. PROPOSED LANDSCAPE
13. EXISTING SIGNAGE	13. PROPOSED SIGNAGE
14. EXISTING LIGHTING	14. PROPOSED LIGHTING
15. EXISTING SECURITY	15. PROPOSED SECURITY
16. EXISTING ACCESS	16. PROPOSED ACCESS
17. EXISTING BARRIER	17. PROPOSED BARRIER
18. EXISTING OBSTACLE	18. PROPOSED OBSTACLE
19. EXISTING HAZARD	19. PROPOSED HAZARD
20. EXISTING DANGER	20. PROPOSED DANGER
21. EXISTING WARNING	21. PROPOSED WARNING
22. EXISTING INFORMATION	22. PROPOSED INFORMATION
23. EXISTING GUIDANCE	23. PROPOSED GUIDANCE
24. EXISTING RECOMMENDATION	24. PROPOSED RECOMMENDATION
25. EXISTING SUGGESTION	25. PROPOSED SUGGESTION
26. EXISTING NOTE	26. PROPOSED NOTE
27. EXISTING COMMENT	27. PROPOSED COMMENT
28. EXISTING OBSERVATION	28. PROPOSED OBSERVATION
29. EXISTING RECORD	29. PROPOSED RECORD
30. EXISTING DOCUMENT	30. PROPOSED DOCUMENT

GENERAL NOTES:

1. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
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OWNERS CERTIFICATION

I, the undersigned, being the owner of the property shown on this plan, hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief, and that the same has been prepared in accordance with the requirements of the applicable laws and regulations.

[Signature]
 DATE: 11/22/2011
 TITLE: OWNER

ENGINEER'S CERTIFICATION

I, the undersigned, being a duly licensed professional engineer, hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief, and that the same has been prepared in accordance with the requirements of the applicable laws and regulations.

[Signature]
 DATE: 11/22/2011
 TITLE: ENGINEER

SCALE: 1" = 60'

C-001

ATLANTIC CONCRETE COMPANY, INC.
REPLACEMENT LEMES PLANT
COVER SHEET & OVERALL LAYOUT

BECKER MORGAN GROUP
ARCHITECTURE ENGINEERING
 300 E. CAMPUS AVE.
 SUITE 200
 ANN ARBOR, MI 48106-1000
 PH: 734.769.1000
 FAX: 734.769.1001
 WWW.BECKERMORGAN.COM

OLD ORCHARD ROAD
HUNDRED
SUSSEX COUNTY, DE

DATE: 11/22/2011
PROJECT NO: 071113.00
SCALE: 1" = 60'
DRAWN BY: T.M.D. [P.O.] M.C.L. C.V.A.

C-001

STATEMENT OF GROUNDS FOR APPEAL

1. The Director's determination letter of April 29, 2022 ("determination letter"), promulgated in response to Julian Karpoff's letter of March 4, 2022 ("Karpoff letter") makes errors of law.
2. The determination letter is unsupported by substantial evidence.
3. The determination letter is arbitrary and capricious.
4. The process by which the determination letter was prepared was arbitrary and capricious.
5. The process by which the determination letter determination letter was prepared violated the Director's own policies and practices.
6. Specifically, the determination letter makes the following errors on its face, keyed to the numbering of its paragraphs on the attached copy of same:
 - a. Determination letter par. 1 materially mis-states the Karpoff letter by its assertion that this letter related to "the non-conforming status of the existing concrete production and batching use." However, the Karpoff letter fairly relates to the Atlantic Concrete concrete recycling operation on the "westernmost portion of the Old Orchard Road site." The only reference to the batching operation is a passing reference to the ongoing batching operation "conducted on the easternmost section of the Old Orchard Road site," and this mention was made in the context of the contrasting non-use of the westernmost portion since 2006. The last sentence of this determination letter par. 1 states that the batching plant has been in operation since 1969, without stating any factual basis for this conclusion.

b. Determination letter par. 2 is mistaken in that the quoted material attributed to the Karpoff letter is a direct quote from the referenced Chancery Court decision, Minquadale Civic Association, et als. v. Kline, et al., etc., which reads as follows:

“[T]he better reasoned cases which deal with the doctrine of expansion of non-conforming use hold that such doctrine does not benefit adjoining lands purchased after the enactment of a zoning ordinance.” 42 Del. Ch., at 385, 212 A.2d, at 816 (emphasis added; citation omitted).

This central point is not addressed by the determination letter.

c. Determination letter, par. 3 states that the Karpoff letter “suggests” that the survey and deed relating to Atlantic’s 2001 purchase of additional lands “revokes its [Atlantic’s] non-conforming (grandfathered) status.” Rather, the Karpoff letter states that the subject land, which is the tract purchased by Atlantic in 2001, “is not subject to any grandfathering, and/or tha[t] any grandfathering terminated by non-use.” (Page 2, par. 2) Nothing about the 2001 acquisition causing any revocation can fairly be attributed to the Karpoff letter. Also, the determination letter does not address the point that the 2001 purchase tract is not subject to grandfathering, per Minquadale, and that any grandfathering terminated by non-use.

d. Determination letter par. 4 is a quotation from Westlaw headnote 4 (or syllabus) for the referenced Chancery Court case which is attributed by the determination letter to the Court’s decision. Moreover, the Westlaw headnote is materially mis-quoted. The quotation changes the subject, changes a tense, and changes a gerund to a verb.

The faithful quotation of the Westlaw headnote is as follows:

Owner of trucking business who used lots adjacent to his garage premises prior to enactment of zoning ordinance which classified area as residential, but who did not own such lots, could not claim that nonconforming use existing on his own lots prior to adoption of ordinance also existed on adjoining lots

The further rub is that the determination letter's version of the headnote, that the referenced property owners "[cannot] claim that nonconforming use exist[s] on [their] own lot prior to the adoption of ordinance also existed on adjoining lots," does not parse. What is worse is that the portion of the Minquadale case to which this headnote relates, 42. Del Ch., at 384, dealing with pre-ordinance use of a post-ordinance acquisition tract, is not relevant to Atlantic Concrete and this case. This is so because there is no suggestion that Atlantic Concrete used the 2001 acquisition tract prior to the 1970 adoption of the Zoning Code.

The relevant portion of the Minquadale case is stated above in this par. 6, at the determination letter par. 2 reference.

e. Determination letter par. 5 states that "County records indicate that the subject property has been owned by Atlantic Concrete Asphalt Co. since January 31, 1970," but this is demonstrably false, for the land where the offending recycling operation has started up was deeded to Atlantic Concrete Co., Inc. by a 2001 deed recorded at DB 2596, PG 221, copy attached, and this paragraph further states that the January 31, 1970 deed, relating to the original Old Orchard Road tract, "demonstrates that the concrete production and batching use existed prior to the Code on January 1, 1970." Yet the referenced 1970 deed does not mention the prior use of the property. See the attached copy of this deed as recorded. The grantors to this deed were Douglas C. Hudson and Frances Olivia Hudson, husband and wife, and, indeed, notary Ruth E. Wilkins so certified. The grantors were referenced by

the instant paragraph of the determination letter only as “Mr. and Mrs. Hudson,” the significance of which will shortly become apparent.

f. Determination letter par. 6 is almost entirely incorrect in its presentation of the 2001 deed (which relates to the subject westernmost tract of the Atlantic Concrete land, which is where the offending concrete recycling is going on). The determination letter states that this deed “indicates that the property was purchased on May 31, 2001, by a company known as Lin-Leigh, Inc.” (emphasis supplied) The rub is that Lin-Leigh is the grantor in this deed and not the purchaser, and the grantee/purchaser was Atlantic Concrete Company, Inc., which is a big difference. The very next sentence compounds this error, for it states that Mr. Wayne D. Hudson’s signature is “feature[d]” “at the bottom of the previously referenced deed.” This is presumably the 1970 deed discussed in the determination letter’s immediately preceding paragraph. However, that deed reflects the signatures of Douglas C. Hudson and Frances Olivia Hudson, his wife, not Wayne D. Hudson’s signature. This mistake is further compounded by the next sentence, “The deed indicates that Mr. Hudson was duly authorized to sign on behalf of Atlantic Concrete Company, Inc.” The face of the 2001 deed is directly to the contrary, however. Wayne D. Hudson’s signatures appear just below the corporate name Lin-Leigh, Inc. Also, the jurat states:

BE IT REMEMBERED, that on May 31, 2001, personally came before me, the subscriber, Wayne D. Hudson, president of Lin-Leigh, Inc., party of the first part to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed and the act and deed of said corporation; that the signature of Wayne D. Hudson President thereto is in his own proper handwriting; duly affixed by its authority; and that his act of signing, sealing, acknowledging and delivering said

Indenture was first duly authorized by resolution of the Board of Directors of said Corporation. (emphasis supplied)

and is signed by notary Eric C. Howard. Thus, Wayne D. Hudson is not shown to be signing on behalf of Atlantic Concrete Company, Inc., which is not even mentioned in the jurat. Rather, he is the agent of grantor Lin-Leigh, Inc. No other corporation is mentioned. The further significance of this will become apparent.

g. Determination letter par. 7 recites the “being” clause of this deed, but it is entirely irrelevant.

h. Determination letter par. 8 erroneously states, at its first sentence, that “In consideration of the abovementioned information, staff would hold that ownership of the property (Tax Parcel 335-11.00-56.00) has not changed and that the purchase of land by a corporation owned by the original party does not revoke its status as a non-conforming use.” First, the “abovementioned information is erroneous for the reasons stated in section 6.e., above, and, second, there is no purchase of the subject westernmost Atlantic Concrete land by a corporation owned by the grantor and involving Atlantic Concrete and its owners. The next sentence includes the assertion that “the ownership of the affected properties themselves have (sic) not changed since 1970.” This is demonstrably false by review of the much-discussed 2001 deed which conveyed the subject tract from an unrelated entity to Atlantic Concrete Co., Inc. The assertion that the signatory to that deed was an agent of Atlantic Concrete Co., Inc. is a fantasy, as discussed in section 6.f., above. Thus, the entire argument of determination letter par. 8 has no bearing on this case and appears to be an effort to distract from the rule of the Minquadale case.

i. Determination letter par. 9 correctly recites the 1981 re-subdivision of the 1970 deed tract and a 1979 deed tract, but the accuracy of the

referenced tax map numbers is not clear. It is noteworthy that this document makes no reference that the grandfather status of the 1970 deed tract is, as a result of the re-subdivision, bestowed upon the 1979 deed tract, which would be inconsistent with the rule of the Minquadale case. The balance of the determination letter par. 9 relates to a Director's determination letter dated May 6, 1985, which letter states, at its page 2, par. 1, that the factors to be considered in approving the intensification of nonconforming uses include whether "the 'quality' of the new use is similar to the original use" and whether "the new use has the same impact has the same impact on the surrounding neighborhood." These factors are not mentioned or considered in the subject determination letter. It is noteworthy that in case no. C/Z 663, to which the May 6, 1985 director's determination letter relates, even Atlantic Concrete apparently did not feel its intended use qualified as an intensification of its grandfathered use, but instead such intended use required it to file a re-zoning application, from AR-1 Agricultural to HI-1 Heavy Industrial. It is also noteworthy that Atlantic Concrete did not own the subject tract until over 15 years after the 1985 matter and, not surprisingly, the 1985 determination letter and the related Atlantic Concrete zoning petition do not mention the subject land.

j. Determination letter par. 11, after re-stating the change in ownership argument which has no factual predicate, states that "the expansion of the use to the western portion of the site is permitted under the property's nonconforming status...." but this is a mere conclusion and begs the question of the rule of the Minquadale case and whether the recycling operation using a skid breaker is the same "quality" activity as cement batching and whether the recycling operation with a skid breaker has "the same impact on the surrounding neighborhood." See Karpoff letter of March 18, 2022 to Director Whitehouse (copy attached).

k. Determination letter par. 12 takes the lack of factual predicate to a new level, when it states, “Therefore, it is my position that the recycling of aggregate materials originally obtained from and made on site is considered to be part of the concrete production and batching process.” (emphasis supplied) What is the antecedent for “therefore” which supports the conclusion that recycling is part of concrete production and batching? There is no antecedent, which makes this conclusion unsustainable.

7. Delaware caselaw provides:

The case law addressing the “arbitrary and capricious” standard contemplates that the scope of judicial inquiry is not limited to the adequacy of the evidence considered by the decision-making agency. The inquiry may also include the adequacy of the process by which the relevant evidence and facts were obtained. If the law were otherwise, an agency could rely solely upon selected facts or evidence that would support one particular outcome while at the same time blinding itself – or refusing to inquire into – material facts or evidence that might compel an opposite outcome. That approach, if countenanced, would be the essence of arbitrariness.

Conclusion: The director’s April 29, 2022 determination letter should be reversed or modified to reflect that the subject concrete recycling on the 2001 deed tract of the Atlantic is inconsistent with the zoning for that land, either (1) because grandfathering does not attach to that land, and/or (2) because concrete recycling is a new use not permitted in an AR-1 Agricultural Residential district and is not a mere extension of the cement batching plant use, and/or (3) because concrete recycling use is an intensification of a different quality from the original use and has a different and severely negative impact on the surrounding neighborhood.

The right to present further evidence and argument incident to any hearing on this appeal is reserved.

Attachments:

1. Director's determination letter of April 29, 2022, with paragraphs numbered for reference.
2. Karpoff letter of March 18, 2022 to Director Whitehouse, with enclosure.
3. Copy of recorded 1970 deed to individuals trading as Atlantic Concrete and Asphalt Company.
4. Copy of recorded 1979 deed to Atlantic Concrete Corporation, Inc.
5. Copy of recorded 2001 deed to Atlantic Concrete Corporation, Inc.



Julian Karpoff, Appellant
33026 W. Falling Creek Street
Lewes, DE 19968
703-509-5811
Captainkarpoff@outlook.com

L:200

JAMIE WHITEHOUSE, AICP MRTPI
 PLANNING & ZONING DIRECTOR
 (302) 855-7878 T
 (302) 854-5079 F
jamie.whitehouse@sussexcountyde.gov



Sussex County
 DELAWARE
sussexcountyde.gov

April 29, 2022

Mr. Julian Karpoff
 33026 W. Falling Creek Street
 Lewes, DE 19958

By email to: captainkarpoff@outlook.com

RE: Determination of Non-Conforming Status of the Atlantic Concrete Company, Inc. Site located at 16762 Old Orchard Road in Lewes, Delaware
 Tax Parcel: 335-11.00-57.00

Dear Mr. Karpoff,

1 I am writing this letter in reference to your previous letter to our offices dated March 4, 2022, and as a result of our meeting which occurred on that same date. In this letter, you presented staff with information pertaining to the non-conforming status of the existing concrete production and batching use managed by Atlantic Concrete Company, Inc. The property is a 9.97 acre parcel located at 16762 Old Orchard Road in Lewes, Delaware and consists of Tax Parcel ID: 335-11.00-57.00 and previously existing Parcels 56.00 and 56.01. The property is zoned Agricultural Residential (AR-1) District. The use has been in operation since 1969 and prior to the adoption of the Sussex County Code in 1970.

2 The letter cites a 1965 Delaware Chancery Court case from New Castle County, Minquedale Civic Association, et. als. V, Kline335-, et. al., etc., and specifically states that *"the doctrine of the expansion of non-conforming use hold[s] that such doctrine does not benefit adjoining lands purchased after the enactment of a zoning ordinance"* 42. Del Ch., at 385, 212 A.2d, at 816. (Emphasis added).

3 Furthermore, the letter also references a survey which was recorded at PB 71, PG 9 and corresponding deed (DB 2596, PG 220) in which additional lands were purchased by Atlantic in 2001 and suggests that this action, in light of the court's decision, revokes the non-conforming (grandfathered) status.

4 The Court Case cited in the letter also references that property owners who *"[do] not own [adjacent] lots [cannot] claim that nonconforming use exist[s] on [their] own lot prior to the adoption of ordinance also existed on adjoining lots."*

5 County records indicate that the subject property has been owned by Atlantic Concrete Asphalt Co. since January 31st, 1970. The deed, recorded at DB 651, PG 405 reflects that Mr. and Mrs. Garbutt, trading as Atlantic Concrete and Asphalt Co. (now known as Atlantic Concrete Company, Inc.) purchased the property from Mr. and Mrs. Hudson. This documentation demonstrates that the concrete production and batching use existed prior to the adoption of the Code or January 1, 1970.

6 In reference to parcel 56.00, the deed for the property (DB 2596, PG 221), which was also included as an attachment to your letter, indicates that the property was purchased on May 31, 2001, by a company known as Lin-Leigh, Inc. The bottom of the previously referenced deed features the signature of the same property owner for parcel 57.00, Mr. Wayne D. Hudson, who signed on behalf of the Lin-Leigh company as President of the company. The deed indicates that Mr. Hudson was duly

Letter to Julian Karpoff
 RE: Determination of Non-Conforming Status of the Atlantic Concrete Company, Inc. Site
 Page 2 of 3

authorized to sign on behalf of Atlantic Concrete Company, Inc. by resolution of the Board of Directors. The deed also references that these lands are the same lands which were provided to Lin-Leigh, Inc. in 1982 through DB 1119, PG 270.

7 The deed referenced above granted Lin-Leigh Inc. ownership of the parcel from a corporation known as Harbeson Land, Inc. As provided in that deed, the owners of the Harbeson Land, Inc. corporation were Mr. and Mrs. Hudson, with Mr. Hudson also being the President of that corporation. Prior to this deed, the property was owned by Mr. and Mrs. Hudson.

8 In consideration of the abovementioned information, staff would hold that ownership of the property (Tax Parcel 335-11.00-56.00) has not changed and that the purchase of land by a corporation owned by the original party does not revoke its status as a non-conforming use. Although the transference of the property's ownership under several corporations does provide the appearance of the ownership of the property changing, the ownership of the affected properties themselves have not changed since 1970. Staff would also note for further clarity that a change in ownership of a property does not revoke the non-conforming status of a use which was applied prior to the adoption of the Code.

9 A Lot Consolidation Plan was approved in 1981 by a previous Director of Planning and Zoning, at PB 24, PG 105 to consolidate Parcels 56.01 and 57.00. The Plan contains a note that the purpose of the plan is to add "2 acres as an expansion to other Lands of Atlantic Concrete Co. Inc." and that the lands are "not to be considered a separate building lot." A related Director's determination letter was issued by the same Director on May 6, 1985, which determined that further proposed expansion is not the extension of a non-conforming building as noted in §115-200 but an intensification of the business by adding further equipment.

10 A Revised Site Plan for the use was approved by the Planning and Zoning Commission on June 27, 2019. The plan proposed the replacement of two (2) concrete manufacturing plants with a single plant, including a 3,200 square foot building, new conveyor system, concrete block storage bins for aggregate stockpiles, parking, and other site improvements. The improvements were located on the eastern portion of the site, consisted of less than an acre of disturbance and were not located on the additional lands which were acquired in 2001.

11 In summary, I would note that a change in ownership of a property does not revoke the non-conforming status of the use and that the expansion of the use to the western portion of the site is permitted under the property's nonconforming status following Revised Site Plan review and approval. This determination is consistent with previous determinations issued by the County for this site.

12 Therefore, it is my position that the recycling of aggregate materials originally obtained from and made on site is considered to be part of the concrete production and batching process.

13 Should any new material be shipped to the site or processed on the site which was not made on and/or did not originate on the site, an Application made to the Board of Adjustment for a Special Use Exception would likely be required for an expansion of the use §115-23(A).

14 This response is a Director's determination and may be appealed to the Sussex County Board of Adjustment, who have the ability to hear and decide appeals where it is alleged that there is an error

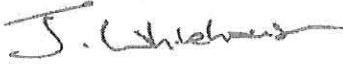
Letter to Julian Karpoff
RE: Determination of Non-Conforming Status of the Atlantic Concrete Company, Inc. Site
Page 3 of 3

in any order, requirement, decision, or determination made by an administrative official as well as for applications for special exceptions (§115-209(A-B)).

15

Please feel free to contact me with any questions during business hours 8:30 am to 4:30 pm, Monday through Friday, at (302) 855-7878.

Sincerely,



Mr. Jamie Whitehouse, AICP, MRTPI
Director, Department of Planning & Zoning

CC: Mr. Lester Shaffer, Chief Constable



COUNTY ADMINISTRATIVE OFFICES
2 THE CIRCLE | PO BOX 417
GEORGETOWN, DELAWARE 19947

Julian Karpoff
33026 W. Falling Creek Street
Lewes, DE 19958
703-509-5811
Captainkarpoff@outlook.com
March 18, 2022

Mr. Jamie Whitehouse
Director, Sussex County
Dept. of Planning and Zoning
1 The Circle
Georgetown, DE 19947

And

Ms. Laura Mensch
Regulatory Programs Manager
DNREC
100 W. Water Street
Dover, DE 19904

Re: Atlantic Concrete Company, Inc. concrete dumping and breaking operations
on westernmost portion of Old Orchard Road site; Atlantic Concrete Application
for Coastal Zone Status Decision

Dear Mr. Whitehouse and Ms. Mensch,

Further to my March 4 letter to Mr. Whitehouse (a copy of which was forwarded to Ms. Mensch by cover dated March 7, I enclose a photo of the type of equipment that was used substantially non-stop on the subject property during the January – February period to break up the concrete resulting from the previously dumped cement. It is called a “skid steer breaker.”

I submit that the use of a skid steer breaker is not a standard part of cement batching operations and that it had not previously been used on the subject property, at least not since 2006.

Yours Sincerely,

Julian Karpoff

G:157.1

Encl.



Hydraulic ATTACHM

Conditi

Quant

Pri

039-13

BOOK 651 PAGE 405

This Deed, Made this

31st

day of January

in the year of

our LORD one thousand nine hundred and seventy

BETWEEN, Douglas C. Hudson and Frances Olivia Hudson, his wife,
of Sussex County, Delaware, parties of the first part;

and

Ira A. Garbutt and Thomas E. Garbutt, trading as Atlantic Concrete
and Asphalt Co., principle office at Millford, Delaware, party of the
second part;

Witnesseth, That the said parties of the first part, for and in consideration of the sum of
two thousand nine hundred and sixty dollars (\$2,960.00)-----
lawful money of the United States of America,

the receipt whereof is hereby acknowledged, hereby grant and convey unto the said
part Y of the second part,

ALL

That certain tract, piece, and parcel of land, situate, lying and being in
Lewes and Rehoboth Hundred, Sussex County, Delaware, more fully
described as follows, to wit: Beginning at a stake in the southwesterly right
of way line of Highway No. 280A, a corner for this lot and lands of the
D. M. & V. Railroad; thence by and with this lot and in line of said
Railroad, south 78 deg. 18 min. west 865.04 feet to an iron pipe, a corner
for this tract of land and in line of lands of said Railroad and in line of
other lands of the grantors; thence by and with these lands and in line of
other lands of the grantors, south 13 deg. 42 min. east 283.93 feet to an
iron pipe; thence turning and running North 59 deg. 03 min. East 890.03 feet
to an iron pipe; thence continuing North 59 deg. 04 min. East 16.02 feet to
the southwesterly right of way line of Highway No. 280A; thence North 13
deg. 42 min. West 13.25 feet home to the place of beginning, containing
2.96 acres of land, more or less.

Being part of the same lands conveyed to Douglas C. Hudson, et ux, by
Martin A. Wells, et ux, by deed dated the 23rd day of December, A.D. 1937,
said deed of record in the office of the Recorder of Deeds, in and for Sussex
County, Delaware, in Deed Book no. 495, page 314; also being same lands
conveyed to Douglas C. Hudson, et ux, by Clifford B. Farrell, et ux, by deed
dated the 9th day of November, 1964, said deed of record in the said
Recorder's office in deed book no. 593, page 344.

It is understood and agreed by and between the parties hereto, that there shall be
a mutual easement for the right of ingress and egress to and from the lands of
the grantees and grantors over the following described tract of land, which is a part
of the above described tract of land: Beginning at a point in the southwesterly
right of way line of Highway No. 280A, a corner for this lot and lands of D. M. & V.
Railroad; thence by and with said Railroad South 78 deg. 18 min. West 865.04 feet
to an iron pipe; thence turning and running south 13 deg. 42 min. east 20 feet;
thence turning and running north 76 deg. 18 min. East to a point or cement marker
which is 16.02 ft. in a southwesterly direction from Highway No. 280A; thence
North 59 deg. 03 min. East 16.02 feet to said Highway No. 280A; thence by and
with said Highway North 13 deg. 42 min. West 13.25 feet to the place of
beginning.

AP 5X

IND. 20' easement

NO LIEN SEARCH OR TITLE SEARCH WAS DONE AS NONE WAS REQUESTED

4535

DUNLAP, HOLLAND & EBERLY
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
GEORGETOWN, DELAWARE 19947

BOOK 995 PAGE 46

This Deed, made this 1st day of October 1979, by

and between: DOUGLAS C. HUDSON and FRANCES OLIVIA HUDSON, his wife, of Milton, Sussex County, Delaware 19968,

parties of the first part,

- AND -

ATLANTIC CONCRETE COMPANY, INC., a Delaware corporation, of Milford, Delaware 19963,

party of the second part;

Witnesseth, that the said parties of the first part, for and in consideration of the sum of FOUR THOUSAND DOLLARS (\$4,000.00)-

-----, current lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part, its successors and assigns,

ALL that certain tract, piece, and parcel of land, situate, lying and being in Lewes and Rehoboth Hundred, Sussex County, State of Delaware, and being more fully described as follows:

BEGINNING at the southwesterly corner of an intersection marking a corner for Road 269A, other lands of the grantee, and lands of D. M. & V. Railroad; thence South 76° 18' West a distance of 865.94 feet to a pin set, marking a corner for the lands of the grantor and other lands of the grantee and also marking the place of beginning; thence North 13° 42' West a distance of 283.93 feet to a pin set, marking a corner for the lands of the grantor, other lands of the grantee, and lands now or formerly of Townsend, Inc.; thence North 59° 03' East a distance of 280.28 feet to a pin set, marking a corner for the lands of grantor, lands now or formerly of Townsend, Inc., and lands now or formerly of Douglas C. Hudson; thence South 13° 42' East a distance of 367.04 feet to a pin set, marking a corner for the lands of the grantor, lands now or formerly of Douglas C. Hudson, and lands of D. M. & V. Railroad; thence South 76° 18' West a distance of 267.67 feet along the line of lands owned by D. M. & V. Railroad to the place of beginning; containing 2.00 acres of land, more or less, be the contents thereof what they may.

SUBJECT TO a 20 foot easement along the northerly edge of the lands described herein adjacent to the lands of the D. M. & V. Railroad as the same may more fully and at large appear on a survey drawn by Ira A. Garbutt, III, Registered Surveyor, P.L.S. 216, dated December 1, 1976.

BEING a part of the same lands conveyed to the grantors by deed of Martin A. Wells, et ux, by deed dated December 23, 1957, said deed being filed in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware, in

BGGK 995 PAGE 47

Deed Book 495, at Page 514. Also being a part of the same lands conveyed to the grantors by Clifford B. Farrell, et ux, by a deed dated November 9, 1964, and being filed for record in the Office of the Recorder of Deeds, aforesaid, in Deed Book 583, at Page 344.



71332

932 89 10

BOOK 995 PAGE 48

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Sealed and delivered
in the presence of

[Signature]
[Signature]

Douglas C. Hudson (SEAL)
DOUGLAS C. HUDSON

Frances Olivia Hudson (SEAL)
FRANCES OLIVIA HUDSON

(SEAL)
STATE TAX DEPT. SUSSEX
REALTY TAX 00.00 (SEAL)

STATE OF DELAWARE
COUNTY OF SUSSEX

BE IT REMEMBERED, that on this 1st day of October 1979, personally came before me, the subscriber, a notary public in and for the county and state aforesaid,

DOUGLAS C. HUDSON and FRANCES OLIVIA HUDSON, his wife, parties to this indenture, known to me personally to be such, and they acknowledged this indenture to be their act and deed.

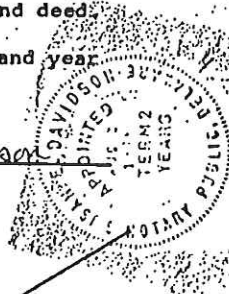
Given under my hand and seal of office the day and year aforesaid.

RECEIVED
MARY ANN MCARE

FEB 13 1 29 PM '80

RECORDER OF DEEDS
SUSSEX COUNTY

Susan E. Davidson
Notary Public



STATE OF
COUNTY OF

BE IT REMEMBERED, that on this day of 19 , personally came before me, the subscriber, a notary public in and for the county and state aforesaid,

part to this indenture, known to me personally to be such, and acknowledged this indenture to be act and deed.

Given under my hand and seal of office the day and year aforesaid.

Notary Public

THIS 14 PURCHASERS REPORT MADE
DAY OF FEB 1980
ASSESSMENT DIVISION OF SUSSEX COUNTY

61041

02596 220

Parcel #3-35-11.00-56
 Prepared by and return to:
 Wilson, Halbrook & Bayard, P.A.
 107 West Market Street
 Georgetown, DE 19947
 2/14/01

THIS DEED, made this 31st day of May, 2001,

BETWEEN

Lin-Leigh, Inc., a Delaware Corporation, with offices located at of PO Box 123, Milton, Delaware 19968, party of the first part,

AND

Atlantic Concrete Company, Inc., a Delaware Corporation, with offices located at of PO Box 321 New Wharf Road, Milford, Delaware 19963, party of the second part,

WITNESSETH that the said party of the first part, for and in consideration of the sum of One Dollar (\$1.00), lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the party of the second part, individually, its successors or assigns, in fee simple, the following described lands, situate, lying and being Sussex County, State of Delaware:

BEGINNING at a capped rebar set on the southerly right-of-way line of a railroad right-of-way, said rebar lying South 76 degrees 18 minutes 00 seconds West 1,133.61 feet from the intersection of the northerly right-of-way line of other lands of Atlantic Concrete Company, Inc. and County Road 269A; thence proceeding by and with other lands of Atlantic Concrete Company, Inc., South 13 degrees 42 minutes 00 seconds East 367.04 feet to a rebar found lying on the line of the lands now or formerly of Olde Towne Point, L.L.C.; thence proceeding by and with the lands now or formerly of Olde Towne Point, L.L.C. South 59 degrees 3 minutes 00 seconds West 514.47 feet to a capped rebar set marking a corner for this lot and a corner for the residual lands of Lin-Leigh, Inc.; thence proceeding by and with the residual lands of Lin-Leigh, Inc. North 13 degrees 42 minutes 00 seconds West 519.59 feet to a capped rebar set lying on the southerly line of the right-of-way line of a railroad right-of-way; thence proceeding by and with the right-of-way line of the railroad North 76 degrees 18 minutes 00 seconds East 491.29 feet home to the capped rebar marking the point and place of Beginning, said to contain 5 acres of land, more or less, as depicted on a survey dated May 29, 2001, prepared by Charles D. Murphy Associates, Inc., P.L.S. 291, and recorded in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware at Plot Book 71, Page 9.

GRANTOR reserves unto itself, its successors and assigns, a 30 foot wide easement over and upon the northerly most 30 feet of the above described lands parallel with the right-of-way line of the railroad for purposes of ingress and egress to the residual lands of the Grantor lying to the west of the above described lands. Nothing herein is intended to either limit or increase whatsoever rights Grantor

County State Total
 1500.00 1500.00 3000.00
 Date: 6/05/2001
 Consideration: 100000.00

02596 221

has to a 20 foot right-of-way over and upon other lands of Atlantic Concrete Company, Inc. as specified in previous deeds.

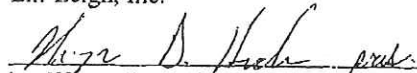
BEING a part of the same lands and premises which Harbeson Land, Inc., by Deed dated May 21, 1982 and recorded June 18, 1982, in the Office of the recorder of Deeds, in and for Sussex County, Georgetown, Delaware, in Deed Book 1119, Page 270 did grant and convey unto Lin-Leigh, Inc., in fee.

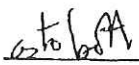
IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, Scaled and Delivered
in the presence of:

 _____

Lin-Leigh, Inc.

 (SEAL)
by: Wayne D. Hudson, President

 _____

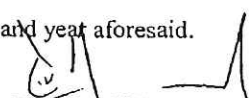
 (SEAL)
by: _____ Secretary

State of Delaware)
 : S.S.
County of Sussex)

BE IT REMEMBERED, that on May 31, 2001, personally came before me, the subscriber, Wayne D. Hudson, president of Lin-Leigh, Inc., party of the first part to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed and the act and deed of the said corporation; that the signature of Wayne D. Hudson, President thereto is in his own proper handwriting; duly affixed by its authority; and that his act of signing, sealing, acknowledging and delivering said Indenture was first duly authorized by resolution of the Board of Directors of said Corporation.

Given under my Hand and Seal of office the day and year aforesaid.

Eric C. Howard
Attorney At Law
29 Del. C. 4323
Non-Expiring Commission

 _____
Notary Public
Printed Name: _____
My Commission Expires: _____

File No 0000213ECH

Received

JUN 06 2001

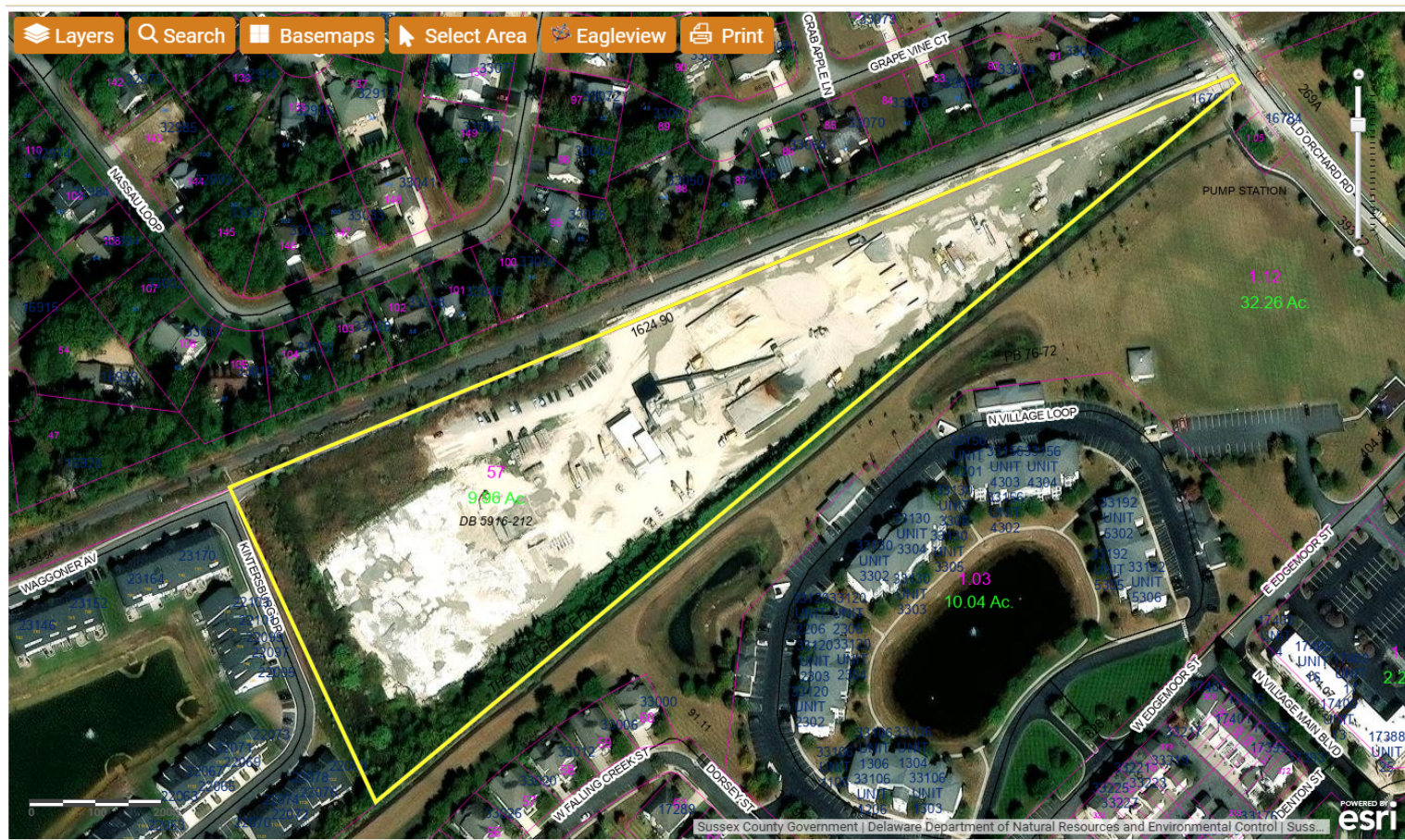
ASSESSMENT DIVISION
OF SUSSEX CTY.

RECORDED BY DEEDS

01 JUN -5 PM 3:44

SUSSEX COUNTY
DOC. SURCHARGE PAID

The screenshot displays the Eagleview web application interface. The top navigation bar contains buttons for Layers, Search, Basemaps, Select Area, Eagleview, and Print. The main map area shows a residential neighborhood with streets like Wiltbank Ave, Sand Dunes Village, Nassau Ct, Peach Tree Ln, Old Orchard Rd, and others. A yellow line highlights a specific parcel boundary. On the right, the 'Selected Features' panel shows details for a selected parcel (335-11.00-57.00), including fields like BOOK, PAGE, FULLNAME, Second_Owner_Name, MAILINGADDRESS, CITY, STATE, a_account, DESCRIPTION, DESCRIPTION2, DESCRIPTION3, LUC, SCHOOL, MUNI, CAP, APRBLDG, APRLAND, PINWASSEMENTUNIT, and PIN. A scale bar at the bottom left indicates 0 to 300 feet.



Eagleview Search Results

Selected Features: Parcels (1)

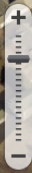
▼ 1) 335-11.00-57.00 Zoom

BOOK	2596
PAGE	220
FULLNAME	ATLANTIC CONCRETE
Second_Owner_Name	COMPANY INC
MAILINGADDRESS	PO BOX 321
CITY	MILFORD
STATE	DE
a_account	10-36-057
DESCRIPTION	SW/OLD ORCHARD RD
DESCRIPTION2	S/RR
DESCRIPTION3	
LUC	703
SCHOOL	6
MUNI	00
CAP	0
APRBLDG	0
APRLAND	457200
PINWASSEMENTUNIT	335-11.00-57.00
PIN	335-11.00-57.00

Selected Features (1)

Clear Selected

CONNECTEXPLORER



Search

Search by SUSSEXPARCELS

335-11.00-57.00

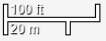
Search results (1) Options

335-11.00-57.00

Workspaces



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map: Auto (Oblique) Mar 2025 - Mar 2025 image 1 of 3 03/10/2025

