

COUNTY COUNCIL

MICHAEL H. VINCENT, PRESIDENT
JOHN L. RIELEY, VICE PRESIDENT
CYNTHIA C. GREEN
DOUGLAS B. HUDSON
MARK G. SCHAEFFER



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

AGENDA

June 11, 2024

1:00 P.M.

Call to Order

Approval of Agenda

Approval of Minutes - June 4, 2024

[Draft Minutes 060424](#)

Reading of Correspondence

Public Comments

Consent Agenda

1. **Use of Existing Wastewater Infrastructure Agreement – IUA-1109
Patriots Glen (Phase II), Oak Orchard Expansion #1 Area**
[Patriots Glen](#)
2. **Use of Existing Wastewater Infrastructure Agreement – IUA-1230
Mulberry Knoll Store – IUA-1230**
[Mulberry Knoll Store](#)

Todd Lawson, County Administrator

1. **Reappointment of Board of Adjustments and Appeals Member Kevin Pritchett**
2. **Administrator's Report**



Jamie Whitehouse, Planning & Zoning Director

1. **2019-24 filed on behalf of Stratus Estates (Formerly Known as Cool Spring Meadows) - request for an extension**
[Stratus Estates \(2019-24\) \(F.K.A. Cool Spring Meadows\)](#)

Hans Medlarz, County Engineer, Ret.

1. **Wolfe Neck Regional WWF Electrical Service & Switchgear Replacement**
A. General Construction, Project S24-10 – Recommendation to Award
B. GHD Amendment No. 25
[Wolfe Neck Regional WWF Electrical Service & Switchgear Replacement](#)

John Ashman, Director of Utility Planning & Design Review

1. **Permission to Prepare and Post Notices for Marvel Minor Subdivision Annexation into the Sussex County Unified Sanitary Sewer District (Holts Landing Area)**
[Prepare and Post Notices Marvel Minor](#)
2. **Permission to Prepare and Post Notices for Zion Church Road Storage Annexation into the Sussex County Unified Sanitary Sewer District (Johnsons Corner Area)**
[Prepare and Post Notices Zion Church Road Storage](#)
3. **Permission to Prepare and Post Notices for creation of South Blades Area into the Sussex County Unified Sanitary Sewer District**
[Prepare and Post Notices South Blades](#)

Introduction of Proposed Zoning Ordinances

[Ord Intros CU2499 CZ2025 CZ2026](#)

Council Members' Comments

Executive Session - Land Acquisition pursuant to 29 Del.C.§10004(b)

Possible action on Executive Session Items

1:30 p.m. Public Hearings

1. [Conditional Use No. 2514 filed on behalf of Bruce Sentman](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL ENGINE & LAWN MOWER REPAIR BUSINESS AND SALES SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 42,961 SQUARE FEET, MORE OR LESS” (property lying on the east side of Sheep Pen Road [S.C.R 328], approximately 250 feet northeast of Godwin School Road [S.C.R. 410]) (911 Address: N/A) (Tax Map Parcel: 133-16.00-73.03)

[Public Hearing CU 2514](#)

2. [Conditional Use No. 2497 filed on behalf of Bethany Court Ventures, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM-DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.28 ACRES, MORE OR LESS” (property lying on the east side of Coastal Highway [Rt. 1], approximately 0.19 mile north of the intersection of Coastal Highway [Rt. 1] and Indian Harbor Villas Drive) (911 Address: N/A) (Tax Map Parcel: 134-5.00-4.00)

[Public Hearing CU 2497](#)

3. [Ordinance No. 24-02](#)

“AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 110, ARTICLE III, SECTIONS 110-9 AND CHAPTER 115, ARTICLES I, IV, V, VI, VII, VIII, IX AND XXVII SECTIONS 115-4, 115-20, 115-23, 115-29, 115-32, 115-40, 115-48, 115-53, 115-56, 115-64, AND 115-210 REGARDING ACCESSORY DWELLING UNITS”

[Public Hearing Ord. 24-02 - Accessory Dwelling Unit Ordinance](#)

4. [Ordinance No. 24-03](#)

“AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV, V AND VI SECTIONS 99-5, 99-6, 99-23, 99-26, 99-27, 99-30, 99-31 AND 99-32 AND BY ADDING A NEW SECTION 99-21a, AND CHAPTER 115, ARTICLES IV, V, VI, VII, VIII AND XXVIII SECTIONS 115-20, 115-25, 115-29, 115-37, 115-45, 115-53 AND 115-28 REGARDING PERIMETER BUFFERS AROUND RESIDENTIAL DEVELOPMENT”

[Public Hearing Ord. 24-03 - Residential Development Perimeter Buffers](#)

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on June 4, 2024 at 4:15 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 may be considered out of sequence.

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

The County provides a dial-in number for the public to comment during the appropriate time of the meeting. **Note, the on-line stream experiences a 30-second delay.**

Any person who dials in should listen to the teleconference audio to avoid the on-line stream delay.

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

Members of the public joining the meeting on the telephone will be provided an opportunity to make comments under the Public Comment section of the meeting and during the respective Public Hearing.

The Council meeting materials, including the “packet”, are electronically accessible on the County’s website at: <https://sussexcountyde.gov/agendas-minutes/county-council>.

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 4, 2024

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 4, 2024, at 10:00 a.m., in Council Chambers, with the following present:

Michael H. Vincent	President
John L. Rieley	Vice President
Cynthia C. Green	Councilwoman
Douglas B. Hudson	Councilman
Mark G. Schaeffer	Councilman
Todd F. Lawson	County Administrator
Gina Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 278 24
Approve
Agenda**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to approve the Agenda, as presented.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Minutes

The minutes from May 21, 2024, were approved by consensus.

**Correspond-
ence**

There was no correspondence.

Public comments were heard.

**Public
Comments**

Ms. Dana Ellis spoke about a non-profit group in Georgetown.

Ms. Patty Deptula spoke about the Planning & Zoning Commission appointment for District 5 and the establishment of an environmental commission.

**M 279 24
Approve
Consent
Agenda**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to approve the following items under the Consent Agenda:

Proclamation – Cape Henlopen High School Unified Track & Field Team DIAA State Champions

M 279 24
Approve
Consent
Agenda
(continued)

Proclamation – Cape Henlopen High School Girls Lacrosse Team DIAA State Champions

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

BOA
Appoint-
ment

Mr. Lawson reported that a reappointment is needed for Mr. Jordan Warfel for the Board of Adjustment.

M 280 24
Approve
BOA
Appoint-
ment

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer that be moved that the Sussex County Council approves the reappointment of Mr. Jordan Warfel to the Sussex County Board of Adjustment effective July 1 for a term of three years until such time as the term expires in June of 2027.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

PZ Appoint-
ment

Mr. Lawson reported that a reappointment is needed for Ms. Holly Wingate for the Planning & Zoning Commission.

M 281 24
Approve PZ
Appoint-
ment

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer that be it moved that the Sussex County Council approves the reappointment of Ms. Holly Wingate to the Sussex County Planning & Zoning Commission effective July 1 for a term of three years until such time as the term expires in June of 2027.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Fenwick
Island
Dredging
Project

Bill Rymer, Town of Fenwick Island Town Council Treasurer and Dredge Committee Chair provided Council with a presentation regarding a dredging project.

Mr. Rymer reviewed the proposed project. The Town rescoped the project in hopes of reducing overall costs. The new public RFP and bidding process launched in May with final bids received on May 29th. In the rebidding process, there were three bids received; during the original process there were six bids received. Mr. Rymer explained that specifications were changed in a few areas. Particularly related to the upland dewatering location to make it just as useful but decrease the cost. In addition, the

bidders were requested to bid on two different depths. Mr. Rymer reported that the request is now \$800,000 which will match the funding that the Town of Fenwick Island is contributing. Mr. Rymer then discussed the benefits of this project.

**M 282 24
Approve
Fenwick
Island
Dredging
Project
MOU**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that be it moved that the Sussex County Council approves entering into a MOU with the Town of Fenwick Island for the purpose of contributing \$800,000 related to the Town's pending dredging project.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Adminis-
trator's
Report**

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

1. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Chase Oaks – Phase 3 (Construction Record) received Substantial Completion effective May 9, 2024.

2. Blackwater Village Referendum

The Sussex County Engineering Department will be conducting a referendum at Grace United Methodist Church, Millsboro, Delaware on Thursday, June 6, 2024, from 5:00 p.m. until 8:00 p.m. The purpose of the referendum is to determine if the area residents are in support of a revised assessment rate for Blackwater Village Area based on the funding package offer received from SRF.

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

**Housing
Trust Fund
Recommen-
dations**

Brandy Nauman, Community Development & Housing Director presented housing trust fund award recommendations. Mrs. Nauman reported that the third round of grant funding for affordable housing developers was opened on April 1, 2024, and closed on April 30, 2024. During that period, there were eight applications received. On May 23, 2024, the SCHTF Advisory Board met to review applications. Due to the restrictions and with ARPA funding ending, there were tight deadlines that need to be met a part of the process.

Mrs. Nauman presented the four recommended applicants. The first one

Housing Trust Fund Recommendations (continued)

being Sussex County Habitat for Humanity for 10 new homeownership units for households <65% AMI, with one affordable to a household <50% AMI. The recommended funding amount is \$500,000 and the properties are located in Milton, Milford, Greenwood, and Bridgeville. The next application is Homes for America for preservation of 54 rental units. Forty-five affordable units to households <50% AMI and the project includes ADA upgrades to the community and seven units. In addition, the applicant is seeking approval from USDA for a migrant worker set-aside. The recommended amount of funding is \$500,000 and the project is located in Bridgeville. The third project is for CHEER in Georgetown for construction of 39 new rental units (Gateway East); with 30 affordable units to households <50% AMI and the project targets seniors. The recommended amount of funding is \$500,000. The last project is Laurel Redevelopment Corporation located in Laurel. The project consists of construction of 2 new duplexes for households <65% AMI. The recommended funding amount is \$100,000. The total requested funding is \$1,600,000 to preserve or create 105 affordable units.

M 283 24 Approve Housing Trust Fund Recommendations

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, be it moved based on the recommendation of the Sussex County Housing Trust Fund Advisory Committee that Sussex County Council awards grants of \$500,000 to Sussex County Habitat for Humanity, Homes for America, CHEER, Inc. and a grant of \$100,000 to Laurel Redevelopment Corporation contingent on meeting the requirements of the American Rescue Plan Act funding.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

SC RWF & RB WTP

Hans Medlarz, County Engineer Ret. presented change order no. 34 for general construction and change order no. 27 for electrical construction for SC RWF and Rehoboth Beach WTP project for Council's consideration.

M 284 24 Approve CO No. 34/ General Construction

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, be it moved based upon the recommendation of the Sussex County Engineering Department, that change order no. 34 for contract C19-11, South Coastal WRF treatment process upgrade no. 3 & Rehoboth Beach WTP capital improvement program, phase 2 – general construction, be approved, increasing the contract by \$81,983.43.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

M 285 24

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, be it moved

**Approve CO No. 27/
Electrical
Construc-
tion** based upon the recommendation of the Sussex County Engineering Department, that change order no. 27 for contract C19-17, SCRWF treatment process upgrade no. 3 & RBWTP capital improvement program, phase 2 – electrical construction, be approved, for an increase of \$20,137.99.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

**Cannon Rd
– CO No. 6** Hans Medlarz, County Engineer Ret. presented change order no. 6 for Cannon Road – Inland Bays Road Drainage Improvements and Construction Wetlands for Council’s consideration.

**M 286 24
Approve CO
No. 6/
Cannon
Road** A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, be it moved based upon the recommendation of the Sussex County Engineering Department that change order nos. 6A and 6B for contract S22-05, Cannon Road/Inland Bays Road drainage improvements and construction wetlands, be approved, increasing the contract amount by a not to exceed amount of \$604,800.00 and \$438,138.00, respectively.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

**COS
Addendum
No. 2** Hans Medlarz, County Engineer, Ret. presented addendum no. 2 to the Wastewater service agreement with the City of Seaford for Council’s consideration.

**M 287 24
Approve
Addendum
No. 2/COS/
WW
Agreement** A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, be it moved based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approve addendum no. 2 to the Wastewater service agreement between Sussex County and the City of Seaford, as presented.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

**Boom Truck
/CO No. 1** Hans Medlarz, County Engineer, Ret. presented recommendation to award and change order no. 1 for a boom truck for Council’s consideration.

**M 288 24
Approve CO** A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, be it moved based upon the recommendation of the Sussex County Engineering

No. 1/Boom Truck Department, that the Environmental Services boom truck procurement be awarded to Mid-Atlantic waste systems – Division of THC Enterprises, Inc., in the base bid amount of \$237,000.00 and to accept the boom upgrade proposal in the amount of \$16,536.00.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Magnesium Bulk Delivery Hans Medlarz, County Engineer, Ret. presented a recommendation to award for bulk delivery of magnesium hydroxide for Council's consideration.

M 289 24 Approve Magnesium Bulk Delivery A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, be it moved, based upon the recommendation of the Sussex County Engineering Department, that bid item 1 for Sussex County project M25-02, "Bulk Delivery of Magnesium Hydroxide", be awarded to Premier Magnesia at the bid amount of \$3.34 per gallon.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

M 290 24 Approve Magnesium Bulk Delivery Alternate Bid A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, be it moved based upon the recommendation of the Sussex County Engineering Department, that alternate bid item 1 for Sussex County project M25-02, "Bulk Delivery of Magnesium Hydroxide", be awarded to Garrison materials at the bid amount of \$4.98 per gallon of 300-gallon totes.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Resolution/ Sugar Maple Farms Mark Parker, Assistant County Engineer presented a Resolution for Sugar Maple Farms Road Improvements – Chapter 96 Sussex County Improvements for Council's consideration.

M 291 24 Adopt Resolution No. R 010 24/ Sugar Maple A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to Adopt Resolution No. R 010 24 entitled "A RESOLUTION ESTABLISHING A DATE, TIME, PLACE AND JUDGE FOR AN ELECTION TO BE HELD TO CONSIDER THE SUGAR MAPLE FARMS CHAPTER 96 SUSSEX COMMUNITY IMPROVEMENT PROJECT".

Farms

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**GMB/Amed.
No. 5**

Mark Parker, Assistant County Engineer presented amendment no. 5 for architectural services with George, Miles & Buhr, Inc. for Council's consideration.

**M 292 24
Approve
GMB
Contract
Amend. No.
5**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, be it moved based upon the recommendation of the Sussex County Engineering Department that Amendment No. 5 of GMB architectural services contract be approved in the amount of \$38,380.00.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Airport
Master Plan
Update**

Robert Bryant, Airport Manager presented an update of the airport master plan. Mr. Bryant shared the total dollar, income, and employment impacts for the Delaware Coastal Airport. Mr. Bryant reported that this started in 2019, Sussex County has received "Conditional" airport layout plan approval from the Federal Aviation Administration (FAA). The Delaware Coastal Airport's Master Plan was prepared in compliance with Federal Aviation Administration requirements.

Mr. Bryant reviewed the 9 objectives that each master plan should meet which are included in the plan. The FAA reviews all elements of the master plan to ensure that sound planning techniques have been applied. However, the FAA only approves the following elements of airport master plans: forecasts of demand and airport layout plan.

An airport master plan is a comprehensive 20-year study of an airport and typically describes short-, medium- and long-term development plans to meet future aviation demand. Mr. Bryant reviewed the short-term plans which include construct new parallel taxiway B, obstruction removal and remove displaced RWY thresholds. The medium-term plans include runway 4 extension, taxiway improvements and obstruction removal. The long-term plans include rehabilitate existing paved surfaces, hangar development and terminal facility expansion.

Mr. Bryant reviewed the runway 4-22 extension and two different ways for the project, self-funded and AIP-funded. He added that the self-funded has already been started with funding that has been earmarked for the project.

**Grant
Requests**

Mrs. Jennings presented grant requests for Council's consideration.

**M 293 24
Greenwood
Police
Department** **A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,500 (\$1,500 from Mrs. Green’s Councilmanic Grant Account) to Greenwood Police Department for their National Night Out 2024.**

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 294 24
Southern
DE
Therapeutic
&
Recreational
Horseback
Riding, Inc.** **A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,100 (\$1,100 from Mrs. Green’s Councilmanic Grant Account to Southern Delaware Therapeutic and Recreational Horseback Riding, Inc. for their Children with Disabilities Summer program.**

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 295 24
Fraternal
Order of
Police
Sussex
County
Lodge 2** **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$3,000 (\$1,000 from Mr. Schaeffer’s Councilmanic Grant Account and \$500 from Mr. Vincent, Mr. Hudson, Mr. Rieley and Mrs. Green’s Councilmanic Grant Accounts) to Fraternal Order of the Police Sussex County Lodge 2 for their charity programs.**

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Proposed
Ordinance
Introduct-
ions** **Mr. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A HI-1 HEAVY INDUSTRIAL DISTRICT FOR AN ELECTRIC SUBSTATION AND UTILITY USES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 140.25 ACRES, MORE OR LESS” filed on behalf of Renewable Redevelopment, LLC.**

Mr. Schaeffer introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR AN INDOOR AND OUTDOOR MINIATURE GOLF COURSE TO BE LOCATED ON A 0.30 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.69 ACRES, MORE OR LESS” filed on behalf of NGR

Sports, LLC.

Proposed Ordinance Introductions (continued)

Mr. Rieley introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR AN AUTO REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.61 ACRES, MORE OR LESS” filed on behalf of Henry Villegas-Solis.

Mr. Schaeffer introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITION A OF ORDINANCE NO. 2853 TO ALLOW FOR A CONVENIENCE STORE WITH FUELING STATIONS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 2.98 ACRES, MORE OR LESS” filed on behalf of V&M LLC.

The Proposed Ordinances will be advertised for a public hearing.

CC Member Comments

There were no Council Member comments.

M 296 24 Go Into Executive Session

At 11:26 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to go into Executive Session for the purpose of discussing matters related to land acquisition and pending & potential litigation.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

Executive Session

At 11:32 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters related to land acquisition and pending & potential litigation. The Executive Session concluded at 11:42 a.m.

M 297 24 Reconvene

At 11:45 a.m., a Motion was made by Mr. Hudson, seconded Mr. Rieley to come out of Executive Session back into Regular Session.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

E/S Action

There was no action related to Executive Session matters.

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

**Public
Hearing/
Warwick
Park Phase I**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$1,225,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE WARWICK PARK PHASE I PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”.

Hans Medlarz, County Engineer Ret. reported that this is the Warwick Park area which comprises of Gull Point, Warwick Cove, and Warwick Park. This project has been broken down into two phases, Gull Point and Warwick Cove is phase 1. The application for phase 2 will be filed this month. The Ordinance was introduced by the County Council on April 30, 2024.

There were no public comments.

The Public Hearing and public record were closed.

**M 301 24
Adopt
Ordinance
No. 3018/
Warwick
Park Phase I**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 3018 entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$1,225,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE WARWICK PARK PHASE I PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Rules

Mr. Moore read the rules and procedures for zoning hearings.

**Public
Hearing/
CU2439**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MEDICAL BUILDING FOR OUTPATIENT SERVICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 2.24 ACRES, MORE OR LESS” (property lying on the west side of Bridgeville Highway [S.C.R. 13], approximately 0.85 mile southwest of Sussex Highway [Rt. 13A]) (911 Address: 22540 Bridgeville Highway, Seaford) (Tax Map Parcel: 331-3.00-186.00) filed on behalf of Eric Johnson.

The Planning & Zoning Commission held a Public Hearing on the application on April 24, 2024. At the meeting of May 8, 2024, the Planning

**Public
Hearing/
CU2439
(continued)**

& Zoning Commission recommended approval of the application for the 5 reasons stated and subject to the 7 recommended conditions as outlined.

The Council found that Dr. Eric Johnson spoke on behalf of Compass Mental Wellness Services in regard to the application; that he would like to open a second office in Seaford for outpatient mental health services; that they have one office that is across from City Hall in Seaford; that Sussex County especially the West side has a need for mental health services; that they are trying to meet the needs of the area.

There were no public comments.

The Public Hearing and public record were closed.

**M 302 24
Adopt
Ordinance
No. 3019/
CU2439**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to Adopt Ordinance No. 3019 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MEDICAL BUILDING FOR OUTPATIENT SERVICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 2.24 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows:

- 1. The proposed Conditional Use is located along Bridgeville Highway and close to Sussex Highway. There are other commercial zoning districts and uses in this area with a mixture of small businesses and homes. This is an appropriate location for this medical office.**
- 2. The use serves a community need in Western Sussex County by creating medical offices and mental health facilities at a convenient location.**
- 3. The use as a medical office will benefit the health, safety and welfare of Sussex County residents.**
- 4. The use, with the conditions and limitations placed upon it, will not adversely affect neighboring properties or roadways.**
- 5. There was no opposition to this Application.**
- 6. This recommendation is subject to the following conditions:**
 - a. As stated by the applicant, the hours of operation shall be between 7:00 a.m. and 7:00 p.m. Monday through Friday. Additional hours for emergency purposes are permitted.**
 - b. One lighted sign, not to exceed 32 square feet on each side, shall be permitted.**
 - c. The use shall comply with the parking requirements set forth in the Zoning Code. There shall not be any parking within the front yard setback.**
 - d. All entrance, intersection and roadway improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.**
 - e. All exterior lighting shall be directed downward so that it does not shine on neighboring properties or roadways.**

- f. Any dumpsters shall be screened from view of neighboring properties and roadways.
- g. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

**M 302 24
Adopt
Ordinance
No. 3019/
CU2439
(continued)**

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CU2488**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WATERSPORT RECREATIONAL FACILITY TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.13 ACRES, MORE OR LESS” (properties lying on the northeast side of Muddy Neck Road [S.C.R. 361] directly across from the intersection of Muddy Neck Road [S.C.R 361] and Double Bridges Road [S.C.R. 363]) (911 Address: N/A) (Tax Map Parcels: 134-17.00-15.00 & 15.03) filed on behalf of Kelly Benson.

The Planning & Zoning Commission held a Public Hearing on the application on April 24, 2024. At the meeting of May 8, 2024, the Planning & Zoning Commission recommended approval of the application for the 6 reasons stated and subject to the 7 recommended conditions as outlined.

The Council found Mr. Kelly Benson, spoke on behalf of his application in regard to a conditional use permit for an extension of his existing paddle sports business; that he is the owner of Bay Venture Outfitters; that it is a paddle sports and recreation operation out of the Town of Northeast, Maryland; that they are excited to bring this to the Bethany Beach area; that they are a low impact operation; that the business was founded in 2015 and currently operates in the town of Northeast Maryland; that they currently offer hourly onsite rentals, offsite rentals and delivery consisting of paddleboard, kayaks and bicycles; that they do special events, large group reservations, seasonal route storage, a triple pass and sale of retail items; that they pride themselves in their customer service; that they include all of the equipment that is needed; that they are a seasonal business that runs April until October; that they have a risk management policy where they open depending on water temperature; that their typical hours are from 10:00 a.m. until 6:00 p.m.; that during special events their hours may be from sunrise to sunset; that their high season is Memorial Day until Labor Day; that they need a storage structure; that all of their equipment is stored neatly outside; that they need a low risk area for launching and a parking area; that they would like road front signage; that at their other location, they have a small vessel for use of their staff incase they need to get out on the water quickly; that restrooms are provided in the form of portable units; that the site plan was shown; that he requested a few

**Public
Hearing/
CU2488
(continued)**

changes to the conditions given by the Planning & Zoning Commission; that he would like to amend 7A to add bicycles; that he would like the addition of the motorized vessel for business use onto the property; that he requested to allow the sales of other incidental items such as waters, prepacked bars and retail items related to the business; that he requested that Item D be amended so that parking can be closer to the road; that majority of the site is marsh land and there is only a small area that can be parked on.

Mr. Hudson questioned the sale of food. Mr. Benson responded that if there is a special event, he may partner with a food vendor for that particular event. However, there will be no alcohol sales on the site. A discussion was held about the size of the requested motorized vessel and the parking. Mr. Benson reported that the parcel is on a lease to own basis.

There were no public comments.

The Public Hearing and public record were closed.

**M 303 24
Amend
Condition D/
CU2488**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to amend Condition D to read “All of the parking areas shall be shown on the Final Site Plan”.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 304 24
Amend
Condition A/
CU2488**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to amend Condition A to read “The use shall be limited to the use as a paddleboard, kayak, bicycles, beach related, or other recreational equipment rental and watersports launch facility. No motorized watercraft shall be permitted on the site or accessing waterways from the site unless for business purposes. The motorized watercraft shall be less than 25 horsepower.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 305 24
Amend
Condition C/
CU2488**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to amend Condition C to read “Sales, including sale of food, beverages, bait, incidentals, supplies, equipment and other retail items shall be limited and incidental to the primary use as a recreational and launching facility.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;

**Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 306 24
Adopt
Ordinance
No. 3020/
CU2488**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 3020 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WATERSPORT RECREATIONAL FACILITY TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.13 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows and as amended by this Council:

- 1. The Applicant seeks approval for a paddleboard and kayak rental and launching area for access to the Assawoman Canal, Assawoman Bay and Assawoman Wildlife Refuge Area.**
- 2. The property has both wetlands and uplands upon it, but there will be little if any disturbance of the wetlands and very few improvements required to implement this use.**
- 3. A representative of the Town of Ocean View appeared and testified on behalf of the Town in favor of this Application.**
- 4. This use will provide a recreational amenity for residents and visitors to Sussex County.**
- 5. The use will not adversely impact the neighborhood, area roadways or the environment.**
- 6. There was no opposition to this Application.**
- 7. This recommendation shall be subject to the following conditions:**
 - a. The use shall be limited to the use as a paddleboard, kayak, bicycles, beach related, or other recreational equipment rental and watersports launch facility. No motorized watercraft shall be permitted on the site or accessing waterways from the site unless for business purposes. The motorized watercraft shall be less than 25 horsepower.**
 - b. The use shall be subject to all necessary state agency approvals including but not limited to DelDOT, DNREC and the Sussex Conservation District and/or the Tax Ditch Commissioners for use of the adjacent Tax Ditch for access to other waterways.**
 - c. Sales, including sale of food, beverages, bait, incidentals, supplies, equipment and other retail items shall be limited and incidental to the primary use as a recreational and launching facility.**
 - d. All of the parking areas shall be shown on the Final Site Plan.**
 - e. One lighted sign shall be permitted. It shall not exceed 32 square feet in size. It shall not be used to advertise retail sales of watersport equipment.**
 - f. Any dumpsters shall be screened from the view of roadways and neighboring properties.**
 - g. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.**

**M 307 24
Adjourn**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to adjourn at 2:11 p.m.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

**Tracy N. Torbert
Clerk of the Council**

{An audio recording of this meeting is available on the County's website.}

ENGINEERING DEPARTMENT

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING & DESIGN REVIEW

(302) 855-7370 T
(302) 854-5391 F
jashman@sussexcountyde.gov




Sussex County

DELAWARE
sussexcountyde.gov

MIKE HARMER, P.E.
SUSSEX COUNTY ENGINEER

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable Mark G. Schaeffer

FROM: John J. Ashman 
Director of Utility Planning & Design Review

RE: *Existing Wastewater Infrastructure Use Agreement
Patriots Glen (Phase II) IUA 1109
File: OM 9.01*

DATE: June 11, 2024

The Existing Wastewater Infrastructure Use Agreement is an arrangement that collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Engineering Department requests approval of an agreement for the existing wastewater infrastructure use with **TSK Land Group, LLC** for **Patriots Glen (Phase II)** project in the **Oak Orchard Area**. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, **Patriots Glen (Phase II)** project will connect to the existing County owned wastewater infrastructure. In return for utilization of said **TSK Land Group, LLC** will contribute **\$94,046.00** for the financial catch-up contribution of the existing infrastructure to serve **128.00** Equivalent Dwelling Units. Payments of the contribution will be required prior to receiving substantial completion of the on-site collection system.



EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT

PATRIOT’S GLEN (PHASE II) - IUA1109

THIS AGREEMENT (“Agreement”), made this _____ day of _____ 2024, by and between:

SUSSEX COUNTY, a political subdivision of the State of Delaware, hereinafter called the “County,” and;

TSK LAND GROUP, LLC, a Delaware Limited Liability Company and developer of a project known as Patriot’s Glen Phase II, hereinafter called the “Developer.”

WITNESSETH:

WHEREAS, Developer is developing several tracts of land identified as Tax Map parcels 234-29.00-67.00 to be known as Patriot’s Glen Phase II (“Project”) and;

WHEREAS, the Project is within the boundary of the Sussex County Unified Sanitary Sewer District (Oak Orchard Expansion #1 Area) and;

WHEREAS, the Project will utilize available capacity in existing wastewater infrastructure previously funded by Sussex County.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, which is hereby acknowledged by both parties as sufficient consideration, the parties hereby agree as follows:

- (1) Developer is proposing to utilize County’s existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to **128.00** additional equivalent dwelling units to County’s existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of **\$94,046.00** for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **Payment of the contribution must be submitted prior to receiving substantial completion of the on-site collection system.**
- (5) If the Project (as currently submitted) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement

may be declared by County to be null and void, and any unused payments made pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.

- (6) The contribution is to be placed in County's sewer capital fund and expended towards overall debt reduction or at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires capital improvements (See Chapter 110-96 of the Sussex County Code).
- (7) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of the *Sussex County Code* for all lots, due at such time the Developer receives the sewer connection permit.
- (8) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
- (9) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of the *Sussex County Code*.
- (10) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
- (11) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
- (12) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of litigation, arising out of Developer's negligence in connection with its performance of this Agreement, including but not limited to damage to the County's infrastructure

in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is **16054 S. Dupont Hwy, Harrington DE 19952.**

IN WITNESS, WHEREOF, the respective parties hereto have affixed their hands and seals the day and year aforesaid.

FOR THE COUNTY:

{Seal}

By: _____
(President - Sussex County Council)

_____ (DATE)

ATTEST:

Tracy Torbert
Clerk of the County Council

FOR TSK LAND GROUP, LLC

By:  _____ (Seal)
T. J. Schiff - Authorized Signatory

5/20/2024 (DATE)

WITNESS: _____


ENGINEERING DEPARTMENT

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING & DESIGN REVIEW

(302) 855-7370 T
(302) 854-5391 F
jashman@sussexcountyde.gov




Sussex County

DELAWARE
sussexcountyde.gov
MIKE HARMER, P.E.
SUSSEX COUNTY ENGINEER

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable Mark G. Schaeffer

FROM: John J. Ashman 
Director of Utility Planning & Design Review

RE: *Existing Wastewater Infrastructure Use Agreement
Mulberry Knoll Store IUA 1230
File: OM 9.01*

DATE: June 11, 2024

The Existing Wastewater Infrastructure Use Agreement is an arrangement that collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Engineering Department requests approval of an agreement for the existing wastewater infrastructure use with **WitSil Mulberry Associates, LLC** for **Mulberry Knoll Store** project in the **West Rehoboth Area**. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, **Mulberry Knoll Store** project will connect to the existing County owned wastewater infrastructure. In return for utilization of said **WitSil Mulberry Associates, LLC** will contribute **\$17,745.00** for the financial catch-up contribution of the existing infrastructure to serve **7.50** Equivalent Dwelling Units. Payments of the contribution will be required prior to receiving a connection permit.



EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT

Mulberry Knoll Store – IUA 1230

THIS AGREEMENT (“Agreement”), made this _____ day of _____ 2024, by and between:

SUSSEX COUNTY, a political subdivision of the State of Delaware, hereinafter called the “County,” and;

WITSIL MULBERRY ASSOCIATES, LLC a Limited Liability Company and developer of a project known as **Mulberry Knoll Store**, hereinafter called the “Developer.”

WITNESSETH:

WHEREAS, Developer is developing a tract of land identified as Tax Map parcel 334-12.00-108.00 to be known as **Mulberry Knoll Store** (“Project”) and;

WHEREAS, the Project is within the boundary of the Sussex County Unified Sanitary Sewer District (Western Rehoboth Area) and;

WHEREAS, the Project will utilize available capacity in existing wastewater infrastructure previously funded by Sussex County.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, which is hereby acknowledged by both parties as sufficient consideration, the parties hereby agree as follows:

- (1) Developer is proposing to utilize County’s existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to 7.50 additional equivalent dwelling units to County’s existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of \$17,745.00 for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **Payment of the contribution must be submitted prior to receiving connection permit.**

- (5) If the Project (as currently submitted) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement may be declared by County to be null and void, and any unused payments made pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.
- (6) The contribution is to be placed in County's sewer capital fund and expended towards overall debt reduction or at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires capital improvements (See Chapter 110-96 of the Sussex County Code).
- (7) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of the *Sussex County Code* for all lots, due at such time the Developer receives the sewer connection permit.
- (8) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
- (9) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of the *Sussex County Code*.
- (10) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
- (11) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
- (12) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of litigation, arising out of Developer's negligence in connection with its performance of this Agreement, including but not limited to damage to the County's infrastructure

in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is **3304 Old Capitol Trail, Wilmington Delaware 19808.**

IN WITNESS, WHEREOF, the respective parties hereto have affixed their hands and seals the day and year aforesaid.

FOR THE COUNTY:

{Seal}

By: _____
(President - Sussex County Council)

_____ (DATE)

ATTEST:

Tracy Torbert
Clerk of the County Council

FOR WITSIL MULBERRY ASSOCIATES, LLC

By: _____ (Seal)

Robert G. Wittig

5/29/24 (DATE)

WITNESS:

Prof. Malachuk



Memorandum

To: Sussex County Council

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: June 7th, 2024

RE: County Council Report for Stratus Estates (2019-24) (F.K.A. Cool Spring Meadows)

On April 12th, 2024, the Planning and Zoning Department received a request for a 6-month time extension for Stratus Estates (2019-24) (F.K.A. Cool Spring Meadows), a cluster subdivision to consist of two-hundred and twenty-six (226) single-family lots, stormwater management, private roads, open space and other site improvements. The Preliminary Subdivision Plan for the Subdivision was approved by the Planning and Zoning Commission at their meeting of Thursday, April 22nd, 2021. Under (§99-9(B)) of the Code, the Preliminary Subdivision Plan approval is valid for a period of three years and will expire on April 22nd, 2024, unless *“a final plan [is] filed with the Commission’s staff within 36 months from the date of action of the preliminary plat.”* The property is located on the north and south sides of Stockley Road (S.C.R. 280), approximately 0.65 mile southeast of Forest Road (S.C.R. 292) in Milton, Delaware.

The Applicant filed this request with the Planning & Zoning Department in writing on April 12th, 2024. The request for extension has been submitted under the sunset provision of (§99-40(C)) which allows an Applicant to request up to a six-month extension of the Preliminary Subdivision approval. The Council may grant a time extension for up to six (6) months pursuant to (§99-40) based on the following:

1. Prior to the expiration date of its current approval, any Applicant holding a currently valid approval set forth in this §99-40(C) may request an extension up to six months for the validity of said approval. The six-month period shall commence on upon the date of expiration of the current approval. Such a request must be in writing and delivered to the Director on or before the expiration date of its current approval. At a minimum, the written request must include the following information:
 - (a) A schedule or plan for the project describing the steps that have been completed through the date of the extension request and describing the remaining steps to be completed. For any steps that remain outstanding, the Applicant is to provide the anticipated time frame for completing those remaining steps.
 - (b) A detailed explanation of the reasons in support of the Applicant’s request for the time extension. The Applicant is to include an explanation of whether such reasons were within the Applicant’s reasonable control. Examples of



reasons beyond the Applicant's reasonable control include, but are not limited to, undue delays in receiving regulatory approvals, litigation affecting the progression of the project, third-party economic restrictions of an extraordinary or unreasonable nature, or delays caused by significant medical or health issues impacting the Applicant's key stakeholders.

On April 12th, 2024, the Planning & Zoning Department received both the initial request for extension letter as well as a copy of the approved Preliminary Subdivision Plan.

The following are the status of agency approvals. The Applicant's representative at Morris James, LLP indicates that the 6th submission was made to the Sussex Conservation District on March 18th, 2024, and that a Notice of Intent Permit was issued on March 26th, 2024. The Applicant's representative also notes that approvals have been received from the Office of the State Fire Marshal, the Geographic Information Office, and the Office of Drinking Water of which an extension of the prior approval was received on January 22nd, 2024. The Applicant's representative further notes that a Letter of No Objection to Recordation (LONOR) and Record Plan approval were received on December 12th, 2023, from DelDOT. The Applicant's letter also includes details on the progress of the pending Sussex County Engineering Department approval.

The Planning and Zoning Commission recommended approval for the 6-month time extension request at their meeting of Thursday, May 8th, 2024, and to forward the Application to the Sussex County Council for their final decision and approval of this request.

If the Council agrees, there should be a motion that, based upon the authority granted to Council under §99-40(C)), and based upon compliance and requirements of the referenced Ordinance, supporting documentation, and the recommendation of the Director of Planning and Zoning that Stratus Estates (2019-24) (F.K.A. Cool Spring Meadows) shall be granted a six (6) month time extension until October 22nd, 2024, which is six (6) months from April 22nd, 2024, the original expiration date for the Subdivision.

ENGINEERING DEPARTMENT

MIKE HARMER, P.E.
SUSSEX COUNTY ENGINEER

(302) 855-7370 T

(302) 854-5391 F

mike.harmer@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable Mark G. Schaeffer

FROM: Hans Medlarz, P.E., County Engineer, Ret.

RE: **Wolfe Neck Regional WWF Electrical Service & Switchgear Replacement**
A. General Construction, Project S24-10 – Recommendation to Award
B. GHD Amendment 25

DATE: June 11, 2024

GHD, Inc., held the County's engineering services contract associated with the SCRWF since December 7, 2001. Council reaffirmed GHD as the "Engineer of Record" South Coastal in September of 2016 and again on May 14, 2019, at which time Council also included professional services associated with the City of Rehoboth Beach's Wastewater Treatment Plant.

In July of 2016, County Council authorized agreement negotiations with other wastewater service providers for the utilization of existing unallocated wastewater treatment capacity. On September 20, 2016, Council approved the initial agreement with the Lewes Board of Public Works (LBPW) for wastewater treatment and disposal. It allowed for the transmission of a year-round base flow rate of up to 75,000 gallons per day into the BPW's system with a seasonal ramp up of up to 300,000 gallons per day during the fall/winter season.

As per the LBPW's request, the County utilized George, Miles & Buhr, Inc., the Board's Engineer of Record for the design of the proposed improvements. Following the design completion and permitting Council approved on August 29, 2017, LBPW's assistance request under the FY18 General Labor & Equipment Contract for a joint project.

In March of 2018, the LBPW requested an amendment to the Agreement allowing LBPW's service area tie-in(s) to the County's system and on March 20, 2018, Council approved Amendment No. 1 allowing wastewater to be transmitted and treated in the most cost-effective manner with the billing to be accomplished on a net zero metering basis.



On September 26, 2018, the County presented a request to increase the flow contributions at a Board meeting. Subsequently, the Board instructed their Counsel to draw up Amendment No. 2, which was accepted by County Council on January 8, 2018.

In 2021 both parties independently started planning for capital treatment plant improvements and expansions using GHD, Inc., the consultant already representing both entities. In addition, County Council committed substantial ARPA funding to the upgrade of wastewater treatment facilities in general and the Wolfe Neck RWF in particular. In this context, the County Engineer was authorized to initiate discussion with the Board.

The possible cooperation presented an opportunity to significantly reduce the LBPW's future long-term capital costs concerning sustainability of the wastewater treatment plant, especially compared to other potential options. Therefore, the Board held a series of workshops for public discussion and input and on March 31, 2022 decided to evaluate the following three (3) options with variations:

1. Maintain wastewater treatment facility in its current flood plain location at its current capacity while "hardening" the perimeter to deal with climate change.
2. Relocate wastewater treatment facility outside of the flood plain, increase capacity to meet ultimate demand and investigate (2a) land treatment disposal, (2b) continued Canal discharge and (2c) ocean outfall.
3. Relocate wastewater treatment facility to Wolfe Neck in a partnership with County using the same capacity assumptions while investigating (3a) continued piped Canal discharge versus (3b) biological polishing.

The 2016 Agreement established a "handshake" point splitting capital responsibility between the parties. Under options 1 & 2, all activities would occur on the Board's side of the handshake point and the County would participate on the agreed upon prorated percentage. Under option 3, most of the transmission and all the treatment plant capital upgrades would occur on the County side of said point.

On May 24, 2022, Council approved to fund 50% of the long-range study in the amount of \$124,250.00 utilizing allocated ARPA. The results of the study were presented to County Council on December 6, 2022. Since then, the LBPW held workshops on February 10th, March 22nd, April 12th, May 17th and June 14th to continue the open decision-making process.

In late June Sussex County was informed by DNREC officials of significant findings during a Phase 1 archeological study at the Wolfe Neck RWF. These findings triggered a Phase 2 archeological study, encompassing the entire spray lease area. The impact has created uncertainty for biological polishing under option 3b as well as the proposed facility conversion from center pivot irrigation to a fixed-head irrigation in managed forests.

During the LBPW workshop on August 9th the concept of an ocean outfall from the Wolfe Neck RWF emerged as study Option 3c. Under this scenario the County would construct a new 5.25 mgd treatment facility relying mainly on the outfall and only spray irrigate at agronomically required rates using the exiting irrigation systems. With LBPW's waste load allocation in the Lewes-Rehoboth Canal no longer an asset, Option 3c would be a flow-based partnership requiring a new agreement detailing future operation and maintenance.

Any Wolfe Neck treatment expansion can only occur in the location of the primary treatment lagoon requiring even more urgent removal of the accumulated biosolids. As a precursor of the removal, all incoming flows must be transferred to treatment lagoons 2 & 3. For the support of the biosolids removal and dewatering equipment a new electrical service and power distribution center must be designed and constructed to accommodate both the immediate power needs as well as the future plant expansion.

On August 15, 2023, Council approved GHD's Amendment 22 – Advanced Electrical Design in the not to exceed amount of \$427,138.72 and Amendment 23 for the expansion of the long-range study to include Option 3c in the not to exceed amount of \$95,000.00, utilizing allocated ARPA funding.

Subsequently GHD developed construction documents for the associated electrical and general construction at the Wolfe Neck Facility with the option to bid on one or both segments of the work and Invitations to Bid were advertised in the local newspaper, as well as available to view on the County website. In addition, the information was directly forwarded to several contractors. Five (5) contractors attended the pre-bid meeting on March 26, 2024, and on April 18, 2024, two (2) bids were received for the Electrical Construction and one (1) bid was received for the General Construction.

BW Electric, Inc.'s low bid for the Electrical Construction was within budget. However, the bid for General Construction came in well above budget. At the time of bid the County had three (3) open general construction projects with different companies. All three, Bancroft, Whayland and Ronca are capable of performing the scope but chose not to bid. Therefore, the Engineering Department recommended, and Council concurred to approach each company requesting competitive proposals for a potential change order under their respective open contract.

On April 30, 2024, Council approved award of the Electrical Construction to BW Electric, Inc. in the low bid amount of \$5,000,000.00, rejecting the sole General Construction bid and soliciting three proposals under an alternate delivery method.

The Whayland Company, Bancroft Construction, and M.F. Ronca were sent a request for proposals. BW Electric was later invited to bid since they were awarded the electrical portion of the project. All four (4) proposals, summarized in the attached spreadsheet were received on June 7, 2024. The lowest responsible offer was made by Bancroft Construction at \$1,376,000.00. This offer includes builders risk insurance and has a built-in allowance of \$26,000.00 for differing site conditions. In summary, the Engineering Department recommends issuance of Change Order No. 1 under Bancroft Construction's James Farm contract in the full amount of \$1,376,000.00 including the \$26,000.00 allowance but with separate accounting and schedule of values.

The Engineering Department requested GHD to submit an amendment for construction phase engineering services for both contracts at the Wolfe Neck Facility. GHD subsequently submitted Amendment 25 in the not to exceed amount of \$736,342.23. The Engineering Department recommends approval of Amendment 25.



WNRWF ESSR General Construction Bids

Bidder	Bid	Notes
Bilbrough's Electric	\$4,782,200.00	Received at first bid
Bancroft Construction	\$1,376,000.00	Excludes test pits, but verified to include dewatering if required for building construction, and final grading and restoration (including for duct banks).
BW Electric	\$3,750,000.00	--
Michael F. Ronca & Sons	\$3,121,000.00	--
The Whayland Company	\$1,429,000.00	Excludes steel fabricator/erector value due to them "not having an AISC Certified Steel Fabricator/Erector to submit pricing".

SOUTH COASTAL REGIONAL WASTEWATER FACILITIES

SUSSEX COUNTY, DELAWARE

CONTRACT AMENDMENT NO. 25

This contract amendment, **Contract Amendment No. 25** dated _____, **2024** amends our original contract dated December 7, 2001, between Sussex County, a political subdivision of the State of Delaware, as First Party, hereinafter referred to as the COUNTY and GHD Inc., a State of Maryland Corporation, hereinafter referred to as CONSULTANT, whose address is 16701 Melford Boulevard, Suite 221, Bowie, Maryland 20715. Except as specifically amended herein, the provisions of the Original Contract dated December 7, 2001, as thereafter amended, remain in effect and fully valid.

By execution of this Amendment, the following sections are hereby added as new sections to the Original Contract, as respectfully numbered below.

ARTICLE FOUR

FEE STRUCTURE

- 4.4.1 The previous versions of Section 4.4 as set forth in **Contract Amendment Nos. 1 to 24** are hereby incorporated by reference. Notwithstanding any language to the contrary in such Amendments, the parties agree that those Amendments are intended to be additions to the Original Contract between the parties dated December 7, 2001.
- 4.4.2 In accordance with the method of fee determination described in Articles 4.3.1, 4.3.2, 4.3.3, and 4.3.4 of this Agreement, the total compensation and reimbursement obligated and to be paid the CONSULTANT by the COUNTY for the CONSULTANT's Scope of Services for **Construction Phase Engineering Services for the WNRWF Electrical Service and Switchgear Replacement** as set forth in **Attachment A**, which is attached hereto and incorporated by reference, shall not exceed **Seven Hundred Thirty-Six Thousand, Three Hundred Forty-Two dollars and Twenty-Three cents (\$736,342.23)**. In the event of any discrepancy or inconsistency between the amounts set forth in this Article 4.4.2 and any appendices, exhibits, attachments or other sections of this Agreement, the amounts set forth in this Article 4.4.2 shall govern.

ARTICLE FOURTEEN

INCORPORATED DOCUMENTS

- 14.2 **Attachment A: Consultant's Scope of Services, Construction Phase Engineering Services for the WNRWF Electrical Service and Switchgear Replacement with Man-hour Spreadsheets. (Contract Amendment No. 25).**

By execution of this Agreement, the following sections are amended as set forth below:

- 2.4 The CONSULTANT shall perform the Scope of Services attached hereto as Attachment A and all additional Scopes of Services as may be set forth in consecutively numbered subsets of Attachment A.
- 4.3 The COUNTY shall pay the CONSULTANT for the satisfactory completion of the Scope of Services specified herein before in Attachment A and all additional Scopes of Services as may be set forth in consecutively numbered subsets of Attachment, based on and limited to the following method of determination....”

IN WITNESS WHEREOF, the parties hereunto have caused this Amendment No. **25** to this Agreement to be executed on the day and year first written hereof by their duly authorized officers.

SEAL

FOR THE COUNTY:
SUSSEX COUNTY

President, Sussex County Council

PREVIOUSLY APPROVED FORM

Date

ATTEST:

Clerk of the Sussex County Council

FOR THE CONSULTANT:

GHD Inc.



Vince Maillard, P.E.

WITNESS:



Attachment A

Your ref:
Our ref: 12619190

April 30, 2024

Hans Medlarz P.E., Mike Harmer P.E.
Sussex County
2 The Circle
Georgetown, DE 19947

Construction Engineering Services Proposal for the Wolfe Neck RWF Electrical Service & Switchgear Replacement

Dear Mr. Medlarz & Mr. Harmer

GHD is pleased to submit this proposal for Engineering Services during construction of the Wolfe Neck Regional Wastewater Facilities Electrical Service and Switchgear Replacement.

Introduction

GHD has designed and prepared bid documents for the replacement of the electrical service and switchgear at the Wolfe Neck Regional Wastewater Facilities (WNRWF). The scope and fee presented herein is for construction management and engineering, inspection, materials testing and programming services.

Scope of Services

GHD will provide the following services:

1. Construction Management and Engineering Services
 - a. Contract Coordination and Project Management: Contract coordination will involve routine communication with the OWNER, OWNER's Authorized Representative, and Contractors to discuss overall project issues, help resolve conflicts or discrepancies, make contract interpretations, and assist in resolution of certain field-related construction issues. Project management tasks include contract administration, invoicing, resource scheduling, and communications.
 - b. Construction Meetings: Attend pre-construction meeting (1), monthly construction progress meetings (total of 15 assumed for the 30 month period), weekly coordination meetings (total of 45 assumed for the 30 month period), pre-final inspection meeting (1), and final inspection meeting (1) with the Contractors and OWNER. Prepare agendas and minutes.
 - c. Preliminary Submittals: Review the Contractors' required preliminary submittals (including the progress schedule, shop drawing schedule, and schedule of values) for conformance with Contract Documents. Request modifications, where required.
 - d. Shop Drawings and Submittals: Review shop drawings and submittals for conformance with Contract Documents. Request modifications, where required. Submittals will be stored and tracked using a software database hosted by ENGINEER.

- e. Requests for Information (RFI): Respond to Contractors' written requests for clarification in a written format. RFI's will also be stored and tracked using a software database hosted by ENGINEER.
 - f. Operations & Maintenance (O&M) Submittals: Review operations and maintenance submittals furnished by the Contractors for conformance with Contract Documents. Request modifications, where required. Three separate stages of O&M manuals are required including Preliminary O&M manuals, Final Draft O&M manuals, and Final O&M manuals.
 - g. Materials Testing Results: ENGINEER will review and analyze the results of field and materials testing results. The field testing requirements will be coordinated with the ENGINEER's Resident Project Representative.
 - h. Field Engineering and Change Review: Engineering of solutions to construction issues and as potential value engineering opportunities are identified. Technical review of change proposals. Provide written comments and recommendations to OWNER.
 - i. Testing and Startup: Engineering assistance during testing and startup of major equipment and systems by lead engineers involved in the design.
 - j. Schedule Review: ENGINEER will review the Contractors' baseline schedule and subsequently review schedule updates provided by the Contractors.
 - k. Record Drawings: Modify bid drawings at the completion of the project and produce a Record Drawing set for the OWNER's use based on red-line drawings provided by the Contractor . Three (3) sets of Record Drawings will be provided to the OWNER along with electronic AutoCAD files.
 - l. Witness Factory Acceptance Test for Process Control Systems: ENGINEER will witness Factory Acceptance Testing of critical Process Control Systems at the Control System Integrator's panel fabrication facility. The Factory Acceptance Test shall be successfully completed when all of the required functions have been demonstrated to ENGINEER and ENGINEER will sign off the acceptance documents for system delivery to project site.
 - m. ENGINEER will host a project database utilizing PROCORE software.
2. Inspection Services (Owner's Authorized Representative)
- a. ENGINEER will provide a Resident Project Representative (RPR) to serve as the OWNER's Authorized Representative during construction activities. It is assumed that the RPR will work out of the existing administration building or another facility provided by Sussex County. It is anticipated that inspection will be provided as needed to suit construction activity on site. This may include periods of full-time inspection (40 hours per week, except for Observed Holidays as listed in the Supplementary Conditions of the Contract Documents), part-time inspection, and periods with no inspection. This engineering services proposal allows for a total of 1,800 hours of onsite inspection, or the equivalent of 45 weeks full time inspection over the 30 month construction period.
 - b. OWNER will provide furnished office space at WNRWF to serve as the ENGINEER's field office. OWNER will provide high speed internet access for use by the ENGINEER.
 - c. Responsibilities and limitations for the RPR shall be as described in the exhibit.
3. Materials Testing and Special Inspections
- a. ENGINEER will contract with a third party materials testing and inspection subconsultant to complete concrete testing, masonry testing, soils testing, and Special Inspections as necessary to meet the requirements of the Contract Documents.
 - b. Field and laboratory services performed by the third party materials testing and inspection subconsultant will be billed to the OWNER at direct cost under an Allowance for this item.
 - c. Allowance included in this proposal is \$25,000.00.
4. PLC Programming and Process Control System Development
- a. This engineering services proposal includes an allowance of \$50,000.00 for programming services associated with the new PCS Cabinet being provided in the new electrical building. While it is

anticipated that conventions will generally follow those developed for ongoing work at SCRWF, GHD will also meet and review with Sussex County prior to commencing programming services to review County preferences for this facility in consideration of the planned expansion and any recent developments in policy or preference. These meetings to be held during construction will ultimately define programming scope for this project.

- b. Deliverables: GHD anticipates providing the following deliverables for the control systems:
 - i. Complete and Annotated Programmable Logic Controller (PLC) Logic.
 - ii. Complete and Annotated Supervisory Software (SCADA/HMI) Development.
 - iii. Preliminary Testing.
 - iv. Startup/Commissioning.
 - v. Training
- 5. Post-Bid Value Engineering Services
 - a. ENGINEER will work with the OWNER and CONTRACTORS to develop, review, and incorporate value engineering opportunities anticipated to generally relate to duct bank and conduit materials and details. This includes attending a meeting with the selected Contractors to identify and discuss opportunities, review opportunities, develop RFPs to submit to the Contractors, and review technical aspects of PCOs submitted by the Contractors.

County Responsibilities

1. Processing of Contractor pay applications following review by GHD RPR.
2. Reviewing pricing of Change Proposals submitted by Contractors.
3. Preparing and processing of Change Orders.
4. Provide office space and high-speed internet access for use by GHD RPR.

Schedule

1. This Amendment is based on a construction contract duration of 27 months from Notice to Proceed to Substantial Completion and three (3) additional months to Final Completion. The scope of services and price will have to be adjusted by Amendment if the construction contract duration increases.
2. This Amendment is based on the OWNER's Authorized Representative being on site for up to 40 hours per week each (reduced by 8 hours for each contract recognized holiday in any week). Should the OWNER's Authorized Representative be required to be on site in excess of this amount ("overtime") due to a Contractor working outside of normal working hours, including any work on weekends and contract recognized holidays, engineering cost for providing these additional OWNER's Authorized Representative services will be adjusted by Amendment.
3. As-Built drawings will be provided 16 weeks following receipt of complete and approved red-line drawings from the Contractors.

Subconsultants

1. Materials Testing and Inspection: John D. Hynes and Associates

Engineering Fee

GHD proposes to provide engineering services for the Design Engineering Scope of Services based on direct hourly payroll costs paid to technical staff engaged on the project plus FAR overhead costs of 1.83 times actual payroll costs billed plus out-of-pocket and subconsultant expenses at cost, plus a fixed fee of 10% on direct costs plus FAR overhead costs. Payroll rates presented on invoices will be constrained by the maximums

specified in the attached rate schedule. This rate schedule is valid until June 30, 2025, and subject to adjustment at that time and on an annual basis thereafter. Total cost shall not exceed the following:

Table 1 *Engineering Fee*

Description	Cost
Direct Wage Costs	\$208,502.00
FAR Overhead	\$381,558.66
Fixed Fee	\$ 59,006.07
Expenses	\$ 87,275.50
Total	\$736,342.23

Please contact me if you have any questions or comments regarding this proposal.

Regards



Steven Clark
Project Manager

443-875-5061
steven.clark@ghd.com

Responsibilities of Resident Project Representatives

1. The RPR responsibilities shall be as outlined in Article 2 of the General Conditions of the Contract Documents for Construction and as described below:
 - a. RPR will be ENGINEER's employee or agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the Work in general shall be with ENGINEER and Contractor. RPR's dealings with Subcontractors shall be through or with the full knowledge and approval of Contractor. The RPR shall:
 - i. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
 - ii. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and circulate copies of minutes thereof.
 - b. Liaison:
 - i. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's authorized representative, assist in providing information regarding the intent of the Contract Documents.
 - ii. Assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-site operations.
 - iii. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
 - c. Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
 - d. Shop Drawings and Samples:
 - i. Record date of receipt of Samples and approved Shop Drawings.
 - ii. Receive Samples which are furnished at the Site by Contractor, and notify ENGINEER of availability of Samples for examination.
 - e. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to ENGINEER. Transmit to Contractor in writing decisions as issued by Engineer.
 - f. Review of Work and Rejection of Defective Work:
 - i. Conduct on-site observations of Contractor's work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - ii. Report to ENGINEER whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - iii. Inspections, Tests, and System Startups:
 - A. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that Contractor maintains adequate records thereof.

- B. Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems start-ups.
 - g. Records:
 - i. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
 - ii. Maintain records for use in preparing Project documentation.
 - h. Reports:
 - i. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - ii. Immediately notify ENGINEER of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Hazardous Environmental Condition.
 - i. Payment Requests: Review quantities of installed and stored materials on Contractor's Applications for Payment and forward with recommendations to OWNER for processing.
 - j. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment for that part of the Work.
 - k. Completion:
 - i. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
 - ii. Participate in a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
 - iii. Observe whether all items on the final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.
2. The RPR shall not:
- a. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - b. Exceed limitations of ENGINEER's authority as set forth in the Contract Documents.
 - c. Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.
 - d. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
 - e. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of OWNER or Contractor.
 - f. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENGINEER.
 - g. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 - h. Authorize OWNER to occupy the Project in whole or in part.

GHD, Inc.
Hourly Direct Rate Ranges By Classification
Amendment 25

Personnel Category	Hourly Rate (\$/Hr)	
	Minimum	Maximum
Principal	75.00	88.00
Associate	60.00	84.00
Senior Engineer	55.00	82.00
Project Manager	45.00	70.00
Project Engineer	40.00	60.00
Engineer	26.00	40.00
Managing Designer	46.00	65.00
Senior Designer	36.00	46.00
Designer	25.00	36.00
Drafter	20.00	25.00
Senior Rep	30.00	46.00
Project Rep	24.00	30.00
Administrative Assistant	22.00	32.00

Rates are subject to annual adjustment
First adjustment on 7/1/2025
Rates do not include overhead and profit

CLIENT : <u>Sussex County, DE</u>		PREPARED BY: <u>SPC</u>											CLIENT : <u>Sussex County, DE</u>		PREPARED BY: <u>SPC</u>											
PROJECT: <u>WNRWF ESSR CM/I</u>		CHECKED BY : <u>VMM</u>											PROJECT: <u>WNRWF ESSR CM/I</u>		CHECKED BY : <u>VMM</u>											
		HOURS BY CATEGORY													Overhead= 1.83 SUMMARY											
		Maillard	Clark	Patricia	Cardinal	Zenovy	Yusuf	RPR	Claire	SHA	Harsha	Jim Miller	KML			Profit= 0.10 COST										
TASK DESCRIPTION		PR	AS	PE	SE	SE	SE	Ed/Tom	PE	SE	SE	SE	SD	HOURS	TASK DESCRIPTION	Car	O'nights	O'nights	Eqpmt	Outside	Copy	Direct Labor	Indirect	Profit	Expenses	Total Price
		Miles	Rentals	Hotels	& Misc	Tech	Drawings	Center																		
Construction Engineering															Construction Engineering											
1. Contract coord & project mgt		30mo													1. Contract coord & project mgt											
Project Director		2h/mo													60 Project Director		5280 9662 1494 16437									
Construction Manager		12h/mo													360 Construction Manager		28080 51386 7947 87413									
Construction Coordinator		12h/mo													360 Construction Coordinator		17280 31622 4890 53793									
Procure															Procure		10000 10000									
2. Meetings															2. Meetings											
Preconstruction		1													16 Preconstruction		1104 2020 312 3437									
Progress		15													129 Progress		3000 8190 14988 2318 1665 27160									
Coordination		45													60 Coordination		3780 6917 1070 11767									
Pre-final inspection		1													32 Pre-final inspection		200 2208 4041 625 111 6985									
Final-inspection		1													32 Final-inspection		200 2208 4041 625 111 6985									
3. Preliminary submittals		8													20 3. Preliminary submittals		1200 2196 340 3736									
4. Shop drawings and submittals															4. Shop drawings and submittals											
Civil & Permitting		4													32 Civil & Permitting		1596 2921 452 4968									
Architectural		4													32 Architectural		1996 3653 565 6214									
Structural		4													32 Structural		1956 3579 554 6089									
HVAC		4													32 HVAC		2336 4275 661 7272									
Electrical		8													164 Electrical		10592 19383 2998 32973									
5. Operations & maintenance manuals															5. Operations & maintenance manuals											
Architectural		2													10 Architectural		608 1113 172 1893									
HVAC		2													14 HVAC		1004 1837 284 3125									
Electrical		8													72 Electrical		4416 8081 1250 13747									
6. Field engineering & change review		40													220 6. Field engineering & change review		13840 25327 3917 43084									
7. Testing & startup		16													80 7. Testing & startup		400 5152 9428 1458 222 16260									
8. Witnessing factory acceptance tests		16													12 8. Witnessing factory acceptance tests		100 696 1274 197 56 2222									
9. Materials testing results		2													26 9. Materials testing results		1436 2628 406 4470									
10. Training		4													20 10. Training		200 1336 2445 378 111 4270									
11. Record drawings		8													124 11. Record drawings		6312 11551 1786 19649									
RPR															1800 RPR		82800 151524 23432 257756									
Testing and Inspection															Testing and Inspection		25000 25000									
Programming															Programming		50000 50000									
Post-Bid VE Services		8													48 Post-Bid VE Services		3096 5666 876 9638									
TOTALS		60	577	678	92	184	256	1800	20	24	28	28	40	3787	TOTALS	4100				85000		208502.00	381558.66	59006.07	87275.50	736342.23
RATES THIS PROJECT		100%	88.00	78.00	48.00	82.00	68.00	58.00	46.00	45.00	63.00	65.00	82.00	36.00	UNIT RATES	0.555	120.00	200.00	1.0	1.0	1.25	0.05	BUDGET SUMMARY			
															TOTAL EXPENSE COST		2276 85000									

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
UTILITY PLANNING	(302) 855-1299
FAX	(302) 855-7799



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Marvel Minor Subdivision Expansion of the Sussex County Unified Sanitary Sewer District

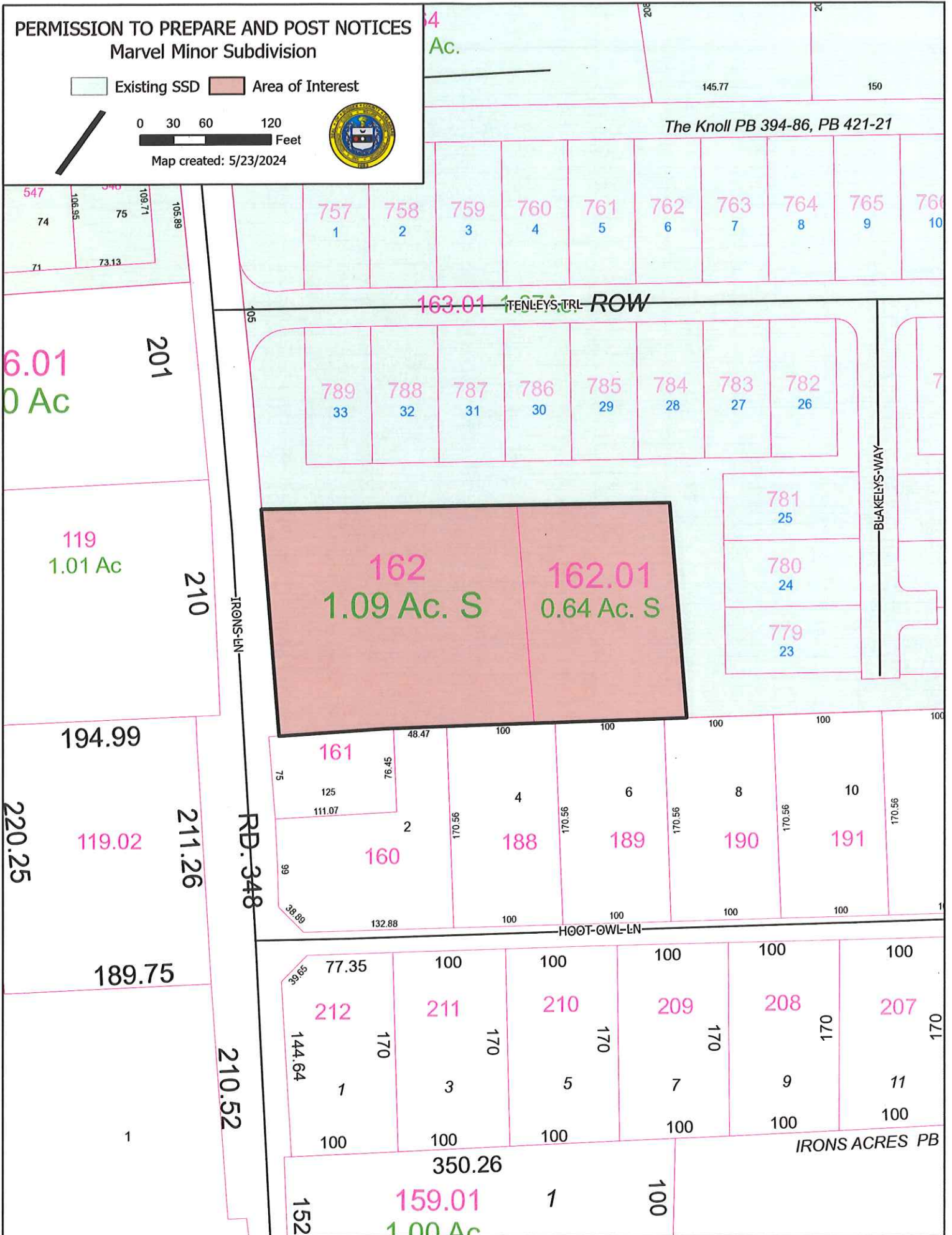
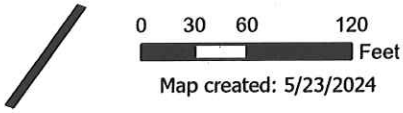
PERMISSION TO POST FACT SHEET

- Expansion of the Sussex County Unified Sanitary Sewer District (Holt's Landing Area)
- The Engineering Department has received a request from Foxlane Homes the developers of a project to be known as Marvel Minor Subdivision.
- The request includes parcels 134-7.00-162.00 & 162.01.
- The project is proposed at 3 lots.
- The project will be responsible for System Connection Charges of \$7,700.00 per EDU based on current rates.
- The Engineering Department would like to request permission to prepare and post notices for a Public Hearing on the annexation of the area.
- A tentative Public Hearing is currently scheduled for July 23, 2024 at the regular County Council meeting.



PERMISSION TO PREPARE AND POST NOTICES
Marvel Minor Subdivision

Existing SSD Area of Interest





FOXLANE
HOMES

May 10, 2024

Mr. John J. Ashman, Director
Utility Planning & Design Review
Sussex County Engineering Department
2 The Circle
Georgetown, DE 19947

RE: Marvel Minor Subdivision Sewer District Annexation

John,

Please let this letter serve as our official request to annex the subject parcels into the Sussex County sanitary sewer district. For reference, the parcels are identified as TM #134-7.00-162.00 & 162.01.

We appreciate your assistance with this matter and please do not hesitate to contact me at your earliest convenience if there is anything else that you may need.

Sincerely,

John Murray
Land Development Manager

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
UTILITY PLANNING	(302) 855-1299
FAX	(302) 855-7799



Sussex County

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sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Zion Church Road Storage Expansion of the Sussex County Unified Sanitary Sewer District

PERMISSION TO POST FACT SHEET

- Expansion of the Sussex County Unified Sanitary Sewer District (Johnson's Corner Area)
- The Engineering Department has received a request from Davis, Bowen & Friedel, Inc on behalf of their client AWH Properties, LLC the owners/developers of a project to be known as Zion Church Road Storage (East & West).
- The request includes parcels 533-11.00-23.00, 23.02, 23.03 & 23.04.
- The projects are proposed as a storage facility & warehouses.
- The project will be responsible for System Connection Charges of \$7,700.00 per EDU based on current rates.
- The Engineering Department would like to request permission to prepare and post notices for a Public Hearing on the annexation of the area.
- A tentative Public Hearing is currently scheduled for August at a regular County Council meeting.

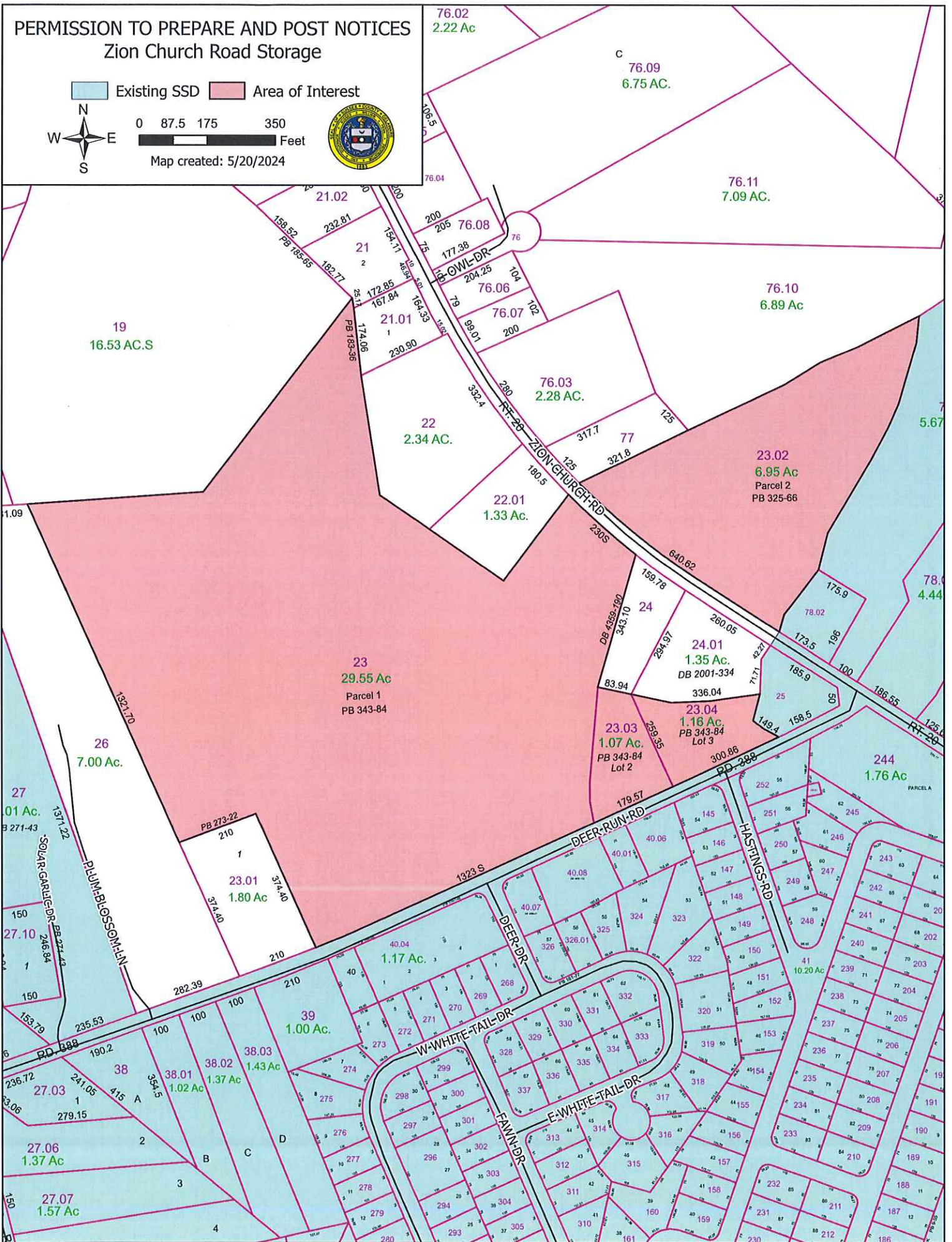


PERMISSION TO PREPARE AND POST NOTICES Zion Church Road Storage

Existing SSD Area of Interest



0 87.5 175 350 Feet
Map created: 5/20/2024





ARCHITECTS • ENGINEERS • SURVEYORS

May 10, 2024

Sussex County Engineering Department
2 The Circle
P.O. Box 589
Georgetown, DE 19947

Attn: Mr. John Ashman

Re: **Zion Church Road Storage -East
Sewer Service Concept Evaluation**
Tax Map # 533-11.00-23.02
DBF # 4065A001.K01

Ring W. Lardner, P.E.
W. Zachary Crouch, P.E.
Michael E. Wheelleton, AIA, LEED GA
Jason P. Loar, P.E.
Jamie L. Sechler, P.E.

Dear Mr. Ashman,

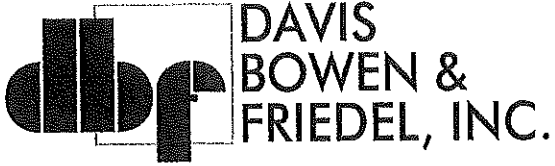
On behalf of our client, AWH Properties, LLC, we would like to request an extension of the Sewer District Boundary for the above-referenced project. This would move the project from a Teir II area to a Teir I area. The project is located in the Unified Sanitary Sewer District and the estimated number of EDUs is 2.

Should you have any questions regarding this submission, please contact me at (302) 424-1441 or via e-mail at jls@dbfinc.com.

Sincerely,
Davis, Bowen & Friedel, Inc.

A handwritten signature in black ink, appearing to read 'JLS', is written over a light blue horizontal line.

Jamie L. Sechler, P.E.
Principal



ARCHITECTS • ENGINEERS • SURVEYORS

May 10, 2024

Sussex County Engineering Department
2 The Circle
P.O. Box 589
Georgetown, DE 19947

Attn: Mr. John Ashman

Re: **Zion Church Road Storage – West
Sewer District Boundary Extension**
Tax Map # 533-11.00-23.00
DBF # 4065A001.K01

Ring W. Lardner, P.E.
W. Zachary Crouch, P.E.
Michael E. Wheelleton, AIA, LEED GA
Jason P. Loar, P.E.
Jamie L. Sechler, P.E.

Dear Mr. Ashman,

On behalf of our client, AWH Properties, LLC, we would like to request an extension of the Sewer District Boundary for the above-referenced project. This would move the project from a Teir II area to a Teir I area. The project is located in the Unified Sanitary Sewer District and the estimated number of EDUs is 106.

Should you have any questions regarding this submission, please contact me at (302) 424-1441 or via e-mail at jls@dbfinc.com.

Sincerely,
Davis, Bowen & Friedel, Inc.

A handwritten signature in black ink, appearing to read 'JLS', is written over a light blue horizontal line.

Jamie Sechler, P.E.
Principal

**Proposed South Blades Area of the
Sussex County Unified Sanitary Sewer District**

Permission to Post Fact Sheet

- Expansion of the Sussex County Unified Sanitary Sewer District by creation of a new Area.
- Parcels 132-6.00-95.00 & 88.01 and parcels 132-11.00-41.00 & 41.02
- The Engineering Department has received a request from BioEnergy Devco for sewer service for the proposed Delmarva Bioenergy Center-Seaford (BDC) facility south of Blades. The facility is not contiguous to the existing boundary therefore it would need to be established as a new area, holding a public hearing and referendum.
- The request comes for a flow allocation of 100,000 GPD fully equalized with BDC obtaining a pretreatment agreement with the City of Seaford.
- BDC will be responsible for all system connection charges at the completion of the referendum process, if in favor.
- BDC will be responsible for design & construction of a pumpstation and forcemain to connect to the County's existing infrastructure. And will be responsible for a catch-up contribution as outlined in the Use of Existing Infrastructure Agreement.

April 24, 2024

Mr. John Ashman, Director of Utility Planning
Sussex County Administrative Office Building
2 The Circle - 3rd Floor, Room 324
P.O. Box 58
Georgetown, DE 19947

Re: Delmarva Bioenergy Center – Seaford (DBC)
Sewer System Concept Evaluation

Dear Mr. Ashman:

BDG DE, LLC (“BDC”), a wholly owned subsidiary of Bioenergy Devco, LLC, has reviewed the June 17, 2020 Sewer Service Concept Evaluation (the “SSCE”) for the proposed Delmarva Bioenergy Center – Seaford (“DBC”) to be located at 28338 Enviro Way, Seaford, DE 19973. We understand the following:

1. Sussex County can extend the boundaries of the Unified Sanitary Sewer District to **exclusively serve the Tax Map & Parcels** owned by BDC and listed on the attached Project Information Sheet (the “Site”), in accordance with the SSCE. Boundary adjustment requires completion of Sussex County’s referendum process.
2. A flow allocation of approximately 100,000 gallons¹ per day fully equalized can be discharged by BDC at Manhole No. 17 on South Market Street in Blades.
3. BDC will be responsible for constructing a new dedicated pumping station and force main to serve the Site. This infrastructure will be designed, permitted, and constructed in accordance with Sussex County Engineering Department Design Standards, latest edition. Upon completion by BDC and acceptance by Sussex County, ownership of this infrastructure will be conveyed from BDC to Sussex County.
4. BDC will be responsible for payment of the System Connection Charges at the completion of the referendum process. These charges include both impact fees and catch-up charges and will be included in an Infrastructure Use Agreement between BDC and Sussex County.
5. BDC will be responsible for obtaining a pretreatment agreement with the City of Seaford.

ONCE COUNTY
OWNS WE CAN
UTILIZE

Based on the above, BDC requests to be included in the Sussex County Unified Sanitary Sewer District at this time.

Sincerely,


Willard C. Hoagland (Apr 24, 2024 13:48 EDT)

Willard C. Hoagland
Chief Financial Officer
BDG DE, LLC

cc: David Small, Verdantas LLC
w/o enclosures

¹Estimated flow rate. To be finalized within 45 days during facility engineering.

Project Information Sheet

Engineer Information: Verdantas LLC
1060 South Governors Avenue
Dover, DE 19904
Scott Hoffman
Phone: (302) 674-9280

Developer Information: BDG DE, LLC
c/o Bioenergy Devco, LLC
50 State Circle 9250
Annapolis, MD 21401
Christine McKiernan
Phone: (201) 779-1958

Project Name: Delmarva Bioenergy Center – Seaford

Tax Map & Parcels: 132-6.00.95.00, 132-6.00-88.01, 132-11.00-41.00, and 132-11.00-41.02

To Be Introduced: 6/11/24

Council District 3: Mr. Schaeffer
Tax I.D. No.: 334-5.00-175.00 (p/o)
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR - MEDIUM RESIDENTIAL DISTRICT TO ALLOW FOR MULTI-FAMILY USE TO BE LOCATED ON A 7.882 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.071 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS

WHEREAS, on the 5th day of December 2023, a conditional use application, denominated Conditional Use No. 2499 was filed on behalf of Northstar Property, LLC; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2499 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article V, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2499 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the southeast side of Lewes-Georgetown Highway (Rt. 9) and the northwest and southeast sides of Beaver Dam Road (S.C.R. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1) and being more particularly described in the attached legal description prepared by Davis, Bowen, & Friedel, Inc., said parcel (portion of) containing 7.882 ac., more or less.

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

To Be Introduced: 6/11/24

Council District 3: Mr. Schaeffer
Tax I.D. No.: 334-5.00-175.00 (P/O)
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A 12.696-ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.071 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS

WHEREAS, on the 5th day of December 2023, a zoning application, denominated Change of Zone No. 2025 was filed on behalf of Northstar Property, LLC; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 2025 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County, and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation C-3 Heavy Commercial District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the southeast side of Lewes-Georgetown Highway (Rt. 9) and the northwest and southeast sides of Beaver Dam Road (S.C.R. 285/Rt. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1) and being more particularly described in the attached legal description prepared by Davis, Bowen, & Friedel, Inc., said parcel (portion of) containing 12.696 ac., more or less.

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

To Be Introduced: 6/11/24

Council District 3: Mr. Schaeffer
Tax I.D. No.: 334-5.00-175.00 (P/O)
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A 7.882-ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.071 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS

WHEREAS, on the 5th day of December 2023, a zoning application, denominated Change of Zone No. 2026 was filed on behalf of Northstar Property, LLC; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 2026 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County, and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation MR Medium Density Residential District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the southeast side of Lewes-Georgetown Highway (Rt. 9) and the northwest and southeast sides of Beaver Dam Road (S.C.R. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1) and being more particularly described in the attached legal description prepared by Davis, Bowen, & Friedel, Inc., said parcel (portion of) containing 7.882 ac., more or less.

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

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
(302) 855-7878 T
pandz@sussexcountyde.gov



Sussex County

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sussexcountyde.gov

Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: June 6, 2024

RE: County Council Report for C/U 2514 filed on behalf of Bruce Sentman Jr.

The Planning and Zoning Department received an application (C/U 2514 filed on behalf of Bruce Sentman) for a small engine & lawn mower repair business and sales shop, to be located at Tax Parcel 133-16.00-73.03. The property is located on the east side of Sheep Pen Road (SCR 328), approximately 250 feet northeast of Godwin School Road (SCR 410). The parcel size is 42,961 s.f +/-

The Planning & Zoning Commission held a Public Hearing on the application on May 8, 2024. At the meeting of May 22, 2024, the Planning & Zoning Commission recommended approval of the application for the 6 reasons stated and subject to the recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of May 8 2024, and May 22, 2024.

Minutes of the May 8, 2024, Planning & Zoning Commission Meeting

C/U 2514 Bruce Sentman

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL ENGINE & LAWN MOWER REPAIR BUSINESS AND SALES SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 42,961 SQUARE FEET, MORE OR LESS. The property is lying on the east side of Sheep Pen Road (S.C.R 328), approximately 250 feet northeast of Godwin School Road (S.C.R. 410). 911 Address: N/A. Tax Map Parcel: 133-16.00-73.03.



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

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the staff analysis, a copy of the applicant survey and sketch plan, a copy of Ordinance No. 2364 dated 16th of September 2014, a copy of the DelDOT SLER, and zero comments.

Mr. Bruce Sentman spoke on behalf of his application for a conditional use to operate a small engine repair business and to add in sales for 10 or 12 golf carts that would be sitting out when I'm open inside the buildings when we are closed.

Ms. Wingate asked if the business would like a sign and the proposed hours of operation.

Mr. Sentman stated that he would like a sign, that his hours would be the same as his current repair shop business hours, which are Monday through Saturday 8:00 AM to 5:00 PM, and no business on Sunday; that the golf carts would be for sale would be placed on his property line in front of his business across from Plantation Lakes property.

Ms. Wingate explained that he may want to consider Sunday hours in his Conditional Use because if he chooses to have any golf cart sales on those days and his hours are only listed as the same as his repair shop business he would be in violation of the conditional use.

Mr. Robertson commented that in the information online, Ordinance #2364 has conditions A through J that cover the businesses Mr. Sentman mentioned; that if the Commission approved this Conditional Use he'd defer it just not to hold things up, but since everything's already established we would want to change it so that the golf carts can be sold on Sunday hours, maybe the other hours of operations stay the same, that it covers the sign, it covers the dumpster and security lights.

The Commission found that no one was present to speak in favor or opposition to the application.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/U 2514 Bruce Sentman. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

Minutes of the May 22, 2024, Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since May 8, 2024.

Ms. Wingate moved that the Commission recommend approval of Conditional Use # 2514 for Bruce Sentman to modify his existing conditional use for small engine and lawn mower repairs to permit the sale of golf carts based on the record made during the public hearing and for the following reasons:

1. On September 16, 2014, Sussex County Council Approved Ordinance # 2364 for Conditional Use #1989 to allow this applicant to perform repairs on small engines, generators and lawn mowers.
2. The Applicant has conducted this business successfully at this location and seeks to add the ability to sell golf cars from the location in addition to the repair service.

3. The Applicant intends to continue to keep this business small and without any employees. The Applicant will continue to reside upon the property.
4. This is a limited and reasonable expansion of the Applicant's business and will not have any adverse impact upon traffic or the neighborhood.
5. There was no opposition to this application.
6. The conditions imposed by Ordinance #2364 and Conditional Use # 1989 shall remain in effect, except that Conditions A and E of that Ordinance shall be modified to allow the retail sales of golf cars (and similarly designed vehicles) from the premises. Provided, however, that (a) the golf cars shall be stored indoors when not displayed; (b) the golf cars shall only be displayed outdoors during daylight hours; and (c) the golf cars shall not be displayed within the property's setbacks.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2514 Bruce Sentman for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Ms. Wingate – yea, Mr. Mears – yea, Mr. Collins – yea, Chairman Wheatly - yea

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
HOLLY J. WINGATE, VICE-CHAIRMAN
SCOTT COLLINS
J. BRUCE MEARS
BRIAN BUTLER



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302-855-7878 T
302-854-5079 F
JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: May 8, 2024

Application: CU 2514 - Bruce Sentman Jr.

Applicant: Bruce Sentman Jr.
24230 Sheep Pen Road
Millsboro, DE 19966

Owner: Bruce Sentman Jr.
24230 Sheep Pen Road
Millsboro, DE 19966

Site Location: Located on the northeast side of Godwin School Road (S.C.R. 410) and southeast of Sheep Pen Road adjacent to the municipal boundary of the Town of Millsboro.

Current Zoning: Agricultural Residential (AR-1) Zoning District

Proposed Use: Small Engine & Lawn Mower Repair Business & Sales Shop
Comprehensive Land
Use Plan Reference: Developing Area

Councilmanic District: Mr. Rieley

School District: Indian River School District

Fire District: Millsboro Fire Co.

Sewer: Private – On Site Septic

Water: Private - Well

Site Area: 0.99 -acres +/-

Tax Map ID.: 133-16.00-73.03



PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
HOLLY J. WINGATE, VICE-CHAIRMAN
J. BRUCE MEARS
GREGORY SCOTT COLLINS
BRIAN BUTLER



Sussex County

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SUSSEXCOUNTYDE.GOV
302-855-7878 T
302-854-5079 F
JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR

Memorandum

To: Sussex County Planning Commission Members
From: Mr. Michael Lowrey, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: May 2nd, 2023
RE: Staff Analysis for CU 2514 - Bruce Sentman

This memo is to provide background and analysis for the Planning Commission to consider as a part of Application CU 2514 - Bruce Sentman to be reviewed during the May 8th, 2024 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

Please note that the following staff analysis is for informational purposes only and does not prejudice any decision that the Sussex County Planning & Zoning Commission or Sussex County Council may wish to make as part of any Application submitted to the Department.

Tax Parcel ID: 133-16.00-73.03

Proposal: The request is for a Conditional Use for Tax Parcel 133-16.00-73.03 to allow for a Small Engine & Lawn Mower Repair Business & Sales Shop on a parcel lying on northeast side of Godwin School Road (S.C.R. 410) and southeast of Sheep Pen Road adjacent to the municipal boundary of the Town of Millsboro. Sussex County Council previously approved Conditional Use on the same parcel for use as “Small Engine and Lawn Mower Repair Shop” subject to ten (10) Conditions of Approval at their meeting on September 16, 2014. The approved (CU 1989 - Ord. No. 2364) with the Conditions of Approval has been included in the Record for this Application. The subject of this current Application is the addition of the retail “Sales Shop” use component to the existing approved uses approved via the aforementioned CU 1989. The parcel is comprised of 0.99 acres +/-.

Zoning: The Parcel is zoned Agricultural Residential (AR-1) District. The parcels adjacent to the subject property are zoned Agricultural Residential (AR-1) District with the municipal boundary of the Town of Millsboro immediately nearby to the north and east of the site.

Future Land Use Map Designation w/in Comprehensive Plan: Developing Area

Applicability to Comprehensive Plan: The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the Plan indicates that the subject property is designated as a Growth Area and has a land use designation of “Developing



Area.” The properties adjacent to the subject Parcel are also categorized as “Developing Area” with the parcels beyond the Developing Area to the north and west categorized with the “Municipalities Area” designation associated with the jurisdiction of Millsboro.

As outlined in the 2018 Sussex County Comprehensive Plan, Developing Areas are emerging growth areas that “that demonstrate the characteristics of developmental pressures” and are “adjacent to municipalities, within or adjacent to potential future annexation areas of a municipality, or adjacent to Town Centers” (2018 Sussex County Comprehensive Plan, 4-14). The Plan also notes that “in selected areas and at appropriate intersections, commercial uses should be allowed”. Furthermore, the Plan notes “appropriate mixed-use development should also be allowed. In doing so, careful mixtures of homes with light commercial and institutional uses can be appropriate to provide for convenient services” (2018 Sussex County Comprehensive Plan, 4-14).

Further Site Considerations:

- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** The site is within the vicinity of active agricultural lands.
- **Interconnectivity:** Staff recommend the Plan incorporate as much directional connectivity as possible in the design in order to meet County Code. Connectivity will be important due to future development potential adjacent to the property and in close proximity to the municipal boundary of the Town of Millsboro.
- **Transportation Improvement District (TID):** N/A
- **Forested Areas:** N/A
- **Wetlands Buffers/Waterways:** N/A
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The property is located within Flood Zone X and in an area of “Fair” Groundwater Recharge Potential.

Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use Application to allow for a Small Engine & Lawn Mower Repair Business & Sales Shop, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

Existing Conditional Uses within the Vicinity of the Subject Site: A Data Table and Supplemental Map have been supplied which provide further background regarding the approval status of Applications in the area, including the location of all other Conditional Use Applications that are less than 1 mile distance from the subject site.

Conditional Use Applications

(Within a 1-mile radius of the subject site)

Application CU Number	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
165	Mary Ellen Grinolds	AR-1	Beauty Shop	Approved	10/9/1973	N/A
432	Leroy Rickards & Charlotte	AR-1	Antique & Gift Shop & Furniture Refinishing	Approved	8/2/1977	N/A
770	Estate of G.T. White	AR-1	Borrow Pit	Approved	1/10/1984	N/A
1461	Jeffrey Scott Burton	AR-1	Holding Area for Storage Units	Approved	8/27/2002	N/A
1620	P G S Properties LLC	AR-1	Borrow Pit	Approved	9/20/2005	1792
1989	Bruce Sentman	AR-1	Small Engine and Lawn Mower Repair Shop	Withdrawn	9/16/2014	2364
2221	Dominic Lombardi	AR-1	Small Auto Repair	Approved	6/30/2020	2722

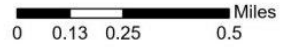


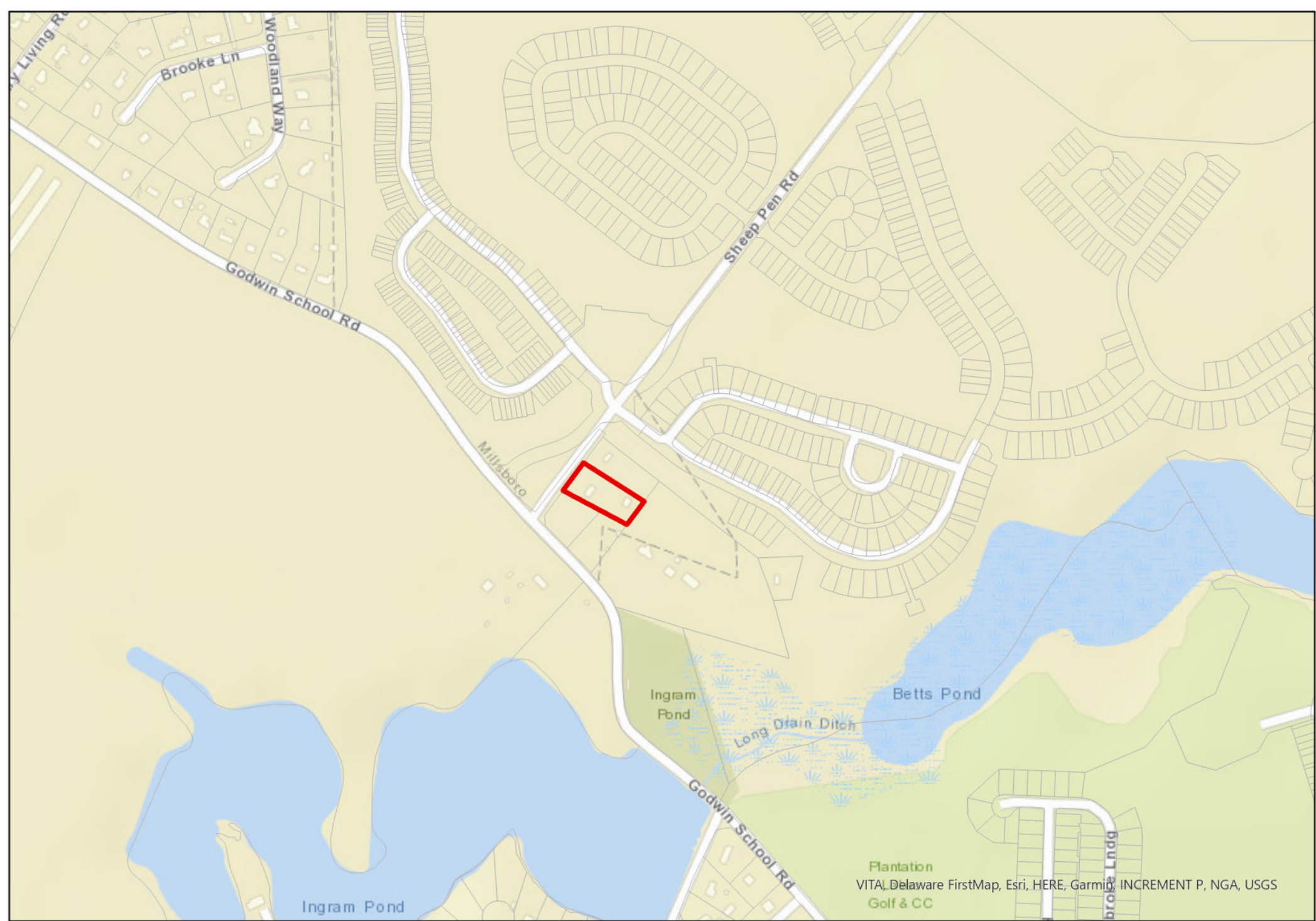
CU 2514 - Bruce Sentman
 CUs Within 1 Mile Radius
 TM#133-16.00-73.03

- CU 2514 - Bruce Sentman
- CU 2514 - CUs Vicinity - 1 Mile


CU 2514 Bruce Sentman - 1 Mile Radius

Municipal Boundaries

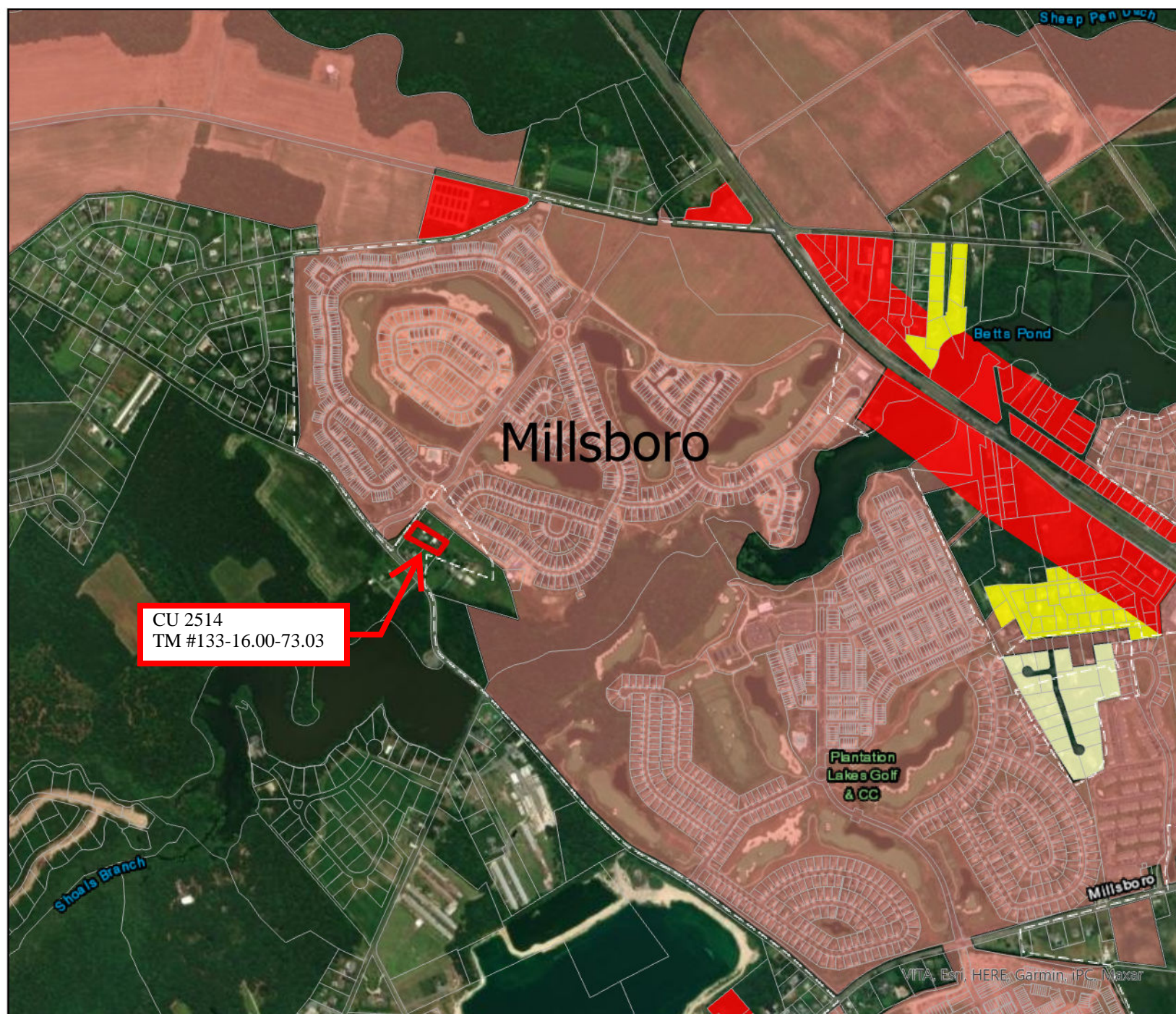




CU 2514 - Bruce Sentman Jr.
Street Map
TM#133-16.00-73.03

 CU 2514 - Bruce Sentman Jr.







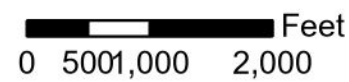
Zoning

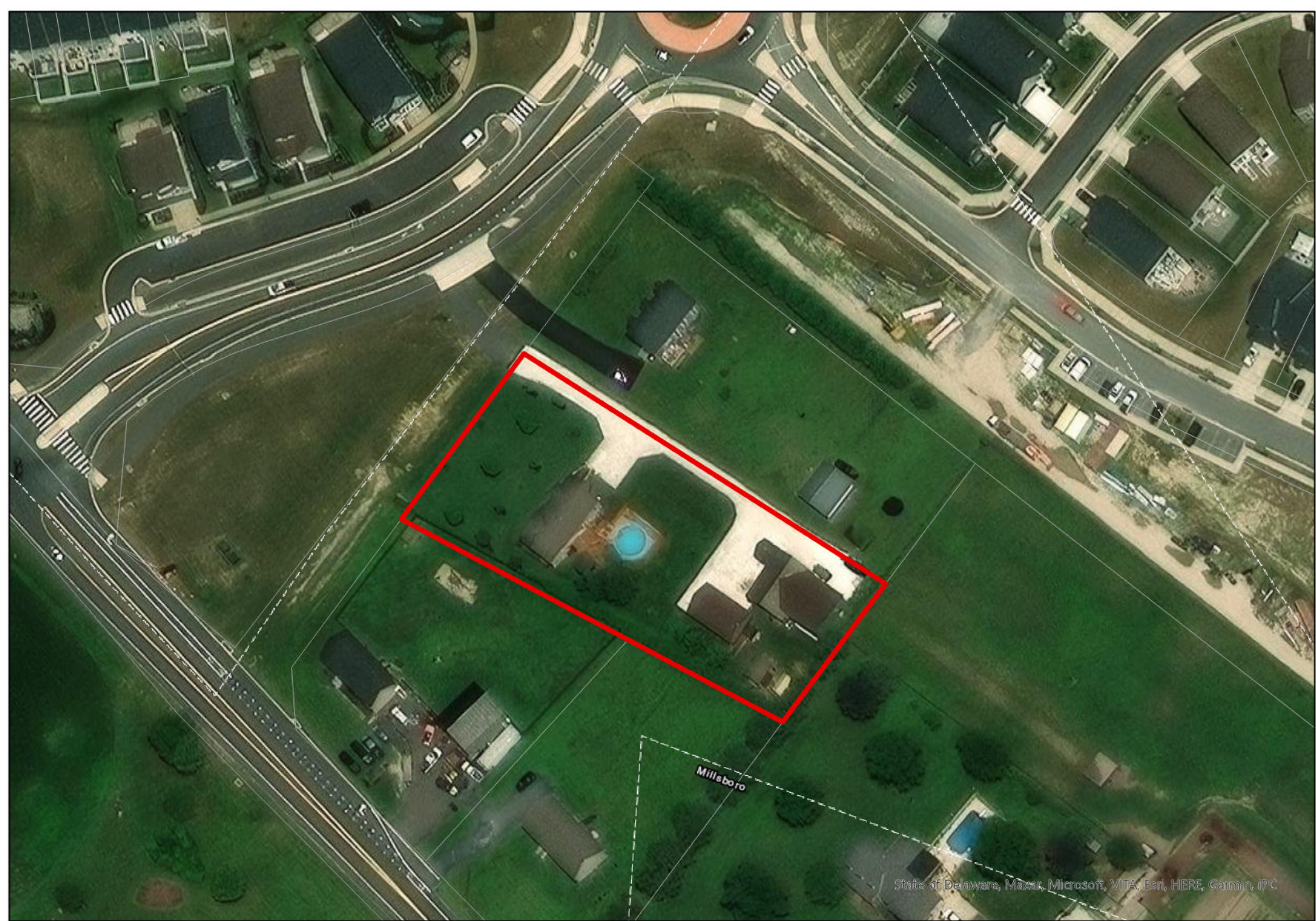
-  Agricultural Residential - AR-1
-  Agricultural Residential - AR-2
-  Medium Residential - MR
-  General Residential - GR
-  High Density Residential - HR-1
-  High Density Residential - HR-2
-  Vacation, Retire, Resident - VRP
-  Neighborhood Business - B-1
-  Neighborhood Business - B-2
-  Business Research - B-3
-  General Commercial - C-1
-  General Commercial - C-2
-  General Commercial - C-3
-  General Commercial - C-4
-  General Commercial - C-5
-  Commercial Residential - CR-1
-  Institutional - I-1
-  Marine - M
-  Limited Industrial - LI-1
-  Light Industrial - LI-2
-  Heavy Industrial - HI-1

CU 2514
TM #133-16.00-73.03

CU 2514 - Bruce Sentman Jr.
Zoning Map
TM#133-16.00-73.03

 CU 2514 - Bruce Sentman Jr.
 Municipal Boundaries





State of Delaware, Maxar, Microsoft, VITA, Esri, HERE, Garmin, IPC

CU 2514 - Bruce Sentman Jr.
Aerial Map
TM#133-16.00-73.03


 CU 2514 - Bruce Sentman Jr.






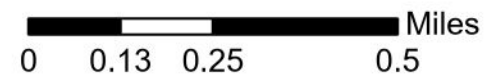
CU 2514 - Bruce Sentman
 CUs Within 1 Mile Radius
 TM#133-16.00-73.03

 CU 2514 - Bruce Sentman

 CU 2514 - CUs Vicinity - 1 Mile

 CU 2514 Bruce Sentman - 1 Mile Radius

 Municipal Boundaries



Introduced: 4/16/24

Council District 5: Mr. Rieley
Tax I.D. No.: 133-16.00-73.03
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL ENGINE & LAWN MOWER REPAIR BUSINESS AND SALES SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 42,961 SQUARE FEET, MORE OR LESS

WHEREAS, on the 21st day of February 2024, a Conditional Use application, denominated Conditional Use No. 2514 was filed on behalf of Bruce Sentman Jr.; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2514 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsections 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2514 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on the east side of Sheep Pen Road (S.C.R 328), approximately 250 feet northeast of Godwin School Road (S.C.R. 410), and being more particularly described in the attached legal description prepared by Sergovic, Carmean & Weidman, P.A., said parcel containing 42,961 square feet, more or less.

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



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: June 6, 2024

RE: County Council Report for C/U 2497 filed on behalf of Bethany Court Ventures, LLC

The Planning and Zoning Department received an application (C/U 2497 filed on behalf of Bethany Court Ventures, LLC) for a Conditional Use for multi-family dwellings (6 units) in an MR Medium Density Residential Zoning District, to be located at Tax Parcel 134-5.00-4.00. The property is located on the east side of Coastal Highway (Rt.1), approximately 0.19 mile north of the intersection of Coastal Highway (Rt. 1) and Indian Harbor Villas. The parcel size is 1.28 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on May 8, 2024. At the meeting of May 22, 2024, the Planning & Zoning Commission recommended approval of the application for the 8 reasons stated and subject to the 12 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of May 8 2024, and May 22, 2024.

Minutes of the May 8, 2024, Planning & Zoning Commission Meeting

C/U 2497 Bethany Court Ventures, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM-DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.28 ACRES, MORE OR LESS. The property is lying on the east side of Coastal Highway (Rt. 1), approximately 0.19 mile north of the intersection of Coastal Highway (Rt. 1) and Indian Harbor Villas Drive. 911 Address: N/A. Tax Map Parcel: 134-5.00-4.00.



Mr. Whitehouse advised the Commission that submitted into the record were a copy of the staff analysis, a copy of the DelDOT SLER, a copy of the applicant's exhibit booklet, a copy of the applicant's conceptual site plan, a copy of Ord. 1864, dated 25th of July 2006, and zero comments received.

Mr. James Fuquay, Esq., spoke on behalf of the applicant, Bethany Court Ventures, LLC, also in attendance with him are Mr. Jason Palkewicz, from Solutions IPEM and Mr. Ed Launay, from Environmental Resources; that they are here for a conditional use application for six multifamily residential units, detached single family condominiums; that the site is located on the east side of Route one containing 1.28 acres and borders the Delaware State Park lands the three R's parking lot is to just to the north of the site and the beach itself is to the east of the site the Indian Harbor Villas Townhouse development is to the South and the Cove subdivision and the villas at Beach Cove townhouses are to the West of the site; that the applicant appeared before the Commission back in December, requesting a determination as to whether a prior conditional use approval was still valid, C/U 1639, had been approved in July of 2006 for six multifamily units, which would be single family detached units; that the final site approval for that conditional use was granted in May of 2007; that site work and some improvements begun, which included the DelDOT entrance approval and construction of the entrance and exit, and the internal drive, installation of central sewer, central water and stormwater improvements and approval of a DNREC Dune Crossing permit; that at that time the Commission made a determination that construction of that development was substantially underway and then Great Recession began which pretty much shut everything down; that in December of 2023 the determination as to the status of the C/U 1639 was requested and in January the Commission did determine that since no construction activity had occurred for like 15 years that the conditional use would be considered to be abandoned; that the approval would be considered expired and the new a new conditional use application would be required; the only significant difference between today's application and the conditional use that had been approved prior was that the original conditional use had a swimming pool at the northern end of the site which has been removed and replaced with a pavilion and a small park or gathering area and two additional parking spaces, which we believe is a more practical amenity for this size type of development; that central sewer will be provided by Sussex County; that the sewer infrastructure has been installed and it will be upgraded as required; that central water will be provided by Sussex Shores Water Company and that infrastructure has also been installed and will be upgraded as required. The Dell dot approved entrance and exit has been constructed and provides an entrance from Route one and an exit to Route one; that the interior drive is in existence; that it does need to be top coated and that would be done when construction was completed; that if DelDOT requires any upgrades they would be completed; that a DelDOT SLER stated that the traffic impact of the development would be diminutive; that stormwater management will comply with all applicable requirements; that there will be a dune crossing to provide access from the site to the State Park beach; that a valid crossing permit had been issued, but the precise location and type of crossing has not yet been formalized; that there are no wetlands located on the site there is a 10 foot wide landscape buffer along the southern boundary of the site and that's the portion of the site that's adjacent to the Indian River Harbors Villas property; that the six condominium buildings will be located as shown on the site plan with each unit having a two car garage. Units one through five or the North units will have one additional parking space located adjacent to the building; that unit 6 has two additional spaces in the driveway; that at the northern end of the site, there would be a gathering area that would consist of a covered pavilion with stairs to a viewing deck on the roof, a small landscape park area, the mailboxes for the community would be located there and two additional parking spaces located in that area; that the site is zoned MR Medium Density Residential and the purpose of the MR district is to provide medium density residential development in areas generally

urban in character or where central sewer and water is available; that the comp plan designates the site as being in the coastal area which states that a range of housing types should be permitted in the coastal area, including multifamily units, and that medium and higher density of four to 12 units per acre are appropriate in areas where central water and sewer are available; that the six units of rough out to approximately 4.7 units per acre and the proposed 6 units are in accordance with both the zoning ordinance and the Comprehensive plan; that the use is in character with the area, the village, the Villas at Beach Cove on the West side of Route one is a multifamily development of 25 units and has a density of 12 units to the acre, Indian Harbor Villas, which is the development bordering the site on the South side is a multi-family development of 32 units with a density of 15.6 units per acre; that South of the Indian Harbor development is the Atlantic Water Gate multifamily development, one of the first developments built down in that area, that has an approximate density of 12 units per acre; that this six multifamily units was previously approved by the county as C/U 1639.

Mr. Mears questioned if the 10-ft wide landscape buffer would be permitted or if it would require a waiver.

Mr. Whitehouse explained that because this is a Conditional Use they have control over things such as the buffer within the conditions of approval and since it is currently less than normally requested, they could take it off and require a new one, but it is not mandatory so it could be a provision.

Mr. Robertson stated that after going over the conditions of approval of the original C/U from 2006; that due to the location of this property, they requested a construction fence be put in place to prevent debris from blowing onto the State Park, the beach, or neighboring properties and they would ask that that be included in the proposed conditions.

The Commission found that there was no one present to speak in favor or opposition to the application.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/U 2497 Bethany Court Ventures, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

Minutes of the May 22, 2024, Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since May 8, 2024.

Mr. Robertson read Mr. Mears' prepared motion per Mr. Mears' request.

Mr. Collins moved that the Commission recommend approval of Conditional Use # 2497 for Bethany Court Ventures, LLC, for 6 Multi-Family Units in a MR Medium-Density Residential District based on the record made during the public hearing and for the following reasons:

- 1) This application seeks the approval of 6 multi-family structures on approximately 1.28 acres of land. The location was previously approved for 6 multi-family units in 2007 as Conditional Use #1639. That prior approval has since lapsed, and this application seeks to reinstate an approval for a similar 6-unit project.
- 2) Six new multifamily units in this location will not overburden this property and will be similar to the other developments and densities to the south of this site and across Coastal Highway from this site.
- 3) The site is in the Coastal Area according to the Sussex County Comprehensive Plan. This type of development is appropriate in this Area according to the Plan, which states that “a range of housing types” are acceptable here, including medium and high densities when a site is served by central water and sewer, where the use is in keeping with the character of the area and other similar factors. These types of considerations exist with regard to this site.
- 4) The proposed development will not have an adverse impact on the neighboring properties or community.
- 5) The proposed development will not have an adverse impact upon traffic or roadways.
- 6) The development will be served by central sewer provided by Sussex County.
- 7) The development will be served by central water.
- 8) There was no opposition to this conditional use.
- 9) This recommendation is subject to the following conditions:
 - A. The maximum number of residential units shall be 6.
 - B. The developer and then the condominium association shall be responsible for the perpetual maintenance of the project’s stormwater management facilities, erosion and sedimentation control facilities, roadways and other common areas.
 - C. All entrance, intersection, roadway and multi-modal improvements shall be completed by the developer as required by DelDOT.
 - D. The trash receptacles shall be standard roll-out residential containers assigned to the 6 units. They shall be stored in an enclosed area on the area of this site where the building is located. No dumpster shall be permitted.
 - E. The project shall be served by Sussex County sewer. The developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.
 - F. The project shall be served by central water to provide drinking water and fire protection.
 - G. Construction activities, including site work and deliveries, shall only occur between 8:00 am and 5:30 pm Monday through Friday, and between 8:00am and 4:00pm on Saturdays. There shall be no construction activities at the site on Sundays. A 24 inch by 36 inch “NOTICE” sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.
 - H. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities. The system shall be designed and maintained using best management practices.
 - I. The Final Site Plan shall include a Grading Plan for the site. No building permits shall be issued until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
 - J. A 10-foot wide landscaped buffer shall be installed along the southern boundary of this property as depicted on the Preliminary Site Plan. A landscape plan showing the landscape

throughout this project and including this buffer area shall be included as part of the Final Site Plan.

- K. A construction fence shall be erected that is high enough to act as a sufficient barrier against blown or discarded construction materials and debris scattering across or impacting the adjacent beach, State land, Coastal Highway or other adjacent properties. In addition, all construction dumpsters shall be covered when not actively in use.
- L. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2497 Bethany Court Ventures, LLC. for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Ms. Wingate – yea, Mr. Mears – yea, Mr. Collins – yea, Chairman Wheatly - yea

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
HOLLY J. WINGATE, VICE-CHAIRMAN
SCOTT COLLINS
J. BRUCE MEARS
BRIAN BUTLER



Sussex County

DELAWARE
sussexcountyde.gov
302-855-7878 T
302-854-5079 F
JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: May 8, 2024

Application: CU 2497 - Bethany Court Ventures, LLC

Applicant: Bethany Court Ventures, LLC
Attn: Bevan Connell
102 Anchorage Drive
Bethany Beach, DE 19930

Owner: Bethany Court Ventures, LLC
Attn: Bevan Connell
102 Anchorage Drive
Bethany Beach, DE 19930

Site Location: Located on the east side of Coastal Highway (Rt. 1), approximately 1.1-mile(s) south of Indian River Inlet on the southeast corner of the intersection of Coastal Highway (Rt. 1) and Three Rs Road (Rt. 24).

Current Zoning: Medium-Density Residential (MR) Zoning District

Proposed Use: Multifamily Dwellings (6 Units)

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Bethany Beach Fire Co.

Sewer: Sussex County

Water: Sussex Shores

Site Area: 1.287-acres +/-

Tax Map ID.: 134-5.00-4.00



PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
HOLLY J. WINGATE, VICE-CHAIRMAN
J. BRUCE MEARS
GREGORY SCOTT COLLINS
BRIAN BUTLER



Sussex County

DELAWARE
SUSSEXCOUNTYDE.GOV
302-855-7878 T
302-854-5079 F
JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR

Memorandum

To: Sussex County Planning Commission Members
From: Mr. Michael Lowrey, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: April 26th, 2024
RE: Staff Analysis for CU 2497 - Bethany Court Ventures, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of Application CU 2497 - Bethany Court Ventures, LLC to be reviewed during the May 8th, 2024 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

Please note that the following staff analysis is for informational purposes only and does not prejudice any decision that the Sussex County Planning & Zoning Commission or Sussex County Council may wish to make as part of any Application submitted to the Department.

Tax Parcel ID: 134-5.00-4.00

Proposal: The request is for a Conditional Use for Tax Parcel 134-5.00-4.00 to allow for a multifamily structure containing six (6) dwelling units on a parcel lying on the east side of Coastal Highway (Rt. 1), approximately 1.1-mile(s) south of Indian River Inlet on the southeast corner of the intersection of Coastal Highway (Rt. 1) and Three Rs Road (Rt. 24). The parcel is comprised (1.287) acres +/-.

Zoning: The Parcel is zoned Medium-Density Residential (MR) District. The adjacent parcels on both sides of Coastal highway are also zoned Medium-Density Residential (MR) District with a sole parcel across Coastal Highway to the west zoned General Commercial (C-1) Zoning District. The AR-1 District parcels adjacent to the east and north are owned by the State of Delaware and associated with the coastal waters and wetland areas extending north to Indian River Inlet.

Future Land Use Map Designation w/in Comprehensive Plan: Coastal Area

Applicability to Comprehensive Plan: The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the Plan indicates that the subject property is designated as a Growth Area and has a land use designation of "Coastal Area." The properties to the east, west, and south of the subject Parcel are also categorized as "Coastal Area."



As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas are growth areas that the County encourages only the appropriate forms of concentrated new development, especially when environmental features are in play. The Coastal Area designation is intended to recognize the characteristics of both anticipated growth and ecologically important and sensitive characteristics. The Plan notes “A range of housing types should be permitted in Coastal Areas, including single-family homes, townhouses, and multi-family units” (2018 Sussex Comprehensive Plan 4-15).

In terms of density the Plan notes, “medium and higher density (4-12 units per acre) can be appropriate in certain locations” (2018 Sussex Comprehensive Plan 4-16).

Further Site Considerations:

- **Density:** The Application’s proposed improvement of 6 multifamily dwelling units would result in a density of 4.7 dwelling units per acre DU/AC.
- **Open Space Provisions:** Proposed 0.37 acres of Open Space (28.7% of site)
- **Agricultural Areas:** N/A
- **Interconnectivity:** The proposed concept plan appears to have interconnectivity to the south included in the design.
- **Transportation Improvement District (TID):** N/A
- **Forested Areas:** N/A
- **Wetlands Buffers/Waterways:** N/A
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The property is located within Flood Zone AE and in an area of “Good” Groundwater Recharge Potential.

Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use Application to allow for a six (6) multifamily units, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

Existing Conditional Uses within the Vicinity of the Subject Site: A Data Table and Supplemental Map have been supplied which provide further background regarding the approval status of Applications in the area, including the location of all other Conditional Use Applications that are less than 1 mile distance from the subject site.

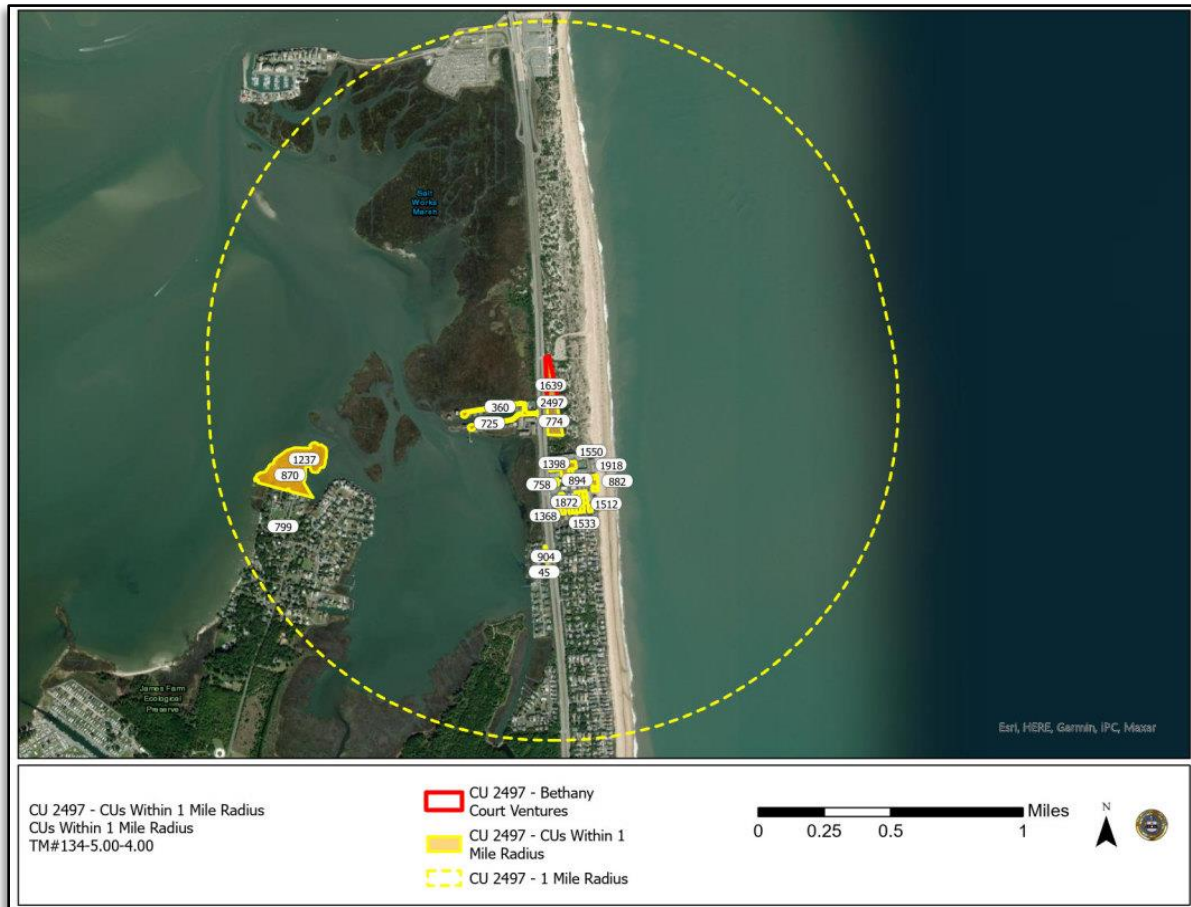
Conditional Use Applications

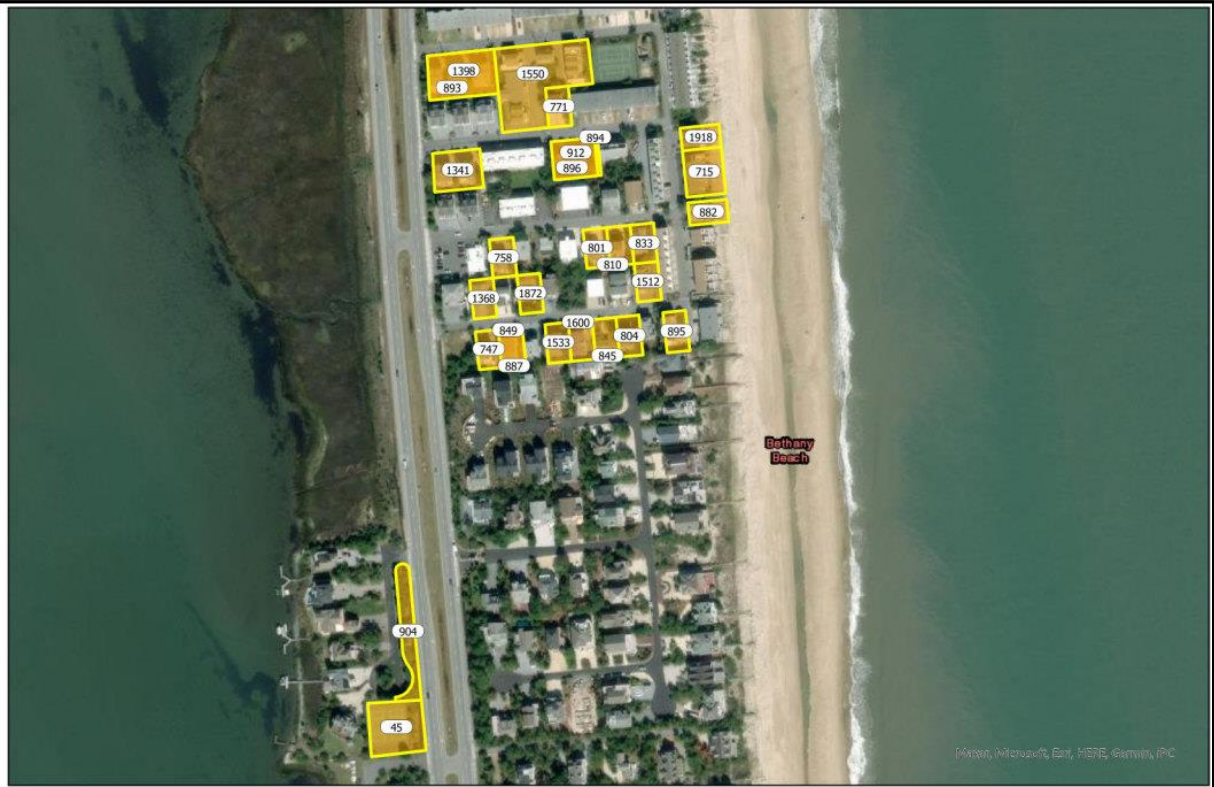
(Within a 1-mile radius of the subject site)

Application CU Number	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
45	Sussex Shores Water Co	MR	Elevated Water Tower	Approved	4/25/1972	N/A
360	Peter Economos	MR	Motel & Restaurant	Approved	6/15/1976	N/A
715	B & J Partnership	MR	Multi-Family	Approved	4/5/1983	N/A
725	John R. Zacharias	MR	Campground	Approved	7/19/1983	N/A
747	Pan-Jag Associates	MR	Two-Family Dwelling	Approved	8/30/1983	N/A
758	Murray W. Kronick	MR	Multi-Family	Approved	11/1/1983	N/A
771	Gerald A. Pusey	MR	Multi-Family	Approved	1/10/1984	N/A
774	Bethany Venture Partnership	MR	Multi-Family	Approved	3/13/1984	N/A
799	Michael A. & Sandra Poppiti	MR	Multi-Family	Approved	7/3/1984	N/A
801	Joseph R. & Margaret J. Leo	MR	Multi-Family	Approved	8/14/1984	N/A
804	Jerome P. Lewis	MR	Multi-Family	Approved	9/11/1984	N/A
810	Arnold H. Koonin	MR	Multi-Family	Approved	12/4/1984	N/A

833	Morton J. & Amy Lou Goode & Morris & Muriel Bisker	MR	Multi-Family	Withdrawn	10/1/1985	N/A
845	Murray Kronick	MR	Multi-Family	Denied	8/19/1986	N/A
849	Robert Kent	MR	Multi-Family	Denied	8/19/1986	N/A
870	V.F.W 7234	MR	Private Club	Denied	8/18/1987	N/A
882	A.S. Ray	MR	Multi-Family	Approved	6/28/1988	515
887	Triple R. Company	MR	Multi-Family	Approved	9/13/1988	529
893	Nomad Village, Inc	MR	Multi-Family	Approved	9/18/1990	721
894	Murray W. Kronick, et ux	MR	Multi-Family	Withdrawn	11/29/1988	N/A
895	Murray W. Kronick, et ux	MR	Multi-Family	Approved	7/18/1989	599
896	Murray W. Kronick, et ux	MR	Multi-Family	Withdrawn	N/A	N/A
904	Scott Wallace & Roy Cowdrey, Jr.	MR	5 Detached Single Family Units	Denied	6/13/1989	N/A
912	Murray W. Kronick	MR	Multi-Family	Approved	8/15/1989	N/A
1237	Mason Dixon VFW Post # 7234	MR	Expansion To Existing Club	Approved	5/5/1998	1229
1341	Buchanan Developers	MR	Multi-Family	Approved	8/8/2000	1387
1368	Steve Brophy	B-1	Multi-Family	Approved	11/28/2000	1415
1398	Nomad Village Inc.	MR	Multi-Family	Approved	6/5/2001	1464


1512	Randall J. Pentoney & Diane M.	MR	Multi-Family	Approved	9/9/2003	1631
1533	Kyung Cho-Miller	MR	Multi-Family	Approved	5/4/2004	1688
1550	Michael R. Emmett, Sr.	MR	Multi-Family	Approved	5/4/2004	1689
1600	Robert E. Kuhl & Kim C.	MR	Multi-Family	Approved	4/19/2005	1771
1639	Bethany Court , LLC	MR	Multi-Family	Approved	7/25/2006	1864
1872	Kim Swann	MR	Multi-Family Duplex	Approved	12/7/2010	2166
1918	Anthony S. Nerlinger	MR	Multi-Family	Approved	1/10/2012	2232

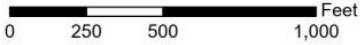


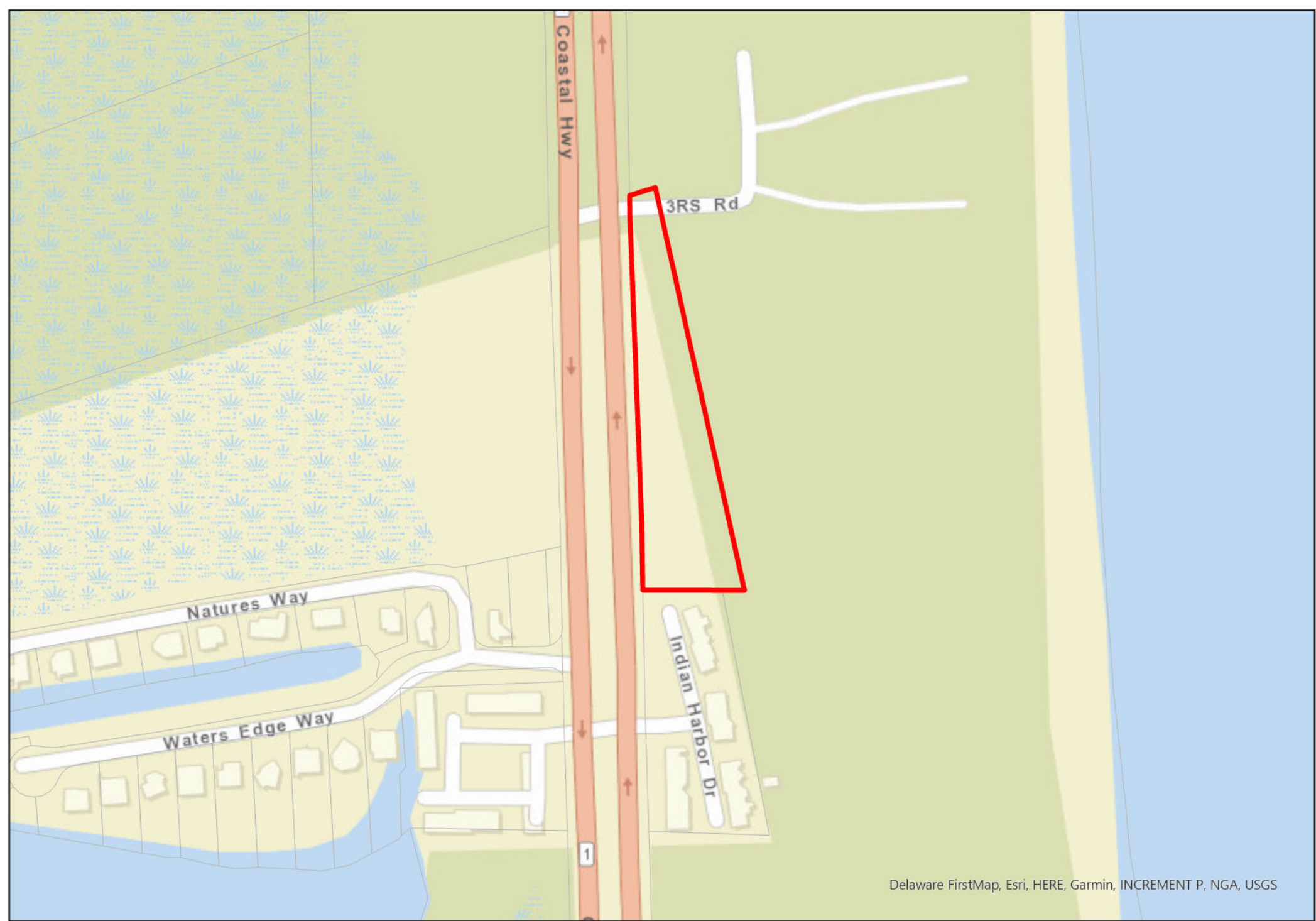


Mapbox, Microsoft, Esri, HERE, Garmin, ©C

CU 2497 - CUs Within 1 Mile Radius
 (Southern Portion)
 TM#134-5.00-4.00


 CU 2497 - CUs Within 1 Mile Radius





Delaware FirstMap, Esri, HERE, Garmin, INCREMENT P, NGA, USGS

CU 2497 - Bethany Court Ventures, LLC
Streets Map
TM# 134-5.00-4.00

 CU 2497 - Bethany Court Ventures

 Feet
0 125 250 500



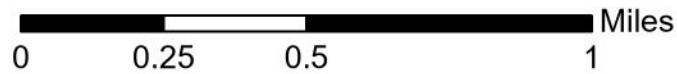


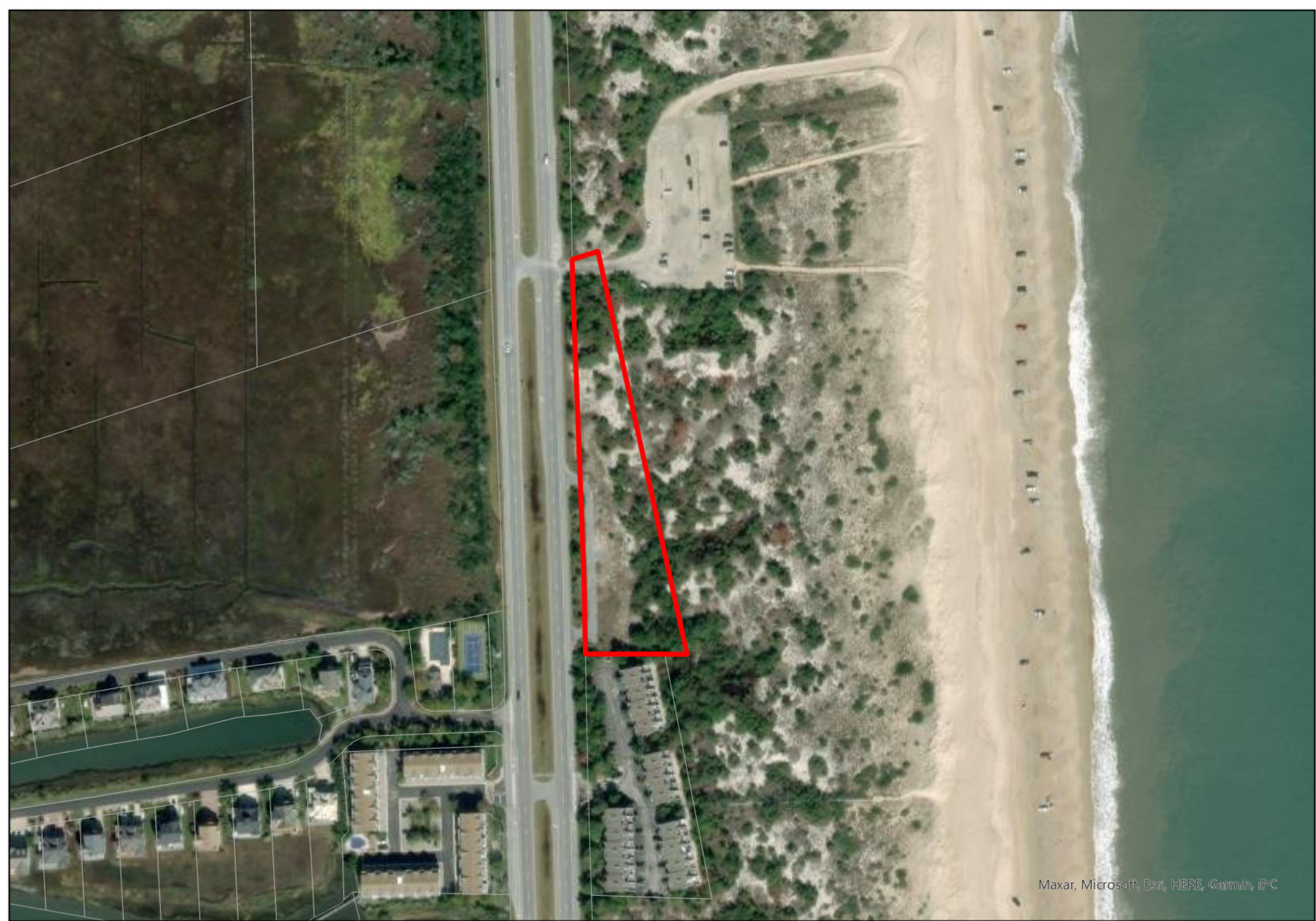
- ### Zoning
- Agricultural Residential - AR-1
 - Agricultural Residential - AR-2
 - Medium Residential - MR
 - General Residential - GR
 - High Density Residential - HR-1
 - High Density Residential - HR-2
 - Vacation, Retire, Resident - VRP
 - Neighborhood Business - B-1
 - Neighborhood Business - B-2
 - Business Research - B-3
 - General Commercial - C-1
 - General Commercial - C-2
 - General Commercial - C-3
 - General Commercial - C-4
 - General Commercial - C-5
 - Commercial Residential - CR-1
 - Institutional - I-1
 - Marine - M
 - Limited Industrial - LI-1
 - Light Industrial - LI-2
 - Heavy Industrial - HI-1

Esri, HERE, Garmin, IPC, Maxar

CU 2497 - Bethany Court Ventures, LLC
 Zoning Map
 TM# 134-5.00-4.00

CU 2497 - Bethany Court Ventures






Maxar, Microsoft, Esri, HERE, Garmin, IPC

CU 2497 - Bethany Court Ventures, LLC
Aerial Map
TM# 134-5.00-4.00

 CU 2497 - Bethany
Court Ventures

 Feet
0 125 250 500



Introduced: 4/16/24

Council District 4: Mr. Hudson
Tax I.D. No.: 134-5.00-4.00
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM-DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.28 ACRES, MORE OR LESS

WHEREAS, on the 22nd day of November 2023, a Conditional Use application, denominated Conditional Use No. 2497 was filed on behalf of Bethany Court Ventures, LLC; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County, and said Planning and Zoning Commission recommended that Conditional Use No. 2497 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article V, Subsections 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2497 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the east side of Coastal Highway (Rt. 1), approximately 0.19 mile north of the intersection of Coastal Highway (Rt. 1) and Indian Harbor Villas Drive, and being more particularly described in the attached legal description prepared by Archer & Greiner, P.C. said parcel containing 1.28 acres, more or less.

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



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: June 6, 2024

RE: County Council Report for Ordinance 24-02 relating to Accessory Dwelling Units

On March 19, 2024, the County Council introduced an Ordinance to amend the Code of Sussex County regarding Accessory Dwelling Units.

The Planning & Zoning Commission held a Public Hearing on the Ordinance on May 8, 2024. At the meeting of May 22, 2024, the Planning & Zoning Commission recommended approval of the Ordinance for the 8 reasons stated and subject to the 12 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of May 8 2024, and May 22, 2024.

Minutes of the May 8, 2024, Planning & Zoning Commission Meeting

ORD 24-02

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 110, ARTICLE III, SECTIONS 110-9 AND CHAPTER 115, ARTICLES I, IV, V, VI, VII, VIII, IX AND XXVII SECTIONS 115-4, 115-20, 115-23, 115-29, 115-32, 115-40, 115-48, 115-53, 115-56, 115-64, AND 115-210 REGARDING ACCESSORY DWELLING UNITS.

Commissioner Wheatley informed the chambers that the Ordinances would be treated differently than an application as they are going to appropriate time for anyone who wishes to speak; that you don't have to say for or against; that we're looking for presentations of about 10 minutes so we're going to run the timer for 10 minutes; that if you have a comprehensive proposal, statement or PowerPoint with a lot of historical information skip through that fairly quickly, because we're not really interested in what's in the rearview mirror as much as we're interested in what's in front of us; that it is on the



record if it's part of your written statement or part of your PowerPoint

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the ordinance as it was introduced to the County Council and one letter of support.

Mr. Whitehouse spoke in regards to the Ordinance that a summary of the accessory dwelling units, the types of accessory dwelling units and an illustration of the different types are included in the presentation; that they can be detached, the most common type that we see here in Sussex County, but they can be attached above a garage, they could be attached in an interior within a basement, or they could be in an attic in a variety of types of twinning units; that they're not necessarily detached, and when we summarized this to County Council, we explained that we already have accessory dwelling units in the code since 1998, but they're referred to as garage studio apartments, and there are certain limitations and rules that led to the creation of this ordinance; that currently they have to be detached, they have to be an accessory to a dwelling, they must be 800 square feet in area, which has led to some variance requests; that some applications have to have at least one parking space and they don't necessarily have to be a garage or a studio they just have to be detached; that in 2019 Council created a notification process that allowed applicants to apply to the county for Garage studio apartment and for staff to review them and to notify neighbors; that if an objection is received, they proceed to the Board of Adjustment as a special use exception, but in cases where there's no objection within 10 days or letters of support, applicants pay a \$50 fee and then staff can approve them administratively, and it avoids the need to go to a public hearing before the Board of Adjustments; that over 70 that have been received since 2019, but over 85% are approved without a hearing and the fee is just \$50.00 to process; that Kent County has adopted an ordinance in September 2023 with a good definition of what an ADU is; that for the record that it's a self-contained dwelling unit that is secondary to the principal dwelling unit on the property and includes independent living facilities such as a separate entrance, bathroom and kitchen; that the dwelling unit may be attached to the principal dwelling, which is accessory apartments or detached on the same lot and they have a set of rules about how many you can have on a parcel, for example, they say that only one is permitted per property and it may be attached to the dwelling, that manufactured homes are not permitted as an ADU; that they have to be in terms of size, a maximum of 50% of the floor area of the principal dwelling, they have to be constructed on a slab or crawl space and Kent County has a total lot coverage maximum requirement of 50%, that they have to comply with all applicable codes and regulations such as building code; that is adopted and in effect in Kent County, which led us to think about our presentation to County Council and the terms of how this ordinance had been drafted, is similar in style; that the ordinance before you changes the references from garage studio apartments in code to refer to accessory dwelling units and the purpose of that is to promote consistency with statewide and national practice; that we propose an increase to 1000 square feet of living space, similar to Kent County, we're proposing, the ADU be no larger than 50% of the floor area of the single family dwelling on the lots, and that there shall be no more than 50% of the lot coverage; that the ADU has at least one parking space, in addition to any parking spaces that may also exist on the lot and proposing an administrative approval process that essentially means that you can apply, pay the fee and they're reviewed administratively by staff checking for setbacks and to make sure that heights and parking spaces are provided; that the Board of Adjustment is not filled with special use exceptions; that by removing the detached requirement it will allow basement ADU's or attached ADU's, which a lot of people want ADU's but don't necessarily want them to be detached.

Mr. Robertson stated that this was a County Council initiative came out of Kent County, but also about different types of housing and affordable housing; that this is another type of affordable housing that's available and would be appropriate; that the floor area size and the lot coverage size that was so that we didn't effectively get duplexes, we wanted to make sure this remained accessory to the primary dwelling; that we wanted to include one parking space, we felt that was important, you know, particularly in some of our developments, because off street parking is at a premium and we wanted to make sure that there was a parking on site available for this; that we also had a minimum lot size because in smaller lot subdivision like a cluster subdivision where there's 7500 square foot lots for example, the building footprint is not really that big to put on another ADU or to add an ADU into a basement of an existing house with you know additional traffic; that this is within Sussex County Zoning Code and doesn't have any bearing on a homeowners association's decision through their restrictive covenants to regulate how they want homes to be located or whether they want ADU use within their development; that there would still be that private sort of contractual oversight over it and there's a bill floating around the General Assembly on this that's a little different in that it doesn't have any parking requirements and it also says that you can't prohibit them only through restrictive covenants; that ours is different from theirs, but we hope it will significantly increase the housing stock through ADU's in Sussex County.

Mr. Mears questioned if the 50% lot coverage applied to just the ADU or the ADU and the residence combined.

Mr. Whitehouse responded that the 50% would be 50% of the total lot, with an easy calculation of 50% of the square footage of the total lot.

Ms. Wingate questioned if there would be a minimum for the size of the building that could be constructed.

Mr. Whitehouse responded that within building code you still have to meet their code which includes the minimum size of the units, how many rooms, and how many bedrooms, but over time building code can change; that the ordinance does not specify a minimum size of the building, but there are the lot area requirements that would need to be followed with the design.

Ms. Wingate asked if the option would be available for a manufactured home, like a tiny home, be a consideration as to have a place to rent; that there should be an option for people to be able to put the tiny home as a detached dwelling.

Mr. Whitehouse explained that there are other provisions in our code today for manufactured homes as an emergency hardship purpose and to have them on a parcel; that this Ordinance would primarily be for stick built custom designed dwellings; that if it's an internal ADU, it would not be a manufactured home; that there is no language in the Ordinance that specifically prevents that, but it was designed for stick built dwellings.

Mr. Robertson stated that they wanted to make sure that the tiny homes were covered by that 1000-foot maximum on the dwelling size; that this isn't designed for RVs to become accessory dwellings on the one hand, but there's no reason why a tiny home couldn't be modified to become an ADU; that it would still have to align with building code and zoning prior to being an acceptable dwelling.

Mr. Butler asked about the required sewage needed to place an ADU on the property, specifically Line 29, Section 8, in which older sewers would not qualify for this, but then if there is a sewer that is designed for a 5000 sq. ft., five-bedroom house and they only build a 2000 sq. ft. house with two bedrooms, if they can bring documentation saying that this sewer is designed for this amount of rooms, would they be able to use that?

Mr. Whitehouse stated that they're still going to have to either comply with county engineering and get a permit from them or DENREC on the septic; that as part of our review process, whether it's at the time of applying for your ADU or applying for the building permit, it's all going to be checked, we're not going to allow extra building permits if there's no provision for sewer or there's no provision for septic; that as long as they have proper documentation showing the sewage system is capable of handling the new dwelling that would be all that is needed.

Mr. David Hutt, with Morris James, LLP spoke on behalf of the application in regards to his belief that this ordinance is something that is needed; that in the draft Ordinance that was submitted lines 105 to 106 are proposed to be deleted; that with the information from Mr. Whitehouse and Mr. Robertson, I would change that to say so that the IT would not be deleted, the 1st 3 words would be deleted and in that last sentence would read a lot with an accessory dwelling unit shall not have a lot coverage that is greater than 50%; that as presently written the accessory dwelling unit cannot have a lot coverage that is greater than 50% and it can only be half as big as the floor area of the main dwelling; that what I've written in the draft is not correct, but what is said would help clarify that in, in the future code provision, if it's adopted by Council; that lines 116 through 119 the purpose of it is so that if you have a detached accessory dwelling unit, it has to be behind the main dwelling and it cannot impact the setbacks; that you can't have it significantly outside the setbacks of the main dwelling; that it needs to stay visually in line with the main dwelling as it was written in the draft; that separated into two concepts, one is the attached is going to be part of the single family dwelling and that has to comply with the setback requirements in the zoning code and then identified separately that a detached accessory dwelling unit has to be behind the primary single family dwelling and its setbacks have to be the largest setback achievable between the minimum setback required in the zoning code for the primary single family dwelling and then 1/2 of the single family dwellings actual side and rear setbacks.

Mr. Robertson stated that a dwelling with a side boundary of 10 feet set back established by code in the house is built 20 feet off the property line so the house is set back 20 feet, even though it's a 10-foot setback; that the idea would be that you could build the accessory structure to 15 feet so that it's not sticking out completely behind the house so that visually, if you are looking at the front of the house the bulk of what is seen is the house in the front and not the Accessory Dwelling; that if you have a large parcel, that might make for some odd math; that when we were drafting, I think we were considering more subdivision lots then you know, large parcels; that it may be something to consider removing if appropriate.

Mr. Hutt stated that he would have no objection to its removal; that just trying to clarify the language that is there, with Mr. Robertson, pointing out the large scale lots and the visualization if you had to be a minimum of 1/2 of that setback that could be awkward to look at; that the proposal of the deletion of the minimum lot size of 1/2 acre from the requirements that are found in this draft and the purpose of the ordinance is the need for affordable housing options in Sussex County and

diversification of housing options being available; that the number of lots that exist, particularly in eastern Sussex County, are going to be 1/2 acre in size or greater is very few; that in the past, in the past 10 years I've presented 1 Standard Subdivision to this county, which meets the size you would need in order for this ordinance to have an impact and take effect; that the eastern side of Sussex County is where affordable housing is and probably is most desperately needed; that a huge section of that will never apply as cluster subdivisions have the restrictive covenants; that every person who lives in a subdivision or community that has restrictive covenants is subject to Sussex County Zoning Code and the private contractual restrictive covenants that exist for that community; that sometimes the two agree, but it's always the most restrictive of the two that applies. So if you live in Community X and Community X does not allow for an accessory dwelling unit then you couldn't do it irrespective of whether you had a half-acre, a three quarter acre or a full acre or a 7,500 square foot lot; that the concern is that if you lived in one of those communities, you could file for a special use exception request with Planning & Zoning office and you could go through the administrative process or the public hearing process you could achieve that and still have to comply with restrictive covenants; that with this ordinance, that's not an option, there are no special use exceptions available; that it's simply a permitted use and the goal of this was so that a person wouldn't have to do either the administrative process or the public hearing process; that it may have an inverse effect of eliminating a large portion of the county from being able to be apply or use the ordinance; that it's a policy argument that will not be as helpful as it's intended as the greatest number of people that are out there are in these communities; that that's why I considered striking it from the draft; that the 1/2 acre doesn't make sense within the section where these requirements are; that if you have a septic system, the lots are 20,000 square feet, which could be in a standard subdivision, but the county doesn't see them often; that maybe there's still a special use exception request route available as a permitted use for certain size lots and a special use exception for smaller lots; that this is also available on MR and GR Zoning districts with the minimum lot size being 10,000sq feet; that it's a concern because there's a whole area of Sussex County that gets bypassed or overlooked with this ordinance.

Chairman Wheatley stated that the half-acre might want to say 20,000 sq. ft. instead because technically 20,000 sq. feet is less than half an acre and maybe even say 10 sq. feet; that on a 7500sq foot lot, it would be difficult to put a detached dwelling; that the option would most likely be to take the garage and use it as an accessory dwelling unit; that would probably be your only option on a 7500sq foot lot; that anything smaller than 20,000sq feet has to go through a process.

Mr. Matt Lloyd, of 32228 Old Hickory Rd., Laurel DE, spoke in favor of the Ordinance in regards to the belief that the ADU's will help solve the affordable housing crisis that exists here in Sussex County; that in 2019, an independent Council study determined we were 10,000 households short and now five years later it has likely doubled, if not tripled in size of the supply demand problem; that these ADU's are a great way to increase the housing supply while minimizing consumption of natural resources, as well as expanding the rights of the citizens who live here; that by allowing homeowners to occupy this additional unit, be it for family members, caretakers, or to increase their household income by renting it out, all this can be done at a fraction of the cost of what it would be to build onto a new property; that I have personal experience building these and using them at properties that I own out of state, they work, they're great options for affordable housing, and they can tap into existing infrastructure on the property, making them ideal cost effective housing options; that there are a few changes he would suggest with new verbiage; that Lines 29 through 33 stipulate that an independent

sewer is required for newly constructed dwellings, however, in accordance with DENREC, because septic capacity is determined by a count, if the proposed ADU, along with the primary dwelling bedroom count, does not exceed the current septic capacity, then the owner should automatically have the right to utilize the existing septic system, provided that you are able to prove the size of the septic and up to standards with DENREC; that if the overall bedrooms exceed the current capacity, it should say that a new system may be required or the homeowner has the option to upgrade the existing septic; that this is critical because of limited parcel size, soil suitability and the cost of installing a separate system should be the right of the homeowner based on their existing septic capacity, not necessarily determined by the county engineer; that regarding the type of ADU Lines 66 through 71 states that the ADU's may be attached or detached from the primary dwelling, but across the country, there's a third type recognized, referred to as an interior ADU's; that these would be finished basements with separate entrances, egress considerations and conformity with International Building Code; that attached ADU's may include finished basements, but to be consistent with standard practices and verbiage, we should include attached, detached and interior types of ADU's to avoid confusion or misinterpretation of the ordinance; that Lines 89 through 92 discuss the fee and the standard practices and paying for the county services; that we change the fee to not exceed \$50 to provide consistency and a fixed cost figure for homeowners to count on for years to come; that Lines 94 through 97 require a signed sealed survey by a licensed surveyor, but in the case of an existing dwelling, a survey would already be on file; that we know where the existing structure is so for simplicity and cost sake, eliminate this requirement and ask for an accurate drawing on graph paper with scale and dimensions showing the location and footprint of the dwelling; that the ADU Ordinance is to help encourage the building of housing and the supply thereof, but each requirement that adds to the cost of the project just increases the barrier of entry and limits people from starting on a project like this; that Lines 103 through 106 discusses the maximum footprint, with a significant portion of ADU's converted from existing structures such as garages and pole barns, to limit the size of the conversion will unnecessarily restrict what would otherwise be already a 50% solution, and would eliminate a significant number of ADU's from becoming available by owners who've already invested into their secondary dwelling; that in those cases consider forgoing the size comment; that Lines 116 through 119 stipulate that an ADU be placed behind the primary dwelling, but a considerable amount of dwellings that will be converted currently sit adjacent to the primary dwelling; that it should say that ADU's can be built behind or adjacent to the existing dwelling; that in cases where the only space available is in front of the house it should be allowed, but with an engineer's approval in the best interest of the county.

Mr. Robertson wanted to clarify some things for the record, being that in Section 110-9, with regards to the county sewer systems and if the septic system is sufficient to serve an ADU; that the old code was worded theoretically in which you would have needed a separate sewer connection for the ADU and we wanted to make sure that it could all be part of a single sewer connection; that in context of the ordinance with fees a decision was made by County Council a while back that they wanted to pull all the fees and mentions of fees out of all the different chapters of the code and put them in a single chapter in the code; that this would allow for all fees to be handled really at the time of budgeting versus having to amend the zoning code; that if the fees change it's still handled each year on a public hearing basis, when the budget gets approved so that was not to change the fee amount just to there was sort of a cleanup on how fees were handled; that one of the things the Commission and staff are going to look at is if you can convert a garage, you still need the off street parking, so that there's still two spaces plus one for the ADU; that maybe have an environment discussion that if we have the

1000 square foot minimum that lot coverage doesn't matter; that we want to make sure that in a subdivision if there are 100 acres and 200 houses, it doesn't balloon into a 400-unit subdivision doubling its density; that that throws off all your DelDOT calculations, all your traffic counts, all your sewer capacity and everything else.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Ordinance.

In relation to Ord. 24-02 (Regarding Accessory Dwelling Units). Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

Minutes of the May 22, 2024, Planning & Zoning Commission Meeting

The Commission discussed this Ordinance which has been deferred since May 8, 2024.

Mr. Robertson read Ms. Wingate's prepared motion at the request of Ms. Wingate.

Ms. Wingate moved that the Commission recommend adoption of Ordinance No. 24-02 for Accessory Dwelling Units based on the "Whereas" clauses contained within the Ordinance as well as the record made during the public hearing. This recommendation is also subject to several proposed revisions to the Ordinance.

1. There is a need for this Code change, and there is a need for additional housing options in Sussex County. This Ordinance will enable more housing options to become available throughout Sussex County.
2. The current Code provisions are outdated and unduly burdensome. For example, the Code currently refers to "Garage/Studio Apartments" which is a term with unnecessary restrictions. "Accessory Dwelling Unit" is a broader and more widely accepted term.
3. This Ordinance eliminates the discretionary review of a potential "Garage/Studio Apartment" that currently exists and makes an Accessory Dwelling Unit a permitted use in all residential zoning districts if the minimum requirements are met.
4. This Ordinance creates greater clarity and certainty with regard to the ability to establish Accessory Dwelling Units in appropriately sized locations.
5. The minimum standards in this Ordinance are appropriate for the following reasons:
 - A. No Accessory Dwelling Unit can exceed 1,000 square feet in size, and it cannot be larger than 50% of the floor area of the primary dwelling on a property. This is necessary to maintain appropriate densities in the residential zoning districts and not overburden existing internal and external roadways, utilities and other factors. Without this reasonable limitation, an Accessory Dwelling Unit could potentially become a full-sized second dwelling or duplex on a property (and therefore potentially double the density of the property or development), which is not the intention of this housing initiative and Ordinance.
 - B. There must be at least one off-street parking space set aside for each Accessory Dwelling Unit. Many subdivisions are at capacity given their roadway and on- and off-street parking designs for the existing homes. They cannot then absorb the parking of additional vehicles associated with an Accessory Dwelling Unit. Therefore,

requiring one additional off-street parking space for an Accessory Dwelling Unit is appropriate and reasonable.

- C. A property must be at least 20,000 square feet in size to accommodate an Accessory Dwelling Unit. This ensures that there is sufficient land area available for the primary dwelling, parking and compliance with setbacks. In addition, this minimum size avoids the special provisions of Ordinance No. 2557 regarding setbacks in small lots.
6. This Ordinance does not impact existing or proposed private restrictive covenants that may regulate the existence, use and/or location of an Accessory Dwelling Unit within a private development.
7. This recommendation is subject to the following recommended changes to the Ordinance:
 - A. At line 70, after “servant quarters”, insert “recreational vehicles (as that term is defined in Title 21, Section 101(60) of the Delaware Code)”. This will ensure that the Accessory Dwelling Units are not merely vehicles or campers and are constructed to be used as dwelling units.
 - B. At lines 105 to 106, delete the sentence, “An accessory dwelling shall not have a lot coverage that is greater than 50%.” This is an unnecessary requirement given the other dimensional requirements of an ADU.
 - C. Delete the proposed new language inserted at Lines 116 through 119 and replace that proposed new language with the following instead: An accessory dwelling unit shall not encroach into the front, side or rear yard setbacks as required by this Chapter on a lot less than three acres in size. A detached accessory dwelling unit shall be located behind the single-family dwelling on the same lot.
 - D. Revise the minimum lot size requirement contained in lines 122 by deleting the reference to “one-half acre in size” and replace it with “20,000 square feet”.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to recommend adoption of the Ordinance subject to the reasons stated and subject to the recommended revisions. Motion carried 4-0. By roll call vote: Ms. Wingate – yay, Mr. Mears – yay, Mr. Collins – yay – and Chairman Wheatley – yay.

1 **AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY,**
2 **CHAPTER 110, ARTICLE III, SECTIONS 110-9 AND CHAPTER 115,**
3 **ARTICLES I, IV, V, VI, VII, VIII, IX, AND XXVII SECTIONS 115-4, 115-20,**
4 **115-23, 115-29, 115-32, 115-40 115-48, 115-53, 115-56, 115-64, AND 115-210**
5 **REGARDING ACCESSORY DWELLING UNITS.**

6
7 WHEREAS, it is acknowledged that there is a need for affordable housing options
8 in Sussex County, and a diversification of housing options; and

9
10 WHEREAS, Accessory Dwelling Units, currently identified as Garage/Studio
11 Apartments in the Code of Sussex County, can provide an alternative and affordable
12 housing option in Sussex County; and

13
14 WHEREAS, it is the desire of Sussex County to revise the name of these housing
15 units from “Garage/Studio Apartment” to “Accessory Dwelling Units”, which is a
16 more appropriate description of the types of units covered by this definition; and

17
18 WHEREAS, these amendments promote the health, safety and welfare of Sussex
19 County and its residents; and

20
21 **NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDNAINS:**

22
23 **Section 1. The Code of Sussex County, Chapter 110, Article III, § 110-109 is**
24 **hereby amended inserting the italicized and underlined language**
25 **alphabetically within the definitions as follows:**

26
27 § 110-9. Separate building sewers required.

28
29 A. A separate and independent building sewer shall be provided for every newly
30 constructed dwelling, building or property used for human occupancy,
31 employment, recreation or other purpose. The Engineer may allow more than
32 one existing structure to be connected to a single building sewer in the best
33 interest of the County.

34 B. A building sewer serving newly constructed buildings shall not service more
35 than one of the following:

- 36 (1) Residential dwelling, either detached or one side of a double house or house
37 in a row of houses, provided that *an accessory dwelling unit*, a garage, a

38 guesthouse and similar features incidental to the family life shall be
39 considered as a portion of the dwelling.

40 (2) Industrial, commercial or manufacturing establishment.

41 (3) Commercial buildings separated by a partition wall or walls and
42 comprising of stores, offices or any combination thereof.

43 (4) Detached building comprising apartments, stores, offices or any
44 combination thereof.

45 (5) Establishment consisting of individual dwelling units under the
46 management of a single commercial or cooperative entity.

47

48

49 **Section 2. The Code of Sussex County, Chapter 115, Article I, § 115-4 is hereby**
50 **amended by deleting the language in brackets and strikethrough and by**
51 **inserting the italicized and underlined language alphabetically within the**
52 **definitions as follows:**

53

54 **§ 115-4. Definitions and Word Usage.**

55 . . .

56

57 B. General definitions. For the purpose of this chapter, certain terms and words are
58 hereby defined as follows:

59

60 [~~GARAGE/STUDIO APARTMENT~~] ACCESSORY DWELLING UNIT

61 [~~A building or use designed and use as a single apartment unit containing not more~~
62 ~~than 800 square feet of total floor area and accessory to the single family dwelling~~

63 ~~Garage/studio apartments do not include duplexes, tourist homes, servant quarters,~~
64 ~~or guest homes. Prior to use, a garage/studio apartment shall obtain a special use~~

65 ~~exception under the provisions of Article XXVII, Board of Adjustment, and all~~
66 ~~necessary state and local permits.] A self-contained dwelling unit that is secondary~~

67 to the principal dwelling unit on a property and includes independent living
68 facilities, such as a separate entrance, bathroom and kitchen. The dwelling unit

69 may be attached to, or detached from, the primary dwelling on the property.
70 Accessory dwelling units do not include duplexes, tourist homes, servant quarters,

71 or guest homes.

72

73

74 **Section 3. The Code of Sussex County, Chapter 115, Article IV, §115-20**
75 **“Permitted Uses” is hereby amended by deleting the language in brackets and**
76 **strikethrough inserting the italicized and underlined language:**

77
78 **§ 115-20 Permitted Uses.**

79
80 A. A building or land shall be used only for the following purposes:

81
82 . . .

83
84 (15) [~~Garage/studio apartment with at least one parking space~~] One accessory
85 dwelling unit for the exclusive use of the tenant included on the premises that is
86 administratively approved by the Director or his or her designee, and subject to the
87 following:

88
89 (a) There shall be a fee [~~of \$50~~] in an amount determined by County
90 Council to request the [~~administrative~~] approval [~~which shall be credited towards a~~
91 ~~Board of Adjustment application fee should consideration by the Board become~~
92 ~~necessary~~] of the accessory dwelling unit.

93
94 (b) The applicant shall submit a survey signed and sealed by a surveyor
95 licensed in the State of Delaware to the Director showing the location of the
96 [~~garage/studio apartment~~] accessory dwelling unit and the floor area of both the
97 accessory dwelling unit and the single family dwelling.

98
99 (c) [~~The Director shall give written notice to adjacent property owners of~~
100 ~~the requested garage/studio apartment and accept written statements within 10~~
101 ~~working days from the date of mailing. If any objection is received, the Director~~
102 ~~shall refer the application to the Board of Adjustment for a Special Use Exception.]~~
103 No accessory dwelling unit shall have a floor area that is greater than 1,000 square
104 feet. An accessory dwelling unit shall not be larger than 50% of the floor area of
105 the single family dwelling located on the same lot. An accessory dwelling shall not
106 have a lot coverage that is greater than 50%.

107
108 (d) [~~The Director shall consider factors including whether the~~
109 ~~garage/studio apartment will have a substantially adverse effect on neighboring~~
110 ~~properties.] There shall be at least 1 parking space set aside for an accessory
111 dwelling unit.~~

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(e) [~~Within 30 working days after the request is submitted, the Director or his or her designee may approve the garage/studio apartment or advise the applicant that an application must be submitted to the Board of Adjustment for a Special Use Exception.~~] *An accessory dwelling unit shall comply with the same setbacks as the primary single family dwelling located on the same lot. An accessory dwelling shall be placed behind the primary single family dwelling on the same lot and maintain one-half of the single family dwelling's actual side and rear setbacks.*

(f) *No accessory dwelling unit shall be constructed or placed on a lot that is smaller than one-half acre in size.*

Section 4. The Code of Sussex County, Chapter 115, Article IV, §115-23 “Special Use Exceptions” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language:

§ 115-23 Special use exceptions.

Special use exceptions may be permitted by the Board of Adjustment in accordance with the provisions of Article XXVII of this chapter and may include:

...

C. Other special use exceptions as follows:

...

(5) [~~Garage/studio apartments, when not approved administratively by the Director or his or her designee, provided that at least one parking space for the exclusive use of the tenant is included on the premises~~] *Reserved.*

Section 5. The Code of Sussex County, Chapter 115, Article V, §115-29 “Permitted Uses” is hereby amended by deleting the language in brackets and strikethrough inserting the italicized and underlined language:

§ 115-29 Permitted Uses.

149 A building or land shall be used only for the following purposes:

150

151 . . .

152

153 ~~(K) [Garage/studio apartment with at least one parking space for the exclusive use~~
154 ~~of the tenant included on the premises that is administratively approved by the~~
155 ~~Director or his or her designee, and] One Accessory dwelling unit subject to the~~
156 requirements set forth in Article IV, Section 115-20A.(15).

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158 **Section 6. The Code of Sussex County, Chapter 115, Article V, §115-32**
159 **“Special Use Exceptions” is hereby amended by deleting the language in**
160 **brackets and strikethrough:**

161

162 § 115-32 Special use exceptions.

163 Special use exceptions may be permitted by the Board of Adjustment in accordance
164 with the provisions of Article XXVII of this chapter and may include:

165 . . .

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167 C. Other special use exceptions as follows:

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169 . . .

170

171 ~~[Garage/studio apartments, when not approved administratively by the Director or~~
172 ~~his or her designee, provided that at least one parking space for the exclusive use of~~
173 ~~the tenant is included on the premises.]~~

174

175 **Section 7. The Code of Sussex County, Chapter 115, Article VI, §115-40**
176 **“Special Use Exceptions” is hereby amended by deleting the language in**
177 **brackets and strikethrough:**

178

179 § 115-40 Special use exceptions.

180 Special use exceptions may be permitted by the Board of Adjustment in accordance
181 with the provisions of Article XXVII of this chapter and may include:

182 . . .

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184 C. Other special use exceptions as follows:

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186 . . .

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188 [~~Garage/studio apartments, when not approved administratively by the Director or~~
189 ~~his or her designee, provided that at least one parking space for the exclusive use of~~
190 ~~the tenant is included on the premises.~~]

191
192 **Section 8. The Code of Sussex County, Chapter 115, Article VII, §115-48**
193 **“Special Use Exceptions” is hereby amended by deleting the language in**
194 **brackets and strikethrough:**

195
196 § 115-48 Special use exceptions.

197 Special use exceptions may be permitted by the Board of Adjustment in accordance
198 with the provisions of Article XXVII of this chapter and may include:

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201 C. Other special use exceptions as follows:

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203 . . .

204
205 [~~Garage/studio apartments, when not approved administratively by the Director or~~
206 ~~his or her designee, provided that at least one parking space for the exclusive use of~~
207 ~~the tenant is included on the premises.~~]

208
209
210
211 **Section 9. The Code of Sussex County, Chapter 115, Article VIII, §115-53**
212 **“Permitted Uses” is hereby amended by deleting the language in brackets and**
213 **strikethrough and inserting the italicized and underlined language:**

214
215 **§ 115-53 Permitted Uses.**

216
217 A. A building or land shall be used only for the following purposes:

218 . . .

219
220 (H) [~~Garage/studio apartment with at least one parking space for the exclusive use~~
221 ~~of the tenant included on the premises that is administratively approved by the~~]

222 ~~Director or his or her designee, and] *One accessory dwelling unit* subject to the~~
223 requirements set forth in Article IV, Section 115-20A.(15).

224
225 . . .

226
227 **Section 10. The Code of Sussex County, Chapter 115, Article VIII, §115-56**
228 **“Special Use Exceptions” is hereby amended by deleting the language in**
229 **brackets and strikethrough:**

230
231 § 115-56 Special use exceptions.

232 Special use exceptions may be permitted by the Board of Adjustment in accordance
233 with the provisions of Article XXVII of this chapter and may include:

234 . . .

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236 C. Other special use exceptions as follows:

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238 . . .

239
240 [~~Garage/studio apartments, when not approved administratively by the Director or~~
241 ~~his or her designee, provided that at least one parking space for the exclusive use of~~
242 ~~the tenant is included on the premises.]~~

243
244 **Section 11. The Code of Sussex County, Chapter 115, Article IX, §115-64**
245 **“Special Use Exceptions” is hereby amended by deleting the language in**
246 **brackets and strikethrough:**

247
248 § 115-64 Special use exceptions.

249 Special use exceptions may be permitted by the Board of Adjustment in accordance
250 with the provisions of Article XXVII of this chapter and may include:

251 . . .

252
253 C. Other special use exceptions as follows:

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255 . . .

256
257 [~~Garage/studio apartments, when not approved administratively by the Director or~~

258 ~~his or her designee, provided that at least one parking space for the exclusive use of~~
259 ~~the tenant is included on the premises.]~~

260

261 **Section 12. The Code of Sussex County, Chapter 115, Article XXVII, §115-210**
262 **“Special Exceptions” is hereby amended by deleting the language in brackets**
263 **and strikethrough:**

264

265 § 115-210 Special exceptions.

266 In order to provide for adjustments in the relative location of uses and buildings, to
267 promote the usefulness of these regulations and to supply the necessary elasticity to
268 their efficient operation, special use exceptions, limited as to locations described in
269 this Article, and special yard and height, exceptions are permitted by the terms of
270 these regulations. The following buildings and uses are permitted as special
271 exceptions if the Board finds that, in its opinion, as a matter of fact, such exceptions
272 will not substantially affect adversely the uses of adjacent and neighboring property:

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274 . . .

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276 (3) Other special use exceptions as follows, which are specified in each district:

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278 . . .

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280 [~~(p) Garage/studio apartments, when not approved administratively by the~~
281 ~~Director or his or her designee, provided that at least one parking space for the~~
282 ~~exclusive use of the tenant is included on the premises.]~~

283

284 **Section 13. Effective Date.**

285

286 This Ordinance shall take effect immediately upon adoption by Sussex County
287 Council.



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: June 7, 2024

RE: County Council Report for Ordinance 24-03 relating to Residential Development Perimeter Buffers

On March 19, 2024, the County Council introduced an Ordinance to amend the Code of Sussex County regarding the perimeter buffers of residential development.

The Planning & Zoning Commission held a Public Hearing on the Ordinance on May 8, 2024. At the meeting of June 5, 2024, the Planning & Zoning Commission recommended approval of the Ordinance for the 8 reasons stated and subject to the recommended revisions to the Ordinance as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of May 8, 2024, and June 5, 2024.

Minutes of the May 8, 2024, Planning & Zoning Commission Meeting

ORD 24-03

AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV, V AND VI SECTIONS 99-5, 99-6, 99-23, 99-26, 99-27, 99-30, 99-31 AND 99-32 AND BY ADDING A NEW SECTION 99-21a, AND CHAPTER 115, ARTICLES IV, V, VI, VII, VIII AND XXVIII SECTIONS 115-20, 115-25, 115-29, 115-37, 115-45, 115-53 AND 115-28 REGARDING PERIMETER BUFFERS AROUND RESIDENTIAL DEVELOPMENT.

Mr. Robertson provided a short presentation for the proposed Ordinance for perimeter buffers around residential development; that this Ordinance goes back to the Comprehensive Plan that we have in place and the joint workshop with the County Council and Planning & Zoning; that Council



ranked issues of priority and this based on ranking was the #1 issue that they wanted to tackle first; that; County Council hears about buffers from developers, from people living within developments, from people living next to developments that are being constructed, people driving down the road and across all walks of life; that the insufficiency of the buffers currently in our code is one topic of discussion that arise; that things such as how big are they, what's required in them, tree removal in the buffers or unnecessary tree removal; that if there is a forested piece of property or a piece of property that has forests along the edge of it, why are we taking full growth forest out and then planting brand new trees that are this tall, or we had trees that were fairly significant in there, why would we remove them; that the timing of the buffer installation, when it happens in conjunction with the development site work, and how it's being coordinated and when it's being completed in conjunction with the development site work and building construction; that we have inconsistent requirements with our code; that the original perimeter buffer standards go back 20 years and state in Chapter 99 that a 20 foot buffer is required with planning requirements and the two year bonding requirements; that then we have separate buffer requirements in Chapter 115 for cluster subdivisions that is 30 feet with a different set of planning requirements; that the goals of this is to clean up all the inconsistencies and make one set of standards; that the original ordinance that was introduced by County Council, established or replaced definitions within the code; that an established definition of clearing or cleared so that if there's existing trees within a subdivision on the perimeter, there would be an assessment of that to have a baseline; that as part of an approval, there's a landscape plan, that defines what we want in that landscape; that if you have existing woods, there's a perimeter buffer protection area of an additional 20 feet to preserve that 30 foot of existing woodlands; that the established definition of woodlands are trees and shrubs that are local and native species; that the Department of Agriculture, Forestry Service, states that there's no list of local and native species; that because of no list for local and native species being found they chose 70% deciduous, 30% Evergreen, 15 trees per 100 feet of buffer, all trees and shrubs must be 6 feet in height at the time of planting and obtain a minimum height of 10 feet; that they have to grow beyond 10 feet and the buffer can include both existing woodlands and planted trees; that to be native a defined list can change over time and there's various guidance documents that we can refer to maintain the list, but ours is not as extensive as others; that if a resource buffer is involved, because of wetlands or an environmental issue along the perimeter, the resource buffer is always going to take precedent; that we're not going to require somebody to go plant trees in a wetlands area or a buffer area that's governed by the perimeter buffer; that there are two categories in the ordinance, one is where there's existing woodlands and one is where there's no woodlands; that in the existing and the idea is to preserve those woods and then when there's none, the idea is that, you have to plant the new ones to comply; that where there's existing woodlands there has to be a forest assessment with the woodlands shown on the site plans, they need to remain natural state with limited activity; that the perimeter buffer will be protected by that buffer protection area; that the buffer and protection area will be fenced off with silt fencing and marked during construction; that selective clearing, removal of invasive species and dead trees in the woodlands is permitted; that walking trails and between lots are permitted access points to maintain the buffers; that any removal of damage of trees within the woodlands is subject to mitigation requirements; that the woodlands ground is going to be cleared, graded or grubbed, not to disturb the roots in those areas; that in the ordinance you see the perimeter buffer where trees are, then the perimeter buffer protection area, which is the 20 feet and the silt fencing; that the signage is at 100 foot intervals so you can see one from every lot; that the Council wanted to be sure that there was prevention of cases avoiding tree

preservation by requiring a period of time (5 years) prior to the application that the woodlands are cleared; that if that was cleared, then it has to be replanted with 15 trees every fifty linear feet to double up the tree density; that if you have existing woodlands that provide a natural screen through large growth and underbrush and you clear that out, 15 trees every 100 feet is going to take a long time to regenerate that screening, that's why there's the recommendation to double that to try to get it back to close to what it was at 15 trees every fifty linear feet; that in addition to the 30 foot buffer, there is new woodlands at least two times the size of the cleared area of tree density of 50 trees per acre; that you have to reforest someplace else, equivalent to what you cleared, offsite or not, and if it is offsite it must be protected by a Conservation Easement.

Mr. Butler asked about the 50-foot trees to an acre ratio and how that will affect the growth of not only the trees but also the undergrowth and the natural floor.

Mr. Robertson stated that the decision about having a 30 foot buffer with the 20 after speaking to the foresters there's an issue of windshear, sunburn and in addition to the damage that occurs during site work, and you keep 20 feet of trees and they're used to being part of a larger forest, and they've grown that way it is harder for them to survive; that another concern is the timing of buffers, especially within subdivisions, where they cannot be planted prior to site work as its not feasible with the way land development works; that the perimeter buffer per phase must be planted prior to the first residential building permit for the respective phase; that you're going to get your site work in or started, have access to the buffer areas before you pull residential building permits; that all of the houses going up are subject to the buffer and the adjacent properties are screened by the buffer that's in before the building is; that you can't move on to the next phase until you've got the prior phase completely planted, where the woodlands exist, the buffer and protection area shall be protected and marked, the developers are responsible for removal of all stakes and guide wires when done; that there has to be a performance bond or other guarantee to cover the perimeter buffer in an amount of 125% or \$50,000, whichever is greater of the cost of the installation and the value of the replacement; that plans guarantee the perimeter buffer, existing or planned, will be for a period of two years; that the perimeter buffer be planted and inspected before moving to the next phase; that this extends the assurance that the trees are alive and you plant the perimeter buffer before the first building permit in that phase; that the developers are responsible for the survival and maintenance of the buffer as recorded in restrictive covenants and a tree mitigation will be required; that when there's damage to existing trees or shrubs or they're removed without authorization, they have to be replaced; that the penalties apply to a violation by any person, landowner, HOA or developer of a fine of \$10,000 per quarter acre Pro rate of disturbance to the perimeter buffer indoor protection area that may be imposed; that is in the resource buffer now, so for consistency, if you damage the resource buffer, we looked at how that was handled and followed suit; that extending the time period from planning to walk away from a year to within the two years; that outside the two years, the HOA's could be inheriting a problem and may not find out that there was an issue against the developer until it's too late; that there has to be some flexibility on intent and education on the signage that people don't realize that something is on a site plan and it's a non-disturbance area and not their backyard; that the buffers, planted or trees will be governed by code and require it to be governed by the homeowners associations restrictive covenant; that outside the perimeter buffer protection area where there is a no cut warning the intention is that the perimeter buffer protection area also be protected; that in that primitive buffer protection area there is likelihood that native species will naturally grow there;

Mr. Mears questioned if the trees could be removed from the 20-foot buffer that protects the 30-foot perimeter buffer or if it would technically be a 50-foot buffer and if a developer could cut trees and remove them from the 20-foot buffer area.

Mr. Whitehouse responded that the no-cut warning signage is outside the perimeter buffer protection area so there would be no tree removal unless there is an invasive species attack; that the language within the Ordinance states that invasive growth can be removed; that any removal in the buffer protection area be cut to the stump and left, or cut and grinded; that if you pull out the stump with its lateral root system, it's going to rip out the roots all around it and defeat the purpose of the perimeter buffer.

A short recess was taken between 5:10 PM and 5:15 PM

Mr. Rich Borrasso, with SARG, spoke on behalf of Sussex Preservation Coalition, a group who focuses on advocating for more livable communities for residents of Sussex County; that SPC formed a team to inform and engage the public in the development, design, review process and the pathway to more livable communities; that team members have professional experience, municipal planning, landscape architecture, county and state careers and natural resources, including forestry; that the county reviewed the potential updates of the county code in reference to development design and outdated and inconsistent land use codes open to interpretation with deficient county enforcement; that Commission and Council were asked independently to review a summary of ideas table to identify their priorities; that the public was not informed of the process, possibly too many approaching it on a one off basis; that each category is interdependent upon one another; that the category of site work determines where the building site is, what remains, is a minimum percentage of both passive and active open space, tree preservation is contained in the open space, including perimeter buffers; that perimeter buffers is a subset of tree preservation and subdivision standards, including superior design, defined the regulations and potential disincentives and incentives; that adopting the concept of requiring a conservation plan that accompanies the site plan and addresses the categories in more holistic fashion; that every bordering jurisdiction references a conservation plan that accompanies a site plan that deals with open space, tree preservation and natural resources.

Mr. Steve Sinclair, an SPC design development community committee member, spoke on behalf of himself in regards to Ordinance; that Line 29 need new verbiage that the existing perimeter buffer standards and existing code talks about just planted trees, but now you can preserve existing woodland with a myriad of values and benefits beyond screening; that this is an opportunity to articulate in the ordinance about flood mitigation, soil erosion, improving air and water quality, wildlife habitat and recreational areas; that it's time to require a conservation plan in the resource buffer ordinance so when the developer is doing his development design and his site plan, it comes with a conservation plan, requiring a force assessment; that counting trees is not enough, there's more values than just trees themselves; that there's habitat, soil erosion, other things in woodlands that need to be recognized, evaluated and strategies put in place to maintain those overtime; that Line 157 needs to expand the forest assessment to not just look at the trees, but all the natural resources within that area; that when thinking about a parcel and where should open space be, knowing what is there is the only way to do that; that Line 218, the state forester for Delaware Forest Service, spoke at the Sussex Preservation Coalition with what would be an adequate buffer width of 100 feet; that in my experience

a minimum buffer width in order for the trees to maintain over time for wind throw and sun skulls to provide some of these natural resource benefits beyond just screening need to be at least the width of the average height of the trees; that we recognize that's going to have an impact on the development so the width of the trees we're recommending is 50 feet as a minimum requirement to maintain some of those values, wild life habitats, soil erosion and flood mitigation; that expanding from 30 to 50 feet is the right idea; that Line 239 expand the perimeter buffer protection area to be applied to resource buffers also; that I request that you keep the record open so that I can submit a list of recommended tree species put out by the Delaware Forest Service; that we're recommending a mix of tree species, 60% deciduous and 40% Evergreen, an Evergreen tree retain their branches lower, are more dense allowing more screening and the canopy size of a conifer tree is less than a deciduous tree when you're requiring 15 trees for 100 feet, you're going to have canopy overlap; that Line 373 relating to mitigation, a developer removes woodland in return have to expand the size of the perimeter buffer; that we suggest in the additional acres there needs to be a higher density of number of trees per acre equal to the existing basal area that's present of the trees.

Ms. Jill Hicks spoke on behalf of Sussex Preservation Coalition, in regards to the Ordinance; that Lines 362-363 add that at no time shall the ground within the woodlands area of the perimeter buffer and the perimeter buffer protection area be clear, graded, regraded or grubbed; that clearing woodlands destroys natural habitats that are necessary for everyone's health, safety and welfare; that clearing large wooded lots which are habitats to native insects. amphibians, fish and animals will destroy the balance of nature that sustains us; that the extension of the perimeter buffers and protection area there is a better chance of providing the wildlife corridors needed for everyone and everything to thrive; that buffers along our roadways would provide positive impacts and vinyl stockade fences and berms do not provide screening, nor do they add value to the county's quality of life or create livable communities; that a stockade fence will never block light but trees will; that I am advocating we not allow forests to be cut down and then replaced with stockade fences, but rather install within the property line or on the line, but not to the exclusion of the required forested perimeter buffer and the perimeter buffer protection area; that the draft ordinance states that the perimeter buffer is to go around the entire property to which the county should adhere to, including along adjacent roadways; that Line 475 stating that clearing of trees in an area should not be permitted in a phase until the developer has received permits for that particular phase; that a current resident should not have to live with a clear cut area and construction debris, and the lack of a buffer year after year before the clearing of that entire forest.

Ms. Katie Gillis, the executive officer of the Home Builders Association of Delaware, spoke on behalf of 375 members that are builders, remodelers and developers statewide; that we support efforts to protect existing trees, buffers are important and so is the preservation of existing buffers; that the request that was made previously for a working group to look at this issue and others from a holistic perspective, involving stakeholders with disparate and diverse backgrounds, viewpoints and perspectives; that this was supported by our association and by the American Council of Engineering Companies, Associated Builders and Contractors of Delaware Committee of 100, Delaware State Chamber of Commerce, Kent Sussex Leadership Alliance, Property Business Alliance, Sea Deck and the Rehoboth Beach and Dewey Beach Chamber of Commerce; that a solution developed by a working group would be more likely to garner widespread support and receive less opposition and would better reflect the competing interests of the stakeholders in this process; that there are no carve

outs for tree removal in existing buffers when required by state or county regulations or when required for utilities; that there are scenarios where county and state regulations and typography would necessitate grading and buffer areas and associated removal of trees; that developers should not be penalized for removing trees and buffers when the law requires them to do so or for the purpose of utilities or future connectivity as written; that if a developer is required to remove trees in a buffer to comply with stormwater regulations or to deliver utilities to a site, they would need to comply with the mitigation requirements of the bill as well as fines.

Chairman Wheatley stated that we get asked to have working groups participate, that's why we have the public hearings, it's the opportunity to do it and there is one more hearing at County Council as well and the record will be held open for anybody to participate by sending written comments; that to have working groups on ordinances every time we do an ordinance that's of consequence, but we've had workshops on this, multiple discussions at County Council, public comment where we've drafted the ordinance and we have this hearing with the record being opened along with County Council; that the request is heard, but suggest that anybody that has an interest in it participate in the public hearing process and not anticipate that they'll be a workshop.

Ms. Susan Hagen spoke on behalf of herself in regards to the Ordinance that you add a no later than date to perimeter buffers, regardless of the phasing and the second is to modify the proposal to start the clock on perimeter buffers, not when the first building permit is issued, but instead the earliest of when the road construction begins or the first building permit is issued; that the timeline for the buffer affects resale values of neighboring properties; that developers go out of business and with the proposed regulation, they would not have to replace that buffer if they never completed the work; that the timing of the buffers needs to say something to the effect of the perimeter buffer landscape plan must include a no later than date for the entire perimeter buffer, regardless of phasing; that this date should not be longer than 24 months from the issuance of the first building permit in any phase or something to your liking, but there has to be a no later that and no portion of a perimeter buffer should be able to be designated on the development plan to be in a different phase than the homes in the phase adjacent to it.

Mr. David Hutt, Esq., from Morris James, LLP, spoke on behalf of the Ordinance that there should be a forest assessment report that's required as part of the perimeter buffer; that Lines, 228 through 235 in the definition of a perimeter buffer landscape plan it says that there's a plan prepared by a developer, but I suggest it be a plan submitted by a developer; that because the definition says it has to be prepared by, enlists the qualifications of the person who actually needs to be, the preparer and certifier of the results of that plan; that the definition of woodlands, distinguish the local versus native verbiage; that Lines 348 through 352 relates to the insertion of the definition of forest assessment report consistent with the balance of that section that talks about invasive species; that the tree may not be local or native, and it may also not be invasive; that Lines 376 through 378 relates to when a property has been cleared within five years or a portion of a property has been cleared within five years of the development project and I added there was to clarify that it could be a separate off property site; that I suggest that in addition to a developer having to create a new woodlands, an alternative is they could purchase an existing woodlands in that same geological code that's there at two times, the replacement acreage and place that conservation easement on it so that it doesn't require that a person plant a new forest, but the county still gets the benefit of a preservation area, an existing

force of forest that already exists; that Lines 507 to 512 I am proposing to delete the reference to the date that maintenance responsibilities are transferred to a homeowners association and fix it on 9931, which is a time period that the county is familiar with and has access to when something achieved substantial completion; that there's a defined process for that versus the homeowners association; that the transfer to a homeowners association is going to be the responsibility of them on day one; that you report a restrictive covenant that says the homeowners association is responsible for those things; that at the beginning, the homeowners association is, dominated by the developer, which is meaningful because it's always the homeowners association responsibility to maintain any amenity, whether it's a pool, clubhouse, a perimeter buffer or stormwater; that when that responsibility is transferred and the homeowners association is formed the land is subjected to those restrictive covenants.

Chairman Wheatley responded to the public comments in regards to the idea that urgent matters take over important matters in terms of how Planning & Zoning field emails and phone calls and we're going to be taking some steps to try to correct that; that this also speaks to the importance of the advocacy groups and how they have an impact on County Council; that the record will be held open for 10 days to receive any written comments.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Ordinance.

In relation to Ord. 24-03 (Regarding Perimeter Buffers Around Residential Developments). Motion by Mr. Butler to defer action for further consideration and leave the record open for 10 days for receipt of additional comments and/or documents, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

Minutes of the June 5, 2024, Planning & Zoning Commission Meeting

The Commission discussed this Ordinance which has been deferred since May 22, 2024, when the Public Record was closed. The initial Public Hearing was held on May 8, 2024, with the Public Record being left open for 10 days following the meeting for receipt of additional written comments.

Mr. Mears moved that the Commission recommend approval of Ordinance Number 24-03 regarding Perimeter Buffers Around Residential Developments with some suggested revisions based upon the record made during the public hearing, including the written comments that were received while the record remained open and for the following reasons:

1. The County Subdivision and Zoning Codes currently provide for perimeter buffers around residential developments. However, the requirements are not entirely consistent. This Ordinance consolidates the perimeter buffer requirements into one uniform set of standards all within Chapter 99 of the County Code.
2. As Sussex County has developed, it has become evident that more clarity is required within the perimeter buffer standards. This ordinance addresses that need.
3. This Ordinance provides definite timeframes for the installation, completion and maintenance of perimeter buffers. This is a significant improvement over the current Code's requirements.

4. The County has seen existing woodland and vegetation along the perimeter of a proposed subdivision clear cut and ultimately replaced with new plantings. The loss of the existing vegetation eliminated the natural screening that it provided. This Ordinance promotes the retention of existing woodlands within a buffer area.
5. It has been shown that existing woodlands within a 30 foot buffer, even when preserved, can be seriously damaged if site work and grading occurs right to the edge of the buffer area and harms the root structures of the trees located there. This Ordinance provides an additional twenty-foot wide Perimeter Buffer Protection Area that will promote and protect any existing woodlands within a Perimeter Buffer.
6. This Ordinance provides clear remedies and penalties if and when an enforcement action becomes necessary following the damage or destruction of a buffer or the failure to maintain it.
7. This Ordinance is in accordance with the current Sussex County Comprehensive Plan and the Goals, Objectives and Strategies contained within it.
8. Several people and organizations provided testimony and written comments about this proposed Ordinance. A majority of those comments were favorable, but with suggested improvements to the proposed language.
9. This recommendation is subject to the following suggested revisions to the Ordinance:
 - A. **Line 158:** Add “forest inventory” before “tree survey” so that it now states “a forest inventory/tree survey”.
 - B. **Line 159:** Add “either groups of trees or” before “individual trees”. Groupings of trees may be determined to have a high habitat value in addition to individual trees.
 - C. **Line 160:** Add a new definition of “Forest Assessment Report”: “A report detailing the findings of a Forest Assessment prepared and certified by a licensed landscape architect, certified arborist, certified nursery professional, or licensed forester or a forester designated by the Society of American Foresters as a “certified forester”.”
 - D. **Line 223:** Add a new sentence that better defines the purpose of the Perimeter Buffer within its definition: “The Perimeter Buffer shall function to filter views from and into a subdivision in such a manner that improves the screening than if no landscaping was provided.”
 - E. **Line 229:** Change the word “prepared” to “submitted” so that the definition of Perimeter Buffer Landscape Plan now states, “A plan submitted by a developer depicting compliance with the Perimeter Buffer and Perimeter Buffer Protection Area....”.
 - F. **Line 311:** Regarding the anticipated height of trees planted within the Perimeter Buffer, change the reference to “obtain a minimum height of ten feet” to “shall be a species that typically achieves a height of at least ten feet...”.
 - G. **Lines 332 and 335:** Change the reference from “Forest Assessment” to “Forest Assessment Report”.
 - H. **Lines 332 through 335:** Delete the phrase “prepared and certified by a licensed landscape architect, certified arborist, certified nursery professional, or licensed forester or forester designated by the Society of American Foresters as a “certified

forester”. This phrase becomes unnecessary since it will now be included within the new definition of “Forest Assessment Report”.

- I. **Line 362 through 363:** Insert “and Perimeter Buffer Protection Area” after “Perimeter Buffer” in the existing sentence and add a new sentence at the end of the section: “Permitted stump removal shall only occur by stump grinding that does not disturb the surrounding area or vegetation.”
- J. **Line 386:** Replace the reference to the “Planning and Zoning Commission” as the entity reviewing the replacement plantings after a timber harvest to “the Director”.
- K. **Line 422:** Replace the reference to “Woodlands” with “Perimeter Buffer and Perimeter Buffer Protection Area”.
- L. **Line 451:** Delete the phrase “for any trees, shrubs or existing woodlands” and add language confirming the duration of the developer’s guaranty so that the note required to guaranty the full cost of replacement now states, “(f) a note confirming that a developer guarantees the full cost of replacement of the Perimeter Buffer for two years after the determination of substantial completion in accordance with Section 99-31.”
- M. **Lines 510-512:** Revise the language about bonding timeframes so that it now states, “The bonds for the Perimeter Buffer shall thereafter remain in place until two years after the determination of substantial completion in accordance with Section 99-31.”
- N. **Line 541:** Insert “Perimeter Buffer” after the word “Woodlands”.
- O. **Line 547:** Delete the phrase “in the form of newly created Woodlands”. The specific requirements of the remedy following damage or removal of trees is defined in the subsections that follow, so this phrase is not necessary.
- P. County Council should also consider a revision to require that a development must install the perimeter buffer at or within a certain time after a notice to proceed when the new development is next to an existing, approved, or under-construction development or homes. This way, if the development is next to existing homes (for instance) there is more certainty about the timing of the installation of the buffer.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of Ordinance Number 24-03 regarding Perimeter Buffers Around Residential Developments for the reasons and conditions stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea