

**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**

**A G E N D A**

**September 19, 2023**

**10:00 AM**

**Call to Order**

**Approval of Agenda**

**Approval of Minutes - September 12, 2023**

[Draft Minutes 091223](#)

**Reading of Correspondence**

**Public Comments**

**Consent Agenda**

1. **Use of Existing Sewer Infrastructure Agreement, IUA 961-2  
Brentwood (Coral Lakes), Chapel Branch Area**

[Consent Agenda Brentwood](#)

**Todd Lawson, County Administrator**

1. **Administrator's Report**

**Gina Jennings, Finance Director & Brandy Nauman, Community Development &  
Housing Director**

1. **Reallocation of ARPA funds for Low-Income Housing Rehabilitation**

[Reallocation of ARPA funds](#)



**Jay Shine, EMS Manager of Operations**

1. **Vendor Agreement with Beebe Healthcare**  
[Vendor Agreement Beebe Healthcare](#)

**John Ashman, Director of Utility Planning & Design Review**

1. **Permission to prepare and post notices for Greenwood Storage Annexation into the Sussex County Unified Sanitary Sewer District (Western Sussex Area)**  
[Greenwood Storage](#)

**Hans Medlarz, County Engineer**

1. **Western Sussex Unified Sewer District: Contract 5, Project S19-29**  
**A. Segment C: Granting of Substantial Completion**  
[WSUSD Substantial Completion](#)
2. **Pintail Pointe, Project 21-16**  
**A. Recommendation to Award**  
[Pintail Pointe Bid Award](#)
3. **Stinson Home Elevation Project (FEMA-4566-DR-DE-0002)**  
**A. Sponsorship 37430 5th Street**  
[FEMA Mitigation Grant Stinson Property](#)

**Introduction of Proposed Zoning Ordinances**

[Intros CU2448 CU2452 CU2470 CZ2005 CZ1998 Ord.23-09](#)

**Council Members' Comments**

**Executive Session - Collective Bargaining pursuant to 29 Del.C.§10004(b)**

**Possible action on Executive Session Items**

**1:30 p.m. Public Hearings**

1. **[Ordinance No. 23-11](#)**

**“AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 234-6.00-6.02” (property lying on the west side of Beaver Dam Road [Rt. 23], approximately 0.50 mile north of Hopkins Road [S.C.R. 286]) (911 Address: 30857 Saddle Ridge Way, Lewes) (Tax Map Parcel: 234-6.00-6.02)**

**[Ord 23-11 Relating to the Future Land Use Map CC Report for 9.19.2023 with maps](#)**

2. **[Conditional Use No. 2350 filed on behalf of Beaver Dam Enterprises, LLC](#)**

**“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.144 ACRES, MORE OR LESS” (property lying on the west side of Beaver Dam Road [Rt. 23], approximately 0.50 mile north of Hopkins Road [S.C.R. 286]) (911 Address: 30857 Saddle Ridge Way, Lewes) (Tax Map Parcel: 234-6.00-6.02)**

**[Public Hearing CU2350](#)**

3. **[Change of Zone No. 1973 filed on behalf of Osprey Point Preserve, LLC](#)**

**“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO AMEND CHANGE OF ZONE NO. 1759 (ORDINANCE NO. 2475) TO INCLUDE A 1.85 ACRE MARINA & RESTAURANT AMENITY AREA FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 126.8795 ACRES, MORE OR LESS” (property lying on the southwest side of Old Landing Road [S.C.R. 274], within the Osprey Point Residential Planned Community, on the north end of Ethan Allen Drive, approximately 0.12 mile west of Old Landing Road [S.C.R. 274]) (911 Address: N/A) (Tax Parcels: 334-18.00-83.00, 83.17, 83.20, 83.21 & 1073.00 through 1289.00)**

**[Public Hearing CZ1973](#)**

**Adjourn**

**-MEETING DETAILS-**

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on September 12, 2023 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://sussexcountype.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://sussexcountype.gov/agendas-minutes/county-council>.

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 12, 2023**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 12, 2023, at 10:00 a.m., in Council Chambers, with the following present:**

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

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

**Call to  
Order**

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

**M 438 23  
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 August 29, 2023, were approved by consensus.**

**Corre-  
spondence**

**Mr. Moore reported a letter was received from Dry Dock Recovery, Inc. thanking Council for their support.**

**Public  
Comments**

**Public comments were heard.**

**Ms. Jill Hicks, representing the Sussex Preservation Coalition spoke in reference to concerns that people have that are a part of the coalition including trees, lack of healthcare, traffic, etc.**

**Mr. Rich Barrasso spoke about the protection of trees and forests.**

**Mr. Jim Henry representing the Sussex Preservation Coalition presented some preliminary results of a survey that they conducted to try to engage the importance of trees and woodlands in Sussex County.**

**Public  
Comments  
(continued)**

**Mr. Steve Sinclair spoke about forest loss, tree preservation and open space in the State.**

**Mr. Jeff Stone spoke about the review of upcoming County land use codes and superior design.**

**Mr. Paul Reiger commented that he believed the hearing that was referenced last week during public comment would not come to County Council. He also spoke about the public comment period during Council and Planning and Zoning Commission meetings as well as the definition of a farm.**

**Ms. Renita Harmon spoke about the laws regarding people living in RVs.**

**Mr. Robert Mitchell commented on a statement that was spoken about him during the last County Council meeting.**

**Adminis-  
trator's  
Report**

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

**1. Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County**

**The Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County will meet September 18<sup>th</sup> at 10:00 a.m. at the Sussex County Administrative Offices West Complex, 22215 North DuPont Boulevard, in Georgetown. A copy of the meeting agenda is attached.**

**2. Sussex County Council and Planning & Zoning Commission Workshop**

**The Sussex County Council will host a workshop with the Planning and Zoning Commission on Thursday, September 21, 2023, at 12:30 p.m. at the Sussex County Emergency Operations Complex (EOC) located at 21911 Rudder Lane in Georgetown. The workshop will continue the County's discussion on the development design initiative.**

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

**SCRWF/CO  
No. 30/  
Modification  
of Unit Cost  
Item C-6**

**Hans Medlarz, County Engineer presented change order no. 30 for South Coastal RWF treatment process upgrade no. 3 and Rehoboth Beach WTP capital improvement program, phase 2 for Council's consideration. Mr. Medlarz reviewed the recommended items for the proposed change order.**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it**

**M 439 23** moved based upon the recommendation of the Sussex County Engineering Department that change order no. 30 for contract C19-11, South Coastal RWF treatment process upgrade no. 3 & Rehoboth Beach WTP capital improvement program, phase 2 – general construction, be approved, increasing the contract amount by \$314,181.45.

**Motion Adopted:** 5 Yeas

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

**M 440 23** A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department that the unit price item C-6 grit removal be amended 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

**Blackwater Village/ Warwick Park** Hans Medlarz, County Engineer presented amendment no. 10 with DBF for Blackwater Village and amendment no. 2 with GMB for Warwick Park for the 2019 Miscellaneous Engineering base contract for Council's consideration.

**M 441 23** A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department, that amendment no. 10 to the 2019 miscellaneous engineering base agreement with Davis, Bowen & Friedel, be approved in the amount not to exceed \$292,500.00, for survey and design services associated with the Blackwater Village project.

**Motion Adopted:** 5 Yeas

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

**M 442 23** A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department, that amendment no. 2 to the EJCDC 2019 miscellaneous engineering base contract with George, Miles & Buhr, be approved in the amount not to exceed \$108,495.00 for design services associated with the Warwick Park project.

**Motion Adopted:** 5 Yeas

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

**RK&K  
Water  
Permit**

**Hans Medlarz, County Engineer presented a water allocation permit with RK&K for professional environmental services for Council’s consideration.**

**M 443 23  
Approve  
RK&K  
Water  
Allocation  
Permit**

**A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department, that Council approve the RK&K water allocation permit proposal in the amount not to exceed \$25,000.00.**

**Motion Adopted: 5 Yeas**

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

**Permission  
to Prepare  
& Post  
Notices/  
Vines Creek  
Crossing  
Annexation  
into  
SCUSSD**

**John Ashman, Director of Utility Planning & Design Review presented a permission to prepare and post notices for Vines Creek Crossing Annexation into the Sussex County Unified Sanitary Sewer District (Dagsboro/Frankford Area). The request includes parcels 533-1.00-38.00, 533-4.00-28.00 & 28.01 located between Pepper Road and Frankford School Road. The Engineering department has received a request from Davis, Bowen & Friedel on behalf of their client Double H Development, LLC the developers of the proposed Vines Creek Crossing project (Cress Farm). The Vines Creek Crossing project consists of 584 units and a clubhouse. The properties were recently annexed into the Town of Frankford.**

**M 444 23  
Approve  
Prepare &  
Post Notices/  
Vines Creek**

**A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved by Sussex County Council that the Sussex County Engineering department is authorized to prepare and post notices for the Vines Creek Crossing expansion of the Sussex County Unified Sanitary Sewer District to include parcels 533-1.00-38.00, 533-4.00-28.00 & 28.01 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**

**Old  
Business/  
CZ1985**

**Under Old Business, Jamie Whitehouse, Planning and Zoning Director presented a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A M MARINE DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.1 ACRES, MORE OR LESS” filed on behalf of Love Creek Acquisition, LLC.**



**On August 29, 2023, Council deferred action for further consideration at the conclusion of the Public Hearing.**

**M 445 23  
Adopt  
Ordinance  
No. 2953/  
CZ1985**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2953 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A M MARINE DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.1 ACRES, MORE OR LESS” for the reasons given at the Council hearing and reasons given by the Planning and Zoning Commission as follows:**

- 1. The purpose of the M-Marine District is “to provide for and to preserve waterfront land in appropriate locations for commercial docking, waterfront sales, storage, and repair of small boats, including out-of-water repairs, and for seafood packing and processing establishments, subject to applicable sanitation and processing laws and ordinances. Marinas, yacht clubs, and tourist-oriented services are permitted uses. Since land in the district is limited, construction of dwellings should be discouraged, but since marine development will be gradual, low-density residential uses are permitted.”**
- 2. This site is adjacent to a property that is Zoned M–Marine that has been developed residentially and with boat docking facilities. The adjacent property has frontage on Love Creek and Route 24. This is a reasonable expansion of that existing M-Marine property.**
- 3. In addition to the existing M-Marine zoned property next door, there are properties in the vicinity that are zoned C-1, B-1, and MR. This rezoning to M-Marine is consistent with the area uses and zoning.**
- 4. The Applicant has stated that they intend to use the property for the purposes of the M-Marine District, including uses that may include boat storage and repairs, boat and marine equipment sales, bait, and tackle shops, and other similar uses. A restaurant or similar “tourist-oriented” service may also be developed on the site. All of these uses are appropriate within the M-Marine District.**
- 5. There was support in the record from a marine service company that operates on the adjacent M-Marine land stating that the rezoning of this parcel would provide a suitable and convenient location for such things as boat storage and repairs to supplement that company’s operations along Love Creek.**
- 6. In addition to its location next to existing M-Marine land, the property also has frontage along Route 24, which is classified as a “Major Collector” Road by DelDOT. This is an appropriate location for this rezoning.**
- 7. The property is designated as both the Commercial Area and the Coastal Area according to the Sussex County Comprehensive Plan. The M-Marine zoning and the types of uses permitted in that zone are appropriate in both areas according to the Comprehensive Plan.**

**M 445 23  
Adopt  
Ordinance  
No. 2953/  
CZ1985  
(continued)**

- 8. The property is served by central water and sewer, making this rezoning from AR-1 appropriate at this location.**
- 9. Any future development of this property will still be subject to site plan review by the Sussex County Planning & Zoning Commission as well as all other agencies that have jurisdiction over it.**
- 10. For all of these reasons, I move that we recommend approval of this rezoning to M-Marine.**

**Motion Adopted: 5 Yeas**

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

**Old  
Business/  
CZ1989**

**Under Old Business, Jamie Whitehouse, Planning and Zoning Director presented a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A 2.47 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 5.42 ACRES, MORE OR LESS” filed on behalf of Fernando Robles.**

**On August 15, 2023, Council deferred action for further consideration at the conclusion of the Public Hearing.**

**M 446 23  
Approve  
CZ1989/  
DENIED**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson to approve a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A 2.47 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 5.42 ACRES, MORE OR LESS”.**

**Motion DENIED: 5 Nays**

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

**Grant  
Requests**

**Mrs. Jennings presented grant requests for Council’s consideration.**

**M 447 23  
East Sussex  
Public  
Broadcasti-  
ng Incorp.**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Mr. Schaeffer’s Councilmanic Grant Account) to East Sussex Public Broadcasting Incorporated for Radio Rehoboth computer upgrades.**

**Motion Adopted: 5 Yeas**

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

**M 448 23** A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$5,000  
**United Way** (\$5,000 from Countywide Youth Grant Account) to United Way of  
**of DE Inc.** Delaware Inc. for Delaware Goes Purple.

**Motion Adopted:** 5 Yeas

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

**M 449 23** A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give  
**Trinity** \$750 (\$750 from Mr. Vincent's Councilmanic Grant Account) to Trinity  
**Foundation** Foundation for their 2023 golf tournament.

**Motion Adopted:** 5 Yeas

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

**Introduction** Mr. Vincent introduced a Proposed Ordinance entitled "AN ORDINANCE  
**of Proposed** TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1  
**Ordinances** AGRICULTURAL RESIDENTIAL DISTRICT FOR AN INDOOR AND  
OUTDOOR SHOOTING/ARCHERY RANGE TO BE LOCATED ON A  
CERTAIN PARCEL OF LAND LYING AND BEING IN GUMBORO  
HUNDRED, SUSSEX COUNTY, CONTAINING 10.55 ACRES MORE OR  
LESS" filed on behalf of Over the Hill Holdings, LLC.

Mr. Hudson introduced a Proposed Ordinance entitled "AN ORDINANCE  
TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1  
AGRICULTURAL RESIDENTIAL DISTRICT FOR THE ADDITION OF  
EIGHT (8) LOTS INTO THE WHITE HOUSE BEACH  
MANUFACTURED HOME PARK AND BEING ON A 1.04 ACRE  
PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND  
LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY,  
CONTAINING 324.18 ACRES MORE OR LESS" filed on behalf of White  
House Beach Inc.

Mr. Hudson reintroduced a Proposed Ordinance entitled "AN  
ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR  
MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY  
DWELLINGS (23 UNITS) TO BE LOCATED ON A CERTAIN PARCEL  
OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX  
COUNTY, CONTAINING 9.20 ACRES, MORE OR LESS" filed on behalf  
of Carl M. Freeman Companies.

**The Proposed Ordinances will be advertised for a Public Hearing.**

**Council  
Member  
Comments**

**Mrs. Green commented that last week there was a SCAT meeting in Milford. During the meeting, there was a speaker from Surefire Cyber that discussed ransomware. She added that they mentioned five points that your computer system needs to have in place. Mrs. Green stated that she found the information very helpful and suggested that the County sponsor an event for this company to come speak to help local businesses.**

**M 450 23  
Go into  
Executive  
Session**

**At 10:58 a.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to recess the Regular Session, and go into Executive Session to discuss matters relating to land acquisition and personnel.**

**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 11:03 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus for the purpose of discussing matters relating to land acquisition and personnel. The Executive Session concluded at 11:37 a.m.**

**M 451 23  
Reconvene**

**At 11:40 a.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson 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.**

**M 452 23  
Adjourn**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to adjourn at 11:40 a.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.}*

**Consent Agenda 9-19-2023**

**Brentwood (Coral Lakes) IUA-961-2  
Existing Sewer Infrastructure Use Agreement  
DE LAND DEVCO, LLC to pay \$493,598.00 for 309.00 EDUs.  
Chapel Branch Area**

## 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

### 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  
Brentwood (Coral Lakes) IUA 961-2  
File: OM 9.01*

DATE: September 19, 2023

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 **DE LAND DEVCO, LLC** for the **Brentwood** project in the **Chapel Branch 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, the **Brentwood** project will connect to the existing County owned wastewater infrastructure. In return for utilization of said **DE LAND DEVCO, LLC** will contribute **\$493,598.00** for the financial catch-up contribution of the existing infrastructure to serve **309.00** Equivalent Dwelling Units. Payments of the contribution will be submitted as follows:

**\$50,000.00 due prior to beneficial acceptance of the 1<sup>st</sup> Phase.**  
**\$200,000.00 due prior to beneficial acceptance of the 2<sup>nd</sup> Phase.**  
**\$243,598.00 prior to the 200<sup>th</sup> connection.**



**EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT**

**Brentwood (Coral Lakes) – IUA 961-2**

THIS AGREEMENT (“Agreement”), made this 19<sup>TH</sup> day of SEPTEMBER 2023, by and between:

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

**DE LAND DEVCO, LLC** a Limited Liability Company and developer of a project known as **Brentwood (Coral Lakes)**, hereinafter called the “Developer.”

**WITNESSETH:**

**WHEREAS**, Developer is developing a tract of land identified as Tax Map parcels 234-6.00-67.00 & 234-6.00-84.00 to be known as **Brentwood** (“Project”) and;

**WHEREAS**, the Project is within the boundary of the Sussex County Unified Sanitary Sewer District (Chapel Branch 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 **309.00** 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 & infrastructure reimbursement in the amount of **\$493,598.00\*** for said existing facilities.

\*The project proposes splitting the flow to two (2) separate connection points, sending flow to two (2) different areas. This will cause the need for a two-part agreement whereas (70) EDUs will contribute for the flow to Chapel Branch Area and reimburse the County for 222-foot extension of pipeline into the existing collection system (222’ x \$180.00/ft = \$39,960.00) plus \$9,500.00 for paving, for a total of \$259,578.00 and 239 EDUs (234 homes + 5 amenities) will flow to the West Rehoboth Area for \$234,021.00.



(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) **Payments of the contribution will be submitted as follows:**

**\$50,000.00 due prior to beneficial acceptance of the 1<sup>st</sup> Phase.**

**\$200,000.00 due prior to beneficial acceptance of the 2<sup>nd</sup> Phase.**

**\$243,598.00 prior to the 200<sup>th</sup> connection.**

(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 **20184 Phillips Street, Rehoboth Beach, Delaware 19971.**

**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 DE LAND DEVCO, LLC**

By: Timothy Green (Seal)  
Timothy Green – Director of Land Development

9.6.2023 (DATE)

WITNESS:

Elison Hoodman

GINA A. JENNINGS, MBA, MPA  
FINANCE DIRECTOR  
(302) 855-7741 T  
(302) 855-7749 F  
gjennings@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: Gina A. Jennings  
Finance Director/Chief Operating Officer

RE: **American Rescue Plan Act Grant Update**

DATE: September 14, 2023

In March of 2022, I discussed the \$45.5 million that the County has been granted through the American Rescue Plan Act. At that time, I gave a presentation on the Treasury guidelines and made a recommendation on how to best utilize these funds following those guidelines.

A year later, I gave Council an annual update on those funds. At that meeting, I made a recommendation to reallocate these funds to our ARPA affordable housing initiatives and begin a non-profit small grant program. The non-profit small grant program was to supplement the large grant program we rolled out the year before. It was a formula-based grant program. All grantees have received their awards, as Council approved, and there is \$537,610 left to be allocated to one of the ARPA eligible categories.

One of the most successful ARPA programs Council established has been the housing rehabilitation program. Council previously allocated \$1.5 million to this program. All \$1.5 million has been successfully spent. Therefore, it is my recommendation to allocate the \$537,610 to the housing rehabilitation program. Brandy will be giving a presentation to show Council how the first \$1.5 million has been spent and how it has made a positive impact in Sussex County.

If you have any questions, please feel free to contact me.

pc: Todd F. Lawson



# SUSSEX COUNTY EMERGENCY MEDICAL SERVICES

Caring People, Quality Service

21911 Rudder Lane • P.O. Box 589 • Georgetown, DE 19947 • 302-854-5050 • FAX 302-855-7780

**Robert W. Murray**  
Director



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

FROM: Robert Murray, Director 

RE: Beebe Healthcare Vendor Agreement

DATE: September 6, 2023

In 2022, Beebe Healthcare began discussions regarding the lack of a vendor agreement with Sussex County EMS. We have, for more than thirty years, purchased medications from Beebe.

With changes and tightening of controlled substances laws Beebe Healthcare has requested that we enter into a formal agreement outlining the obligations of each party. This vendor agreement also clearly defined the transfer of legal responsibility once we take possession of the medications.

The attached vendor agreement was drafted by county legal counsel and agreed upon by Beebe Healthcare. The initial agreement is for three years and renews annually until terminated by either party.

All local hospitals have agreed to allow one-for-one exchanges for controlled substances administered to a patient who was taken to their facility. Only Beebe Healthcare has agreed to order controlled substances to replace expired medications, medications that were wasted, or for ordering new medications due to expansion of service. Their agreement is contingent upon this vendor agreement.

Enclosure

- Beebe Healthcare Vendor Agreement
- Proposed Motion

**Todd F. Lawson**  
Administrator



Motion – Beebe Healthcare Vendor Agreement

Be it moved that Sussex County Council approve the Vendor Agreement with Beebe Healthcare allowing Sussex County EMS to order medications, including controlled substances, through Beebe Healthcare Pharmacy.

## HOSPITAL PHARMACY VENDOR AGREEMENT

THIS HOSPITAL PHARMACY VENDOR AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between **Beebe Medical Center, Inc.** (alternatively referred to as “Beebe” or “the Hospital”), a Delaware nonprofit corporation located in Lewes, Delaware, and **Sussex County**, a political subdivision of the State of Delaware, together with **Sussex County Emergency Medical Services**, a department of Sussex County (alternatively referred to as “the County” or “SCEMS”), located in Georgetown, Delaware.

### WITNESSETH THAT:

WHEREAS the Hospital, the County and SCEMS are mutually desirous of entering into this Agreement to permit the SCEMS to purchase medications from the Hospital, and to enable the Hospital to supply such medications to SCEMS, in order for SCEMS to provide quality health care to the patients SCEMS encounters while performing its duties; and

WHEREAS the parties hereto desire to enter into this Agreement to set forth their mutual obligations to each other.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00), the premises and mutual representations, warranties and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The Recitals are incorporated herein by reference as though fully set forth.
2. The initial term of this Agreement shall be for three (3) years commencing on the Effective Date. After the initial term, this Agreement shall automatically renew for consecutive one (1) year terms until terminated by either party as described in Section 10 of this Agreement.
3. That the Hospital will:
  - a. Provide the medications requested by the SCEMS in timely manner if requested in compliance with the terms of this Agreement.
  - b. Exchange one-for-one all medications that have been administered to patients who have been transported to any Beebe facility. The cost of the medication administered to such patient shall be billed directly to the patient and not to SCEMS.
  - c. Provide the initial purchase of SCEMS medications that: (i) have been depleted, have expired or are damaged; (ii) have been administered to patients who have been transported to medical facilities other than Beebe facilities; and (iii) are necessary to allow for SCEMS system expansion, as may be needed from time to time. The cost of the medications shall be billed to SCEMS in accordance with Section 7.
  - d. Provide SCEMS with written instructions outlining the medication ordering process. The Hospital shall timely notify SCEMS in writing of any changes in the ordering process.

- e. Meet with designated SCEMS personnel as needed to discuss any concerns that may arise upon receipt of a written request from SCEMS to do so.

4. That the SCEMS will:

- a. Identify SCEMS personnel who shall have the authority to place and receive medication orders with the Hospital Pharmacy.
  - i. All paramedics may remove medications from the automated dispensing cabinet as outlined in Sections 3b. and 3c.(i) and (ii).
  - ii. Monthly orders for expiring medications as outlined in Section 3c.(i) shall only be placed and received by supervisory staff.
    - (1) Supervisory Staff shall include District Supervisors, PIIs and Senior Administrative Personnel.
    - (2) Senior Administrative Personnel shall include the SCEMS Director, Deputy Director and Managers.
  - iii. Orders for expansion of services as described in Section 3c.(iii) shall only be placed and received by Senior Administrative Personnel.
  - iv. Orders for medications as described in Section 5 below, shall only be placed and received by Senior Administrative Personnel.
- b. Follow proper channels to place and receive medication orders with the Hospital, as more fully set forth herein.
- c. Track the location and use of all medications, as required by law, from the time SCEMS takes possession of the medications from the Hospital.
- d. Properly store and secure all medications to ensure that: (1) medications shall remain effective for the intended shelf life; and (2) all medications are securely locked up and monitored, such that no unauthorized persons can gain access to them.

Meet with designated Hospital personnel as needed to discuss any concerns that may arise upon receipt of a written request from the Hospital to do so.

5. The purchase, tracking and storage of medications from the Hospital shall be in compliance with the Beebe Pharmacy Manual, as may be amended from time to time, which is attached hereto as Exhibit A and is incorporated herein by reference. In the event the Hospital modifies the Manual during the term of this Agreement, the Hospital shall provide SCEMS with at least thirty (30) days' written notice of the changes. In addition, the following shall apply:



- a. For each Scheduled II narcotics purchase, SCEMS shall be required to complete a DEA Form 222, as may be amended from time to time ("Form 222"). Form 222 shall be signed by the State or County EMS Medical Director and delivered to the Hospital by the SCEMS. Schedule II controlled substances shall require a signed hard copy of Form 222 prior to purchase. Schedule III, IV and V narcotics require a written request prior to purchase, or a Form 222, if required by law.
  - b. At the time of pick-up, SCEMS shall be required to sign a release for all medication purchases from the Hospital.
  - c. Upon receipt thereof, SCEMS shall assume all legal responsibility for the proper tracking, storage and use of all medications it receives from the Hospital pursuant to the terms of this Agreement.
6. SCEMS acknowledges that, in the course of the performance of its obligations hereunder, it may come into possession of confidential and/or proprietary data and information regarding patients, agents, businesses and activities and, accordingly, shall abide by all State and Federal regulations, in particular those associated with Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH). If SCEMS receives any individually identifiable health information from the Hospital ("Protected Health Information" or "PHI") or creates or receives any PHI on behalf of Covered Entity, SCEMS will maintain the security and confidentiality of such PHI as required by the Hospital and all applicable laws and regulations.
7. Except as set forth in Section 3b., SCEMS shall be required to pay for all medications it purchases from the Hospital equal to the Hospital's cost for each medication plus ten percent (10%). The Hospital shall provide monthly invoices to SCEMS. SCEMS shall tender payment to the Hospital within thirty (30) days of the invoice date. Invoices shall be sent to the County at the following address:  
  
Sussex County EMS  
Attn. EMS Office Manager  
P.O. Box 589  
Georgetown, DE 19947
8. The County and the Hospital shall each secure and maintain, at their own expense, professional and general liability insurance, with such coverages as is customary, but with limits not less than \$1 million per occurrence and \$3 million for annual aggregate. Prior to the commencement of services hereunder, the County will submit to the Hospital, and the Hospital will submit to the County, a certificate of insurance evidencing their respective insurance. The County and the Hospital will maintain this coverage at all times while this Agreement is in effect. Each Party shall notify the other at least thirty (30) days in advance prior to cancellation of coverage. Each Party will also maintain, at their own expense, workers' compensation insurance with statutory limits.

Each party agrees to indemnify, defend and hold harmless the other party, its affiliates and their respective officers, directors, employees, agents and staff from and against any and all claims, demands, liabilities, damages, settlements, judgments, orders, decrees, actions, suits, proceedings, fines, penalties, deficiencies, losses, interest, costs and expenses (“Losses”) to the extent arising from (a) (i) the alleged material inaccuracy or material breach of any of the representations or warranties made by the indemnifying party in or under this Agreement, and (ii) any and all negligent and willful acts and omissions attributable to the indemnifying party in connection with this Agreement; (b) *except that* such indemnification obligation shall not apply to (i) Losses related to professional negligence that are covered and paid by insurance required above, or (ii) to the extent caused by (x) the indemnified party’s breach or default in the performance of this Agreement, or (y) the negligent or willful acts and omissions attributable to the indemnified party in connection with this Agreement.

9. Any modifications to the Agreement shall be mutually agreed upon by both parties.
10. This Agreement may be terminated without cause by either party, provided that written notification to terminate is submitted at least ninety (90) days prior to such termination.
11. The relationship between Hospital and SCEMS is that of independent contractors. SCEMS employees shall in no way be deemed to be employees, representatives or agents, of the Hospital under any appropriate hospital policy, law or statute. Likewise, Hospital employees shall in no way be deemed to be employees, or agents, of the County under any County policy, law or statute. Nothing contained in this Agreement shall be construed so as to create a partnership or joint venture between any of the parties hereto.
12. All notices required to be given hereunder shall be sent by registered or certified mail, return receipt requested or by a nationally recognized overnight delivery service with all charges pre-paid to the addresses set forth in this Section.

To the Hospital:

Beebe Medical Center, Inc.  
424 Savannah Road  
Lewes, DE 19958  
Attn: Bruce Leshine, Vice President & General Counsel

To the County:

Sussex County  
2 The Circle  
P.O. Box 589  
Georgetown, DE 19947  
Attn: Robert W. Murray, Director OR  
Robert Mauch, Deputy Director of Administration

With a copy to:

J. Everett Moore, Jr., Esquire  
Moore & Rutt, P.A.  
122 W. Market Street  
P.O. Box 554  
Georgetown, DE 19947

Any party shall be entitled to change the address to which notices shall be given hereunder by giving notice to the other parties in accordance with the provisions set forth herein.

13. Nothing contained herein is intended to waive, alter, or otherwise amend the County's immunity under the Delaware Code or otherwise, including but not limited to the County and Municipal Tort Claims Act. Additionally, nothing contained herein is intended to violate any constitutional principles of the State of Delaware or United States. To the extent that any obligations contained in this Agreement are determined by court or other judicial action to waive, alter, or otherwise amend such immunity or to be constitutionally prohibited or otherwise not in accordance with the laws in effect at the time of any such claim, liability, cost or expense, the offending language shall be stricken from this Agreement by such authority and considered invalid and unenforceable to the extent necessary to allow the application of such immunity to any claims, losses, damages, or suits asserted against either party or to the extent necessary to correct such violation of the law. The parties agree that any claims, liabilities, damages, costs and expenses shall be subject to the provisions of the County and Municipal Tort Claims Act, including the limitations on damages.
14. This Agreement constitutes the entire Agreement between the parties, and it supersedes any and all prior understandings or commitments concerning the subject matter hereof. The parties hereto acknowledge and agree that this Agreement has been freely negotiated by all parties.
15. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, with venue lying in Sussex County. In the event of a dispute between the parties, each party shall be entitled to pursue any action at law or in equity in a court of competent jurisdiction in the State of Delaware.
16. Each party hereby waives all right to trial by jury and in a summary or other action, proceeding or counterclaims out of or in any way connected with this Agreement, and any claim or injury or damages relating thereto.
17. Any party's waiver of any right or remedy available to it in the event of any default hereunder, or any breach by any party of the terms and conditions of this Agreement, shall not constitute a waiver of any succeeding default of the same or other terms and conditions of this Agreement.
18. If any provision of this Agreement, or the application thereof, shall to any extent be held invalid, then the remainder of this Agreement, or the application of such provision other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

19. This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, successors and assigns.
20. All pronouns and any variations thereof used in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require.
21. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures and photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.  
SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the respective date(s) set forth below.

**Beebe Medical Center, Inc., a  
corporation of the State of Delaware**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David A. Tam, M.D., President & CEO,  
Authorized Person

Attest: \_\_\_\_\_

**Sussex County, a political subdivision of  
the State of Delaware**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Michael H. Vincent,  
President of the Sussex County Council

Attest: \_\_\_\_\_  
Tracy Torbert,  
Clerk of the Sussex County Council

**Sussex County Emergency Medical  
Services, a department of Sussex County**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Robert W. Murray, Director

Date: \_\_\_\_\_

EXHIBIT A

Beebe Pharmacy Manual

# BEEBE HEALTHCARE

## Pharmacy Manual

SUSSEX COUNTY EMERGENCY MEDICAL SERVICES 6470	Date: 06/23
Issued By: Joshua Coffield, PharmD, MBA, Director of Pharmacy  Approved By: Joshua Coffield, PharmD, MBA, Director of Pharmacy William Chasanov, DO, MBA, FACP, P&T Committee Chair	

### PURPOSE

To ensure compliance with county, state, and federal regulations

### SCOPE

Beebe Healthcare Emergency Departments and Pharmacy (pharmacy), Sussex County Emergency Medical Services (SCEMS)

### DEFINITIONS

One to one exchange – an exchange of an equal size and strength of medication, when SCEMS administers a dose of medication to a patient who is transported to one of Beebe Healthcare’s emergency departments.  
 Distribution – An exchange of medication pursuant to an appropriate order form to stock Emergency Medical Services (EMS) units or replace expired products. Distribution will not exceed the allowable volume for a registered hospital pharmacy.

### POLICY

1. Beebe pharmacy may supply SCEMS with medications in compliance with state and federal regulations.
2. SCEMS may retrieve a one-to-one exchange from the SCEMS assigned automated dispensing cabinet (ADC).
3. The one-to-one exchange will not be considered distribution.
4. The Emergency Medical Services (EMS) Medical Director or licensed designee shall register with the DEA and the Delaware Division of Professional Regulations – Controlled Substance Registration to obtain initial purchases from Beebe Healthcare in a limited distribution agreement.
5. Beebe Healthcare and SCEMS will audit administration, distribution, and dispensing records to ensure exchanges and distribution are done in accordance with policies. Discrepancies will be reported to both SCEMS and the Director of Pharmacy which may result in accountability actions including termination of distribution agreement, reporting to the Drug Enforcement Agency (DEA), the Delaware Board of Profession Regulation, the Delaware Board of Pharmacy and/or the Food and Drug Administration (FDA)
6. Narcotic distribution will be pursuant to the appropriate DEA form 222.
7. Controlled substance diversion or loss will be filed by SCEMS utilizing the DEA form 106.
8. Beebe Healthcare and SCEMS will ensure compliance with the Drug Supply Chain Security Act (DSCSA) and all applicable state and federal regulations or guidelines for storage, security, and handling of medications.

**REFERENCES**

Emergency Medical Service that Administer Controlled Substances. 21 U.S.C. §823 (2020).

<https://www.govinfo.gov/content/pkg/USCODE-2020-title21/pdf/USCODE-2020-title21-chap13-subchapI-partC-sec823.pdf>

Drug Supply Chain Security Act (DSCSA). Pub. L. No. 113-54 (2013).

<https://www.govinfo.gov/app/details/PLAW-113publ54>



## 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 Greenwood Storage Expansion of the Sussex County Unified Sanitary Sewer District

### PERMISSION TO POST FACT SHEET

- Expansion of the Sussex County Unified Sanitary Sewer District (Western Sussex Area)
- The Engineering Department has received a request from Davis, Bowen & Friedel, Inc. (DBF) on behalf of their client DESTORAGE.COM GREENWOOD, LLC the owners/developers of a project known as Greenwood Storage for parcels 530-10.00-55.00, 56.00 & 56.02.
- The parcels are zoned HC, Highway Commercial and are within the Greenwood Municipal Limits.
- The project will be responsible for System Connection Charges of \$7,70.00 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 November 7, 2023 at the regular County Council meeting.


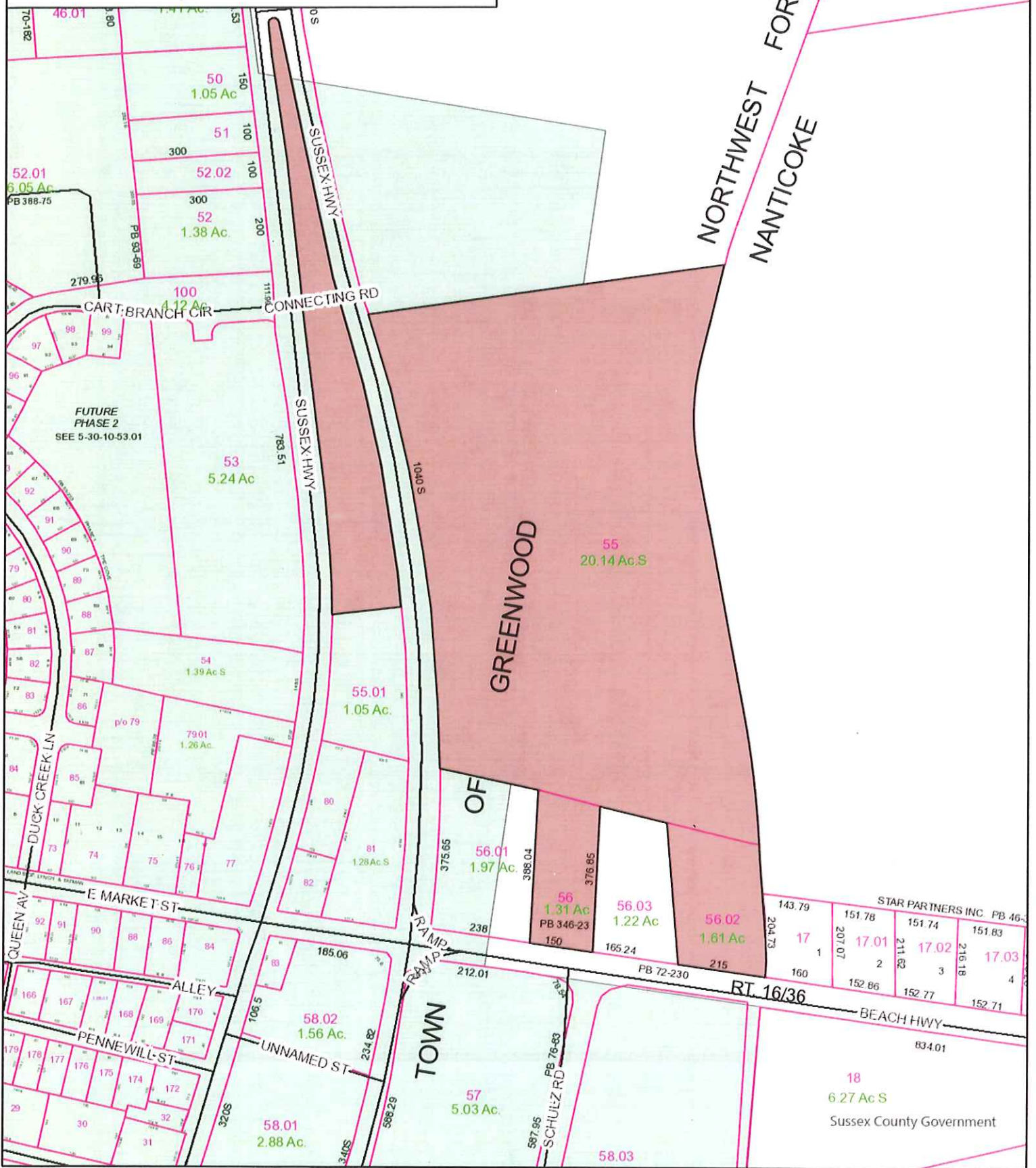


# Permission to Prepare and Post Notices Western Sussex Area

Existing SSD  
 TMP 530-10.00-55.00, 56, & 56.02

0 100 200 400 Feet

Map created: 9/7/2023

## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

(302) 855-7370 T  
(302) 854-5391 F

[hans.medlarz@sussexcountyde.gov](mailto:hans.medlarz@sussexcountyde.gov)



# Sussex County

DELAWARE  
[sussexcountyde.gov](http://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

RE: ***Western Sussex Unified Sewer District:  
Contract 5, Project S19-29  
A. Segment C: Granting of Substantial Completion***

DATE: September 19, 2023

In February 2017, the municipal councils of Bridgeville and Greenwood requested investigation of an alternate County Sewer District based scenario. Upon review of the findings both municipal Councils requested formation of a County sewer district pursuant to Title 9 Del. Code § 6501, and on August 22, 2017, County Council adopted a resolution establishing the Western Sussex Area of the Unified Sanitary Sewer District.

The County requested funding consideration under the Clean Water State Revolving Fund and on August 14, 2018, the State issued a binding commitment offer in the overall amount of \$16,634,748 to be repaid within 30-years with 2.5% interest. On November 27, 2018, Council accepted the offer and approved the associated borrowing ordinance. After project completion, \$3,200,000 will be applied in principle forgiveness reducing the overall borrowing. On May 15, 2020 the County filed a supplemental CWSRF funding request in the amount of \$850,000 to cover unanticipated change orders associated with the DeIDOT restoration on RT-13. The County's request was approved by the Water Infrastructure Advisory Council during their July 15, 2020 meeting in the form of "Loan Forgiveness.

Council also authorized a 2nd request for supplemental funding for the Western Sussex District Area Expansion Project through the CWSRF in the amount of \$1,336,315.00. Once an offer is received, an associated debt ordinance would be introduced and voted on by Council after a public hearing. Since the project is already at the affordability limits an offer in the form of mostly "Loan Forgiveness" is expected.



The project has three components; transmission under Contracts 1-4, treatment plant demolition/system rehabilitation Contract 5, maintenance garage under Contract 6 and a Bridgeville Branch restoration project spearheaded by the Sussex Conservation District.

The construction of the transmission project was further broken down in the following four (4) individual contracts based on DelDOT's schedule requirements:

- Contract No.1 to A-Del Construction Co, Inc. in the amount of \$3,224,820.00, for the force main work in the RT-13 rights-of-way. Awarded by Council on May 14, 2019.
- Contract No.2 to Pact One LLC in the amount of \$2,063,255.00, for the gravity sewer upgrades. Awarded by Council on May 14, 2019.
- Contract No.3 to A-Del Construction Co, Inc. in the amount of \$2,980,602.00, for the force main work in the RT-13 Alternate and Herring Road rights-of-way. Awarded by Council on January 7, 2020.
- Contract No.4 to Zack's Excavating, Inc. in the amount of \$3,236,939.00, for gravity sewer equalization chambers and two (2) pump stations. Awarded by Council on November 12, 2019.
- Contract No. 6 to GGI, Inc. in the amount of \$410,525.00, for construction of a new Office/Garage Building. Awarded by Council on June 23, 2020.

During the construction of Contract No.1 awarded to A-Del Construction Co, Inc., DelDOT did not allow the reuse of most of the excavated trench material and required Type C Borrow instead. Therefore, this unit price item went considerably above the bid quantity. In addition, a wider concrete base course was encountered under the Cannon Road crossing. Rather than using hot-mix for restoration, DelDOT required reinstallation of the concrete base course adding 25% to the cost of this lump sum item. On February 4, 2020, Council approved the associated Change Order No.1 in the amount of \$254,188.92. During the final restoration phase DelDOT required additional matting and utility adjustments resulting in a final balancing Change Order No. 2 in the amount of \$26,486.65. Council issued Change Order No.2 and granted final project completion on June 2, 2020.

The award of Contract No.2 to Pact One, LLC included the base bid and two alternate bid items. At the time of award, the Alternate Bid Item D5 was not awarded due its significantly higher than anticipated cost. In subsequent discussions, Pact One LLC realized they had misinterpreted the scope for Item D5 and submitted an alternate proposal at approximately 16% of the original bid. On September 10, 2019 Council awarded Change Order No. 1 in the amount of \$96,840.00 to cover item D5. On June 2, 2020 Council approved a final balancing Change Order No. 2 in the credit amount of (\$128,708.70) and granted final project completion.

Contract No.3 awarded to A-Del Construction Co, Inc. encountered no issues and on June 15, 2021 Council approved the balancing Change Order No. 1 in the credit amount of \$643,915.22 together with final project completion as of April 7, 2021.

During the construction of Contract No. 4 awarded to Zack's Excavating, Inc. a groundwater contamination was encountered, in addition to a construction sequencing issue at the Bridgeville site. In response, the Department developed a value engineering approach approved by Council on June 2, 2020 under Change Order No.1 in the amount of \$40,045.00. The north Seaford pump station included RT-13 entrance improvements which required a more substantial reconstruction due to lack of an existing base course as well as a compromised subbase. In response Council approved Change Order No. 2 in the amount of \$22,642.78 on July 28, 2020. On September 30, 2020 Zack's Excavating, Inc. encountered a previously unknown ductile iron water pipe within the area of the deep excavation of the Bridgeville pump station structures. On November 10, 2020 Council approved Change Order No. 3 in the total amount of \$32,644.19 for the time and material relocation effort.

On February 3, 2021, Delmarva Power and Light contacted Sussex County with an opportunity for net schedule and cost savings by adjusting the transformer type from pad mount to a pole mounted system. While this decreased the charges from Delmarva Power and Light, it increased Zack Excavating Inc.'s electrical subcontractor's scope by \$5,504.87. However, the coordination with DP&L did affect the critical schedule and caused a two-week delay. In addition, the Environmental Services team did additional assessments of the Heritage Shores Pump Station pre-existing conditions and recommended additional upgrades to the existing SCADA system to bring it up to the current county standard exceeding the stipulated contract allowance by \$16,000.00. On March 9, 2021 Council approved Change Order No. 4 in the amount of \$21,504.87 and the associated two-week contract time extension.

The final gravity sewer line to transferred to the new Bridgeville pump station had significant, previously unknown, infiltration. The Department requested a change order for the necessary repairs but Zack's Excavating, Inc. declined any further change orders. Subsequently, after receiving concurrence from the funding agency, the Engineering Department mobilized the County's General Labor & Equipment contractor to the site. Furthermore, the Department suggested to transition Zack's contract to a lump sum approach, requesting credit proposals for several remaining incidental work items and allowances. On May 25, 2022 Council issued the close out credit Change Order No. 5 in the amount of (\$92,704.30) as well as the granting of substantial project completion.

The Invitation to Bid for the last remaining Western Sussex Unified Sewer District, Contract 5, Project S19-29 was advertised in the local newspaper, available to view on the County website and directly forwarded to interested contractors. On February 9, 2022, seven (7) bids were received.

On February 22, 2022, Council made the following three awards 7 one rejection:

- Segment A to A-Del Construction Co., Inc. for \$427,000.00
- Segment B to Richard E. Pierson Construction Co., Inc. for \$920,800.00
- Segment D to Standard Pipe Services, LLC for \$525,100.00
- Segment C due to irregularities in the low bid, Council rejected all bids for Segment C and authorized an immediate re-bid.

On March 25, 2022, two (2) re-bids were received and on April 26, 2022 Council awarded Segment C to Zack's Excavating, Inc. in the amount of \$551,585.16.

Western Sussex Unified Sewer District Contract 5, Project S19-29 change order requests and substantial completion summary.

- Segment A was awarded to A-Del Construction Co, Inc for \$427,700.00. The contractor stated they were 'substantially complete' as of June 23, 2022, with the last remaining waste materials picked up from the Bridgeville Wastewater Treatment plant for disposal. Part of this last removal were some additional chemicals not in the original bid inventory sheets. The additional chemicals in Change Order No. 1 amounted to \$2,628.88 for a new contract amount of \$430,328.88. The substantial complete balancing Change Order No. 2 with consideration for less than anticipated removal of residual liquids, solids and sludger resulted in a surplus of \$216,097.35. On July 12, 2022, Council approved Change Order No. 1. On June 23, 2022 Council approved the balancing Change Order No. 2 and granted substantial completion.
- Segment B was awarded to Richard E. Pierson Construction Co., Inc. for \$920,800.00. In the process of demolition, Richard E. Pierson recognized that the existing water main crossing the site could not be sustained in its current location. Therefore, Richard E. Pierson Construction Co., Inc. proposed Change Order No. 1 for the relocation of the main in the amount of \$27,743.89 which was approved by Council on July 12, 2022. The project contained contingency items which were not all used and on October 18, 2022, Council approved the balancing Change Order No. 2 in a credit amount of \$177,857.89 as well as the granting substantial completion effective October 11, 2022.
- Segment C rebid was awarded to Zack's Excavating, Inc. for \$551,585.16. Zack's Excavating, Inc. requested a Change Order No.1 for additional unit price work at the Bridgeville Pump Station and the Engineering Department is requested to uncouple the work at the Heritage Shores Pump Station.
  - Bridgeville Pump Station repair experienced challenges relative to the position of the existing gravity sewer pipe and the existing inverts at the manholes requiring 62.75 feet of additional length to ensure adequate slope.
  - The railing system of the equalization chamber was damaged in a recent emergency response triggering an increase of the previously bid repair amount.
  - Heritage Shores Pump Station has new upgrade requirements including wet well access and odor control triggering another redesign.

On December 6, 2022, County Council approved Change Order No. 1 for Zack's Excavating, Inc. in the aggregate credit amount of (\$229,133.70) and authorized a standalone rebid of the Heritage Shores Pump Station.

Since then, all the work was completed and the Engineering Department recommends granting of substantial completion as of September 15, 2023, contingent upon SRF concurrence.

- Segment D was awarded to Standard Pipe Services, LLC for \$525,100.00. Standard Pipe Services, LLC proposed Change Order No. 1 in the amount of \$52,500.00 for unit rates covering camera work beyond the main for locating, cleaning and televising laterals estimated and Change Order No. 2 in the amount of \$33,900.00 or contingent unit rates approval for heavy cleaning services prior to camera work. Council approved both change orders on July 12, 2022.

At the end of 2022 Standard Pipe Services, LLC proposed a no-cost extension of the contract timeline by 180-day due in part to:

- Equipment down time associated with the heavy cleaning effort.
- Delays associated with the consolidation, formatting, reviewing, and analysis of the videos from Standard Pipe Services and supplemental video support from the Sussex County team.
- Based on the video more lining work than the original bid quantities is proposed.

On December 6, 2022, County Council approved Standard Pipe Services, LLC's Change Order No. 3. for a 180-day no-cost extension from December 18, 2022, to June 23, 2023.

The Standard Pipe Services, LLC requested Change Order No. 4 for repairs to additional compromised infrastructure discovered while completing the original scope within the Town of Bridgeville. In addition, the County camera crews have identified repairs, as they were mapping lateral connections to the mains. In total, these repairs are estimated using the unit prices bid, at approximately \$75,500.00. With the June 23<sup>rd</sup> contract completion date approaching, the Department proposed a four-week contract time extension to July 21<sup>st</sup>, 2023.

On June 20, 2023, Council approved Change Order No. 4 in the not to exceed amount of \$75,500.00 for additional repair scope at the unit prices bid and an associated four (4) week contract extension.

Since then, Standard Pipe Services, LLC completed the remaining scope items that could be resolved within the context of the approved unit bid items of Contract 5D leaving a balancing Change Order No. 5 in the credit amount of (\$32,236.00), and the new contract total of \$654,764.00.

On August 15, 2023 Council granted substantial completion as of July 21<sup>st</sup>, 2023, and approved balancing Change Order No. 5 for Standard Pipe Services, LLC's in the credit amount of (\$32,236.00).

## ENGINEERING DEPARTMENT

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# Sussex County

DELAWARE  
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## 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

**DATE:** September 19, 2023

**RE:** *Pintail Pointe, Project 21-16*  
*A. Recommendation to Award*

In January 2021, the Engineering Department and elected officials started receiving calls pertaining to the large on-site system failure serving the Pintail Pointe Community. On March 29, 2021 the Engineering Department presented to the Pintail Pointe Owners Association (PPOA) a short-term and a long-term remediation approach.

The short-term required an interim sewer operations and transition agreement which was executed on March 30, 2021 allowing temporary repairs and County operational assistance under a reimbursement arrangement. Subsequently, Sussex County applied to DNREC for an on-site system permit modification which was received and implemented.

The long-term sewer district creation required a Public Hearing and a referendum. The Public Hearing was held on April 27, 2021 and the referendum on June 4, 2021, the referendum passed (34) in support and (0) opposed to the creation of a sanitary sewer area. The results from the referendum were presented to County Council on June 15, 2021 and Council voted to extend the Sussex County Unified Sanitary Sewer District to include the Pintail Pointe Community.

In April of 2022 the Engineering Department finalized the Preliminary Engineering Report and the Environmental Information Documents required for submittal of the funding application to Delaware State Revolving Fund (SRF). On November 8, 2021 these Documents were combined with the overall funding application prepared by the Finance Department and filed with DNREC for \$959,888.00. On December 30, 2021 the County received the Binding Commitment Letter from DNREC Environmental Finance. January 3, 2022, the County accepted the Binding Commitment Offer and the obligating documents associated in the loan amount of \$959,888.00 and \$579,000.00 of principal forgiveness.





On January 25, 2023, Council approved the introduction and approval of the associated debt ordinance authorizing the issuance of up to \$959,888.00 of general obligation bonds of Sussex County in connection with the construction and equipping of the Pintail Pointe Expansion of the Unified Sanitary Sewer District.

On May 14, 2019, County Council awarded a five (5) year base contract for miscellaneous engineering services to George Miles & Buhr, Inc. and on May 24, 2022 Council approved a standalone contract for design & permitting in the not to exceed amount of \$81,450.00.

The design was completed and permitted in the spring of 2023 and subsequently Invitations to Bid were advertised and on May 10, 2023, five (5) bids were received. The two (2) lowest bid submissions were missing all three required State certifications and contained other minor irregularities. DNREC must concur in any award which would not be possible without the required State certification. An award to the third lowest bidder would have significantly exceeded the budget. Therefore, Council rejected all bids on May 23, 2023 and authorized an immediate rebid.

Bid were readvertised in the local newspaper, as well as available to view on the County website. In addition, the information was directly forwarded to several contractors. Four (4) contractors attended the pre-bid meeting on June 15, 2023, and on June 29, 2023, five (5) bids were received. This time all bid submissions included the required State certifications.

Therefore, the Department recommends Council to award the project to the lowest bidder Zack Excavating, Inc. in the amount of \$887,031.96 contingent upon DNREC concurrence.

Due to the tight budget the Engineering Department will performing the contract administration and inspections in house.

Pintail Pointe PS & Forcemain Project S21-16				Zack Excavating		MGK		Chesapeake Turf		Richard E. Pierson		Pact One		
Bid Item	Description of Work	Quantity	Unit	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Average Unit Price
<b>SCHEDULE A</b>														
A1	Mobilization	1	LS	\$39,858.66	\$39,858.66	\$28,000.00	\$28,000.00	\$54,900.00	\$54,900.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$43,189.67
A2	Furnish & Install Erosion Sediment Control Measures	1	LS	\$6,300.00	\$6,300.00	\$5,000.00	\$5,000.00	\$56,800.00	\$56,800.00	\$20,000.00	\$20,000.00	\$10,000.00	\$10,000.00	\$22,025.00
A3	Furnish & Install Bypass Pumping	1	LS	\$85,408.87	\$85,408.87	\$15,000.00	\$15,000.00	\$85,500.00	\$85,500.00	\$53,000.00	\$53,000.00	\$20,000.00	\$20,000.00	\$59,727.22
A4	Demolition & Removal of Existing WWTP Structures & Equipment	1	LS	\$148,902.42	\$148,902.42	\$321,000.00	\$321,000.00	\$77,800.00	\$77,800.00	\$160,000.00	\$160,000.00	\$80,000.00	\$80,000.00	\$176,925.61
A5	Abandonment of Existing Ground Water Monitoring Wells by a Licensed Well Driller	5	EA	\$1,000.00	\$5,000.00	\$400.00	\$2,000.00	\$663.00	\$3,315.00	\$500.00	\$2,500.00	\$2,500.00	\$12,500.00	\$640.75
<b>SUBTOTAL FOR SCHEDULE A</b>					<b>\$285,469.95</b>		<b>\$371,000.00</b>		<b>\$278,315.00</b>		<b>\$285,500.00</b>		<b>\$172,500.00</b>	
<b>SCHEDULE B - PUMP STATION</b>														
B1	Furnish & Install Sewer Pump Station No. PS 359	1	LS	\$430,109.85	\$430,109.85	\$438,910.00	\$438,910.00	\$573,500.00	\$573,500.00	\$550,000.00	\$550,000.00	\$625,000.00	\$625,000.00	\$498,129.96
B2	Electric Utility Service Extension Allowance	1	LS	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
B3	Wet Well Wall Coating	1	LS	\$23,400.00	\$23,400.00	\$25,000.00	\$25,000.00	\$53,500.00	\$53,500.00	\$22,500.00	\$22,500.00	\$52,000.00	\$52,000.00	\$31,100.00
<b>SUBTOTAL FOR SCHEDULE B</b>					<b>\$458,509.85</b>		<b>\$468,910.00</b>		<b>\$632,000.00</b>		<b>\$577,500.00</b>		<b>\$682,000.00</b>	
<b>SCHEDULE C - FORCE MAIN TRANSMISSION SYSTEMS</b>														
C1	Furnish & Install HDPE Force Main (Via Open Cut)	500	LF	\$52.24	\$26,120.00	\$36.00	\$18,000.00	\$73.00	\$36,500.00	\$158.00	\$79,000.00	\$120.00	\$60,000.00	\$79.81
C2	Furnish & Install Sch. 80 PVC Force Main (Via Open Cut)	40	LF	\$375.63	\$15,025.20	\$36.00	\$1,440.00	\$270.00	\$10,800.00	\$347.00	\$13,880.00	\$120.00	\$4,800.00	\$257.16
C3	Furnish & Install Force Main (Via Directional Drill)	1,700	LF	\$38.00	\$64,600.00	\$53.00	\$90,100.00	\$49.00	\$83,300.00	\$54.00	\$91,800.00	\$100.00	\$170,000.00	\$48.50
C4	Furnish & Install Toning Wire Box	3	EA	\$1,000.00	\$3,000.00	\$500.00	\$1,500.00	\$1,600.00	\$4,800.00	\$450.00	\$1,350.00	\$600.00	\$1,800.00	\$887.50
C5	Furnish & Install Air Release Valve ARV-1	1	EA	\$11,506.96	\$11,506.96	\$5,000.00	\$5,000.00	\$26,375.00	\$26,375.00	\$14,000.00	\$14,000.00	\$12,000.00	\$12,000.00	\$14,220.49
<b>SUBTOTAL FOR SCHEDULE C</b>					<b>\$120,252.16</b>		<b>\$116,040.00</b>		<b>\$161,775.00</b>		<b>\$200,030.00</b>		<b>\$248,600.00</b>	
<b>SCHEDULE D - CONTINGENT BID ITEMS</b>														
D1	Excavation Below Subgrade	50	CY	\$42.00	\$2,100.00	\$40.00	\$2,000.00	\$10.00	\$500.00	\$91.00	\$4,550.00	\$60.00	\$3,000.00	\$45.75
D2	Furnish & Place No. 57 Stone Gravel Bedding	50	CY	\$90.00	\$4,500.00	\$60.00	\$3,000.00	\$75.00	\$3,750.00	\$68.00	\$3,400.00	\$80.00	\$4,000.00	\$73.25
D3	Furnish & Place Borrow Material (Backfill)	300	CY	\$9.00	\$2,700.00	\$40.00	\$12,000.00	\$10.00	\$3,000.00	\$54.00	\$16,200.00	\$40.00	\$12,000.00	\$28.25
D4	Miscellaneous Excavation & Backfill	10	CY	\$35.00	\$350.00	\$60.00	\$600.00	\$50.00	\$500.00	\$90.00	\$900.00	\$90.00	\$900.00	\$58.75
D5	Furnish & Place Miscellaneous 4,000 PSI Concrete	10	CY	\$180.00	\$1,800.00	\$500.00	\$5,000.00	\$250.00	\$2,500.00	\$1,111.00	\$11,110.00	\$800.00	\$8,000.00	\$510.25
D6	Secure Modified Proctor Tests on Trench Backfill	1	EA	\$600.00	\$600.00	\$700.00	\$700.00	\$500.00	\$500.00	\$360.00	\$360.00	\$500.00	\$500.00	\$540.00
D7	Secure Field Density Tests on Trench Backfill	10	EA	\$250.00	\$2,500.00	\$400.00	\$4,000.00	\$350.00	\$3,500.00	\$158.00	\$1,580.00	\$500.00	\$5,000.00	\$289.50
D8	Solids/Sludge Removal, Handling, Hauling & Disposal	50	CY	\$165.00	\$8,250.00	\$375.00	\$18,750.00	\$262.00	\$13,100.00	\$210.00	\$10,500.00	\$200.00	\$10,000.00	\$253.00
<b>SUBTOTAL FOR SCHEDULE D</b>					<b>\$22,800.00</b>		<b>\$46,050.00</b>		<b>\$27,350.00</b>		<b>\$48,600.00</b>		<b>\$43,400.00</b>	
<b>Total Bid Price</b>					<b>\$887,031.96</b>		<b>\$1,002,000.00</b>		<b>\$1,099,440.00</b>		<b>\$1,111,630.00</b>		<b>\$1,146,500.00</b>	\$1,025,025.49

**PINTAIL POINTE RE-BID EVALUATION FORM**

**06/29/23**

Required Bid Items	Zacks	MGK
<b>Total Bid Amount</b>	\$887,031.96	\$1,002,000.00
Bid Amount Discrepancy	None	None
Schedule E: List of Subcontractors Filled out in it's Entirety	Yes	Yes
Acknowledge Addendums <b>*No Addenda Issued</b>	*	*
Bid Bond Provided	Yes	Yes
Copy of Delaware Business License	Yes	Yes
Drug Testing Affidavit	Yes	Yes
Qualification Statement	Yes	Yes
Certification of Non-Segragated Facilities	Yes	Yes
Compliance Statement	Yes	Yes
American Iron & Steel Certificate	Yes	Yes

Chesapeake Turf	Richard E. Pierson	Pact One
\$1,099,440.00	\$1,111,630.00	\$1,146,500.00
None	None	None
Yes	Yes	Yes
*	*	*
Yes	Yes	Yes
Yes	Yes	Yes
Yes	Yes	Yes
Yes	Yes	Yes
Yes	Yes	Yes
Yes	Yes	Yes
Yes	Yes	Yes
Yes	Yes	Yes

## ENGINEERING DEPARTMENT

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# Sussex County

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## 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

RE: ***Stinson Home Elevation Project (FEMA-4566-DR-DE-0002)***  
***A. Sponsorship 37430 5<sup>th</sup> Street, Rehoboth Beach***

DATE: June 15, 2021

April of 2010 County Council approved the FEMA Flood Mitigation Program in principle. Since then the Delaware Emergency Management Agency (DEMA) has been soliciting eligible projects to be submitted through sub-applicants i.e., local governments for the Hazard Mitigation Grant Program. DEMA reviews all pre-applications for eligibility and determines which projects will move forward in the application process. Eligible project sub-applications will be required to be submitted to FEMA for further review and concurrence.

The Stinson application for tax parcel 234-25.00-2.00 with an address of 37430 5th Street Rehoboth Beach and located in the Bay Vista community was originally submitted to FEMA on November 30, 2021 with a 10% applicant cost share. FEMA officially approved Stinson's home elevation project and obligated the federal funding into the State of Delaware's FSF system in July of 2023.

In addition to the federal funding for the project in the amount of \$173,250 (90% of total), DEMA secured sub-recipient management costs at 100% federal share, totaling \$9,625.00. This is specifically for Sussex County to assist in managing the project including any indirect expenses reasonably incurred in administering and managing the award.

The project residence is an historically significant structure, designed and constructed in 1960 under the supervision of the original owner a DuPont Company chemical engineer. Built in the tradition of classic mid-century design, the structure consists of a two-bedroom house and a single space studio attached by a trellis of similar architecture, added in 1961. Both structures



are supported by turn down poured concrete slab foundations, with the exterior supporting walls constructed using concrete blocks.

The property is designated by FEMA as flood zone AE with a Base Flood Elevation (BFE) of 7 feet MSL. The approach calls for elevating the structure in the most cost-effective manner by constructing a new base floor at BFE some 4-5 feet above the existing slab foundation. The A-frame roof of the structure is proposed to be elevated while the difference is filled in with new CMU walls while affixing the roof at the new increased wall height. The existing concrete slab will remain, creating the base of a newly created crawl space with flood vents.

The project will follow the ASCE 24-14 Flood Resistant Design and Construction guidance. In addition, we will specify flood resistant materials below the BFE and elevate all utilities and mechanical equipment above the BFE.

The project will be designed by Mr. Stinson's professional architect and structural engineering consultant at his expense. The structural evaluation will follow the requirements under the 2021 edition of the IBC Section 1609 Wind Loads with 120 mph and appropriate surface roughness category D under IBC 1609.4.2 as well as exposure category B as per IBC Section 1609.4.3. In addition, the structure must be designed to IBC Section 1612, Flood Loads.

Once designed, the Sussex County Engineering Department will assemble the bid documents and competitively bid the project. After the award by Council the Engineering Department will manage the construction. Mr. Stinson has executed and notarized the required concurrence to the future deed restriction for projects receiving federal FEMA funding.

In summary, the Engineering Department recommends County Council sponsor the FEMA Mitigation Grant Application: FEMA-4566-DR-DE-0002 under the 90% Federal cost share arrangement.

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One Independence Mall  
615 Chestnut Street, 6<sup>th</sup> floor  
Philadelphia, PA 19106-4404



**FEMA**

July 20, 2023

Abel J. Schall, Jr.  
Governor's Authorized Representative  
Delaware Emergency Management Agency  
165 Brick Store Landing Rd.  
Smyrna, DE 19977

**Re: Project Approval Letter  
FEMA-4566-DR-DE-0002  
Stinson Home Elevation  
Hazard Mitigation Grant Program (HMGP)**

Governor's Authorized Representative Schall:

I am pleased to inform you that the **Stinson Home Elevation Project (FEMA-4566-DR-DE-0002)** application has been approved. The funds for this project will be utilized to increased the base floor elevation 5-feet above the existing slab foundation for one (1) structure. This will prevent futher inundation of most flood waters.

Location Address	Latitude/ Longitude
37430 5 <sup>th</sup> Street, Rehobeth Beach, Delaware 19971	38.69777, -75.09706

The total approved project cost is \$192,500.00 with 90% federal share of \$173,250.00 and a 10% non-federal share of \$19,250.00. Requested Sub-Recipient Management Costs of \$9,625.00 is awarded at 100% federal share. The total federal share amount of \$182,875.00 is available in the SMARTLINK system. A copy of the obligation is enclosed for your files.

	Federal Share	Non-Federal Share	Total
Project Costs	\$173,250.00	\$19,250.00	\$192,500.00
Sub-Recipient Management Cost	\$9,625.00	\$0.00	\$9,625.00
Total	\$182,875.00	\$19,250.00	\$202,125.00

In implementing this project, Delaware Emergency Management Agency (DEMA) as the recipient, shall ensure compliance of the subrecipient with the FEMA-State Agreement for FEMA-4566-DR-DE and all applicable laws, assurances, and guidance.

The sub-recipient must adhere to all requirements and conditions outlined in the Record of Environmental Consideration (REC) document enclosed. Special Conditions required on implementation of this project are:

**Clean Water Act (CWA)** All work and equipment staging must occur within the previously developed footprint and outside of the water. Proper erosion and sedimentation (E&S) control measures must be implemented during demolition activities to prevent runoff of materials and soil into the adjacent waters. If the work will occur outside the previously developed footprint, in the waterway, or E&S control measures cannot be implemented, FEMA EHP staff must be notified prior to the start of work for further review.

**Coastal Zone Management Act (CZMA)** Pursuant to 15 CFR 930.101, Sussex County shall notify the Delaware Coastal Management Program of any proposed modifications to activities after receiving a decision from the DCMP. Modifications will be subject to supplemental federal consistency review if effects to any coastal use or resource will be substantially different than originally described.

**Magnuson-Stevens Fishery Conservation and Management Act (MSA)** The project is located within Essential Fish Habitat. Appropriate erosion and sedimentation (E&S) control measures must be implemented during construction activities to prevent runoff of materials and soil into adjacent waterways. Work in water activities should not take place. If these conditions cannot be met, the applicant must notify FEMA EHP prior to the start of work to allow for the appropriate coordination with NOAA.

Please be aware that all projects approved under 4566-DR-DE have a **Period of Performance (POP) that ends on October 1, 2024**. All work and administrative tasks must be completed within this POP to request reimbursement for eligible project cost. This includes compliance with the Record of Environmental Consideration.

Please provide our office with a quarterly report thirty (30) days after the end of each federal fiscal year quarter. If you have any questions, please contact Lauryl Lenox, Project Officer at [lauryl.lenox@fema.dhs.gov](mailto:lauryl.lenox@fema.dhs.gov)

Sincerely,

Tessa W. Nolan  
Acting Deputy Director  
Mitigation Division

Enclosure:   Obligation Report  
                  Record of Environmental Consideration



cc: Philip Cain, State Hazard Mitigation Officer  
Maura Hannigan-Pierce, HMGP Branch Chief  
Sabrina Jefferson, HMGP Section Supervisor  
Lauryl Lenox, FEMA Project Officer, Region 3

**Acknowledgement of Conditions for Mitigation of Property in a  
Special Flood Hazard Area with FEMA Grant Funds**

Property Owner Terrence Stinson  
Street Address 27430 5th St  
City Redoboth Beach, State DE Zip Code 19971  
Deed dated 13 April 2014, Recorded 28 April 2014  
Tax map 334-17.16-113, Block \_\_\_\_\_, Parcel \_\_\_\_\_  
Base Flood Elevation at the site is 3.0 feet (NGVD).  
Map Panel Number 10005C0353K, Effective Date 3/14/2015

As a recipient of Federally-funded hazard mitigation assistance under the Hazard Mitigation Assistance Program, as authorized by 42 U.S.C. §5170c / Pre-Disaster Mitigation Program, as authorized by 42 U.S.C. §5133 / Flood Mitigation Assistance Program, as authorized by 42 U.S.C. §4104c / Severe Repetitive Loss, as authorized by 42 U.S.C. §4102a / Repetitive Flood Claims, as authorized by 42 U.S.C. §4030, through the Maryland Emergency Management Agency and (sub-applicant), the Property Owner accepts the following conditions:

1. That the Property Owner has insured all structures that will not be demolished or relocated out of the Special Flood Hazard Area "SFHA" for the above-mentioned property to an amount at least equal to the project cost or to the maximum limit of coverage made available with respect to the particular property, whichever is less, through the National Flood Insurance Program (NFIP), as authorized by 42 U.S.C. §4001 et seq., as long as the Property Owner holds title to the property as required by 42 U.S.C. §4012a.

2. That the Property Owner will maintain all structures on the above-mentioned property in accordance with the floodplain management criteria set forth in Title 44 of the Code of Federal Regulations (CFR) Part 60.3 as long as the Property Owner holds title to the property. These criteria include, but are not limited to, the following measures:

- i. Enclosed areas below the Base Flood Elevation will only be used for parking of vehicles, limited storage, or access to the building;
- ii. All interior walls and floors below the Base Flood Elevation will be unfinished or constructed of flood resistant materials;
- iii. No mechanical, electrical, or plumbing devices will be installed below the Base Flood Elevation; and
- iv. All enclosed areas below Base Flood Elevation must be equipped with vents permitting the automatic entry and exit of flood water.

3. The above conditions are intended to run with the land and be binding on all future property owners so long as the property is improved. To provide notice to subsequent owners of these conditions, the Property Owner agrees to legally record with the (county or appropriate jurisdiction's) land records a

notice that includes the name of the current property owner (including book/page reference to record of current title), a legal description of the property, and the following notice of flood insurance requirements:

"This property has received Federal hazard mitigation assistance. Federal law requires that flood insurance coverage on this property must be maintained during the life of the property regardless of transfer of ownership of such property. Pursuant to 42 U.S.C. §5154a, failure to maintain flood insurance on this property may prohibit the owner from receiving Federal disaster assistance with respect to this property in the event of a flood disaster. The Property Owner is also required to maintain this property in accordance with the flood plain management criteria of Title 44 of the Code of Federal Regulations Part 60.3."

4. Failure to abide by the above conditions may prohibit the Property Owner and/or any subsequent owners from receiving Federal disaster assistance with respect to this property in the event of any future flood disasters. If the above conditions are not met, FEMA may recoup the amount of the grant award with respect to the subject property, and the Property Owner may be liable to repay such amounts.

This Agreement shall be binding upon the respective parties' heirs, successors, personal representatives, and assignees.

IN WITNESS WHEREOF, the Property Owner has signed and sealed this Agreement on the date indicated below:

WITNESS:

OWNER:

(Date)

[Signature]

[Signature]

8/2/2023

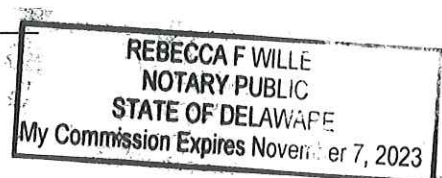
STATE OF Delaware, (SUBAPPLICANT), TO WIT:

I HEREBY CERTIFY that, on this 2nd day of August, 2023, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared [and] known to me (or satisfactorily proven) to be the person[s] whose [name is][names are] known to me to be the person[s] whose name[s] is[are] subscribed to the foregoing instrument and in my presence exercised the foregoing instrument for the purposed therein contained.

Rebecca J. Willey

Notary Public

My Commission Expires: 11/7/23



April 21, 2023

**FEMA Hazard Mitigation Grant Program  
(HMGP) Assistance Listing Number 97.039  
Sub-recipient Award Acceptance Agreement and Certification & Assurances  
Acceptance**

<b>DEMA Program Support Contact</b>	
<b>DEMA State Hazard Mitigation Officer (SHMO):</b> Phillip Cane	<b>Phone Number:</b> 302-659-2325
	<b>Email:</b> Phillip.Cane@Delaware.gov
<b>Sub-recipient Contact</b>	
<b>Sub-recipient:</b> Sussex County	<b>Date of Subaward:</b> 20 July 2023
<b>Sub-recipient POC:</b> Hans Medlarz	<b>UEI #:</b> QNNDLPJD39L4
<b>Approved Disaster and Project Information</b>	
<b>Disaster:</b> DR-4566 HMGP Ida	
<b>Performance Period Start Date:</b> 7 July 2023	<b>Performance Period End Date:</b> 1 October 2024
<b>Subaward Number/Project Title:</b> FEMA-4566-DR-DE-0002; Stinson Home Elevation	
<b>Amount and Cost Share:</b> \$192,500 (\$173,500 at 90% federal share, 10% non-federal share)	
<b>Sub-recipient Management Costs:</b> \$9,625 (100% federal share)	

This Agreement between the Delaware Emergency Management Agency (DEMA), henceforth the recipient, and Sussex County henceforth the Sub-recipient, shall be effective on the date signed by both parties. It shall apply to all Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program disaster funds provided through the recipient to the Sub-recipient as a result of Disaster 4566 DR-DE. Failure to comply with the conditions and requirements set forth could jeopardize the funding of any additional projects under Disaster 4566 DR-DE or any future projects which would utilize Hazard Mitigation Grant Program funds.

**The designated representative of the Sub-recipient certifies that:**

1. He/she has the legal authority to apply for and accept assistance on behalf of the Sub- recipient.
2. The Sub-recipient shall comply with all directives set forth under the Hazard Mitigation Grant Program Sub-recipient Certifications and Assurances, as well as all applicable rules, regulations, and conditions prescribed by FEMA and the State of Delaware.
3. The Sub-recipient is aware of and understands the Hazard Mitigation Grant Program will only cover specific percentages of eligible project costs and the additional percentages of funds may come from the Sub-recipient (reference Page 1 for percentage breakdown). The Sub-recipient's cost share cannot include any federal funds outside of the Hazard Mitigation Grant Program. The State of Delaware does not provide additional funds to cover any portion of the Sub-recipient's cost share (if applicable).

4. The Sub-recipient shall not deviate from the Scope of Work as provided in the approved Project Application, without first receiving written approval from FEMA through DEMA.
5. Extensions may be granted, upon request, for those factors that are out of the span of control of the Sub-recipient. The Sub-recipient must write a letter to the State Hazard Mitigation Officer (SHMO) at DEMA, requesting an official extension and supplying valid documentation/reasoning as to why the project cannot be completed on time. Authorization for an extension remains at the discretion of DEMA and/or FEMA and will be made in writing by DEMA or FEMA depending on the agency's respective extension authority.
6. The Sub-recipient shall submit to DEMA, quarterly updates on all open projects. These updates will be due on April 15, July 15, October 15, and January 15. Failure to comply with these timelines may result in loss of current and or future funding under the Hazard Mitigation Grant Program.
7. The Sub-recipient shall establish and maintain a proper accounting system to record expenditures of disaster assistance funds in accordance with generally accepted accounting standards and shall maintain all records and supporting documentation associated with the disaster in accordance with 2 CFR § 200.333. The Sub-recipient shall retain documentation supporting each claim for a period of not less than three years from the date of disaster closeout.
8. The Sub-recipient is aware that under the conditions of 2 CFR §§ 200.500–200.521, a non-federal entity that expends \$750,000 or more during the non-federal entity's fiscal year in federal awards must have a single or program-specific audit conducted for that year. A copy of any audit reports you receive, or a letter certifying that these funds do not meet the requirements for an audit is due upon completion of the project.
9. The Sub-recipient shall not enter any cost-plus percentage of cost contracts or contracts for which payment is contingent upon receipt of Federal Disaster Funds, or into any contract with any party which is debarred or suspended from participating in federal assistance programs.
10. The Sub-recipient shall, upon request of DEMA, participate in initial, interim, and final site inspections with State Hazard Mitigation Officer (SHMO).
11. The Sub-recipient shall return to the state, within thirty (30) days of written request, any reimbursement due the state or federal government, not supported by audit or other review of documentation maintained by the Sub-recipient. If the Sub-recipient fails to refund the monies, the Recipient reserves the right to offset the amount due against any existing or future sums of money owed to the Sub-recipient by any state agency or department.
12. The Sub-recipient shall comply with any mitigation requirements for repair or replacement of projects subject to repeated damages from flooding or other hazards and shall comply with any requirement by FEMA to obtain and maintain flood insurance.
13. The Sub-recipient shall ensure that all applicable local, state, and federal permits have been obtained prior to starting any construction and that all projects are consistent with current codes and standards.

14. The Sub-recipient shall submit within 45 calendar days after the date of the completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award, as part of the closeout process.
15. The Sub-recipient has the right to opt out of the Hazard Mitigation Grant Program for any project(s) prior to receiving funds. A written request must be submitted to the DEMA State Hazard Mitigation Officer (SHMO) indicating the project number that the Sub-recipient no longer wishes to pursue.
16. The recipient reserves the right to terminate the Sub-recipient as an applicant if the Sub-recipient does not comply with the terms and conditions set forth in this document. The recipient will provide written notice to the Sub-recipient seven (7) calendar days before the effective date of the termination.
17. This agreement may be amended at any time by written approval of both parties.

A subaward is hereby made to Town of Smyrna, hereafter referred to as the Sub-recipient, under the Hazard Mitigation Grant Program, subject to the general conditions that follow and any special conditions that may be attached. This award is also subject to all applicable rules, regulations, and conditions as prescribed by the Federal Emergency Management Agency (FEMA) and the State of Delaware. Sub-recipients receiving federal financial assistance awards must ensure that federal funds do not supplant funds that have been budgeted for the same purpose through non-federal sources.

This subaward shall become effective when this signed document is received by the Delaware Emergency Management Agency (DEMA). No funds will be awarded to the Sub-recipient until such time as this document and an approved project including the associated funding specifics and scope of work requirements - is in the Sub-recipient's grant file at DEMA.

The Sub-recipient shall establish and maintain a proper accounting system to record expenditures of disaster assistance funds in accordance with generally accepted accounting standards and shall maintain all records and supporting documentation associated with the disaster for a period of three (3) years from disaster closeout.

The Sub-recipient agrees to abide by their respective procurement rules, policies, and/or procedures and remain in accordance with 2 CFR 200. If there are no written rules, the most stringent procurement rules, policies, and/or procedures will be followed, per 2 CFR 200. A copy of the Sub-recipient's procurement policy will be provided to DEMA upon request.

Under the conditions of 2 CFR Part 200 Subpart F - Audits (b) Non-federal entities that expend \$750,000 or more in a year in federal awards shall have a single or program specific audit conducted for that year; to be completed within nine (9) months of the end of the Sub-recipient's fiscal year. The Sub-recipient shall have six (6) months upon completion of the audit to submit to DEMA any findings or corrective actions that must be undertaken. If the Sub-recipient does not meet the conditions necessary for an audit, a letter stating such must be sent to DEMA. Should you fail to accomplish any of these requirements; it may adversely affect your eligibility for future grant funding. The Sub-recipient is responsible for audit fees associated with these federal funds.

### **Governing Laws, Regulations, and Statutes**

The Sub-recipient hereby assures and certifies compliance with all applicable statutes, regulations, policies, guidelines, and requirements imposed by FEMA including, but not limited to

the following:

- The Whistleblower Protection Act at 10 U.S.C. Section 2409, 41 U.S.C. 4712, and 10 U.S.C. Section 2324, 41 U.S.C. Sections 4304 and 4310;
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- The Disaster Recovery Reform Act of 2018;
- The Sandy Recovery Improvement Act of 2013 (Disaster Relief Appropriations Act, 2013);
- Title 2 of the Code of Federal Regulations;
- Title 31 of the Code of Federal Regulations, Section 205.6;
- Title 44 of the Code of Federal Regulations;
- The USA Patriot Act of 2001;
- The Trafficking Victims Protection Act of 2000;
- The Terrorist Financing Executive Order 13224;
- the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act;
- The Hotel and Motel Fire Safety Act of 1990;
- The Fly America Act of 1974;
- The Federal Leadership on Reducing Text Messaging while Driving Executive Order 13513;
- The False Claims Act;
- The Energy Policy and Conservation Act, Education Amendments of 1972; and
- The National Environmental Policy act (NEPA).

### **General Conditions and Standard Assurances**

The Sub-recipient hereby assures and certifies compliance with all applicable Federal statutes, regulations, policies, guidelines, and requirements, including 2 CFR. Part 200; Executive Order 12372 (intergovernmental review of federal programs); and 28 CFR parts 66 or 70 (administrative requirements for grants and cooperative agreements).

The Sub-recipient also specifically assures and certifies that:

1. It is non-delinquent in their repayment of any federal debt. (see OMB Circular A-129).
2. It will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
3. It will use best practices for collection and use of personally identifiable information (PII). Sub-recipients are required to have a publicly available privacy policy that describes standards on the usage and maintenance of PII they collect.
4. It will obtain permission from their DHS FAO prior to using DHS seal(s), logos, crests, or reproduction of flags or likenesses of DHS agency officials.
5. It will comply with SAFECOM guidance for emergency communication equipment, including provisions on technical standards that ensure and enhance interoperable communications.

6. It will comply with all instructions, guidance, limitations, and other conditions set forth in guidance released by DEMA and/or FEMA, specific to the award.
7. It will acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid initiations, and other documents describing projects or programs funded in whole or in part with federal funds.
8. It will affix the applicable copyright notices of 17 U.S.C. Sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.
9. It will give DEMA or the General Accounting Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the financial assistance.
10. It will ensure compliance with section 106 of the National Historic Preservation Act of 1966, as amended; Executive Order 11593, Protection and Enhancement of the Cultural Environment; the Archeological and Historical Preservation Act of 1974 (16 U.S.C. § 469 a-1 et seq.), and the National Environmental Policy Act of 1969, as amended, if applicable.
11. It will comply, and will require contractors to comply, with any applicable statutorily imposed nondiscrimination requirements, including:
  - The Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d);
  - The Victims of Crime Act (42 U.S.C. § 10604(e));
  - The Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b));
  - The Civil Rights Act of 1964 (42 U.S.C. § 2000d);
  - The Civil Rights Act of 1968 (42 U.S.C. § 3601);
  - The Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34);
  - The Rehabilitation Act of 1973 (29 U.S.C. § 7 94);
  - The Education Amendments of 1972 (20 U.S.C. §§1681, 1683, 1685-86);
  - and the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07).

See Executive Order 13279 (equal protection of the laws for faith-based and community organizations).

### **Certifications Regarding Lobbying; Debarment, Suspension**

1. If it is a governmental entity, it will comply with requirements of 5 U.S.C. §§ 1501-08 and §§ 7324-28, which limits certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.
2. LOBBYING: As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, the Sub-recipient certifies that:
  - 2.1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or



employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.

- 2.2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS: As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510. The Sub-recipient certifies that it and its principals:
  - 3.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency.
  - 3.2. Have not, within a three-year period preceding this application, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  - 3.3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2.2) of this certification; and have not, within a three-year period preceding this application, had one or more public transactions (Federal, State, or local) terminated for cause or default.
4. Where the Sub-recipient is unable to certify to any of the statements in the above-mentioned certifications, he or she shall attach an explanation to this application.

### **Special Conditions**

All requirements and/or scopes of work must be reviewed and approved by DEMA for compliance with federal award guidelines prior to the start of any work.

### **Sub-recipient Management Costs**

By signing below, the Sub-recipient further acknowledges to abide by the federal and program regulations governing the use of management costs by doing the following:

1. Providing the State Hazard Mitigation Officer with a budget and descriptive narrative for the 165 Brick Store Landing Road · Smyrna, Delaware 19977 - 302-659-DEMA (3362) - <http://dema.delaware.gov>

expenditure of non-construction items to include but not limited to:

- a. Personnel
  - b. Fringe Benefits
  - c. Travel
  - d. Equipment
  - e. Supplies
  - f. Contractual
  - g. Indirect Costs
2. Required Documentation Further includes, where applicable:
- a. An explanation of work performed with a representative sample of daily logs/activity reports. The activity must be related to eligible projects.
  - b. Documentation to substantiate the necessity of any claimed officer supplies, equipment, or space.
  - c. For meetings or site inspections, the activity description needs to include the number and purpose of the meetings or site inspections.
  - d. Travel costs need to include the location, date(s), and title of the course.
  - e. Must certify that the management activities and associated costs claimed are eligible, consistent with the Interim Policy, and are not related to ineligible projects.
3. In addition to number 1 of this subsection, claimed costs must be reasonable and incurred for the benefit of the award. Further eligible activities include, but not limited to:
- a. Solicitation, development, review, and processing of sub-applications
  - b. Delivery of Technical Assistance
  - c. Quarterly progress and Fiscal Reporting
  - d. Project Monitoring
  - e. Technical Monitoring
  - f. Compliance Activities Associated with Federal Procurement Requirements
  - g. Documentation of Quality of Work Verification for Quarterly Reports and Close Out
  - h. Payment of Claims
  - i. Closeout Review and Liquidation
  - j. Records Retention
4. Acknowledges that management costs are inherently designed to provide financial support in the implementation and management of the awarded grant.
5. Is no greater than 5% of the total amount of the awarded grant.
6. Understands that if the sub-recipient reduces or moves funds from a project budget to a management costs budget, the amount of funds available for management costs will also be reduced.
7. If there is a cost underrun because of scope, schedule, or budget changes; approval by the State Hazard Mitigation Officer and subsequently FEMA, will be required to re-direct funds within the same subaward.

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A.J. Schall  
Governor's Authorized Representative  
Director of DEMA  
165 Brick Store Landing Rd.  
Smyrna, DE 19977

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Date

I \_\_\_\_\_, acting under my authority to contract on behalf of the Sub-recipient, hereby signify acceptance for the Sub-recipient of the above-described sub-award on the terms and conditions stated above or incorporated by reference therein. I further certify that we will follow all prescribed procurement policies and procedures set forth by our agency, and that this agency is not suspended or debarred from receiving federal funds and has not been so in the past.

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Date of Acceptance

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Hans Medlarz, Sussex County

To Be Introduced: 9/19/23

Council District 2: Mrs. Green  
Tax I.D. No.: 131-15.00-34.00 (p/o)  
911 Address: N/A

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A 35 ACRE PORTION, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 75.62 ACRES, MORE OR LESS.**

WHEREAS, on the 4<sup>th</sup> day of May 2023, a Conditional Use Application, denominated Conditional Use No. 2448 was filed on behalf of TPE DE SU75, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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. 2448 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2448 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 Northwest Fork Hundred, Sussex County, Delaware, and lying on the northeast side of Seashore Highway (Rt. 18 and S.C.R. 404), approximately 0.67 mile southeast of Sussex Highway (Rt. 13) and being more particularly described in the attached legal description prepared by Becker Morgan Group, Inc., said parcel containing 35 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.

To Be Introduced: 9/19/23

Council District 4: Mr. Hudson  
Tax I.D. No. 533-2.00-8.00  
911 Address 30897 Omar Road, Frankford

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN ON-PREMISES ELECTRONIC MESSAGE CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED AND BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.99 ACRES, MORE OR LESS**

WHEREAS, on the 22<sup>nd</sup> day of May 2023, a conditional use application, denominated Conditional Use No. 2452 was filed on behalf of Community Lutheran Church c/o Ed Evans; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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. 2452 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2452 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 and Baltimore Hundred, Sussex County, Delaware, and lying on southwest side of Armory Road (S.C.R. 382) and the north side of Omar Road (Rt. 54), at the intersection of Armory Road (S.C.R. 382) and Omar Road (Rt. 54), and being more particularly described in the attached deed prepared by D. Stephen Parsons, P.A., said parcel containing 3.99 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.

To Be Introduced: 9/19/23

Council District 5: Mr. Rieley  
Tax I.D. No.: 135-15.00-8.00  
911 Address: N/A

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 64.59 ACRES, MORE OR LESS**

WHEREAS, on the 24<sup>th</sup> day of July 2023, a Conditional Use Application, denominated Conditional Use No. 2470 was filed on behalf of CI Solar DP, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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. 2470 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2470 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 Georgetown Hundred, Sussex County, Delaware, and lying on the east side of Savannah Road (S.C.R. 246), approximately 0.85 mile south of Rudd Road (S.C.R. 246) and being more particularly described in the attached legal description prepared by Pennoni said parcel containing 64.59 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.

To Be Introduced: 9/19/23

Council District 3: Mr. Schaeffer

Tax I.D. No.: 334-12.00-115.00

911 Address: 19101 John J. Williams Highway, Rehoboth Beach

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 CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.58 ACRES, MORE OR LESS**

WHEREAS, on the 27<sup>th</sup> day of January 2023, a zoning application, denominated Change of Zone No. 2005 was filed on behalf of Cherner Development Group; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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. 2005 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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 southwest corner of the intersection of John J. Williams Highway (Route 24) and Warrington Road (Route 1D) and being more particularly described in the attached legal description prepared by Tunnell & Raysor, P.A., said parcel containing 1.58 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: 9/19/23

Council District 4: Mr. Hudson

Tax I.D. No.: 134-12.00-73.00, 73.01, 73.02, & 73.03

911 Address: 36294, 36306, & 36328 Old Mill Road, Ocean View & N/A

ORDINANCE NO. \_\_\_\_

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.11 ACRES, MORE OR LESS

WHEREAS, on the 1<sup>st</sup> day of November 2022, a zoning application, denominated Change of Zone No. 1998 was filed on behalf of Louis, Janet & William Melton; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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. 1998 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, 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 [GR General Residential] and adding in lieu thereof the designation and B-2 Business Community District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcels of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the southwest side of Old Mill Road (S.C.R. 349) and the northwest corner Railway Road (S.C.R. 350) at the intersection of Railway Road (S.C.R. 350) and Old Mill Road (S.C.R. 349) and being more particularly described in the attached legal descriptions prepared by Scott and Schuman, P.A., D. Stephen Parsons, P.A., & Parsons & Robinson, P.A. said parcels containing 2.11 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.



**ORDINANCE NO. 23-09**

**AN ORDINANCE TO AMEND THE SUSSEX COUNTY SEWER TIER MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL 533-11.00-23.02**

WHEREAS, on September 27<sup>th</sup>, 2022, the Sussex County Planning and Zoning Office received an Application for a requested Comprehensive Plan Amendment to amend the Sussex County Sewer Tier Map element of the Comprehensive Plan to change the Sewer Tier designation of Sussex County Parcel No. 533-11.00-23.02; and

WHEREAS, the Parcel approximating 6.95 acres of land, more or less, lying and being within Baltimore Hundred, and lying on the northeast side of Zion Church Road (Rt. 20), approximately 275 feet northwest of Deer Run Road (S.C.R. 388);

WHEREAS, The Property is designated as being within the Tier 4 – System Optional Areas as set forth in the Sussex County Sewer Tier Map as Figure 7.3-2 in the 2018 Comprehensive Plan for Sussex County;

WHEREAS, The Property is designated as being within the Coastal Area as set forth in the Sussex County 2045 Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan; and

WHEREAS, as noted in the Sussex County Comprehensive Plan, central sewer facilities are “strongly encouraged” within the Coastal Area; and

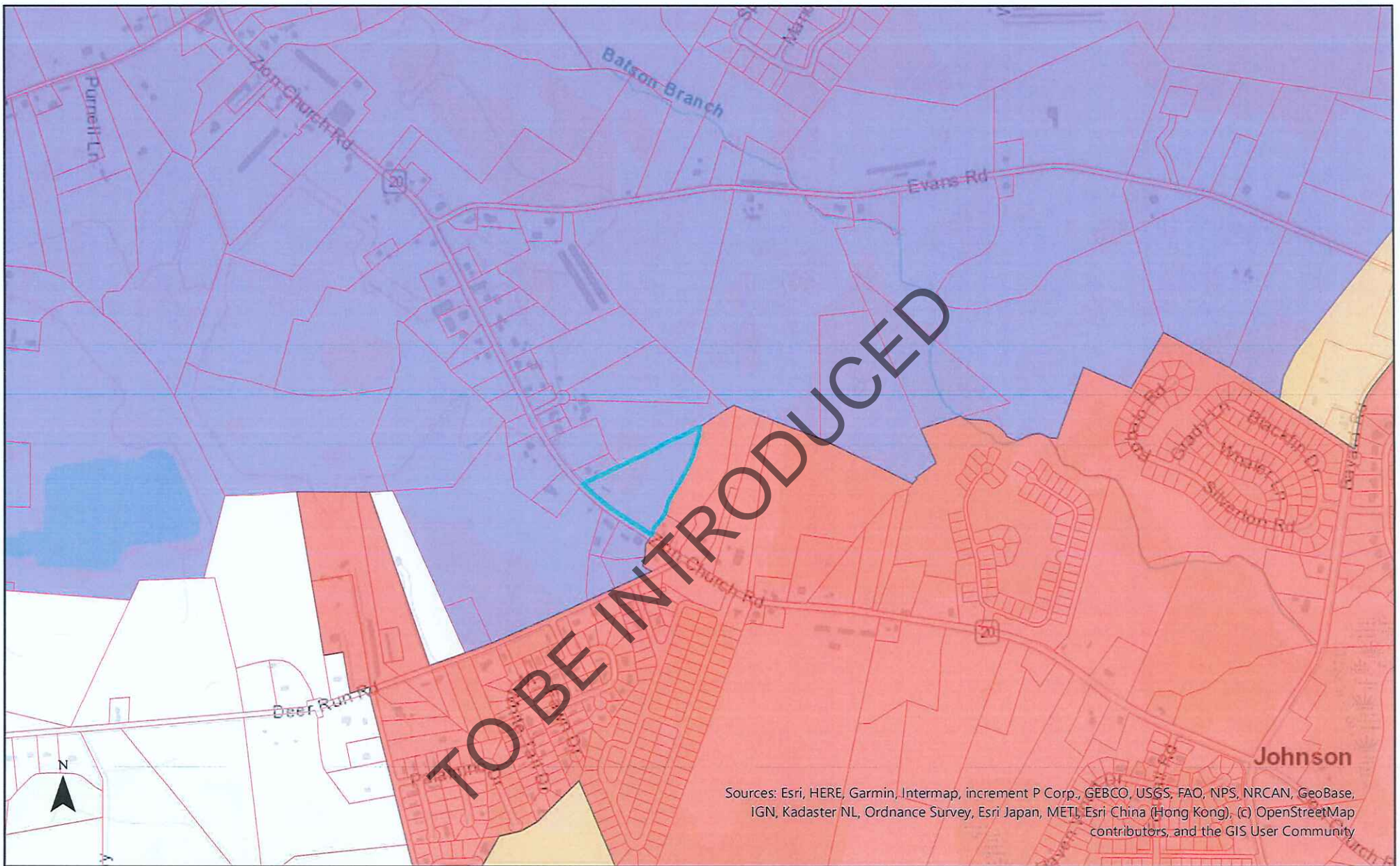
WHEREAS, Sussex County Council desires to adopt this Ordinance amending the Sussex County Sewer Tier Map element of the Plan with minor amendments; and

WHEREAS, in accordance with the required process for public hearings on Ordinances such as this one, both the Sussex County Planning & Zoning Commission and the Sussex County Council will hold public hearings on this Ordinance but limited in scope to this specific proposed Amendment to the Sussex County Sewer Tier Map contained in the Plan.

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1.** The Sussex County Sewer Tier Map identified as Figure 7.3-2 of the Sussex County Comprehensive Plan is hereby amended to change the Parcels currently classified as Tier 4 – System Optional Areas for Sussex County Parcel No. 533-11.00-23.02 from the Tier 4 – System Optional Areas Sewer Tier designation to the Tier 2 – Sussex County Planning Area designation; Sussex County Parcel No. 533-11.00-23.02 so changed as identified in Exhibit A, attached hereto and incorporated herein.

**Section 2.** This Ordinance shall also take effect following its adoption by majority vote of all members of the County Council of Sussex County, Delaware, and upon certification by the State of Delaware.



Current Sewer Tier Map  
 Ord. No. 22-09 - AWH Properties, LLC  
 Proposed Sewer Tier Amendment  
 Proposed: Tier 4 to Tier 2

- Sewer Tiers**
- Tier 1 - Sussex County Unified Sanitary Sewer District
  - Tier 2 - Sussex County Planning Area
  - Tier 3 - Coordinated CPCN Areas
  - Tier 4 - System Optional Areas
  - Tier 5 - Regulated On-site Area





## 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: September 15, 2023

RE: County Council Report for Ord 23-11 Relating to the Future Land Use Map Element of the Comprehensive Plan (Tax Parcel 234-6.00-6.02)

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On July 11, 2023, the County Council introduced an Ordinance to consider a potential amendment of the Future Land Use Map element of the Comprehensive Plan in relation to Tax Parcel No. 234-6.00-6.02 for a change from the low-density area designation to the Coastal Area designation. The parcels are located on the west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (SCR 286). The 911 address is 30857 Saddle Ridge Way, Lewes.

The Planning & Zoning Commission held a Public Hearing on the application on August 10, 2023. At the meeting of September 14, 2023, the Planning & Zoning Commission recommended adoption of the Ordinance for the 10 reasons as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of August 10, 2023, and September 14, 2023.

### Minutes of the August 10, 2023, Planning & Zoning Commission Meeting

#### **ORD 23-11**

**AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 234-6.00-6.02.** The property is lying on the west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (S.C.R. 286). 911 Address: 30857 Saddle Ridge Way, Lewes. Tax Map Parcel: 234-6.00-6.02.

Mr. Whitehouse advised the Commission that the Ordinance request is to amend the Future Land Use Map element of the Comprehensive Plan from a Low-Density Area to a Coastal Area. Mr.



Whitehouse stated that the Commission previously considered a Conditional Use application for the property at a previous public hearing; that at the time, the Commission deferred the Conditional Use application to allow for the Ordinance to be introduced to the County Council and proceed through the process; that the Application was submitted to PLUS; that the PLUS comments had not yet been received by staff, and he was happy to provide the Commission a verbal update with what happened during the PLUS meeting if not presented within the Applicant's presentation.

The Commission found that Ms. Mackenzie Peet, Esq. with Saul Ewing, LLP, spoke on behalf of the Applicant, Beaver Dam Enterprises, LLC; that also present was Mr. Anton Balakin on behalf of the Applicant. Ms. Peet stated that on March 23<sup>rd</sup>, 2023, the Applicant appeared before the Commission to present its request for a Conditional Use of land for the conversion of an existing pole building, currently existing on the property; that the Applicant request to convert the existing pole building into two multifamily units, with each unit to be rented on an annual basis; that after the public hearing, the Applicant learned, despite an understanding to the contrary, the Application could not proceed without an amendment to the Future Land Use Map; that former Commissioner Kim Hoey-Stevenson, motioned at the meeting of April 20, 2023, to defer a decision to allow for the Applicant to pursue the required Future Land Use Map amendment; that since the public hearing on March 23, 2023, the Applicant has worked with the Planning & Zoning office to seek an amendment to the Future Land Use Map that designates the property from Low Density to Coastal Area; that as part of the request, the Application was also put through the PLUS process; that they anticipate to receive the PLUS comments within the next month, and should be received prior to the public hearing scheduled for September 19, 2023, before County Council; that the property is 2.144 acres, being located along Saddle Ridge Way in Lewes; that the property is located on the west side of Beaver Dam Rd., being approximately .5 mile north of Hopkins Rd.; that the property is accessed from Beaver Dam Rd.; that the property is located within the AR-1 (Agricultural Residential) Zoning District; that the property is located adjacent to other properties located within AR-1, GR (General Residential) and MR (Medium-Density Residential); that the area is largely developed with residential units in a number of surrounding communities; that §115-22 of the Code provides that multifamily dwelling structures may be permitted as Conditional Uses; that the Code requires, in part, that multifamily dwelling units in AR-1, the applicable zoning district are located in designated growth areas, including Town Center, Developing Area, or Coastal Area, as described within the land use element and shown on the Future Land Use Plan, provided in the Comprehensive Plan, specifically; that due to this, the Applicant seeks a Future Land Use Map amendment from Low Density to Coastal Area; that the Coastal Area is a designated Growth Area, which will permit the use of the existing pole building as a two unit multifamily dwelling, with the intent of renting each unit on an annual basis; that she believed it was common knowledge that in Sussex County, especially in the Rehoboth and Lewes area, people are seeking rental properties; that the proposed use is only for two units, however, it is proposed for an already existing pole building; that the property is extremely well manicured; that there is certainly a demand for the Applicant's proposed use; that the use will otherwise comply with the requirements of the Code; that the request is supported by the Conditional Use Plan that was submitted as Exhibit B, as part of the Future Land Use Map Application submission; that the Conditional Use Plan provides significant vegetative buffers and open space; that the existing pole building makes up a very small portion, being approximately 7% of the site; that the undeveloped and forested area make up 70% of the site; that the remaining areas of the site are comprised of the pervious gravel driveway and parking area, which make up the remaining 23% of the site; that as part of the Conditional Use submission, the Applicant proffered Conditions of Approvals, which proposed to limit the use to two units within the Conditional Use area; that the proposed conditions proposed that the Developer will provide for the perpetual maintenance of the streets, roads, stormwater management, etc.; that the common areas

will contain a stormwater management system, that will meet or exceed the requirements of the Code; that all entrances will conform with the DelDOT requirements; that the project will be served by central water and sewer; that any hours of construction improvements be limited in nature; that for the Conditional Use application, there was a four-signature petition from the surrounding property owners submitted in support of the Application; that Mr. Anton Balakin owns other property adjacent to the site as well; that the property is currently located within the Low Density area according to the Future Land Use Map of the Comprehensive Plan; that the Applicant is requesting to amend the Future Land Use Map to allow the property to be located within the Coastal Area; that the Coastal Area permits for a range of housing types, including multifamily units, such as what it is proposed; that the plan confirms that Sussex County's base density of two units per acre is appropriate in the Coastal Area; that the proposed use is less than that of the allowable base density; that the proposed two units would be located on 2.144 acres; that the Applicant is not proposing medium to higher density for the project, however the plan does support medium to higher density development, in the Coastal Area, where central water and sewer are available, sufficient commercial uses and employment centers are located, where the use is in keeping with the character of the area, located along a main road, and/or is located along a major intersection, where there is an adequate level of service, or where other considerations exist that are relevant to the requested project and density; that the Comprehensive Plan also encourages the preservation of natural resources or open space in the Coastal Area; that all of which is encouraged by the proposed plan, and evidenced within Exhibit B; §4.4.2.1 of the Comprehensive Plan entitled, Growth Areas, provides that the County should consider the following to help determine where Growth Areas should be located; that consideration should be given to the proximity to incorporated municipality or municipal annexation, the location on or near a major road or intersection, the character and intensity of the surrounding development, including proposed development, the location relative to major preserved lands, location of water bodies, location of agriculture, protected easements, the areas environmental character, the areas ranking according to the Delaware Strategies for State Spending map, and the presence of existing public water and sewer; that for the proposed project, the County is to provide public sewer service within five years; that the proposed Future Land Use Map Amendment to the Coastal Area would be consistent with the area and the Comprehensive Plan, because multifamily units are permitted in the area; that AR-1 is an applicable Zoning District in the Coastal Area; that the use is less than Sussex County's base density of two units per acre; that the use is therefore compatible with the nearby residential communities; that the use proposes the maintenance of existing and proposed open space areas and vegetative buffers; that public utilities are available to the site; that access to the site is located off an easement, being located off Beaver Dam Rd.; that through DelDOT's Service Level Evaluation, provided that the use will generate fewer than 50 trips per day; that the Office of State Planning commented regarding the sites location within Investment Level 4, and the properties location not being immediately adjacent to other Coastal Area designated properties; that the property is located within Investment Level 4, however, the surrounding area is developed along Beaver Dam Rd. with residential properties; that the request is to use an existing structure on the site; that the Applicant is attempting to use, what he considers to be, the best use for the property; that when review the Future Land Use Map in general for Sussex County, there are other isolated pockets of Coastal Area throughout the County, being surrounding by, adjacent to, or within the vicinity of the Low Density Area; that an example of this would be a property located down the street, at the Conley's Chapel Rd. and Beaver Dam Rd. intersection; that there are also properties located in the Selbyville area, owned by Mountaire, and properties on and near Camp Arrowhead Rd.; that she noted, Chairman Wheatley previously mentioned concern regarding a potential flood of similar request beginning, if the project were to receive a recommendation of approval; that the subject property is unique; that the property is situated in the residential area, with an existing structure on the site; that the property is located

within the immediate vicinity of other properties that are classified as being within the Coastal Area, located across Beaver Dam Rd.; that she understood, there is a separation of properties located within Low Density, but she requested the Commission focus on the intended use, being for a two unit rental within the existing pole building; that the property provides significant open space and vegetative buffers, all of which are in character, not only with the AR-1 Zoning District, but the Coastal Area as well; that in the event the Applicant would ever want to seek a use outside of the scope proposed, and otherwise not permitted within AR-1, the Applicant would be required to make a new Application and appear back before the Planning & Zoning Commission and/or County Council; that a new land use submission would require the Applicant to proceed through the Site Plan process and any other approvals; that the Conditional Use request will be subject to the Conditions of Approval, and for all the reasons provided on the record and at the previous Conditional Use hearing, which she requested to incorporate by reference, the Applicant requests the Commission recommend approval of not only the Conditional Use request, but also the current amendment to the Future Lands Use Map from Low Density to Coastal Area.

The Commission found that no one was present in support of or in 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 Ord. 23-11 requesting to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No. 234-6.00-6.02. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

#### Minutes of the September 14, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Ordinance application which had been deferred since August 10, 2023.

Ms. Wingate moved that the Commission recommend approval of Ordinance No. 23-11 to change the Future Land Use Designation of Parcel # 234-6.00-6.02 from its current designation as being within the Low-Density Area to being within the Coastal Area within the County's Future Land Use Map based on the record made during the public hearing and for the following reasons:

1. The property is currently designated as a "Low-Density Area" within the County's Future Land Use Map.
2. The Future Land Use Map designates the property on the opposite side of Beaver Dam Road as "Coastal Area" and there is some existing "Coastal Area" land mapped on the same side of Beaver Dam Road.
3. There was no opposition to this proposed amendment to the Future Land Use Map.
4. This property is located along Beaver Dam Road in an area that has developed with multiple large subdivisions around it. Presumably, since these subdivisions preceded the current Future Land Use Map, there was no consideration about mapping them to direct their future development and they were left within the Low-Density Area. However, they are also consistent with the Coastal Area designation and could have been given that designation at the time the current Future Land Use Map was drafted and approved.

5. For all of these reasons, it is appropriate to recommend that Parcel No. 234-6.00-6.02 be changed to the “Coastal Area” on the Future Land Use Map.
6. In addition, in recognition of the existing development in this area and the nearby mapping, it would be appropriate for the County Council to separately consider changing all of the land in this triangle between Fisher Road, Hopkins Road, and Beaver Dam Road to the Coastal Area in our Future Land Use Map.
7. For all of these reasons, I move that the Commission recommend approval of Ordinance No. 23-11.

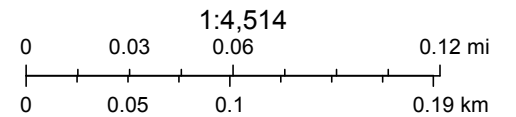
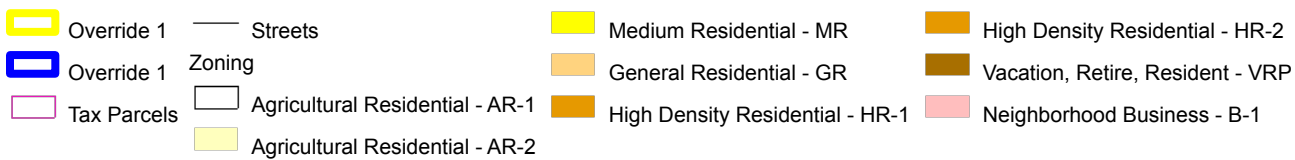
Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of Ord. 23-11 to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No. 234-6.00-6.02, for the reasons stated in the motion. Motion carried 5-0.

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

# Sussex County



February 20, 2023



Sussex County, Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodastystyrelsen, Rijkswaterstaat, GSA,





# Sussex County



<b>PIN:</b>	234-6.00-6.02
<b>Owner Name</b>	BEAVER DAM ENTERPRISES LLC
<b>Book</b>	5518
<b>Mailing Address</b>	PO BOX 555
<b>City</b>	NASSAU
<b>State</b>	DE
<b>Description</b>	IRONHORSE RANCH
<b>Description 2</b>	PARCEL 3
<b>Description 3</b>	N/A
<b>Land Code</b>	

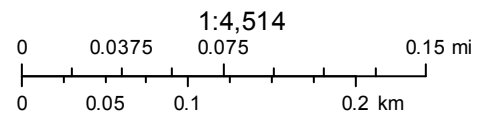
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Override 1

### polygonLayer

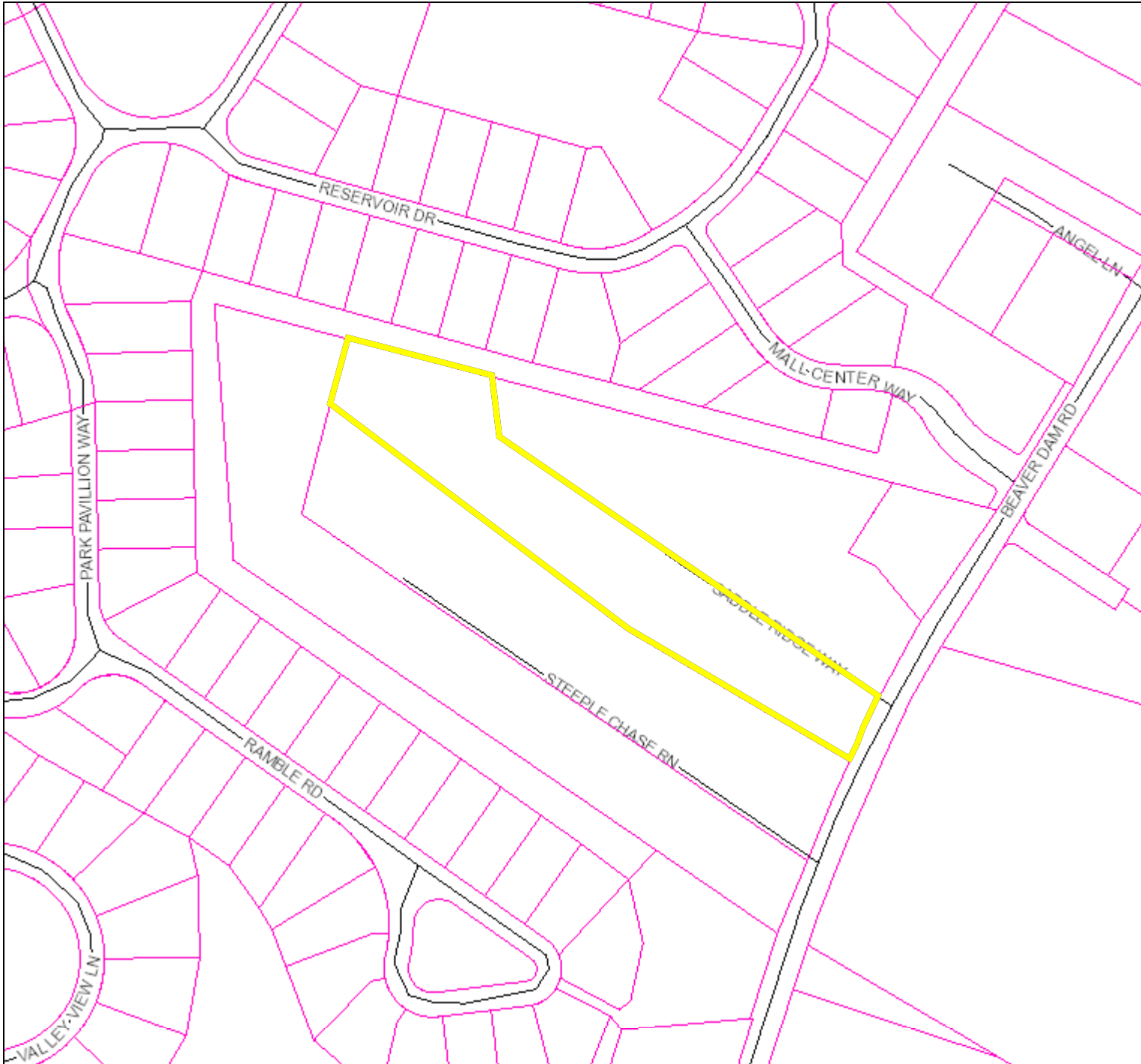
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- Tax Parcels
- Streets
- County Boundaries





# Sussex County






<b>PIN:</b>	234-6.00-6.02
<b>Owner Name</b>	BEAVER DAM ENTERPRISES LLC
<b>Book</b>	5518
<b>Mailing Address</b>	PO BOX 555
<b>City</b>	NASSAU
<b>State</b>	DE
<b>Description</b>	IRONHORSE RANCH
<b>Description 2</b>	PARCEL 3
<b>Description 3</b>	N/A
<b>Land Code</b>	

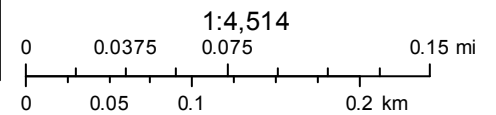
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Override 1

-  Tax Parcels
-  Streets
-  County Boundaries





**STATE OF DELAWARE**  
**OFFICE OF MANAGEMENT AND BUDGET**  
**OFFICE OF STATE PLANNING COORDINATION**

August 23, 2023

Jamie Whitehouse  
Sussex County Planning & Zoning  
2 The Circle  
P.O. Box 417  
Georgetown, DE 19947

RE: PLUS review – 2023-07-14; Beaver Dam Enterprises – Sussex County Comprehensive Plan Amendment

Dear Mr. Whitehouse,

Thank you for meeting with State agency planners on July 26, 2023 to discuss the proposed Sussex County comprehensive plan amendment. According to the application, the County desires to amend 2.14 acres of parcel 234-6.00-6.02 on the Future Land Use Map within their Certified Comprehensive Plan to depict the parcel as being Coastal Area instead of the current Future Land Use designation of Low-Density Area.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting.

This office has received the following comments from State agencies:

Office of State Planning Coordination – Contact: Dorothy Morris 302-739-3090

The proposed amendment is located in investment Level 4 according to the *2020 Strategies for State Policies and Spending*. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4. These areas are comprised of prime agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved. The Office of State Planning Coordination does not feel this amendment is consistent with the Comprehensive Plan.

In addition, this parcel is not contiguous to the existing Coastal area. Allowing this parcel to change from Low Density to Coastal could set a precedent for other property owners, not contiguous to the existing Coastal area, to apply for this designation.

If this parcel is changed to a Coastal land use designation it would open additional zoning opportunities for this parcel in the future to allow for an even larger project in an area where the State has no plans to invest in infrastructure. In the low-density area, property owners are allowed a maximum of 2 units per acre where in the Coastal area the density could go as high as 12 units per acre and could allow heavy commercial uses.

For the reasons stated above, the State opposes the proposed land use designation changes and asks that the County deny this proposed Future Land Use map amendment.

Other State agencies present at the PLUS meeting had no comments regarding the Comprehensive Plan amendment; however, should the parcel develop in the future, the following comments were offered:

Department of Transportation – Contact Stephen Bayer 302-760-4834

- DelDOT notes that should the location be developed in the future any developer will still need to obtain any applicable permits and complete any necessary reviews or approvals.

State Historic Preservation Office – Contact Carlton Hall 736-7400

- There are no known archaeological sites or known historic or eligible properties on the parcel.
- The parcel was deforested at some point in 1997. Probability is medium to high but based on construction of structure and deforestation in 1997, archaeological resources, if present, are unlikely to be intact.

Once the amendment is voted on by Planning and Zoning and/or County Council, please forward a copy of the decision regarding the amendment to this office for our files. Thank you for the opportunity to review this amendment. If you have any questions, please contact me at 302-739-3090.

Sincerely,



David L. Edgell, AICP  
Director, Office of State Planning Coordination

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 234-6.00-6.02**

WHEREAS, on May 28<sup>th</sup>, 2023, the Sussex County Planning and Zoning Office received an application for a requested Comprehensive Plan Amendment to amend the Future Land Use Map element of the Comprehensive Plan to change the Area designation of Sussex County Parcel No. 234-6.00-6.02 from the Low Density Area to the Coastal Area; and

WHEREAS, the Parcel is comprised of 2.14 acres of land, lying and being within Lewes & Rehoboth Hundred, and are located on the west side of Beaver Dam Road (Route 23) approximately 0.5 miles north of the intersection of Beaver Dam Road (Route 23) and Hopkins Road (S.C.R. 286).

WHEREAS, The Property is designated as being within the Low Density Area as set forth in the Future Land Use Map identified as Figure 4.5-1 in the 2018 Comprehensive Plan for Sussex County.

WHEREAS, Sussex County Council desires to adopt this Ordinance amending the Future Land Use Map of the Plan with minor amendments; and

WHEREAS, in accordance with the required process for public hearings on ordinances such as this one, both Sussex County Council and the Sussex County Planning & Zoning Commission will hold public hearings on this Ordinance, but limited in scope to this specific proposed amendment to the Future Land Use Map contained in the Plan.

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1.** The Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan is hereby amended to change the area designation of Sussex County Parcel No. 234-6.00-6.02 from the Low Density Area to the Coastal Area. The entirety of Sussex County Parcel No. 234-6.00-6.02 so changed is identified in Exhibit A, attached hereto, and incorporated herein.

**Section 2.** This Ordinance shall also take effect following its adoption by majority vote of all members of the County Council of Sussex County, Delaware, and upon certification by the State of 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: September 15, 2023

RE: County Council Report for C/U 2350 filed on behalf of Beaver Dam Enterprises, LLC

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The Planning and Zoning Department received an application (C/U 2350 filed on behalf of Beaver Dam Enterprises, LLC) for a Conditional Use for parcel 234-6.00-6.02 for multi-family (2 units). The property is located at 30857 Saddle Ridge Way, Lewes. The parcel size is 2.14 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on March 23, 2023. At the meeting of April 20, 2023, the Planning & Zoning Commission deferred action on the application to allow for an Ordinance to be prepared and introduced to enable the Commission to consider a potential amendment to the Future Land Use Map element of the Comprehensive Plan.

At this time, the Commission has not made a recommendation regarding C/U 2350 and this is to be added to the Commission's agenda for September 28, 2023 under Old Business.

Below are the minutes from the Planning & Zoning Commission meeting of March 23, 2023, and April 20, 2023.

[Minutes of the March 23, 2023, Planning & Zoning Commission Meeting](#)

### **C/U 2350 Beaver Dam Enterprises, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.144 ACRES, MORE OR LESS.**

The property is lying on the west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (S.C.R. 286). 911 Address: 30857 Saddle Ridge Way, Lewes. Tax Map



Parcel: 234-6.00-6.02.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Applicant's Exhibit Booklet, the Staff Analysis, a letter received from the Sussex County Engineering Department Utility Planning Division, a letter from the U.S. Army Corp of Engineers, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse advised the Commission that a four-signature petition was received in support of the Application.

The Commission found that Ms. Mackenzie Peet, Esq. with Baird Mandalas Brockstedt Federico & Cardea spoke on behalf of the Applicant, Beaver Dam Enterprises, LLC; that also present were Mr. Anton Balakin, on behalf of the Applicant, and Mr. Kenneth Christenbury, P.E., President of Axiom Engineering, LLC. Ms. Peet stated the Applicant previously met with Director Jamie Whitehouse for his pre-submittal meeting on January 12<sup>th</sup>, 2022, where it was determined his proposed use could proceed as a Conditional Use; that subsequently, the Applicant submitted a Conditional Use application on February 4<sup>th</sup>, 2022; that the request is for a Conditional Use of land within the AR-1 (Agricultural Residential) Zoning District to convert an existing pole building into two residential units; that the property consist of 2.144 acres, located on Saddle Ridge Way in Lewes; that the property is accessed from Beaver Dam Rd.; that adjacent properties are zoned AR-1 (Agricultural Residential), GR (General Residential) and MR (Medium-Density Residential); that the surrounding area has largely been developed with single-family residential units and number of surrounding subdivisions; that the GR and MR zoned properties are at the location of Oak Crest Farms; that there are other scattered existing residential developments near the property; that there are many Conditional Uses approved in the area, as confirmed by the Planning & Zoning Map and the Office of Planning & Zoning Memorandum; that the Applicant submitted a number of exhibits, consisting of the Conditional Use Application and deed, property information and updated legal description; that within Exhibit 3, a Minor Subdivision Plan for Iron Horse Ranch was submitted; that the subdivision plan includes the construction plan and site distance triangle; that the plan shows access to the site from Beaver Dam Rd, by a gravel road easement, which continues to the existing pole building; that the existing pole building makes up about seven percent of the .135 acre site; that the undeveloped forest area make up approximately 1.577 acres (70%) of the site; that the gravel driveway and gravel parking area consist of the remaining .432 acre (23%) of the site; that also submitted were the Sussex County aerial maps and images of the property; that the photos reflect that the property is very well maintained and currently in good condition; that Exhibit 7 contains the determination from the U.S. Army Corp of Engineers, confirming that no wetlands are located on the site; that Exhibit A contains proposed Conditions of Approval; that the Future Land Use Map indicates the property is located within the Low Density Area; that all properties within the immediate vicinity are also located within the Low Density Area; that Low Density Areas are considered to be rural areas, in contrast to growth areas; that as of 2018, all lands designated as Low Density Areas according to the Comprehensive Plan, are also zoned AR-1 (Agricultural Residential); that the Comprehensive Plan provides guidelines that should be applied to future growth in Low Density Areas; that residential growth is expected, with the intent to maintain the rural landscape; that the Applicant believes the proposed Conditional Use plan does meet the requirements with the significant amount of undeveloped area; that the proposed use may be permitted as a Conditional Use when approved in accordance with Article 24 of the Code, when the purposes of the AR-1 Chapter are more fully met; that the purpose of the AR-1 District is to provide a full range of agricultural activities and to protect agricultural lands, as one of the County's most valuable natural resources from the depreciating effect of objectionable hazardous and unsightly uses; that the Applicant should also protect established agricultural operation and activities; that these districts are also intended for protection of watershed, water resources, forest areas, and scenic views,

while providing low density residential development; that §115-171 details the purpose of Article 24 relating to Conditional Uses, to provide for certain uses which cannot be well adjusted to their environment in particular locations with full protection offered to surrounding properties by rigid application of the district; that these uses are generally of public or semi-public character; that the uses are essential and desirable for the general convenience and welfare, but because of the nature of the use, the importance of the relationship to the Comprehensive Plan and the possible impact not only on neighboring properties, but on a large section of the County; that this requires the exercise of planning judgement on location and site plan; that the proposed use is of semi-public character, as it proposes a low density development, at less than one unit per acre, with two units proposed on a 2.14 acre parcel with 70% of the site being undeveloped; that each unit will consist of three bedrooms and two bathrooms; that the Applicant intends to rent the units on an annual basis; that there is a significant demand for rental units in Lewes and Rehoboth areas, especially rental units offered on an annual basis in Sussex County; that the proposed use is compatible with surrounding residential uses, with lower density in comparison to the single-family residential uses nearby being mostly constructed at two units to the acre or as a cluster subdivision; that public utilities are available to the site; that the units will be served by public water, provided by Tidewater and sewer, provided by Artesian; that access to the site is by an easement off Beaver Dam Rd.; that DelDOT's response to the Service Level Evaluation Request provided that the use will generate fewer than 50 vehicle trips per day; that DelDOT considers the development's traffic to be diminutive; that Code compliant parking will be provided with four spaces, provided parking is proposed towards the rear of the property; that the use is not anticipated to adversely impact neighboring properties as the site has an existing vegetative buffer screening the proposed use from adjacent properties; that one letter supporting the Application was also submitted; that there are a number of more intensive uses located within the surrounding area; that the Office of Planning & Zoning's Memorandum reflects 23 Conditional Uses in the area, as well as confirmed the proposed use is consistent with the design and land uses in the area and for the reasons stated, the Applicant respectfully requested the Commission's recommendation of approval for the proposed Application.

The Commission found that there was no one present in the room or by teleconference who wished to speak in support of 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 2350 Beaver Dam Enterprises, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 3-0.

#### Minutes of the April 20, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since March 23, 2023.

Ms. Stevenson moved that the Commission to defer this Application to allow the Applicant to apply for a Future Land Use Map Amendment because a conditional use for multi-family dwellings in the AR-1 District is not permitted in an area designated as the "Low-Density Area" on the Sussex County Future Land Use Map.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer C/U 2350



Beaver Dam Enterprises, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

**PLANNING & ZONING COMMISSION**

ROBERT C. WHEATLEY, CHAIRMAN  
KIM HOEY STEVENSON, VICE-CHAIRMAN  
R. KELLER HOPKINS  
J. BRUCE MEARS  
HOLLY J. WINGATE



**Sussex County**

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

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date: March 23, 2023

Application: CU 2350 Beaver Dam Enterprises, LLC

Applicant: Beaver Dam Enterprises, LLC  
PO Box 555  
Nassau, DE 19969

Owner: Anton Balakin  
30862 Saddle Ridge Way  
Lewes, DE 19958

Site Location: West side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (S.C.R. 286)

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

Proposed Use: 2 Unit Multifamily

Comprehensive Land Use Plan Reference: Low Density

Councilmanic District: Mr. Rieley

School District: Cape Henlopen School District

Fire District: Lewes Fire Company

Sewer: Artesian

Water: On-site well

Site Area: 2.144 acres +/-

Tax Map ID.: 234-6.00-6.02



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



**Sussex County**

DELAWARE  
sussexcountyde.gov

## Memorandum

To: Sussex County Planning Commission Members  
From: Mx. Jesse Lindenberg, Planner I  
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant  
Date: March 23, 2023  
RE: Staff Analysis for C/U 2350 Beaver Dam Enterprises, LLC

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application C/U 2350 Beaver Dam Enterprises, LLC to be reviewed during the March 23, 2023, 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.

The request is for a Conditional Use for Tax Parcel: 234-6.00-6.02 to allow for a two-unit multifamily project. The property is located on the west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (S.C.R. 286). The parcel is comprised of a total area of 2.144 acres +/-.

### Comprehensive Plan Analysis

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 parcel has a designation of “Low Density.” The adjacent parcels to the north, south, west, and east (across Beaver Dam Rd) also have a designation of “Low Density.”

As outlined in the 2018 Sussex County Comprehensive Plan, Low Density Areas are intended to support agricultural uses and low-density single-family housing. Specifically, the Comprehensive Plan states that single family homes have a density of up to two dwelling units to the acre. It is envisioned that the Low-Density Areas allow for businesses that support nearby residents and the agricultural economy. More intense commercial uses could be limited in scale and impact. While residential growth is expected, the Comprehensive Plan intends for the rural landscape to be maintained and for farmland to be preserved in select locations.

### Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. The adjacent properties to the north, south, west, and east (across Beaver Dam Rd) are also zoned Agricultural Residential (AR-1) District.



Existing Conditional Uses within the Vicinity of the Subject Site

Since 2011, there have been twenty-three (23) Conditional Use applications within a one (1) mile radius of the application site. These applications are outlined below.

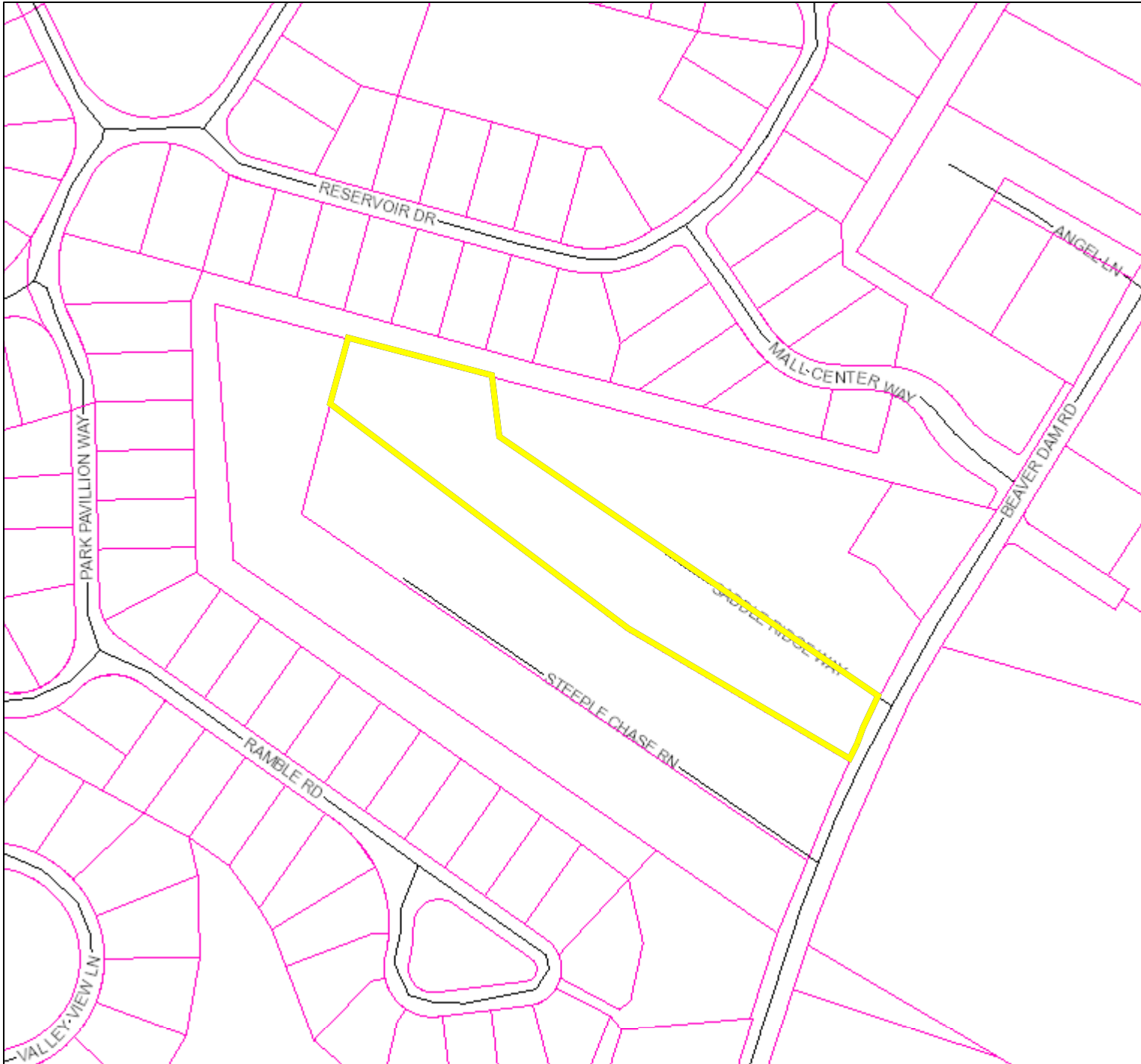
Conditional Use Number	APPLICANT	Current Zoning	Proposed Use	P&Z Decision	P&Z Decision Date	CC Decision	CC Decision Date	Ordinance Number
265	Leroy Lucas	AR-1	Manufactured Home Park	N/A	N/A	Approved	4/29/1975	N/A
272	Melvin Gollub & Ada	AR-1/GR	FM radio station & tower	N/A	N/A	Approved	6/10/1975	N/A
550	John & Barbara Clark	GR	Upholstery shop/antique & used furniture sales	N/A	N/A	Approved	10/16/1979	N/A
616	John R. Metcalf	GR/AR-1	Manufactured Home Park	N/A	N/A	Withdrawn	N/A	N/A
1017	Townsend Inc.	AR-1	Sludge Application to Forested Land	Recommended Denial	10/22/1992	Withdrawn	N/A	N/A
1568	Douglas W. Brockway	AR-1	Boat repair & accessory	Recommended Approval	11/18/2004	Approved	3/15/2005	1759
1635	Thomas N. & Marion L. Rossi	AR-1	Landscaping	Recommended Approval	1/26/2006	Approved	2/14/2006	1825
1718	Artesian Water Co., Inc.	AR-1	Sewer Treatment Facility	Recommended Approval	11/30/2006	Approved	12/5/2006	1881
1756	Artesian Water Company, Inc. (Heron Bay)	AR-1	Water Utility	Recommended Approval	7/26/2007	Approved	8/14/2007	1928
1932	Tanya Gibbs & Kimwuan Gibbs	GR	Automotive Sales Lot	Recommended Denial	8/23/2012	Denied	1/15/2013	
2006	Thomas/Laura Kucharik	AR-1	Seasonal farm stand/garden center	Recommended Approval	1/22/2015	Approved	3/10/2015	2388
2014	Jay Beach	AR-1	Landscaping and Site Work Business	Recommended Approval	4/23/2015	Approved	10/13/2015	2420
2082	Tidewater Utilities	AR-1	Withdrawn	Withdrawn	N/A	Withdrawn	N/A	N/A
2138	Walker Construction Inc.	AR-1	Site contracting excavating services, with storage, repair and maintenance and light material storage with office	Recommended Approval	8/9/2018	Approved	8/21/2018	2596
2177	Ingrid Hopkins	AR-1	Events venue	Recommended Approval	7/18/2019	Approved	7/30/2019	2670
2216	Kenneth Dominic Alton Drummond	AR-1	Storage & residence for manager Quality Care Homes	Recommended Approval	8/13/2020	Approved	8/25/2020	2735

2232	Covered Bridge Inn, LLC	AR-1	Wedding Event Space	Recommended Approval	8/13/2020	Withdrawn	12/29/2020	N/A
2247	Hillary Brock	AR-1	Mini Spa	Recommended Approval	11/19/2020	Approved	12/1/2020	2757
2273	Michael Parsons	AR-1	Delivery of Commercial Part for Off-Site Sales	Recommended Approval	11/18/2021	Approved	11/30/2021	2815
2280	Covered Bridge Inn, LLC	AR-1	Wedding Event Space (Resubmitted)	Recommended Approval	6/10/2021	Approved	7/13/2021	2790
2379	Lewes Saddle Ridge Solar 1, LLC	AR-1	Solar Farm	N/A	N/A	N/A	N/A	N/A
2382	Consolidated Edison Development, Inc.	AR-1/GR	Solar Farm	N/A	N/A	N/A	N/A	N/A

Based on the analysis provided, the Conditional Use to allow for a two-unit multifamily project in this location could be considered as being consistent with the land use, area zoning and surrounding uses, subject to considerations of scale and impact.



# Sussex County






<b>PIN:</b>	234-6.00-6.02
<b>Owner Name</b>	BEAVER DAM ENTERPRISES LLC
<b>Book</b>	5518
<b>Mailing Address</b>	PO BOX 555
<b>City</b>	NASSAU
<b>State</b>	DE
<b>Description</b>	IRONHORSE RANCH
<b>Description 2</b>	PARCEL 3
<b>Description 3</b>	N/A
<b>Land Code</b>	

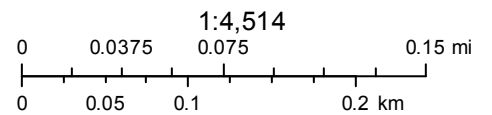
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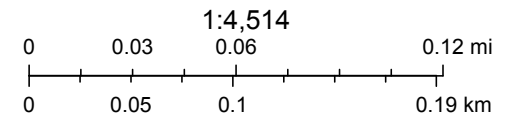
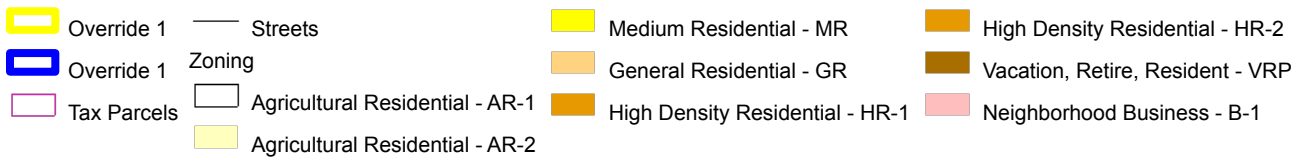
-  Tax Parcels
-  Streets
-  County Boundaries



# Sussex County



February 20, 2023



Sussex County, Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodastystyrelsen, Rijkswaterstaat, GSA,

To Be Reintroduced: 02/28/23

Council District 3: Mr. Schaeffer  
Tax I.D. No. 234-6.00-6.02  
911 Address 30857 Saddle Ridge Way, Lewes

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.144 ACRES, MORE OR LESS**

WHEREAS, on the 11<sup>th</sup> day of February 2022, a conditional use application, denominated Conditional Use No. 2350 was filed on behalf of Beaver Dam Enterprises, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, 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. 2350 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, 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, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2350 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 Indian River Hundred, Sussex County, Delaware, and lying on west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (S.C.R. 286), and being more particularly described in the attached legal description prepared by Hudson, Jones, Jaywork & Fisher, said parcel containing 2.144 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.



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND THE SUSSEX COUNTY SEWER TIER MAP OF THE COMPREHENSIVE PLAN FROM THE TIER 4 AREA (SYSTEM OPTIONAL AREAS) TO THE TIER 2 (SUSSEX COUNTY PLANNING AREA) IN RELATION TO TAX PARCELS 533-11.00-23.00, 23.03 & 23.04.**

WHEREAS, on September 27<sup>th</sup>, 2022, the Sussex County Planning and Zoning Office received an Application for a requested Comprehensive Plan Amendment to amend the Sussex County Sewer Tier Map element of the Comprehensive Plan to change the Sewer Tier designation of Sussex County Parcel Nos. 533-11.00-23.00, 23.03 and 23.04; and

WHEREAS, the Parcels comprise 31.83 acres of land, more or less, lying and being within Baltimore Hundred, and are located on the north side of Deer Run Road (S.C.R. 388) and the southwest side of Zion Church Road (Route 20), approximately 0.42 mile south of the intersection of Evans Road (S.C.R. 383) and Zion Church Road (Route 20);

WHEREAS, The Properties are designated as being within the Tier 4 – System Optional Areas as set forth in the Sussex County Sewer Tier Map as Figure 7.3-2 in the 2018 Comprehensive Plan for Sussex County;

WHEREAS, a portion of Parcel 23.00 contains the Future Land Use Map designation of Developing Area as set forth in the Sussex County 2045 Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan; and

WHEREAS, as noted in the Sussex County Comprehensive Plan, central sewer facilities are “strongly encouraged” within the Developing Area; and

WHEREAS, the remainder of the Parcels within this 31.83 acres of land contain the Future Land Use Map designation of Coastal Area as set forth in the Sussex County 2045 Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan; and

WHEREAS, as noted in the Sussex County Comprehensive Plan, central sewer facilities are “strongly encouraged” within the Coastal Area; and

WHEREAS, Sussex County Council desires to adopt this Ordinance amending the Sussex County Sewer Tier Map element of the Plan with minor amendments; and

WHEREAS, in accordance with the required process for public hearings on Ordinances such as this one, both the Sussex County Planning & Zoning Commission and the Sussex County Council will hold public hearings on this Ordinance but limited in scope to this specific proposed Amendment to the Sussex County Sewer Tier Map contained in the Plan.

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1.** The Sussex County Sewer Tier Map identified as Figure 7.3-2 of the Sussex County Comprehensive Plan is hereby amended to change the Parcels currently classified as Tier 4 – System Optional Areas for Sussex County Parcel Nos. 533-11.00-23.00, 23.03 and 23.04 from the Tier 4 – System Optional Areas Sewer Tier designation to the Tier 1 – Sussex County Unified Sanitary Sewer District designation; Sussex County Parcel Nos. 533-11.00-23.00, 23.03 and 23.04 so changed as identified in Exhibit A, attached hereto and incorporated herein.

**Section 2.** This Ordinance shall also take effect following its adoption by majority vote of all members of the County Council of Sussex County, Delaware, and upon certification by the State of Delaware.

Reintroduced: 02/28/23

Council District 3: Mr. Schaeffer  
Tax I.D. No. 234-6.00-6.02  
911 Address 30857 Saddle Ridge Way, Lewes

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.144 ACRES, MORE OR LESS**

WHEREAS, on the 11<sup>th</sup> day of February 2022, a conditional use application, denominated Conditional Use No. 2350 was filed on behalf of Beaver Dam Enterprises, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, 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. 2350 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, 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, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2350 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 Indian River Hundred, Sussex County, Delaware, and lying on west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (S.C.R. 286), and being more particularly described in the attached legal description prepared by Hudson, Jones, Jaywork & Fisher, said parcel containing 2.144 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.

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



**Sussex County**

DELAWARE  
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: September 15, 2023

RE: County Council Report for C/Z 1973 filed on behalf of Osprey Point Preserve, LLC

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The Planning and Zoning Department received an application (C/Z 1973 filed on behalf of Osprey Point Preserve, LLC) for a Change of Zone of parcels 334-18.00-83.00, 83.17, 83.20, 83.21 & 1073.00 through 1289.00 for an amendment to Change of Zone No. 1759 (Ordinance No. 2475) to include a 1.85-acre marina and restaurant amenity area. The property is located on the southwest side of Old Landing Road (SCR 274), within the Osprey Point Residential Planned Community. The parcel size is 1.85 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on August 11, 2022. At the meeting of June 22, 2023, the Planning & Zoning Commission recommended approval of the application for the 7 reasons and 6 recommended revised conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of August 11, 2022, and June 22, 2023.

[Minutes of the August 11, 2022, Planning & Zoning Commission Meeting](#)

### **C/Z 1973 Osprey Point Preserve, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO AMEND CHANGE OF ZONE NO. 1759 (ORDINANCE NO. 2475) TO INCLUDE A 1.85 ACRE MARINA & RESTAURANT AMENITY AREA FOR A CERTAIN PARCEL OF LAND**



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

**LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 126.8795 ACRES, MORE OR LESS.** The property is lying on the southwest side of Old Landing Road (S.C.R. 274), within the Osprey Point Residential Planned Community, on the north end of Ethan Allen Drive, approximately 0.12 mile west of Old Landing Road (S.C.R. 274). 911 Address: N/A. Tax Parcels: 334-18.00-83.00, 83.17, 83.20, 83.21 & 1073.00 through 1289.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Exhibit Booklet, a copy of Ordinance No. 2475 regarding C/Z 1759, the Conceptual Site Plan, letters from Environmental Resources, Inc., the Siting and Design Study submitted by the Applicant, the Applicant's Operation and Maintenance Plan, a letter from Sussex County Engineering Department Utility Planning Division, the DelDOT Service Level Evaluation Response, a letter from the Old Landing Woods Homeowners Association, one mail return, 27 written public comments; that the majority of the written comment is in opposition to the Application and that some of the comments were duplicates. (1:56:27)

The Commission found that Mr. David Hutt, Esq., with Morris James, spoke on behalf of the Application C/Z 1973 Osprey Point Preserve, LLC; that also present were Mr. Mike Horsey and Ms. Kathleen Horsey, the Principals of Osprey Point Preserve, LLC, Mr. Vine Luciani, Professional Engineer with GMB, Ms. Cheri Hochstedler, Senior Designer with GMB, Mr. Edward Launay, Professional Wetland Scientist with Environmental Resources, Inc.; that the Application was designed as a Change of Zone; that no one was requesting to Change the Zone to the property of Osprey Point; that the Application request is to amend the RPC, which was approved as part of the Osprey Point community; that Osprey Point is located between Old Landing Rd and Arnell Creek; that an RPC can be an additional overlay to an existing zoning district; that Chapter 16 of the Zoning Code described the permitted uses within the RPC District; that Section 115-119 states that permitted uses include, within subsection B, commercial uses of convenience and necessity to the development as a whole; that such uses and accessory off-street parking and loading spaces, incident to such commercial uses, not to exceed one acre for each 100 dwelling units within the planned development; that there is a ratio of commercial uses set forth in the Code provision, being one acre to every 100 units; that within Ordinance 2475 it states there are 217 approved single-family units; that under the RPC Code, Osprey Point is permitted to have 2.17 acres of commercial use; that the current proposal was for 1.85 acres of commercial use; that the current proposal is 3/10 acre less than the permitted ratio; that there is no Change of Zone request to the underlining MR (Medium-Density Residential) Zoning District, with an RPC overlay; that if the current Application request were to be approved and adopted, the current zoning designation would stay the same; that the only change being proposed is to add conditions to the RPC related to the proposed commercial style use of a minor marina, with a café, restaurant, with a bar and beach area, with leasing of non-motorized watercraft; that these watercrafts would include paddleboards, kayaks and canoes; that an example of a similar situation would be Americana Bayside, being another MR-RPC (Medium-Density Residential-Planned Community) which has a number of commercial uses, such as restaurants; that an example being 38 Degrees restaurant within Americana Bayside; that with the RPC Section of the Zoning Code, commercial uses of convenience and necessity are allowed at a specified ratio; that the restaurant and marina request is a light commercial use of convenience and necessity; that this convenience and necessity is not only for the residents of Osprey Point, but also the surrounding communities; that directly across from the Osprey Point Development is the Love Creek fishing access area; that in that area there is a boat ramp with parking places, allowing

people to access Arnell Creek; that the proposed use would also be of convenience to the communities, subdivisions and homes along Old Landing Rd; that surrounding communities include, Old Landing Community, Rehoboth Bay Community, Saw Grass North, Saw Grass South, the Woods at Arnell Creek, Cedar Valley and many more; that Mr. Horsey met with two adjacent communities within a community outreach which was performed; the community outreach meetings occurred in April; that it was explained what the purpose was and how access would be achieved through the proposed facility located on Old Landing Rd.; that the proposed facility would not require residents of Old Landing Rd. to rely on Rt. 1 to access the water or to grab a meal; that each of the community outreach meetings there was generally 50 to 100 people in attendance; that generally at these two meetings there was support for the proposed concept; that there was a third meeting which occurred the weekend before the public hearing; that Osprey Point is currently under construction; that prior to becoming Osprey Point, the property was known as the Old Landing Golf Course; that the Old Landing Golf Course did include a restaurant; that the original Applicant for Osprey Point, was Mr. Robert Marshall, who was the current owner at the time; that Mr. Marshall's family had owned the property for over a century; that when the public hearings occurred for the original application for original approval of Osprey Point; that at the time, the property was split-zoned; that there had been a small portion zoned MR (Medium-Density Residential); that the majority of the property was zoned as AR-1 (Agricultural Residential); that the original Osprey Point application, being C/Z 1759, sought to change all of the AR-1 zoned portion of the property to MR; that in addition to the Change of Zone request, the original Osprey Point application sought the RPC (Residential Planned Community) overlay to allow for a mixture of homes, that included single-family homes and townhomes; that the original Osprey Point application was filed July 2014, which sought approval for 350 units; that these units consisted of 170 single-family homes, with 180 townhomes; that though the public hearing process, the original Osprey Point application was modified at least twice; that the result of the application for 350 units, was reduced to 217 units, with all units being single-family homes; that the application was approved under Ordinance No. 2475, as it was adopted by County Council on November 15, 2016; that at that time, there was not a commercial component sought for the initial application; that since then, every site plan and rendering since 2014 has included two piers that show 24 boat slips, with a general note stating the plan was subject to Site Plan and DNREC approval; that after receiving approval in 2016, the Applicant went through Site Plan approval process; that the Final Site Plan was approved in 2017; that on the approved Final Site Plan the two piers with 24 boat slips are shown; that the ownership of the project did change over time; that revisions were made to the Final Site Plan and a Revised Site Plan was submitted reviewed and recorded in 2020; that the piers and 24 boat slips were still included and shown on the revised plan; that the Commission reviewed the Final Amenities Plan in November 2021; that on the Amenities Plan the marina is shown on the plan; that after receiving final approval for the Amenities, the focus turned to develop a formal plan for the marina; that when looking at the site and the history of the property, the concept of a marina and restaurant began to take shape; that the property is zoned MR; that the Future Land Use Map designates the property within the Coastal Area; that all surrounding properties are located within the Coastal Area; that there is public water and sewer available to the site; that access to the marina would be through Osprey Point Community; that instead of having two piers crossing the wetland areas, the Applicant is proposing one pier crossing the wetlands; that the one pier will create a U-shape pier which will hold the 24 boat slips; that there is a 3,259 sq. ft.; that there is a proposed pool with a bar; that there are two beaches shown on the plan; that located to the left is a community beach; that this

beach would be exclusive to the residents of Osprey Point; that there would be a locked access to this beach; that on the opposite side there is a beach which will be accessed by the restaurant customers; that there is a proposal for a launch for non-motorized watercrafts; that these watercrafts would be along the line of kayaks and paddleboards; that there are 82 parking spaces proposed; that these parking spaces exceeds the parking requirements by the Zoning Code; that upon Final Site Plan review by the Commission, the Commission requires approval by various State agencies, such as Fire Marshal's Office, Sussex Conservation District and DelDOT; that the proposed Application will have additional agency requirements; that several of these agency requirements will have their own public hearings; that there will be a public hearing held by DNREC for the approval of a Minor Marina; that DNREC approval is required in relation to the easement into the area of subaqueous lands; that for a restaurant to have a liquor license, there are certain requirements which must be met before the Office of Alcoholic Beverage Control Commission (DABCC) will grant approval, which may also involve a public hearing; that if this Application is successful, it will have been well vetted by numerous agencies; that Mr. Launay and his firm at Environmental Resources, Inc. was in charge of the required permitting process involved with the proposed project; that there is a written summary submitted in the project booklet of what the permit process looks like; that the application submissions to DNREC and the U.S. Army Corp of Engineers were also included into the project booklet; that the property, as well as surrounding properties, are located within the Coastal Area based on the 2045 Future Land Use Map; that the Coastal Area is designated a Growth Area; that a common theme throughout the Comprehensive Plan is the population growth and the impact the population growth will have on Sussex County; that the population growth of Sussex County raises concerns regarding traffic; that a Service Level Evaluation Request was submitted to DelDOT; that DelDOT's response indicated that the traffic impact for the proposed project to be negligible; that another theme throughout the Comprehensive Plan is improving access to Delaware's waterways; that many people come to Sussex County because of the location to the water; that the proposed use will offer another way to access Arnell Creek; that throughout Old Landing Rd. one can see the population growth; that along Old Landing Rd. there are not a lot of places for people to access the water; that in some of the opposition, there are comparisons to Paradise Grill; that Paradise Grill is significantly larger than the proposed project in land mass and structure size; that within the proposed conditions, the first condition relates to the acreage of the project with a minor marina, pier for non-motorized watercraft vehicles and restaurant; that the second condition relates to the beach area, or sandbox area, to the left be only accessible to the residents of Osprey Point; that the next condition states proposed times of operation be Sunday through Thursday having a closing time of 10:00 pm; that on Friday and Saturday the closing time would be 11:00 pm; that Condition D states there will be no outdoor music after 9:00 pm; that Condition H states that the Applicant will supplement the natural buffer, creating a privacy fence buffer between the marina restaurant parcel and the adjacent properties, specifically being Parcel 39, Parcel 1.01 and Arnell Rd.; that there is a current buffer, consisting of existing trees; that the Applicant intends to utilize the existing buffer, while supplementing areas where there is no buffer with a privacy fence and landscaping; that the Site Plan shows a parking area in that general direction; that there are multiple conditions proposed, relating to the marina; that the proposed conditions are additional requirements to the requirements issued by DNREC; that some of the proposed conditions were constructed from direct requests from adjacent neighbors; that activities not permitted at the marina would include, repairing of boats, fueling of boats, no over-night docking other than those for seasonal slip rental and no pump-out stations located on the dock and/or pier; that the boats will only

be serviced by a portable cart as needed; that the project must receive approval from DNREC and the DABCC; that currently the lots of Osprey Point are being developed; that pursuant to the Delaware Uniform Common Interest Ownership Act, a public offering statement is required when lots are marketed for sale within new construction; that within the provided offering statement, there is a direct statement which indicates the marina, restaurant and café are possibilities for the project; that the offering statement also includes a rendering of the proposed project for future residence; that there is a letter from NVR confirming their support of the Application, as well as confirming the Public Offering Statement for Osprey Point includes a statement regarding the potential development of the site; that the proposed project would be for the convenience of not only the residents of Osprey Point but also the thousands of residents along Old Landing Rd.; that the proposed project would allow residents to have a place to dine, get a drink, a location to access a kayak or paddleboard without the requirement to access Old Landing Rd. or Rt. 1 and with the proposed conditions, the project will promote the welfare, orderly growth, convenience and prosperity of the County and he requested Mr. Launay speak on behalf of his findings.

The Commission found that Mr. Edward Launay, with Environmental Resources, Inc. spoke on behalf of the Application; that he is a professional wetland scientist and environmental consultant; that there is a number of various marinas, community and commercial, within and outside of the State of Delaware, including port facilities, that he has been involved in obtaining State, federal and local permits for; that he has worked with DNREC and the U.S. Army Corp of Engineers, in respect to the subject marina, his entire career; that his firm was involved in the original application for Old Landing Golf Course, which was previous operated by Mr. Marshall; that at the time of the original subdivision there was a desire to think about the best location for a small marina; that he deals with several sets of regulations; that there are subaqueous land regulations; that there are subaqueous lands permitted lease that will be associated with the marina part of the facility; that DNREC does not consider the restaurant and other parts of the facility; that there are things that need to be on the land as part of the marina facility; that they first had to decide where a suitable site would be located for a small or minor marina, within the State of Delaware, being on a single piece of property; that a minor marina is any pier or dock, that has more than four boats, up to 25 boats, on one piece of property; that anything larger than this would be considered a major marina; that under the State's marina regulations, and the required marina permit, there are different areas which would be require different levels of investigations based on the size of the facilities; that subaqueous lands are the underwater lands of the estate, being either private or publicly owned, that are beyond the mean high water line; that the marina regulations, in combination with the State's subaqueous land regulations, set guidelines on how far a dock/pier can extend out into the waterway, how wide a dock/pier can be; that there is a third component being some of the wetlands that border the shoreline of the Old Landing Golf Course were federally regulated; that federally regulated areas are regulated under different criteria; that there were State Map regulated wetlands that were subject to DNREC's jurisdiction; that all wetlands are under the jurisdiction of the U.S. Army Corp of Engineers; that DNREC's jurisdiction only extends only to the wetlands found on the State Wetland's Map; that the presence of these different jurisdictional wetlands played a factor of where and how they were able to do things; that when heading upstream Arnell Creek, the area of wetlands between the existing golf course and the edge of the creek increases wider, becoming a less desirable site for a marina; that the original locations were selected in the attempt to minimize the extent of State and federally regulated wetlands that the dock/pier would be required to cross to arrive to the water's edge; that once at the water's edge, they



had to consider the location of navigable water; that the proposed facility will be very close to the mouth of Arnell Creek; that the water depths increase toward the east and southeast; that toward the other direction the creek becomes more shallow; that across the creek is a recreational boating area maintained by DNREC, which has its own boat launch area; that Arnell Creek is not a deep body of water; that Arnell Creek is approximately three feet at the low water level; that in regards to navigability and siting of a marina, DNREC has a policy that requires one and a half feet of water at the mean low water; that on a normal tide range, the creek has approximately a 6/10-ft. to 8/10-ft. between mean low and mean high water level; that they also considered locations where the required buffer could be located between adjacent property lines and the marina pier location, while still complying with the DNREC regulations; that the buffer is more than exceeded by where the buffers are located; that the proposed location is the existing location of the golf house and restaurant was; that the existing golf house and restaurant location is being redeveloped; that the proposed facility is going to be open to the public and the future residents of Osprey Point; that the facility is located within an open space component; that there is confusion to the two areas, located along the shore line, being referred to as beach areas; that he would encourage the Commission to consider those areas as more of a sand box area; that there is a shore line; that in some locations of the shoreline the water is very close to the edge of the shoreline; that in these areas there is little wetland vegetation between the uplands and the water; that where those locations are wider or narrower will not be impacted in any way; that originally they had proposed two separate piers; that now they have a U-shaped docking pier, with two separate docking piers being connected by a connecting pier, with only one access across the land; that this was proposed to minimize the crossing of the wetlands; that due to this the State and federally regulated wetland areas will not be impacted; that landward of the wetland boundaries there would be a retaining wall, which would not be very high in height, by raising the land in the area; that landward of that area would be a boardwalk with an access area, which is part of the recreational facility; that the landscape would tie into the landscaping located at the front of the restaurant area; that as part of the marina regulations, there are certain things which area required to be part of the marina facility; that there is a small building proposed, which is intended to be the Harbor Master's Office; that the Harbor Master will be in charge of the marina; that this would be the area for signage and emergency numbers for the marina facility; that a marina is also required to have an emergency spill kit, which will also be located in the Harbor Master building; that within the State of Delaware for all marinas, is there must be a holding tank for sewage coming off all vessels; that typically this is handled by the placement of a marina pump out port; that a tank is wheeled down to the dock; that the holding tank would be pumped; that the tank is wheeled back to land; that when the tank becomes full, the operator will contact a licensed hauler who will dispose of the waste; that this is a requirement by the law; that also included in the packet is the required Operation and Maintenance Plan; that it is a draft maintenance plan, which had been filed with DNREC; that there will be restrooms facilities within the marina, located at the restaurant; that there is also shared parking space, which is a component of any marina; that the marina will be required to have a fire protection system; that the fire protection system will be required to be reviewed and approval by the State Fire Marshall's Office; that there are details and permits regarding this which was included within the submitted packet; that located within the parking area, there will be a fire department connection; that located at the marina docks will be a dry system; that there will no water in this system, until the time it is required to be used; that at both legs of the docking piers there will be two fire department connections; that this is a requirement by DNREC; that the marina will be accessed by a small pier; that the pier will be three foot wide; that the pier will

be elevated; that the pier will go across approximately 40-ft. of wetlands; that the pier will then widen out, leading to an additional pier which connects with the two piers which will hold the docks; that there will be a total of 25 slips provided; that the slips spaces will be 12.5-ft wide by 24-ft. long; that between every other dock there will be a 3'x12' finger pier; that this is a typical arrangement for a marina designed for smaller vessels; that the proposed facility is designed for pontoon boats and smaller vessels; that due to the water depths coming up from the shallow parts of Love Creek and the end of Arnell Creek, smaller vessels are the type to navigate there; that smaller vessels are the type to use the State boat ramp across from the property; that as part of the proposed design, there was a survey performed by a professional land surveyor within the State of Delaware, to determine water depths; that the surveyors information was submitted within the packet, as well as, submitted to DNREC; that if one proposes a new marina facility, there must be enough water in compliance with DNREC polices; that any dredging for channels which were previously constructed is considered maintenance dredging; that there typically was a previous depth which was authorized for maintenance dredging to be performed; that the type of permit required for maintenance dredging activity is routinely issued; that DNREC is not issuing permits to anyone wanting to dredge for random reasons; that at the proposed location, DNREC will not authorize a permit for new (not being for maintenance purposes) dredging; that they propose an additional pier, designed for launching canoes and kayaks; that they placed the pier at the proposed location because it has a very short distance of wetlands to cross; that those wetlands are regulated by the U.S. Army Corp of Engineers; that within this location there are no DNREC State regulated wetlands in the area; that there will be a pier, with an aluminum ramp to follow that; that there will be an 8'x8' or 20-ft to 24-ft floating dock; that there will be a yak port, which is a PVC cradle that helps people effectively launch; that they propose the marina, the shed for fire protection, parking, pump out capability and proper signage, which are the elements of the marina which constitute the proposal as a marina in DNREC's perspective; that these elements are the requirements DNREC will be looking at in terms of the application; that the restaurant facility is what the Planning & Zoning Commission is needing to consider; that the Application was submitted to both the U.S. Army Corp of Engineers and DNREC in December 2021; that the application was submitted to DNREC by his office, Environmental Resources, Inc, on December 23, 2021; that since that time the Application was reviewed; that there was noticed offered to the public; that public comments had been received; that after public comment is received, DNREC will decide if a public hearing is required; that he has been informally told that there will be a required public hearing for the project; that the public hearing date will be announced with a public notice; that the public will have the opportunity to provide comment in regards to the marina portion and kayak launch; that there is no dredging permit; that he does believe DNREC would ever grant a permit for the proposed purpose in Arnell Creek;

Mr. Hutt stated that Condition M of the original Ordinance it stated "*as proffered by the Applicant, there should be a 25-ft. non-disturbance buffer from all federal non-tidal wetlands; that " there shall be a 50-ft. non-disturbance buffer from all State tidal wetlands as required by County Code"*"; that he questioned Mr. Launay, as to how the Application complies with Condition M. and he questioned if a dock or a pier was considered to be a disturbance to wetland areas within the County Code.

Mr. Launay stated that Sussex County does have a Buffer Ordinance which requires a 50-ft. buffer from State regulated wetlands; that listed further in the Code, there are permitted uses for amenities, such as a dock or a pier to be located within the buffer area as stated under the old Code; that under

the newly adopted Buffer Ordinance, there are provisions within the new Code that allow for anything which requires a State or Federal permit, being water associated; that he considers the beach area, the walk way within the uplands along the waterfront, as being parts of a recreational amenity associated with water; that there have been different interpretations with each change of Planning Directors for Sussex County as to what is considered a recreational facility within the 50-ft. buffer; that there are some things, which were approved in the past as recreational facilities, which will not be permitted under the new Buffer Ordinance; that previously it was understood that no structures were permitted within the 50-ft. buffer area; that no trees or bushes were allowed to be cut within the buffer; that currently there is no required buffer within County Code from federally regulated wetlands; that immediately landward of the wetland buffers is a golf course; that the area is not natural land; that it is rather a redevelopment of a golf course; that they have proposed to limit any disturbance of the buffers and the restaurant would be required to be located landward of the buffers; that he stated a dock or a pier would not be considered as a disturbance to wetlands areas per the current County Code, as well as the newly adopted Sussex County Buffer Ordinance and the restaurant building would be considered a disturbance, being subject to the 50-ft. buffer requirement.

Mr. Mears questioned if the boat slip rentals were exclusively for the residents of Osprey Point or for public rental as well.

Ms. Wingate questioned if overnight docking was prohibited; that she did understand that residents would be provided a notice when considering purchasing a lot and she questioned if the marina were approved for 25 boat slips, would it be permitted for other boats to pull up in the shallows and walk to the restaurant.

Ms. Stevenson questioned if the marina was for kayaks and paddleboards or for motorized watercraft vehicles as well; that she questioned where people from Osprey Point would launch their boats from the property; she questioned if the sandbox area would be placed on top of wetlands and she stated her questions regarding outdoor entertainment, hours of operation and lighting were answered in the provided letter.

Mr. Hopkins questioned where the location of the three-foot at low tide area was; that he questioned the depth of the water at the State's boating launch area; that he questioned if the areas darker in shade on the rendering referenced deeper waters than other areas in the lighter shade; that he questioned how depth is calculated; that he is concerned if someone were to place a propellor into the water at three feet, will it churn the silt; that he questioned if there would be suspended mud within the three foot depth area; that he questioned where the three foot depth areas are located in relation to the proposed areas the boat slips will terminate; that he questioned if the depths would be able accommodate a pontoon boat with people, a motor and fuel; that he questioned what the minimum depth required is for kayaking; that he questioned what the ratio for parking spaces was for commercial restaurants; that he questioned how many customers would be anticipated for the restaurant by land and by water;

Mr. Robertson stated there is a proposed condition stating there shall be no outdoor music after 9:00 pm; that the condition, regardless of what the Commission requires, will also be governed by the OABCC as it must be applied for as part of obtaining a liquor license; that he questioned if the DNREC approval is required because the marina is opened to the public versus an amenity for only

the residents of the Osprey Point RPC or would DNREC's approval have been required all along and he stated if the marina was always a proposed amenity for the RPC and approved on the Final Site Plan, the project would have still been required to go through DNREC but would not have required this extra step through the Planning & Zoning Commission.

Mr. Hutt stated the intention is for the slips to be transient boat slips, associated with arriving and departing from the restaurant; that it is anticipated that some slips will be for seasonal use; that the restaurant owners intentions were that most slips be for customers of the restaurant; that stated in proposed Condition 3, it states that other than seasonal rentals, overnight docking is prohibited; that currently there are no residents within Osprey Point Development; that the homes are currently being constructed; that the permitted motorized watercraft vehicles would be permitted to access the marina; that the kayaks and paddleboats would be permitted at the launch area located at the other end of the property from the marina; that there is no proposed boat ramp at the marina; that he would imagine residents would be able to access a boat ramp in the nearby area; that he does not believe anyone has performed a calculation of anticipated patrons by land and water; that a pontoon boat is one of the most common boats found in the Inland Bays as they are not deep waters; that the more restrictive regulation for the end time of outdoor music is what the Applicant will comply with;

Mr. Launay stated that if DNREC provides authorization for the marina, they will issue a Subaqueous Land Permit; that with that granted permit there will be a Subaqueous Land Lease; that the lease will encompass the physical area of the marina; that the waters which are subject to the flow of the tide are free and navigable to anyone; that the State regulations state that someone cannot throw out an anchor, leaving their boat for an extended period of time; that a boat cannot be left, where it could become an impediment to other watercraft vehicles coming and going from the marina; that if someone were to get out of their boat, it potentially would not be a pleasant walking experience due to the hard sandy bottom of the creek; that there is a boundary of State wetlands and landward of that area there is a boundary of Federal wetlands under the jurisdiction of the U.S. Army Corp of Engineers; that he previously had testified that three feet landward of that area, the intention is to place a low profile, mild, sheet pile wall; that the wall will contain any sand or land disturbance to prevent anything from crossing over from the land into the wetlands; that he does not predict that people will be inclined to walk through a salt marsh; that the only wetland impact will be from the short portion of the pier that connects to the marina pier; that the pier will impact both State and Federal wetlands; that there is another small impact to the Federal wetlands at the location of the kayak launch; that he has a sounding survey that was performed to approximately the middle of the Arnell Creek; that he does not have a sounding survey for areas past the middle of Arnell Creek; that the depth he measured were 2.8-ft. to 2.5-ft; that in the middle of Arnell Creek the depth will become deeper; that there is a State Boat Ramp located across from Osprey Point; that he has seen an estimated 24-ft. long boat launch from the State boat ramp during normal low tide; that there is a good component of silt, with a more sandy bottom; that depth is calculated by the distance from the bottom floor to the top of the water; that the normal tide range in the subject area is approximately 0.8-ft.; that listed on the permit drawings, there are depth reported; that the permit drawing depths are a corrected at 0.2-ft.; that mean low waters are actually 0.2-ft. lower than the depths shown on the permit drawings the Commission has; that at higher tides there will be an additional .5-ft or higher; that if someone were to drop a propellor in a particular area at low tide, which would be approximately 2.5-ft, it will be in the mud; that a Bathymetric survey is a study of the bottom, which relays the depth;

that the Bathymetric survey is taken from the boundary between the physical water and the physical soil that composes the bottom; that as part of the permit drawings, there was a full size plan submitted showing the extent of the sounding survey performed, all depths and all marina piers; that the depths will vary when moving inland, where it becomes more shallow; that at the other end of the marina, that is where the most depth is located; DNREC's standard requirement is at least 1.5-ft of depth at mean low water; that they meet the minimum standard in the dock area locations; that there will not be any dredging, so they are attempting to access the best water they can; that there is a limitation on where things can be placed; that when placing a pontoon boat in the water, with people, a motor and fuel it would be close to the 1.5-ft requirement; that every boat and every motor is different; that people experienced in navigating the Inland Bays are knowledgeable on how to tilt the motors to navigate through shallow waters; that he believes a canoe or kayak should be able to navigate in shallower water, however it would depend on the size of the person; that at the area of the kayak launch, he estimated the depth to be 2.4-ft at mean low water; that he does not anticipate any issues in the launch area; that he stated the intended use for the marina would not have mattered and the marina would have required the same set of permits and approval from DNREC.

Mr. Whitehouse stated that required parking is based on the square footage of the restaurant; that there are different requirements for restaurants versus retail centers; that he believed the requirement to be one parking space per every 50 sq. ft. assigned for patron use and not all of the restaurant square footage would be used for the calculation, as it is not all for patron space.

Ms. Cheri Hochstedler spoke on behalf of the Application; that she is a Senior Designer with GMB; that the Code requirements for restaurants and bars state one parking space for each 50 sq. ft. assigned for patron use, plus one parking space for two employees on the largest shift; that the 3,259 sq. ft. for the restaurant is not entirely patron use; that the kitchen space and bar area have been subtracted out of the calculation; that the patron use area is 2,767 sq. ft., that would equate to 56 parking spaces; that they have calculated the requirement of 13 parking spaces for 26 employees; that the total amount of required parking would be 69 parking spaces and they are proposing 82 parking spaces.

The Commission found that Mr. Robert Nadig spoke in opposition to the Application; that he is a resident of Old Landing Woods; that he was speaking on behalf of the Old Landing Woods Homeowners Association; that they are opposed to the Application; that the Application request does change the Osprey Point plan dramatically; that the proposed project will change the characteristics of the community; that it will change access points within the community; that the proposed project will have a different impact on the community than what was originally approved; that Old Landing Woods Development was the first development to be created off of the Old Landing Golf Course; that he was present at the previous public hearings; that the original Application, there was not request for commercial use; that he considers the marina and restaurant amenity to be a developers amenity; that the proposed project will attract people off the bay, Rt. 1 and Old Landing Rd.; that the proposed use may be convenient for some, however he questioned if the proposed use is a necessity for the Osprey Point Development; that the acreage of 1.85 acres does not include the acreage of the marina; that about three acres of the 200 unit development is being commercialized; that three acres would equal 50% of the project, being more than is permitted for the proposed use; that he did not agree with the notice provided for the public hearing; that the legal advertisement mentioned a restaurant and marina, but did not mention commercial use; that they feel the Application should be rejected

based on the negative impact it will have to surrounding communities; that they feel the proposed use will be taking over Arnell Creek; that the proposed use will discourage the boating that typically would be found in that area of Arnell Creek; that current boating disturb and destroy the subaqueous land; that the proposed use will exacerbate this; that boats routinely get stuck in Arnell Creek; that there is a boating safety concern with the proposed use; that the project may be smaller than Paradise Grill, but is still substantial for a 200 unit community; that the surrounding communities are quiet; that they are concerned about the bars and the nightclub; that the concept plan shows the large doors where dining can be inside or outside; that it is proposed to have no outdoor music after 9:00 pm; that they may still have music on the inside; that the plan is only a concept plan, so it could change to be anything; that surrounding residents have children who will need to go to bed; that he feels the proposed project will be taking advantage of the investments other people have made in terms of their properties; that the original restaurant of the golf course has not yet been torn down; that the current restaurant closes at dusk; that it was not intrusive to surrounding properties; that the proposed use is asking people to come to party with a marina, beach bar, tiki bar and pool bar; that the proposed use is directed for outside commercial use, not for the residents of Osprey Point; that he believes the proposed access to the restaurant to be a new access; that there were easements which were required to be obtained to create access off Old Landing Rd.; that the main concerns are the boating safety, the impacts to the wildlife and the watershed, the increase in boat traffic for the commercial purpose, that the offloading of sewage should not be part of a recreational amenity or in the location of where one would be; that there will also be a risk of gasoline and oil, which are not risks for the area currently; that the partying and the noise will substantially change the area; that he feels the calculation for commercial use is flawed in the amount the Applicant is requesting; that Osprey Point is an RPC; that Osprey Point has been compared to Americana Bayside; that Americana Bayside is 8,000 units versus Osprey Point at 200 units; that the consensus in his community were in opposition; that there was no one at the hearing in support of the Application and he does not feel approving the Application would set a very good precedent for the future.

Mr. Robertson stated this was the first Application that utilized the large metal Public Notice sign with the QR Code to scan and that the QR Code redirects directly to the application packet on the Sussex County website.

The Commission found that Ms. Nancy Dellavecchio spoke in opposition to the Application; that she lives within the Old Landing Development; that she is opposed to the marina; that she moved here in 2016; that since 2016 she has seen a decrease in accessibility into the water due to the tides; that the past weekend the tides were so low she could not take her 24-ft. pontoon boat out; that she does not understand how Arnell Creek will be able to enable the number of boats the proposed project are anticipating; that over the years, it has gotten worse; that at the mouth of Arnell Creek there is beach land; that she had witnessed many boats get stuck in that area; that this was a clear indication there is not enough water in that area; that she questioned the testimony given of the presence of three feet of water; that she fears the proposed project will terminate her access to the water and she does not feel the proposed project will improve the quality of living for residents on Marshall Rd.

Mr. Mears stated there was a full moon the week prior which creates extreme low and extreme high tides.

Chairman Wheatley stated the Applicant testified that there was a depth of three feet in their particular site location and the Applicant did not testify there was a depth of three feet further up the creek.

Mr. Robertson stated Mr. Launay testified that a maintenance dredging permit could be requested, but DNREC would not permit dredging to establish a marina or pier system.

The Commission found that Ms. Donna Voigt spoke in opposition to the Application; that she lives within the Seagrass South Community, located across from Osprey Point; that Mr. Horsey did go to different communities to discuss the future plans; that the majority of the residents of Sawgrass are in opposition to the proposed project; that she had previously spoken to DNREC's Wetlands & Subaqueous Lands Division regarding the marina application; that she spoke with the project manager regarding her issue to the depths of the area; that the charts reference 1.9-ft.; that she does not understand where the two to three foot depth is being derived from; that the depths are shallow, limiting the type of vessels that can come and go from the area; that she had concerns that the painting, waxing and washing of boats would be permitted at the marina; that she had many concerns that she submitted to DNREC; that she requested to submit her questions to DNREC into the record; that noise is a big concern; that the sound concern is not only from the amplified sound, but also from the increase in patrons and increase in traffic; that in the Traffic Impact Study, DelDOT was focused mostly on the four-way stop intersection at Warrington Rd. and Old Landing Rd.; that the four-way stop is on the Capital Transportation Plan; that action will not be taken until 2025 and not to be completed until 2030; that there have been multiple accidents within the small stretch of road which borders Osprey Point; that adding alcohol to a curvy road is not a good idea; that she feels having music seven days a week until 9:00 pm is torturous; that the Sawgrass community occasionally has bands; that the bands typically play from 4:00 pm until 7:00 pm; that the Sawgrass community does not have a restaurant, however they bring in food trucks; that everything within Sawgrass is done by 8:00 pm; that they scheduled these events about once a month; that she also is concerned about the hours of operation; that early morning deliveries will be made, as well as trash trucks; that within the original approval, the roads were stated to be maintained by the Homeowners Association; that she questioned, if that condition has not changed, have the new owners of Osprey Point been notified that they will be required to maintain roadways for a commercial business; that DNREC does have a permanent swimming advisory restriction in Arnell Creek due to the high bacteria level within the Inland Bays; that she has never seen any boats launch from the proposed launch area; that she has only seen people fish in that area; that she did not recall seeing a proposed marina or docks on the initial plan for C/Z 1759; that in Ordinance 2475, for C/Z 1759, Condition M states *as proffered by the Applicant there should be a 25-ft. non-disturbance buffer from all Federal Non-Tidal wetlands, a 50-ft non-disturbance buffer from all State-Tidal wetlands as required by County Code* and she had not found in the County Code or Conditions of Approval, stating commercial use would not apply to the buffer conditions.

Mr. Robertson stated on page 83 of page 221 of the electronic packet, it referenced the various sounds or “depths” which were derived in different intervals; that there is not a three-foot depth shown on the GMB drawing and the report document was dated December 2021; that Dr. Launay testified that regardless of the Commission or County Council's decision may be, the project will still have a public hearing before DNREC for approval as well and he believed the marina and docks were shown on the original Site Plan.

Chairman Wheatley stated the buffer question was addressed during the Applicant's presentation and testimony; that the County Code has provisions that allow exceptions to the required buffers; that the Applicant is seeking to take advantage of those provisions and that these provisions do not differentiate between private and commercial use.

The Commission found that Mr. Al Bradley spoke in opposition to the Application; that he lives within Old Landing, along Arnell Rd.; that he requested to submit photos into the record showing the multiple boats which were stuck in Arnell Creek; that the photos range from 2019 until current; that he does not see sand in the area; that he has only seen mud; that where there is mud, there are stuck boats; that he has concern to the result of flooding of the marsh lands; that the marsh lands are important for the wildlife; that they have experienced flooding of two to four feet onto their property; that the more that it built and the more land that is paved the more likely flooding will be an issue; that the proposal on the rendering looks nice but he does not understand how the Applicant will be able to accomplish it; that the area of Old Landing is a quiet area and the area does not need anything similar to Paradise Grill; that there is overflow parking located adjacent to the end of Arnell Rd.; that he has concerns regarding traffic; that Arnell Rd. is small, dead-end road with no sidewalks; that he was told Arnell Rd. would stay a dead-end road; that Arnell Rd. is the only emergency exists; that he does not want to see Arnell Rd. become a road extension into Osprey Point and they would like to see the dead-end road remain as an escape from the areas known to flood.

The Commission found that Ms. Lia Koyner spoke in opposition to the Application; that she lives on Arnell Rd.; that her dock is adjacent to the proposed marina; that on the rendering they have blocked out her house and her yard as she lives directly adjacent to the project; that the trees referenced in that area as an existing buffer, are her trees on her property; that there is a dilapidated fencing in that area which is falling down; that there really is not a buffer in that area; that her house will be located directly adjacent to the proposed parking lot for the restaurant; that placing a path for a length of 40-ft. within the wetlands is not the best way to save the environment; that placing a walkway on an existing asphalt road and placing a parking lot behind the restaurant is the best way to protect the wetlands; that any boardwalk with children, adults and alcohol is going to cause pollution; that pollution is going to end up in the wetlands or in her yard; that she is unsure what landscape the Applicant plans to place, but she feels the landscaping should be big and bulky, with a giant fence; that she requested the Commission go to [chart.noaa.gov/pdf/12216.pdf](http://chart.noaa.gov/pdf/12216.pdf); that the website will reference the average depths of Arnell Creek; that the website states the average depth is two feet; that she is 5'2"; that she can walk the subject areas of Arnell Creek; that there are deeper waters in areas that have been dredged; that her kayak has gotten stuck in some areas; that the provision allowing amenities to be placed, taking away the wetlands; that she believes this provision was intended for amenities solely for the residents of the development; that the proposed use is going to attract way more than the area is ready to handle; that she feels the wetlands should be protected; that the Applicant testified the proposed use will serve thousands of homes, but that the proposed use would not cause any extra traffic; that many nearby communities and properties already have pools and amenities; that the people coming to the project will be arriving by vehicles; that she is concerned the fines will not be large enough to enforce the project to abide by the set conditions; that the water was present before any of the homes were constructed; that the water is hard to police and protect and she questioned how the proposed project would be policed.



The Commission found that Mr. Steven Barbato spoke in opposition to the Application; that he lives on Arnell Rd. adjacent to the project; that he represents Old Landing Three Homeowners Association; that they agree with all the concerns and complaints previously stated; that he submitted a letter into the record, written by Mr. Launay on December 23, 2021; that the letter specifically stated at the marina, the mean low tide is 1.6-ft to 2.8-ft; that there is no mention of a three-foot depth; that he questioned if someone will verify the stated depths; that he felt Mr. Hopkins asked a good question, however he felt it was answered incorrectly; that when boating in Arnell Creek, the engine must be trimmed up all the way; that when an engine is trimmed up, there is not much control; that often boats must stop and assess the waterway before heading out of Arnell Creek; that if there is increased boat traffic, it will cause increase the danger; that the darker shades do reference deeper areas in the water; that there are two deep spots; that the water is shallow in the channel; that he does not believe the proposed project will offer convenience and necessity to the development and area

Mr. Mears stated that Mr. Launay previously testified that the depth at mean low tide is 1.6-ft to 2.8-ft.

Chairman Wheatley stated he believed the bathymetric survey was the data that confirmed Mr. Launay's findings to be true.

The Commission found that Mr. Steven Koyner spoke in opposition to the Application; that he lives on Arnell Rd, adjacent to the project; that the Applicant spoke about the two areas that allow patrons to walk through the wetlands; that the Applicant did not talk about the proposed boardwalk; that the proposed parking lot of 82 parking spaces are located adjacent to existing homes; that some of the residents work from home; that he appreciates that outdoor music will end at 9:00 pm; that he is concerned about music being proposed every day; that typically the parking lots at bars are loud with people at 10:00 pm to 11:00 pm; that this patron noise would be located adjacent to residential homes; that the proposed boardwalk is approximately 200-ft. along the wetlands; that the Applicant does not need the boardwalk; that he would request the Commission reject the plan as is; that he requested the Commission have the Applicant remove the boardwalk; that he stated the property is large, with a lot of space between the restaurant and Old Landing Rd, that is not located adjacent to homes; that he requested the Commission make the Applicant move the parking lot and he would request the Commission condition the bar to close at 9:00 pm, as it will take two hours to get everyone to vacate the premises.

The Commission found that Ms. Anita Broccolino spoke in opposition to the Application; that she lives in Old Landing Woods; that she agrees with everything that had already been said; that she constantly has people ask if they can access Osprey Point from Old Landing Woods, while walking her dog; that if a commercial restaurant is placed it will attract a lot of people attempting to cut through Old Landing Woods to get to the marina; that if the restaurant was for residential use, it would be better; that she is concerned about safety; that often people get stuck in Arnell Creek and walk up knocking on residents doors, at times late at night; that there previously was a 10 to 12 year old boy, who got stuck in Arnell Creek; that emergency personnel had to rescue him; that with the presence of a bar, there will be people drunk; that the driving lanes are one way in each direction; that the congestion has been increasing in the area over the years; that there are many other developments in the area, which have been around for years, that have never needed a restaurant that would remain open until 9:00 pm to 11:00 pm; that she is concerned about the noise the project will generate; that

there have been accidents and deaths along Old Landing Rd.; that she questioned if the Traffic Impact Study took into account the additional 217 homes; that she questioned if there would be 350 additional vehicles; that the commercial restaurant and marina would then add on top to that additional traffic; that she and her neighbors feel safe and they currently do not have to worry about patrons getting drunk and wandering into their yards.

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 Application C/Z Osprey Point Preserve, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Hopkins and carried unanimously. Motion carried 5-0.

#### Minutes of the June 22, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since August 11, 2022.

Ms. Stevenson moved that the Commission recommend a partial denial of C/Z 1973 Osprey Point Preserve, LLC to amend the Osprey Point RPC, approved as C/Z 1759 and Ordinance No. 2475 to allow commercial uses within the Residential Planned Community based upon the record made during the public hearing and for the following reasons:

1. The Applicant is seeking to amend the Osprey Point Residential Planned Community approved as C/Z 1759 and Ordinance No. 2475 to add a commercial use to the RPC in the form of a restaurant and commercial marina. When Osprey Point was first approved, it did not include commercial uses.
2. A rezoning application such as this is legislative in nature. Therefore, Sussex County has discretion in deciding whether to approve this amendment to the RPC. In this case, there was substantial opposition to the request from neighboring property owners citing concerns about the incompatibility of commercial uses with the surrounding residential areas, increased traffic, increased noise, and other negative impacts of the request. I find all of this to be compelling and in support of a denial of this request.
3. The Sussex County Zoning Code permits certain limited commercial uses within an RPC. It states that “commercial uses of convenience and necessity to the development as a whole” may be permitted. In this case, the proposal seeks to allow a waterfront restaurant to be built within this otherwise residential community, which is itself surrounded by residential development. Waterfront restaurants, by their nature, are very popular attractions and there are not many of them in Sussex County. One such example is Paradise Grill within the Pot Nets residential community. It is common knowledge that it attracts customers from far and wide given its location and views. Such a restaurant would be no different here, and it would clearly not only be “for the convenience and necessity of” Osprey Point as required by the Zoning Code. What is proposed does not fall under the type of commercial use that is permitted in an RPC.
4. At the time Osprey Point was approved by Ordinance No. 2475, the residential density of the development was substantially reduced because of opposition to the density that was originally proposed. The Ordinance states that the original density and housing types were inconsistent with the surrounding residential communities. A destination-waterfront restaurant would certainly be a more intensive use than anything else in this area of Old Landing Road. I see no

compelling reason to go backward against the determination in 2016 to reduce the intensity of the RPC by permitting more intensive commercial uses within the residential development and its surrounding neighborhood now.

5. Old Landing Road is a two-lane, dead-end winding road. It is not currently suited to handle the increased traffic, pedestrians, bikers, trash trucks, and delivery vehicles that would be utilizing this destination restaurant if approved.
6. In summary, I do not see any legitimate reason to permit an intensive commercial use in the form of what would certainly be a waterfront-destination restaurant that will attract customers from far and wide beyond the confines of just Osprey Point. What has been asked for exceeds what is intended for the limited commercial uses within an RPC. For all of these reasons, it is recommended that the request to amend C/Z 1759 and Ordinance No. 2475 to allow commercial uses in the form of a restaurant and commercial marina within the RPC should be denied.
7. However, I am recommending approval of a marina of no more than 25 boat slips for the exclusive use of the residents of Osprey Point. The slips in this marina may not be bought, sold, leased, or occupied by anyone other than property owners within Osprey Point. The approval of this marina as an amenity for Osprey Point is subject to the following conditions:
  - a. This marina shall be an amenity for the property owners within Osprey Point and shall be limited to use by boats owned by property owners within Osprey Point. No slips shall be bought, sold, leased, or occupied by anyone other than owners of residential units within Osprey Point.
  - b. There shall be no more than 25 boat slips within the marina.
  - c. No boats shall be repaired or refueled at the marina.
  - d. There shall not be any pump-out location on the docks or within the marina.
  - e. DNREC approval shall be obtained for the marina use prior to Final Site Plan approval.
  - f. The existing Final Site Plan for Osprey Point shall be revised to include this marina as an amenity for the property owners within the development. The revised Final Site Plan shall include Condition A above. The Revised Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend a partial denial of C/Z 1973 Osprey Point Preserve, LLC, for the request to amend the Osprey Point RPC, to allow commercial uses within the Residential Planned Community, and to recommend partial approval of the request for a marina, for the reasons and conditions stated in the motion. Motion carried 4-1.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Ms. Stevenson – yea, Mr. Hopkins – nay, Chairman Wheatley - yea

Mr. Mears voted yea on the motion for the reasons and the conditions stated in the motion.

Ms. Wingate voted yea on the motion for the reasons and the conditions stated in the motion.

Ms. Stevenson voted yea on her motion for the reasons and the conditions stated in her motion.

Mr. Hopkins voted nay on the motion. Mr. Hopkins stated there are people who live along Old Landing Rd. who are forced to access Rt. 1 to visit a restaurant; that he believes there is a balance to all of it when considering the amount of traffic on Rt. 1 and therefore he voted against the motion.

Chairman Wheatley reluctantly voted yea on the motion, as he also agreed with Mr. Hopkin's comments.

**PLANNING & ZONING COMMISSION**

ROBERT C. WHEATLEY, CHAIRMAN  
KIM HOEY STEVENSON, VICE-CHAIRMAN  
R. KELLER HOPKINS  
J. BRUCE MEARS  
HOLLY J. WINGATE



**Sussex County**

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JAMIE WHITEHOUSE, MRTPI, AICP  
DIRECTOR OF PLANNING & ZONING

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**

Planning Commission Public Hearing Date: August 11<sup>th</sup>, 2022

Application: C/Z 1973 Osprey Point Preserve, LLC

Applicant: Osprey Point Preserve, LLC  
2979 Barley Mill Road  
Yorklyn, PA 19736

Owner: Osprey Point Preserve, LLC  
2979 Barley Mill Road  
Yorklyn, PA 19736

Site Location: Lying on the southwest side of Old Landing Road (S.C.R. 274), within the Osprey Point Residential Planned Community, on the north end of Ethan Allen Drive, approximately 0.12 mile west of Old Landing Road (S.C.R. 274)

Current Zoning: MR-RPC – Medium Residential District – Residential Planned Community

Proposed Zoning: MR-RPC – Medium Residential District – Residential Planned Community

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Rehoboth Beach Fire Company

Sewer: Sussex County Sewer

Water: Tidewater Utilities, Inc.

Site Area: 1.85 acres +/- (total RPC is 126.8795 acres +/-)

Tax Map IDs.: 334-18.00-83.00, 83.17, 83.20, 83.21 & 1073.00 through 1289.00



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## Memorandum

To: Sussex County Planning Commission Members  
From: Mrs. Christin Scott, Planner II  
CC: Mr. Vince Robertson, Assistant County Attorney, and applicant  
Date: August 4, 2022  
RE: Staff Analysis for C/Z 1973 Osprey Point Preserve, LLC

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application C/Z 1973 Osprey Point Preserve, LLC to be reviewed during the August 11, 2022, 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.

The request is for a Change of Zone for Tax Parcels 334-18.00-83.00, 83.17, 83.20, 83.21, & 1073.00 through 1289.00 to allow for a change of zone from a Medium Density Residential District – Residential Planned Community (MR-RPC) to a Medium Density Residential District – Residential Planned Community (MR-RPC) to include a 1.85-acre marina & restaurant amenity area. The property is lying on the southwest side of Old Landing Road (S.C.R. 274), within the Osprey Point Residential Planned Community, on the north end of Ethan Allen Drive, approximately 0.12 mile west of Old Landing Road (S.C.R. 274). The entire community consists of 126.8795 acres +/-, with the relevant portion of the community being approximately 1.85 acres +/-.

### Further Site Considerations

The property is not located within the Henlopen Transportation Improvement District (TID) and shall therefore not be subject to any of its requirements.

The parcels lie within Flood Zone “VE” and “AE”.

### Comprehensive Plan Analysis

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 has land use designation of “Coastal Area” The properties to the north, south, east, and west of the subject property all have a designation of “Coastal Area.”

As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided that special environmental concerns are addressed. A range of housing types should be permitted in Coastal Areas, including single-family homes, townhouses, and multi-family units. Retail and office uses are appropriate, but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-



use development should all be allowed. In doing so, careful mixtures of homes with light commercial, office and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home. Major new industrial uses are not proposed in these areas. (Sussex County Comprehensive Plan, 4-15).

### Zoning Information

The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories”, the Medium Density Residential (MR) District is listed as an Applicable Zoning District within the “Coastal Area.” (Sussex County Comprehensive Plan, 4-25).

The property is zoned Medium Density Residential District – Residential Planned Community (MR-RPC).

The adjacent parcels to the east are zoned Medium Density Residential (MR) District, along with the parcels across Old Landing Road. Parcels to the south are zoned Agricultural Residential (AR-1) District.

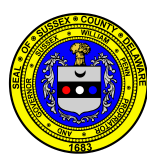
### Existing Change of Zone Applications within the Vicinity of the Subject Site

Since 2011, there have been three (3) Change of Zone applications within a 1-mile radius of the application site. The first application is for Change of Zone No. 1874 Leanna and Hung Nguyen for a change of zone from an Agricultural Residential (AR-1) District to a Medium Density Residential (MR) District. The application was approved by the Sussex County Council at their meeting of Tuesday, April 16, 2019, and the change was adopted through Ordinance No. 2646. Change of Zone No. 1865 Francis C. Warrington, III for a change of zone from an Agricultural Residential (AR-1) District to a Medium Density Residential (MR) District. The application was approved by the Sussex County Council at their meeting of Tuesday, January 15, 2019, and the change was adopted through Ordinance No. 2626. And Change of Zone No. 1759 Osprey Point D, LLC for a change of zone from an Agricultural Residential (AR-1) District to a Medium Density Residential District – Residential Planned Community (MR-RPC). The application was approved by the Sussex County Council at their meeting of Tuesday, November 15, 2016, and the change was adopted through Ordinance No. 2475.

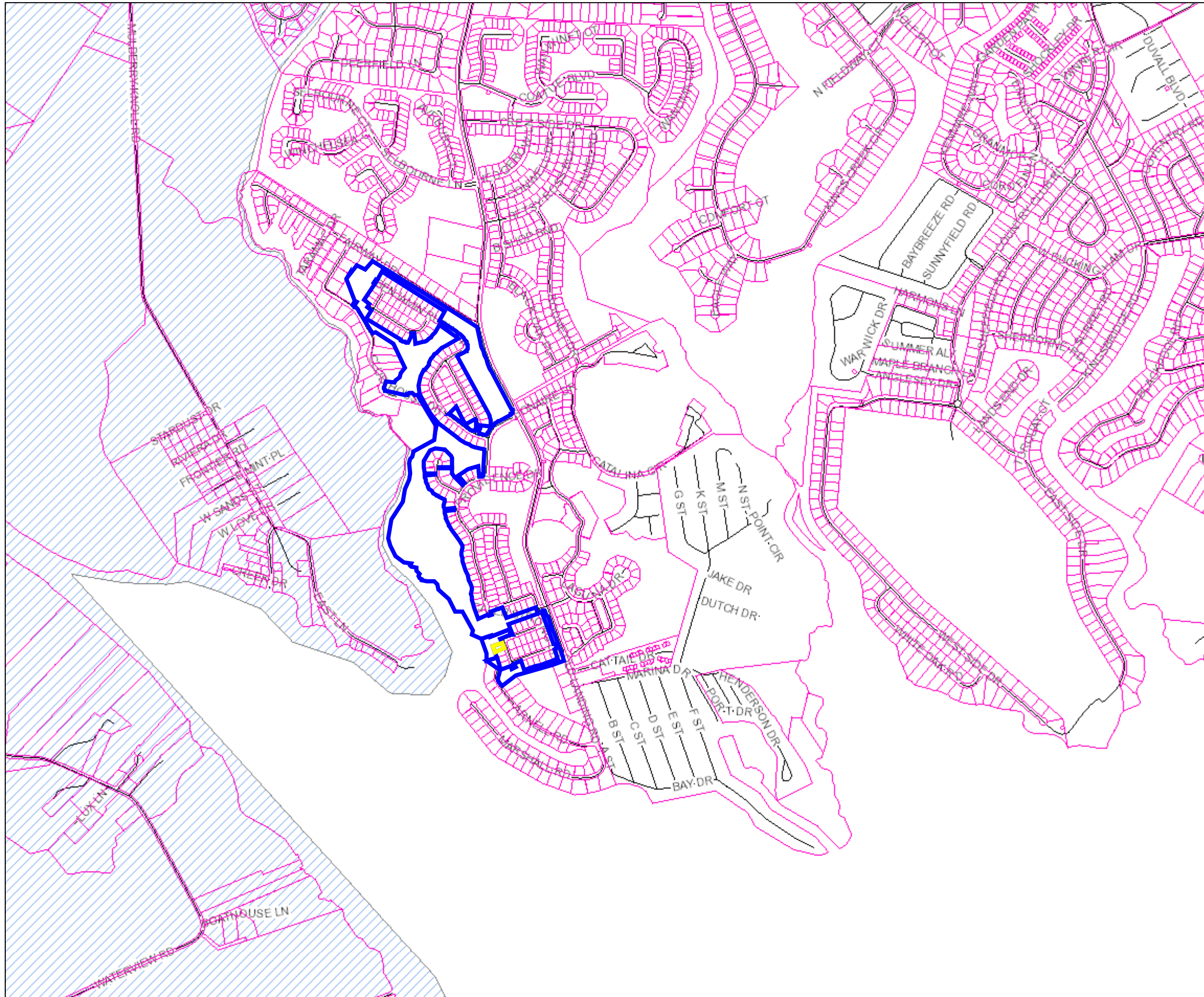
Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from a Medium Density Residential District – Residential Planned Community (MR-RPC) to a Medium Density Residential District – Residential Planned Community (MR-RPC) to include a 1.85-acre marina & restaurant amenity area could be considered as being consistent with the land use, area zoning and surrounding uses.







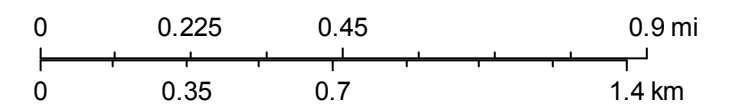
# Sussex County

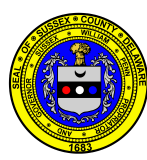


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<b>Description</b>	
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<b>Description 3</b>	
<b>Land Code</b>	

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Override 1	—	Pipe - DeIDOT
<b>polygonLayer</b>	—	Pipe - Tax Ditch
Override 1	—	Pipe - Private
•••	•••	Pond Feature
—	—	Special Access ROW
•••	•••	Extent of Right-of-Way
<b>Tax Ditch Segments</b>	—	Municipal Boundaries
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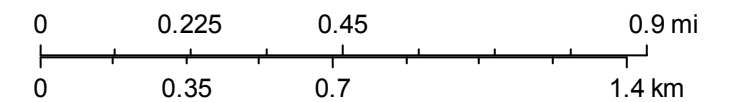
# Sussex County



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<b>Book</b>	Text
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<b>City</b>	Text
<b>State</b>	Text
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<b>Description 2</b>	
<b>Description 3</b>	
<b>Land Code</b>	

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- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- Streets

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Introduced: 07/12/2022

Council District 3: Mr. Schaeffer

Tax I.D. No.: 334-18.00-83.00 & 83.17

911 Address: N/A

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO AMEND CHANGE OF ZONE NO. 1759 (ORDINANCE NO. 2475) TO INCLUDE A 1.85 ACRE MARINA & RESTAURANT AMENITY AREA FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 126.8795 ACRES, MORE OR LESS**

WHEREAS, on the 14<sup>th</sup> day of February 2022, a zoning application, denominated Change of Zone No. 1973 was filed on behalf of Osprey Point Preserve, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, 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. 1973 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, 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 [MR-RPC Medium-Density Residential District – Residential Planned Community] and adding in lieu thereof the designation MR-RPC Medium-Density Residential District – Residential Planned Community as it applies to the property hereinafter described.

**Section 2.** The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the southwest side of Old Landing Road (S.C.R. 274), within the Osprey Point Residential Planned Community, on the north end of Ethan Allen Drive, approximately 0.12 mile west of Old Landing Road (S.C.R. 274) and being more particularly described in the attached legal description prepared by Whittington and Aulgur ., said parcel containing 126.8795 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.