

COUNTY COUNCIL

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



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

AGENDA

November 14, 2023

1:00 P.M.

Call to Order

Approval of Agenda

Approval of Minutes - November 7, 2023

[11 7 23 Draft Minutes](#)

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

1. **2024 Council Meeting Schedule and Holiday Schedule**
[Meeting & Holiday Schedule](#)
2. **Review & Approval of the Property Management Agreement with the Sussex County Land Trust for Hopkins Preserve**
[SCLT Property Management Agreement Hopkins Preserve](#)
3. **Administrator's Report**

Gina Jennings, Finance Director & Sophia Chilelli, Intern

1. **FY 2024 Human Service Grants Recommendation and Award**
[FY 2024 Human Service Grants Recommendation and Award](#)



Hans Medlarz, County Engineer

1. EMS Public Safety Building – Project C19-04

A. Change Order No. 26

[EMS PS Bldg CO No. 26](#)

Robert Bryant, Airport & Business Park Manager

1. Construct General Aviation Apron Expansion, Phase IV, Project A20-36

A. Change Orders 1, 2 and Substantial Completion

[Construct Expansion CO No 1 & 2 & Sub Completion](#)

Grant Requests

1. New Coverdale Outreach Mission Inc. for operational expenses

[New Coverdale Outreach](#)

2. Girl Scouts of the Chesapeake Bay Council, Inc. for an educational trip to Savannah, GA

[Girl Scouts of the Chesapeake Bay](#)

Introduction of Proposed Zoning Ordinances

Council Members' Comments

1:30 p.m. Public Hearings

1. [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” (property lying on the northeast side of Zion Church Road [Rt. 20], approximately 275 feet northwest of Deer Run Road [S.C.R. 388]) (911 Address: N/A) (Tax Map Parcel: 533-11.00-23.02) (Zoning: AR-1 [Agricultural Residential])

[Public Hearing Ord. 23-09](#)

2. [Conditional Use No. 2389 filed on behalf of AWH Properties, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMMERCIAL STORAGE FACILITY INCLUDING RV/BOAT STORAGE, THE STORAGE OF COMMERCIAL VEHICLES, AND AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.95 ACRES, MORE OR LESS” (property lying on the northeast side of Zion Church Road [Rt. 20], approximately 275 feet northwest of Deer Run Road [S.C.R. 388]) (911 Address: N/A) (Tax Map Parcel: 533-11.00-23.02)

[Public Hearing CU2389](#)

3. [Conditional Use No. 2392 filed on behalf of Zion Church Ventures, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE/WAREHOUSE BUILDINGS, A CAR WASH, & CLUBHOUSE WITH SWIMMING POOL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 31.83 ACRES, MORE OR LESS” (properties lying on the southwest side of Zion Church Road [Route 20], approximately 605 feet northwest of Deer Run Road [S.C.R. 388], and the north side of Deer Run Road [S.C.R. 388], approximately 159 feet southwest of Zion Church Road [Route 20]) (911 Address: 36054 Zion Church Road, Frankford) (Tax Map Parcel: 533-11.00-23.00, 23.03 & 23.04)

[Public Hearing CU2392](#)

4. [Conditional Use No. 2448 filed on behalf of TPE DE SU75, LLC](#)

“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” (property 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]) (911 Address: N/A) (Tax Map Parcel: 131-15.00-34.00 [p/o])

[Public Hearing CU2448](#)

5. [Conditional Use No. 2470 filed on behalf of CI Solar DP, LLC](#)

“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” (property lying on the east side of Savannah Road [S.C.R. 246], approximately 0.85 mile south of Rudd Road [S.C.R. 245]) (911 Address: N/A) (Tax Map Parcel: 135-15.00-8.00)

[Public Hearing CU2470](#)

6. [Conditional Use No. 2452 filed on behalf of Community Lutheran Church](#)

“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” (property lying on the 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]) (911 Address: 30897 Omar Road, Frankford) (Tax Map Parcel: 533-2.00-8.00)

[Public Hearing CU2452](#)

7. [Change of Zone No. 1984 filed on behalf of Carl M. Freeman Companies](#)

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.20 ACRES, MORE OR LESS” (properties lying on the north side of Lighthouse Road [Route 54], and the west side of Bennett Avenue, approximately 350 feet west of Madison Avenue) (911 Address: N/A) (Tax Map Parcels: 533-20.00-22.00 & 20.00 [p/o])

[Public Hearing CZ1984](#)

8. [Conditional Use No. 2368 filed on behalf of Carl M. Freeman Companies](#)

“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” (properties lying on the north side of Lighthouse Road [Route 54], and the west side of Bennett Avenue, approximately 200 feet west of Deer Run Road [S.C.R. 388]) (911 Address: N/A) (Tax Map Parcels: 533-20.00-22.00 & 20.00 [p/o])

[Public Hearing CU2368](#)

Executive Session - Pending/Potential Litigation, Collective Bargaining, Personnel, & Land Acquisition pursuant to 29 Del.C.§10004(b)

Possible action on Executive Session Items

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on November 7, 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://sussexcountyde.gov/council-chamber-broadcast>.

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

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

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

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

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

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 7, 2023

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 7, 2023, at 10:00 a.m., in Council Chambers, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 524 23
Approve
Agenda**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, 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 October 24, 2023, were approved by consensus.

**Corre-
spondence**

There was no correspondence.

Public comments were heard.

**Public
Comments**

Mr. Charles C. Clark, IV spoke about paperwork that was filed that described him as being violent.

Ms. Patty Deptula thanked Veterans for their service and discussed development of Sussex County.

Ms. Janet Ligabel spoke about hiring in house legal Counsel and a paralegal staff, homeless shelters and land in Sussex County.

Ms. Judy Rose Siebert spoke about the land use document specifically the section for comments under Ordinance No. 23-05.

**M 525 23
Approve
Consent
Agenda**

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

**Use of Existing Wastewater Infrastructure Agreement – IUA 943-1
Sandy Shores Village, Johnson’s Corner Area**

Motion Adopted: 5 Yeas

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

**M 526 23
Stillwater
Harbor
Subdivision
Appeal**

A Motion was made by Mr. Vincent, seconded by Mr. Hudson that in the matter of the Stillwater Appeal, I move that the Council affirm the Planning and Zoning Commission’s decision to deny the Preliminary Subdivision Plan filed by Stillwater Harbor, LLC for the Stillwater Harbor subdivision. I will provide reasons which are based on the standard of review read by our attorney, Mr. Moore, at the start of the hearing which are incorporated herein by reference. This is a summary only, which will not include citations and more expansive reasoning. Those can be found in the comprehensive written findings given to the Clerk of the Council with this motion to publish in the record and are incorporated by reference. The written findings for introduction into the record which are incorporated by reference and deemed part of this motion were provided to the Clerk of the Council.

In its September 29, 2023, appeal letter, Appellant alleges that the Preliminary Subdivision Plan should have been automatically approved when the Commission did not act on the Plan within 45 days.

Despite Appellant’s contention, the 45-day clock does not start to run until the record has been closed. To do otherwise would require the Commission to render a decision without the ability to review the complete record, which includes all relevant facts, supporting documents, comments from various agencies, staff, and legal counsel. The record for this Application was not closed until June 8, 2023, when Chairman Wheatley stated, “...we will now officially close the record for Stillwater Harbor.” On June 22, 2023, the Commission voted unanimously to deny the Plan. This vote took place fourteen (14) days after the record was closed and was well within the 45-day period.

The Commission Engaged in an Orderly and Logical Review of the Evidence which Involved the Proper Interpretation and Application of the Law.

The Commission provided comprehensive reasons for its unanimous denial of the Plan. In fact, the Commission’s motion covered 19 pages of transcript and contained 12 reasons, three of which contained between six and eight subsections with additional points. This is one of the longest motions the

**M 526 23
Stillwater
Harbor
Subdivision
Appeal
(continued)**

Commission has presented. It clearly demonstrates the Commission's decision was the result of an orderly and logical review of the evidence, that there was substantial evidence in the record to support its decision and that it engaged in the proper interpretation and application of the chapter.

Appellant relies upon a Delaware Supreme Court decision which held that, "when people who own land zoned for a specific use are entitled to rely on the fact that they can implement that use, provided the project complies with the subdivision ordinances subject to reasonable conditions imposed by the Planning Commission to minimize impact." This is the proper standard. However, the Plan simply does not comply with Sussex County Code, § 99-17B and the Appellant did not effectively address the mandatory considerations for all subdivision applications in Sussex County Code, § 99-9C.

A. The Plan Does Not Comply with Sussex County Code, § 99-17B.

First, Sussex County Code, § 99-17B. mandates that, "the access to the subdivision shall be from a public highway having a width of at least 50 feet". The record includes testimony from the Appellant's engineer that the width of the right of way varies from 42 to 46 feet. The Appellant's failure to provide Code compliant subdivision access left the Commission no choice but to deny the Plan.

B. The Plan Does Not Comply with Sussex County Code, § 99-9C.

Second, Sussex County Code § 99-9C sets forth seventeen (17) mandatory factors the Commission must consider in its decision whether to approve or deny a subdivision plan. As mentioned before, the Planning and Zoning Commission considered all of these factors and outlined the Plan's deficiencies in detail in its motion.

C. The Imposition of Conditions will not Rectify Ongoing Flooding.

Third, imposing conditions based on Appellant's wide-ranging deficiencies under Section 99-9C and § 99-17B will not bring the Plan into compliance. For instance, the frequent flooding of River Road was emphasized in hearing testimony and in an opposition letter from the Indian River Volunteer Fire Company.

DNREC also raised the flooding and drainage issue, stating:

Residential properties and roads also flood regularly because of local runoff because of stormwater, drainage, and transportation infrastructure that is undersized or in disrepair" and that, "[d]rainage deficiencies included undersized or non-existent storm drain systems, storm drain systems that require maintenance, and low ground surface elevations. These deficiencies result in problems such as localized flooding, backwater flooding from inland marsh, or coastal inundation directly from Indian River Bay.

**M 526 23
Stillwater
Harbor
Subdivision
Appeal
(continued)**

DNREC and the Secretary of Delaware Department of Agriculture also expressed concern that the removal of forest lands will likely result in increased drainage issues and flooding risks to current and future residents. The Commission found that the Appellant did not seek alternative designs to mitigate the known drainage and flooding risks from the proposed forest removal despite the concerns expressed by DNREC and the Secretary.

The excessive flooding will also have a direct impact on transporting children to and from Stillwater Harbor. Currently, when River Road is flooded, local school children are frequently picked up and dropped off at the fire hall rather than their homes due to road closure. Based on hearing testimony, the Commission found that this "is a safety concern that currently exists, and it should not be made worse by approving more development with more school children who cannot be picked upon and dropped off at their regular location because of frequent weather events"

D. Jackson Draine Lane Does Not Benefit the Stillwater Harbor Lots and is Inadequate to Solve the Emergency Access Concern.

Fourth, while the Appellant attempts to rectify the flooding issue through use of Jackson Draine Lane for emergency access, Jackson Draine Lane is a "12-foot-wide unimproved road" which is a private easement benefiting a limited number of properties. Stillwater Harbor's 123 lots are not among those properties benefiting from the easement. In attempt to gloss over this issue, Appellant relies on 16 *Del. C.* §6701A for the premise that a fire company is authorized to trespass on property in response to a fire or other emergency.

The Commission cannot condone the unauthorized use and make land use decisions for the general public welfare, based on foreseeable trespasses over property that is not part of Stillwater Harbor. That would be overreaching and could result in Jackson Draine Lane becoming a regularly used means of ingress and egress for Stillwater Harbor lot owners which, for a multitude of reasons, it is clearly not suitable.

The foregoing facts demonstrate multiple deficiencies in the Plan presented to the Commission. These facts were collectively confirmed by statements in the record at the public hearing and, there is substantial evidence in the record to deny the Plan based solely on Appellant's inability to comply with Sussex County Code § 99-17B, let alone § 99-9C.

The Commission's findings include detailed, thorough, and well-thought-out reasons for its unanimous vote to deny the Plan. Of utmost importance, is the failure to provide Code compliant subdivision access over a public highway that is at least 50 feet in width as mandated by the Sussex County Code. This deficiency is only exacerbated by the road's habitual flooding, which is common and well-known in the area, and was acknowledged by the Indian River Volunteer Fire Co., DeIDOT, DNREC and the Appellant's own engineer's testimony at the public hearing, as well as that of local residents.

**M 526 23
Stillwater
Harbor
Subdivision
Appeal**

For the reasons above which are considered a part of this motion, together with the entire written findings which have already been introduced into the record, I hereby move that the Council affirm the Planning and Zoning Commission's decision to deny the Plan.

Mr. Moore noted that this includes the written formal opinion and findings that was introduced to the Clerk of the Council. (The documents are attached to these minutes.)

Motion Adopted: 5 Yeas

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

**4th Quarter
Shining Star
Award**

Mrs. Brewington presented the Fourth Quarter Shining Star Awards. She reported that there were 31 nominations received this quarter with Lindsey Behney from the Register of Wills Office being selected as the quarter winner.

**Develop-
ment Design
Priorities &
Next Steps**

Mr. Lawson led a discussion related to Development Design priorities and next steps. Mr. Lawson reminded Council that on September 21, 2023, a joint workshop was held related to development design. After that, a presentation was given to the County Council providing a summary of the ideas in 6 broad categories. These categories include perimeter buffers, forest preservation, open space, interconnectivity, County Code Updates – Miscellaneous and County Code Updates – Superior Design. County Council Members and Planning & Zoning Commissioners were then asked to rank their priorities.

Mr. Lawson then reviewed the Planning & Zoning priority rankings. The rankings were as follows from highest to lowest priority: open space, forest preservation, County Code – Superior Design, perimeter buffer, interconnectivity, and County Code – Miscellaneous Codes.

The County Council priority rankings were then reviewed. The rankings were as follows from highest to lowest priority: perimeter buffers, open space, County Code – Miscellaneous Codes, interconnectivity, forest preservation and County Code – Superior Design.

Mr. Lawson reported that after reviewing the County Council & PZ Commission priority rankings were as follows from highest to lowest: open space (tie 1st), perimeter buffers (tie 1st), forest preservation (tie 2nd), interconnectivity (tie 2nd), County Code – Superior Design and County Code – Miscellaneous Codes.

Mr. Lawson commented that the Master Plan Zoning Ordinance, Workforce Housing and Solar Arrays are also incentives that are currently underway.

Development Design Priorities & Next Steps (continued)

Mr. Lawson noted that staff's feedback is that perimeter buffers should be first. He added that any Ordinances that are produced with have to go through both Commission and Council.

Personnel Board Appt.

Mr. Lawson reported that there are two members on the Personnel Board that need to be reappointed. Dr. Michael Owens and Mrs. Joan Neal have agreed to continue to serve.

M 527 23 Approve Personnel Board Reappointments

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved that Sussex County Council reappoint Dr. Michael Owens and Mrs. Joan Neal to the Sussex County Personnel Board effective January 1, 2024 for a term of three years.

Motion Adopted: 5 Yeas

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

Administrator's Report

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

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Arbor Lyn – Phase 5 (Construction Record) effective October 19th; Beach Tree Preserve – Phase 2B (Construction Record) effective October 19th; Americana Bayside – Coastal Crossing – Phase 2 effective October 20th and El Rancho effective October 25th.

2. Shirley Hitchens

It is with great sadness that we inform you that pensioner, Shirley Hitchens, passed away on Sunday, October 29, 2023. Mrs. Hitchens began her career with Sussex County in September 2005 where she worked until February 2019 for a total of 13 years of service. Her last position with the County was Clerk III in the Assessment Office. We would like to extend our condolences to the Hitchens family.

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

Public Hearing/ Greenwood Storage

A Public Hearing was held for the Greenwood Storage Annexation of the Sussex County Unified Sanitary Sewer District (Western Sussex Area). John Ashman, Director of Utility Planning & Design Review reported that County Council granted permission to prepare and post notices for a public

**Annexation
into
SCUSSD**

hearing for the Greenwood Storage Expansion on September 19, 2023. The Engineering Department received a request from Davis, Bowen & Friedel, Inc. on behalf of their client, DESTORAGE.COM GREENWOOD, LLC owners/developers of parcels 530-10.00-55.00, 56.00 & 56.02. The parcels are zoned HC, Highway Commercial and are within the Greenwood Municipal Limits and Sussex County provides the sanitary sewer service for the town. The parcels are primarily located in the Tier 2 Area for sewer service, with one parcel partially in Tier 1 and will be responsible for System Connection Charges of \$7,700 per EDU based on current rates. The properties were posted on October 13, 2023, and added to the County website. To date, there has been no correspondence either in support or opposition to this annexation.

Mrs. Green noted that the Town of Greenwood has a water main line and a fire hydrant on the property and wanted to confirm that they would have access to them. Mr. Ashman replied that there should be an easement and added that it can be confirmed when the plans are submitted. Mr. Medlarz added that this goes through the Town of Greenwood Land Use review process, and they would make the request at that time.

There were no public comments.

The Public Hearing and public record were closed.

**M 528 23
Adopt
Resolution
No. 020 23**

A Motion was made by Mrs. Green, seconded by Mr. Hudson to Adopt Resolution No. R 020 23 entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD), TO INCLUDE PARCELS 530-10.00-55.00, 56.00 & 56.02 ON THE EAST SIDE OF SUSSEX HIGHWAY. THE PARCELS ARE LOCATED IN THE NORTHWEST FORK HUNDRED, SUSSEX COUNTY, DELAWARE, AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE".

Motion Adopted: 5 Yeas

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

**Public
Hearing/
Vines Creek
Crossing
Annexation
into
SCUSSD**

A Public Hearing was held for the Vines Creek Crossing Annexation of the Sussex County Unified Sanitary Sewer District (Dagsboro/Frankford Area). Mr. Ashman reported that County Council granted permission to prepare and post notices for a public hearing on September 12, 2023. The Engineering Department had received a request from Davis, Bowen & Friedel, Inc. on behalf of their client Double H Development, LLC, developers of parcels 533-1.00-38.00, 533-4.00-28.00 & 28.01 located between Pepper Road and Frankford School Road. The parcels have been annexed into the Town of Frankford and Sussex County provides the

**Public Hearing/
Vines Creek
Crossing
Annexation
into
SCUSSD
(continued)** sanitary sewer service for the town. The parcels are located in the Tier 2 Area for sewer service and will be responsible for System Connection Charges of \$7,700 per EDU based on current rates. The properties were posted on October 13, 2023, and added to the county website. To date, there has been no correspondence either in support or opposition received.

There were no public comments.

The Public Hearing and public record were closed.

**M 529 23
Adopt
Resolution
No. R 021 23
Vines Creek
Crossing** A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Resolution No. R 021 23 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) DAGSBORO/FRANKFORD AREA, TO INCLUDE PARCELS 533-1.00-38.00, 533-4.00-28.00 & 28.01 ON THE EAST SIDE OF PEPPER ROAD, THE SOUTH SIDE OF FRANKFORD SCHOOL ROAD, THE PARCELS ARE LOCATED IN THE DAGSBORO HUNDRED & BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE”.

Motion Adopted: 5 Yeas

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

**Proposed Ordinance/
Lochwood** Hans Medlarz, County Engineer presented a Proposed Ordinance for Council’s consideration for increased costs of the construction and equipping of an extension of sanitary sewer services to Lochwood for Council’s consideration.

Introduction of Proposed Ordinance Mr. Vincent introduced a Proposed Ordinance entitled “Discussion and Possible Introduction of a Proposed Ordinance entitled “AN ORDINANCE TO AMEND ORDINANCE NO. 2787 TO AUTHORIZE THE ISSUANCE OF UP TO A TOTAL OF \$5,187,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY TO COVER THE INCREASED COSTS OF THE CONSTRUCTION AND EQUIPPING OF AN EXTENSION OF SANITARY SEWER SERVICES TO LOCHWOOD AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”.

**Old Business/
CZ1973** Under Old Business, Jamie Whitehouse presented a Proposed Ordinance entitled “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

**Old
Business/
CZ1973
(continued)**

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) filed on behalf of Osprey Point Preserve, LLC.

The County Council held a Public Hearing on the Application at its meeting on September 19, 2023. At the conclusion of the Public Hearing, the public record was closed and action on the application was deferred for further consideration.

**M 530 23
Amend
Condition
7 b/DENIED**

A Motion was made by Mr. Schaeffer, seconded by Mrs. Green to Amend Condition 7 b to read as follows “There shall be no more than 25 boat slips of non-motorized watercraft only within the marina”.

Motion Denied: 3 Nays, 2 Yeas

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

**M 531 23
Adopt
Ordinance
No. 2959/
CZ1973**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to Adopt Ordinance No. 2959 entitled “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” for the reasons and conditions given by the Planning & Zoning Commission as follows:

- 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**

**M 531 23
Adopt
Ordinance
No. 2959/
CZ1973
(continued)**

- 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**

**M 531 23
Adopt
Ordinance
No. 2959/
CZ1973
(continued)**

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 Adopted: 4 Yeas, 1 Nay

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

Mr. Schaeffer voted no based on the following reasons:

I agree with the Planning and Zoning Commission's recommendation to deny the restaurant and a commercial marina, but I disagree with its recommendation to approve a marina for the use of Oprey Point residents for the following reasons:

- 1. All property owners in Osprey Point took title to their properties based on the approved Final Site Plan which did not contain any commercial uses. Adding a marina would be a substantial departure from the Final Site Plan and a significant change in use to which the current property owners have not agreed. Any type of marina will change the current residential character of the community.**
- 2. Any marina will increase the road traffic in that portion of the Osprey Point. The property owners could not have anticipated this since no marinas, commercial or otherwise, were included on the Final Site Plan.**
- 3. Any marina will also increase boat traffic, both from residents' boats as well as boats visiting from points outside the community. Again, the property owners could not have anticipated this since no marinas, commercial or otherwise, were included on the Final Site Plan.**
- 4. Any marina will have an adverse impact of the property owners' quiet enjoyment of the community with increased activity and noise, especially those property owners with lots in the vicinity of the**

proposed marina.

**M 531 23
(continued)**

For all of these reasons and those given by the Planning and Zoning Commission in regard to the denial of the restaurant and commercial marina, I believe this Application should be denied in its entirety.

**Old
Business/
MPZ
Ordinance**

Under Old Business, Mr. Whitehouse presented a Proposed Ordinance entitled “AN ORDINANCE TO DELETE CHAPTER 115, ARTICLE XVII VACATION RETIREMENT-RESIDENTIAL PARK DISTRICT SECTIONS 115-132 THROUGH 115-140 IN ITS ENTIRETY AND TO INSERT ARTICLE XVII MASTER PLAN ZONE, SECTIONS 115-132 THROUGH 115-140 IN ITS PLACE”.

The County Council held a Public Hearing on the Ordinance at its meeting on October 17, 2023. At the conclusion of the hearing, the Council deferred action on the Ordinance, leaving the Public Record open for receipt of additional written comments until the close of business on October 31, 2023. Mr. Whitehouse confirmed that additional comments were received.

**Grant
Requests**

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

**M 532 23
Pop Warner
Little
Scholars,
Inc.**

A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Mrs. Green’s Councilmanic Grant Account) to Pop Warner Little Scholars, Inc. (Woodbridge) for Florida Nationals.

Motion Adopted: 5 Yeas

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

**M 533 23
Kim and
Evans
Family
Foundation**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$500 (\$500 from Mr. Vincent’s Councilmanic Grant Account) to Kim and Evans Family Foundation for their remembering the past and embracing the future event.

Motion Adopted: 5 Yeas

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

**M 534 23
City of
Seaford**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to give \$1,000 (\$1,000 from Mr. Vincent’s Councilmanic Grant Account) to City of Seaford for their Annual Christmas Parade.

Motion Adopted: 5 Yeas

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

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

Introduction of Proposed Ordinances Mr. Rieley introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A POLICE STATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 44 ACRES, MORE OR LESS” filed on behalf of the State of Delaware

Mr. Rieley introduced a Proposed Ordinance entitled “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 SIGN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 10.94 ACRES, MORE OR LESS” filed on behalf of St. Michael the Archangel Church

Mr. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 73.95 ACRES, MORE OR LESS” filed on behalf of Beazer Homes, LLC.

The Proposed Ordinances will be advertised for a Public Hearing.

Council Member Comments Mr. Rieley commented that Land Trust had an open house at Hudson Park over the weekend that was well attended. The Rotary made an announcement that they intend to raise close to a million dollars for a can-do playground to be installed at that location.

Mr. Vincent commented that Mrs. Jennings was inducted into the Sussex Central High School Hall of Fame last Friday.

M 535 23 Adjourn At 11:19 a.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to adjourn.

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.}

**APPEAL OF STANDARD SUBDIVISION PLAN DENIAL
FOR STILLWATER HARBOR, LLC
(STILLWATER HARBOR SUBDIVISION), APP. NO. 2021-23**

This is an appeal of the Planning and Zoning Commission’s (the “Commission”) denial of a subdivision application (the “Application”) for Stillwater Harbor Subdivision No. 2021-23 (“Stillwater Harbor”) filed by Stillwater Harbor, LLC (the “Appellant”). I move that the Council affirm the Commission’s denial of the Application for the following reasons:

Standard Of Review

The standard of review for appeals from Commission decisions does not permit Council to substitute its own opinion for that of the Commission, nor does it permit a rehearing of what was before the Commission. It was a hearing of record and the Council’s review is limited to that record.¹

In reviewing the Commission’s decision on appeal, Sussex County Code, § 99-39(2) states that:

“[t]he Council shall review the record of the hearing before the Commission and shall make a determination as to whether the Commission's decision was the result of an orderly and logical review of the evidence and involved the proper interpretation and application of the chapter....”

The Delaware Supreme Court held that the Commission’s consideration of subdivision plan application acts in a manner that is “partly in a ministerial and partly in a judicial capacity” [and, therefore, on appeal the appealing body must] determine whether the decision is supported by substantial evidence and is free from legal error. Substantial evidence ‘means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Tony Ashburn & Son, Inc. v. Kent County Regional Planning Comm’n*, 962 A.2d 235, 239 (Del. 2008). The Council’s review is “limit[ed] to correcting errors of law and determining whether substantial evidence exists to support the [Commission’s] findings of fact” and that “[w]hen substantial evidence exists, [the Council] will not reweigh it or substitute [its] own judgment for that of the [Commission].” *See Rehoboth Art League, Inc. v. Board of Adjustment of the Town of Henlopen Acres*, 991 A.2d 1163, 1166 (Del. 2010).

¹ In addition, the Council is not permitted to consider any issues and arguments raised by Appellant on appeal that were not raised below as such issues are considered waived on appeal. *See, e.g., Hartigan v. Sussex County Bd. of Adjustment*, 2018 WL 1559938 *3 (Del. Super.); *Rehoboth Art League*, 991 A.2d at 1166.

Therefore, if there is substantial evidence that demonstrates the Commission's decision was based on an orderly and logical review of the evidence and the law was accurately applied, the Council must uphold the Commission's approval.

The Commission Provided its Decision within the Required 45-Day Period

In its September 29, 2023, appeal letter ("Appeal Letter"), Appellant alleges that the Preliminary Subdivision Plan ("Plan") should have been automatically approved when the Commission did not act on the Plan within 45 days.² Appellant's argument is based on 9 *Del. C.* § 6811, which states in part:

"[t]he Commission shall approve or disapprove a plat within 45 days after the submission thereof, otherwise such plat shall be deemed to have been approved and a certificate to that effect shall be issued by the Commission upon demand."

Appellant submitted its Plan on April 17, 2023. As outlined in the Commission's October 11, 2023, appeal response ("Commission's Response"), the public hearing was held on April 27, 2023, at which time the record was left open for three (3) specific purposes:

- (1) receive additional written comment (which the Applicant took full advantage of by submitting written comment and a video just before the deadline; (2) receive information about compliance with the County's Resource Buffer Ordinance; and (3) receive information from counsel about Jackson Draine Lane.³

Planning and Zoning Commission's Response dated October 11, 2023 ("Commission's Response").

Despite Appellant's contention, the 45-day clock does not start to run until the record has been closed. To do otherwise would require the Commission to render a decision without the ability to review the complete record, which includes all relevant facts, supporting documents, comments from various agencies, staff and legal counsel. The record for this Application was not closed until June 8, 2023, when Chairman Wheatley stated, "All right then, so we will now officially close the record for Stillwater Harbor."⁴ On June 22, 2023, the Commission voted unanimously to deny the Plan.⁵ This vote took place fourteen (14) days after the record was closed and was well within the 45-day period.

² See Appeal Letter, pp. 2, 9-10.

³ Commission's Response, p. 9.

⁴ Commission's Response, p. 10 (*citing* 6/8/23 Tr. at 12:4, Exhibit R).

⁵ See Appeal Letter, p. 2; Commission's Response, p. 3, FN 10 (*citing* 6/22/23 Tr. at pp. 20-21, Exhibit I).

The Commission Engaged in an Orderly and Logical Review of the Evidence which Involved the Proper Interpretation and Application of the Law.

The Commission provided comprehensive reasons for its unanimous denial of the Plan. In fact, the Commission's motion covered 19 pages of transcript and contained 12 reasons, three of which contained between six and eight subsections with additional points. This is one of the longest motions the Commission has presented. It clearly demonstrates the Commission's decision was the result of an orderly and logical review of the evidence, that there was substantial evidence in the record to support its decision and that it engaged in the proper interpretation and application of the chapter.

In its Appeal Letter, Appellant relies upon a Delaware Supreme Court decision which held that, "people who own land zoned for a specific use are entitled to rely on the fact that they can implement that use, provided the project complies with the subdivision ordinances subject to reasonable conditions imposed by the Planning Commission to minimize impact."⁶ However, the Plan simply does not comply with Sussex County Code, § 99-17B and the Appellant did not effectively address the mandatory considerations for all subdivision applications in Sussex County Code, § 99-9C.

A. The Plan Does Not Comply with Sussex County Code, § 99-17B.

First, Sussex County Code, § 99-17B. mandates that, "the access to the subdivision shall be from a public highway having a width of at least 50 feet". The record includes testimony from the Appellant's engineer that the width of the right of way varies from 42 to 46 feet.⁷ Appellant's statement that there will be a future "public dedication along the frontage of the property"⁸ does not resolve noncompliance with the 50-foot standard. As pointed out by the Commission, "even if Stillwater could expand River Road to fifty feet solely along its frontage, this would not satisfy the Code, which requires that the "public highway" must have a width of at least fifty feet. That means the entire roadway, not just the limited frontage along a subdivision."⁹ This is especially significant because no plan was introduced into the record indicating that either DelDOT or DNREC plan to widen, raise or otherwise improve River Road to bring it into compliance with the 50-foot requirement.¹⁰ Moreover, except for Appellant's offer to dedicate lands along the frontage of Stillwater Harbor to widen that portion of River Road, Appellant did not provide plans for remedial measures to bring the entire road into compliance.¹¹ The Appellant's failure to provide Code compliant subdivision access left the Commission no choice but to deny the Plan.

⁶ See Appeal Letter, p. 1 (citing *Tony Ashburn & Son, Inc. v. Kent County Regional Planning Comm'n*, 962 A.2d 235, 241 (Del. 2008) (*en banc*)).

⁷ See Commission's Response, pp. 2-5 (citing 4/27/23 Tr. at 44:4-7, Exhibit H).

⁸ Appeal Letter Reply, p. 3.

⁹ See Commission's Response, p. 5, FN 21.

¹⁰ Commission's Response, p. 5.

¹¹ *Id.* (citing 4/27/23 Tr. at 23:9-10 and 43:1-4, Exhibit K).

B. The Plan Does Not Comply with Sussex County Code, § 99-9C.

Second, Sussex County Code § 99-9C sets forth seventeen (17) mandatory factors the Commission must consider in its decision whether to approve or deny a subdivision plan.¹² Of these factors, the record demonstrates that Appellant's Application and presentation did not adequately address concerns in the following categories: integration into the existing terrain and surrounding landscape, the reservation of natural and historical features, the minimization of tree, vegetation and soil removal and grade changes, the prevention of surface and groundwater pollution, the minimization of erosion and sedimentation, changes to groundwater levels, or increased rates of runoff, deficiencies of River Road which does not provide for safe vehicular and pedestrian movement within the site and to adjacent ways and the effect on schools. Each of these deficiencies were outlined in detail in the Commission's reasons for denying the Plan and, specifically, reasons 11.a. – f.¹³

C. The Imposition of Conditions will not Rectify Ongoing Flooding.

Third, while the Appellant argues that approval is required subject to the imposition of reasonable conditions, imposing conditions based on Appellant's wide-ranging deficiencies under Section 99-9C and § 99-17B will not bring the Plan into compliance. For instance, the frequent flooding of River Road was emphasized in hearing testimony¹⁴ and in an opposition letter from the Indian River Volunteer Fire Company ("IRVFC"), which stated in part:

¹² Sussex County Code, § 99-9C requires consideration of the following factors prior to subdivision approval:

- (1) Integration of the proposed subdivision into existing terrain and surrounding landscape.
- (2) Minimal use of wetlands and floodplains.
- (3) Preservation of natural and historical features.
- (4) Preservation of open space and scenic views.
- (5) Minimization of tree, vegetation and soil removal and grade changes.
- (6) Screening of objectionable features from neighboring properties and roadways.
- (7) Provision for water supply.
- (8) Provision for sewage disposal.
- (9) Prevention of pollution of surface and groundwater.
- (10) Minimization of erosion and sedimentation, minimization of changes in groundwater levels, minimization of increased rates of runoff, minimization of potential for flooding and design of drainage so that groundwater recharge is maximized.
- (11) Provision for safe vehicular and pedestrian movement within the site and to adjacent ways.
- (12) Effect on area property values.
- (13) Preservation and conservation of farmland.
- (14) Effect on schools, public buildings and community facilities.
- (15) Effect on area roadways and public transportation.
- (16) Compatibility with other area land uses.
- (17) Effect on area waterways.

¹³ See Commission's Response, Exhibit I.

¹⁴ See, e.g., Commission's Response, p. 2. See also FN 4 (citing Testimony of Kenneth Clark, 4/27/23 Tr. at 36:19-24 and 37:5-6, Exhibit D).

It would be a grave disparity not to highlight ... the drainage deficiencies that continue to pla[g]ue this specific area during conditions of inclement weather and tidal conditions. These deficiencies for the most part remain outstanding with no corrective action for any remedy in the designated area of this proposed subdivision...The proposed development entranceway on River Road clearly lies between two significant areas of roadway tidal flooding on River Road which would preclude any successful passage during these tidal conditions.¹⁵

DNREC also raised the flooding and drainage issue, stating:

Residential properties and roads also flood regularly because of local runoff because of stormwater, drainage, and transportation infrastructure that is undersized or in disrepair" and that, "[d]rainage deficiencies included undersized or non-existent storm drain systems, storm drain systems that require maintenance, and low ground surface elevations. These deficiencies result in problems such as localized flooding, backwater flooding from inland marsh. or coastal inundation directly from Indian River Bay.¹⁶

DNREC and the Secretary of Delaware Department of Agriculture (the "Secretary") also expressed concern that the removal of forest lands will likely result in increased drainage issues and flooding risks to current and future residents.¹⁷ The Commission found that the Appellant did not seek alternative designs to mitigate the known drainage and flooding risks from the proposed forest removal despite the concerns expressed by DNREC and the Secretary.¹⁸

Appellant relies on Soil Conservation standards stating that it will reduce stormwater runoff from Stillwater Harbor.¹⁹ While there may be less water leaving the site itself, Appellant acknowledges that most of the water comes from off-site sources,²⁰ that "River Road is closed during these events,"²¹ and that flooding "is a regional problem...[that] is not going to go away...if the Stillwater community is not built."²² The flooding will occur regardless of the Appellant's actions to decrease runoff from the site, because the main source of water is coastal flooding which is beyond its control. Whatever the source, drainage and flooding will continue to be a risk. Appellant's engineer clearly stated that it will not be raising the road, which has been offered as one type of remedial measure.²³ The Commission's decision prevents an additional 123 households from being subject to this risk.

¹⁵ Commission's Response, p. 1. *See also* FN 2.

¹⁶ Commission's Response, p. 2. *See also* FN 3.

¹⁷ Commission's Response, Exhibit M and Exhibit N, respectively.

¹⁸ Commission's Response, Motion, 6/22/23 Tr. 15:19-17:14, Exhibit I.

¹⁹ Appeal Letter, p. 6.

²⁰ Commission's Response, 4/27/23 Tr. at 45:6-14, Exhibit E.

²¹ Commission's Response, 4/27/23 Tr. at 45:17-18, Exhibit E.

²² Commission's Response, 4/27/23 Tr. at 2:25 and 3:1-4, Exhibit F.

²³ *Id.* (citing 4/27/23 Tr. at 22:20-24; Exhibit J).

The excessive flooding will also have a direct impact on transporting children to and from Stillwater Harbor. Currently, when River Road is flooded, local school children are frequently picked up and dropped off at the fire hall rather than their homes due to road closure.²⁴ Based on hearing testimony, the Commission found that this "is a safety concern that currently exists and it should not be made worse by approving more development with more school children who cannot be picked upon and dropped off at their regular location because of frequent weather events"²⁵

This safety concern will only be exacerbated by adding 1258 new daily vehicular trips on River Road as a direct result of the 123 new lots in Stillwater Harbor. This is in addition to the current 742 daily vehicular trips²⁶ and puts more people and vehicles at risk during an adverse flooding event.

D. Jackson Draine Lane Does Not Benefit the Stillwater Harbor Lots and is Inadequate to Solve the Emergency Access Concern.

Fourth, while the Appellant attempts to rectify the flooding issue through use of Jackson Draine Lane for emergency access, Jackson Draine Lane is a "12-foot-wide unimproved road"²⁷ which is a private easement benefiting a limited number of properties. Stillwater Harbor's 123 lots are not among those properties benefiting from the easement.²⁸ In attempt to gloss over this issue, Appellant relies on 16 *Del. C.* §6701A for the premise that a fire company is authorized to trespass on property in response to a fire or other emergency.²⁹

The Appellant also proposed to allow the Stillwater Harbor residents to access Jackson Draine Lane during emergencies despite the fact that the Stillwater Harbor lots are not subject to the easement.³⁰ The Commission heard testimony in opposition to such use by property owners who legally benefit from the easement.³¹

Further, Appellant did not offer to make any improvements to Jackson Draine Lane, nor did it provide the Commission with evidence that it has the authority to make any improvements to the easement, including those that would be necessary to make it safe for emergency vehicles such as fire trucks.³²

²⁴ Commission's Response, p. 6. *See also* FN 26 (*citing* Tr. testimony in Exhibit O).

²⁵ Commission's Response, p. 6 (*citing* Motion, 6/22/23 Tr. at 19:20-24, Exhibit I).

²⁶ Commission's Response, p. 8; Appeal Reply Letter, p.1

²⁷ The Commission's Motion stated that Jackson Draine Lane "is currently an 8- to 12-foot-wide dirt or sand and gravel road with potholes and varying levels of repair." Commission's Response, Motion, 6/22/23 Tr. 10:14-17, Exhibit I.

²⁸ Commission's Response, Exhibit P.

²⁹ See Appeal Letter, p. 6, FN 4; Appeal Reply Letter, p. 3, FN 3.

³⁰ *Id.*

³¹ Commission's Response, p.8.

³² Commission's Response, Motion, 6/22/23 Tr. 10:18-25. Exhibit I.

The Commission cannot condone the unauthorized use and make land use decisions for the general public welfare, based on foreseeable trespasses over property that is not part of Stillwater Harbor. That would be overreaching and could result in Jackson Draine Lane becoming a regularly used means of ingress and egress for Stillwater Harbor lot owners which, for a multitude of reasons, it is clearly not suitable.

Conclusion

The foregoing facts demonstrate multiple deficiencies in the Plan presented to the Commission. These facts were collectively confirmed by statements in the record at the public hearing and, as the Commission explained in the Commission's Response, there is substantial evidence in the record to deny the Plan based solely on Appellant's inability to comply with Sussex County Code § 99-17B³³, let alone § 99-9C.³⁴

The Commission's findings include detailed, thorough and well-thought-out reasons for its unanimous vote to deny the Plan. Of utmost importance, is the failure to provide Code compliant subdivision access over a public highway that is at least 50 feet in width as mandated by the Sussex County Code. River Road simply does not satisfy this requirement. Dedicating additional road frontage along Stillwater Harbor will only widen a portion of River Road leaving additional roadway with a width less than the mandated 50 feet. This deficiency is only exacerbated by the road's habitual flooding, which is common and well-known in the area, and was acknowledged by the Indian River Volunteer Fire Co., DelDOT, DNREC and the Appellant's own engineer's testimony at the public hearing³⁵, as well as that of local residents. Appellant cannot rely on Jackson Draine Lane for emergency access as it is a private easement that does not benefit the Stillwater Harbor lots. Even if it did benefit the Stillwater Harbor lots, Jackson Draine Lane is a "12-foot-wide unimproved road" which is clearly inadequate for this purpose.

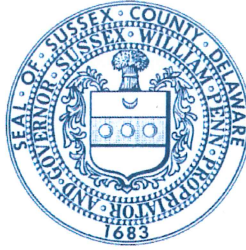
Therefore, the Commission's decision must stand.

³³ Commission's Response, pp. 4-5.

³⁴ See Commission's Response, pp. 5-7.

³⁵ See FN 15-23, *supra*.


TODD F. LAWSON
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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: Todd F. Lawson 
County Administrator

RE: **2024 MEETING AND HOLIDAY SCHEDULE**

DATE: November 9, 2023

During Tuesday's meeting, Council is scheduled to discuss and approve the 2024 Meeting and Holiday Schedule. As in past years, the County will follow the typical holiday schedule and since 2024 is an election year, the schedule will be adjusted accordingly. Thus, for the upcoming year the offices will close for the following holidays:

- New Year's Day
- Martin Luther King, Jr. Day
- Good Friday
- Memorial Day
- Juneteenth
- Independence Day
- Labor Day
- Election Day
- Return Day
- Veterans Day
- Thanksgiving
- Christmas

Regarding the County Council's meeting schedule, the Council is scheduled to meet every Tuesday except on days affected by a holiday and days we select to not meet. If an additional meeting is needed, Council can always schedule one at its discretion.

The calendar reference sheet is attached.

I will review the full schedule during Tuesday's meeting. Please let me know if you have any questions or concerns.



SUSSEX COUNTY 2024 SCHEDULE

Index	
	-Council meeting scheduled
	-No Council meeting
	-County holiday; offices closed.
	-Council Workshop, no meeting

January						
S	M	T	W	T	F	S
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Notes

NY

MLK

February						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29		

Notes

NACo-DC(10-13)

March						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Budget Week

Good Friday

April						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Easter

May						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Budget Workshop

MDW

June						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

Juneteenth

July						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

July 4

NACo(12-15)

DE Fair(18-27)

August						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

OFF

OFF

September						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

LDW

Primary Day

October						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

OFF

OFF

November						
S	M	T	W	T	F	S
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3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

Election & Return Day

Veterans Day

Thanksgiving

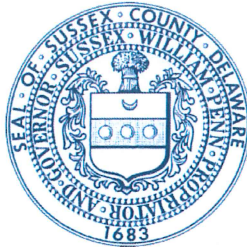
December						
S	M	T	W	T	F	S
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8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

OFF

Christmas

NYE


TODD F. LAWSON
COUNTY ADMINISTRATOR
(302) 855-7742 T
(302) 855-7749 F
tlawson@sussexcountype.gov



Sussex County
DELAWARE
sussexcountype.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: Todd F. Lawson
County Administrator 

RE: **SUSSEX COUNTY LAND TRUST PROPERTY MANAGEMENT AGREEMENT**

DATE: November 9, 2023

During Tuesday's meeting, Council is scheduled to review and approve the Sussex County Land Trust (SCLT) Property Management Agreement for Hopkins Preserve.

On January 11, 2022, County Council voted to approve the purchase of the property known as Hopkins Preserve off Sweetbriar Road, west of Lewes. The County paid one million five hundred thousand dollars (\$1,500,000.00) for over 40 acres of land. In May 2022, the purchase agreement between the County and Mr. Walter Hopkins was ratified. In June 2022, the property officially settled.

The purchase of Hopkins Preserve was a unique negotiated acquisition. Mr. Hopkins agreed to the sale of the property only if it were to be preserved and developed into an amenity the public could access and enjoy. In consideration for this arrangement, Mr. Hopkins sold the property for less than its appraised value, making a charitable contribution of over one million two hundred thousand dollars (\$1,200,000.00). Part of the arrangement included having SCLT develop the property and ultimately manage the Preserve. In anticipation of the development of the Preserve, the County has allocated \$981,000.00 to be used for construction costs.

The purchase stipulated that a Deed of Conservation Easement be recorded in favor of the SCLT for the purposes of developing and managing the property. Additionally, the purchase stipulated that the County and SCLT enter into a Property Management Agreement (Agreement) outlining the responsibilities of each party.



The Agreement specifies SCLT's roles and responsibilities in managing Hopkins Preserve. The Agreement is for a period of twenty-five (25) years with a twenty-five (25) year extension. SCLT is responsible for the development, solicitation of bids, and construction of the agreed upon improvements to the Preserve. The County will reimburse SCLT for completed work in \$245,250.00 increments up to \$981,000.00. Any additional funding requests will need to be approved in a future County budget. SCLT will serve as the day-to-day manager and is also responsible for the long-term maintenance of the facility.

The Agreement is attached and has been reviewed by the County Attorney and the SCLT Board, who have approved it to form. I will review the Agreement in more detail on Tuesday.

In the meantime, please let me know if you have any questions.

PROPERTY MANAGEMENT AGREEMENT

BY AND BETWEEN

SUSSEX COUNTY, DELAWARE
AND
SUSSEX COUNTY LAND TRUST

This Property Management Agreement (“Agreement”) is hereby agreed to this ____ day of _____, 2023 by Sussex County, a political subdivision of the State of Delaware, of 2 The Circle Georgetown, DE 19947 (“County”); and the Sussex County Land Trust, a nonprofit corporation of the State of Delaware, dba Sussex County Land Trust, of P.O. Box 372, Lewes, DE 19958 (“SCLT”) and collectively (the “Parties”).

WHEREAS, this Agreement between the Parties outlines the Parties’ agreement for the capital development, use, maintenance, and ongoing operations of Tax Parcel Number 3-34-4.00-28.01 containing approximately 41.48 acres (alternatively, “Hopkins Preserve” and the “Property”). Said Property has been designated as “Hopkins Preserve”, and will be referenced as such in all signage and promotional/educational materials; and

WHEREAS, Hopkins Preserve is under fee simple ownership by the County, and a Conservation Easement in favor of the SCLT has been placed on the Property. Said actions by the Parties have been done to preserve natural open space and historic agricultural lands for the benefit of the public and for public access; and

WHEREAS, the Parties agree to have installed an entrance road, parking lot, utilities, trails, informational displays, landscape and habitat improvements and other appropriate amenities as defined in the Hopkins Preserve Master Plan, Dated October 2022, as prepared by Vernacular Landscape Architecture (Master Plan) on the Property (Attachment A); and

WHEREAS, the Parties hereto intend to enter this Agreement for the mutual understanding of future use, capital development, maintenance, and operations of the Property in support of long-term land preservation and public access.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) in hand paid by the County to SCLT, as well as the mutual covenants, agreements, representations and warranties promised of the parties, and of other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, it is mutually agreed by and among the parties as follows:

Article 1 Term

1.1 The initial term of this Agreement shall begin on the date the last party executes this Agreement, and shall continue for a period of twenty-five (25) years therefrom (“Initial Term”). Upon expiration of the Initial Term, this Agreement shall be automatically renewed for an additional twenty-five (25) year term unless the County provides SCLT with written notice of its intent to terminate this Agreement at least thirty (30) days prior to the expiration thereof or if this Agreement is otherwise terminated pursuant to Section 6.1. Upon termination, maintenance of the Property will revert to the County. In addition, all books and records relating to the operation of the Property shall be forwarded to the County.

Article 2 Development of the Property for Public Use

2.1 Beginning on the date of this Agreement, SCLT will provide, supply and render such management and support services as are necessary to development the Property in general conformance with the Master Plan, and open it for public use. Specific activities are described below:

- (a) Develop construction plans to implement the Master Plan and secure all necessary state and local agencies’ approvals and permits for Property development;
- (b) Solicit bids for Property development per construction plans via a competitive bid process. Award contracts for construction and oversee all construction activities; and
- (c) Open, upon completion of all construction (or Phase 1 construction if the project is phased), Hopkins Preserve for public use.

2.2 The County will provide \$981,000.00 to SCLT for the development of the Preserve. Funding will be provided in four increments of \$245,250.00 each. Prior to the release of the first funding increment noted herein, SCLT shall provide the County with a budget that contains all expenses related to each construction phase along with all commitments. Upon County review and concurrence with the budget and associated submittals, the County will transfer \$245,250.00 to SCLT. Before each remaining increment is released, SCLT must provide the paid invoices for the previous increment before the next is released. The County may provide additional funds to the construction of the Preserves once the initial \$981,000.00 is spent. Any additional requests will need to be approved in a future County budget.

Article 3 Maintenance

3.1 The County and SCLT agree to the following provisions relative to the management of the Property:

- (a) SCLT will administer, manage and maintain the Property on behalf of the County. SCLT will maintain the Property and improvements in good repair, order and condition, reasonable wear and tear excepted.
- (b) SCLT Maintenance shall include:
 - (i) trash pickup and removal, snow removal, mowing and landscaping;
 - (ii) Upkeep and minor repairs and replacement of site amenities, including but not limited to the parking lot curb stops, restroom fixtures, benches, bike racks, signage and landscape materials;
 - (iii) Repairs as required to the site including repairs to the parking lot, lighting, grounds, trails and drainage; and
 - (iv) Managing the property in conformance with all applicable Federal, State and County laws, ordinances, regulations and the like.

Article 4 Programming

4.1 SCLT, in its sole discretion, shall hold events and conduct programming at the Property consistent with the intended use of the Property as a public preserve. SCLT shall seek the County's input when planning any event that is inconsistent with the intended use of the Property as a public preserve. SCLT may partner with the County or other entities to hold events and conduct programming as opportunities present themselves. The County, or any other third-party entity, may not conduct events or programs without the express written consent of SCLT.

Article 5 SCLT as Manager

5.1 Nothing contained herein shall be deemed to make or render the County a partner, co-venturer or other participant in the business or other participant in the business or operations of SCLT, or in any manner to render County liable, as principal, surety, guarantor, and agent or otherwise for any of the debts, obligations or liabilities of the Manager. Similarly, nothing contained herein shall be deemed to make or render the SCLT a partner, co-venturer or other participant in the business or operations of the County, or in any manner to render SCLT liable, as principal, surety, guarantor, and agent or otherwise for any debts, obligations or liabilities of the County.

Article 6 Termination for Cause

6.1 Upon providing SCLT with ten (10) days' prior written notice, the County may, at its option, terminate this Agreement for one of the following reasons: (i) if the Manager shall violate or be in material breach of any provision, representation, warranty, covenant or undertaking of this Agreement; or (ii) if the Manager (a) makes an assignment for the benefit of creditors, (b) is adjudicated bankrupt, (c) files or has filed against it any bankruptcy, reorganization, liquidation or similar petition or any petition seeking the appointment of a receiver, conservator or other representative, or (d) proposes a composition arrangement with creditors.

Article 7 Insurance

7.1 SCLT shall carry the following insurance coverages:

- (a) Property – All risks insurance for any building that is constructed on the Hopkins Preserve
- (b) Workers' Compensation– Statutory Amount in the State of Delaware.
- (c) Commercial General Liability – with limits no less than \$1,000,000 per occurrence, \$2,000,000 general aggregate.
- (d) Business Auto Liability – including hired and non-owned auto coverage \$1,000,000 combined single limit
- (e) Umbrella/Excess - \$5,000,000 per occurrence/aggregate following form at a minimum, including employers' liability, commercial general liability and business auto liability as scheduled underlying insurance.

On all policies listed, the County, its appointed or elected officials, employees, agents, consultants and authorized volunteers shall be named as additional insureds on this insurance on a primary and non-contributory basis shall be named additional insured.

Article 8 Indemnification

8.1 To the fullest extent permitted by law, SCLT shall indemnify, hold harmless and defend the County and its elected and appointed officials, officers, employees and agents from and against any and all claims, damages, injuries and expenses (including related attorney's fees and other defense costs) arising out of or resulting from SCLT's actions or inactions which are in any way related to its role as a Manager of the Property hereunder and its duties with respect hereto, whether occurring in Sussex County, DE or elsewhere, including, but not limited to, claims, damages, losses, injuries or expenses attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible and intangible property, including the loss of use resulting there from, asserted by any person, persons or artificial entity, including, but not limited to the County's employees, servants, representatives, guests, invitees, contractors, licensees, visitors, etc. regardless of whether or not such claims, damages, injuries and expenses are caused in part by a party indemnified hereunder. This provision shall survive the expiration or termination of this Agreement for a period of three (3) years.

8.2 If a party entitled to indemnification (the “Indemnitee”) receives notice of any claim or the commencement of any action or proceeding with respect to which a party is obligated to provide indemnification (the “Indemnifying Party”) pursuant to Sections 8.1 and 8.2, the Indemnitee shall promptly give the Indemnifying Party notice thereof (“Indemnification Notice”). Such Indemnification Notice shall be a condition precedent to any liability of the Indemnifying Party under the provisions for indemnification contained in this Agreement. Except as provided below, the Indemnifying Party may compromise, settle or defend, at such Indemnifying Party’s own expense and by such Indemnifying Party’s counsel, any such matter involving the asserted liability of the Indemnitee. In any event, the Indemnitee, the Indemnifying Party and the Indemnifying Party’s counsel shall cooperate in the compromise of, or defense against, any such asserted liability. If the Indemnifying Party provides the Indemnitee a defense to a third-party claim at the Indemnifying Party’s cost with a qualified attorney, Indemnitee may participate and/or monitor the defense with an attorney of the Indemnitee’s selection, at the Indemnitee’s own expense. Provided that the Indemnifying Party pays for the full cost of the settlement of any claim, the Indemnifying Party may settle any claim without the consent of the Indemnitee. If the Indemnifying Party chooses to defend any claim, the Indemnitee shall make available to the Indemnifying Party any books, records or other documents within its control that are necessary or appropriate for such defense.

8.3 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.

Article 9 Additional Provisions

9.1 Entire Agreement. This Agreement sets forth the entire understanding and agreement among the Parties hereto with reference to the subject matter hereof and may not be modified, amended, discharge, or terminated except by a written instrument signed by the parties hereto.

9.2 Amendments. No alteration, amendment, modification, or waiver of any of the terms or provisions hereof, and no future representation or warranty by any of the parties with respect to this transaction shall be valid unless the same be in writing and signed by both Parties.

9.3 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to agreements made, delivered and to be performed within such State.

9.4 Assignment. This Agreement may not be assigned by the County or SCLT, except SCLT may in its sole discretion assign certain management or maintenance requirements to a properly licensed company. Upon any assignment, SCLT shall remain primarily liable and also be jointly and severally liable to the County for performance of the assigned duties herein.

9.5 Enforceability. All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by each of the Parties and their respective successors and assigns.

9.6 No Waiver. No failure on the part of any party hereto to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any right, power or remedy.

9.7 Consent of Jurisdiction. Each party to this Agreement, by its execution, (i) hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of Delaware for the purpose of any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof.

9.8 Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the remaining provisions of this Agreement, all of which shall remain in full force and effect.

9.9 Notice. Any notice, request, demand or other communication required or permitted hereunder must be in writing and shall be deemed to have been given, upon receipt or refusal of delivery, if sent by registered or certified mail, return receipt requested, postage prepaid, by hand delivery, or by courier service. All notices to a party shall be sent to the addresses set forth below or to such other address or person as such party may designate by notice to the other party.

To Sussex County:

2 The Circle, Georgetown, DE 19947
Attention: Todd Lawson, County Administrator

To SCLT:

P.O. Box 372, Lewes, DE 19958
Attention: Mark Chura, Executive Director

9.10 Survivability. The terms of this Agreement shall be binding upon the Parties hereto, and upon their respective administrators, successors, and assigns.

9.11 Counterparts; Electronic Signatures. This Agreement may be executed in multiple 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.

[Signature Page Follows]

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

SUSSEX COUNTY LAND FOUNDATION, INC., DBA SUSSEX COUNTY LAND TRUST, A DELAWARE CORPORATION

Date: _____

By: _____

Date: _____

Attest: _____

SUSSEX COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF DELAWARE

Date: _____

By: _____

**Michael H. Vincent
President
Sussex County Council**

Date: _____

Attest: _____

**Tracy Torbert
Clerk
Sussex County Council**

Attachment A

Hopkins Preserve Master Plan dated October 2022, as prepared by
Vernacular Landscape Architecture (Master Plan)

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: **FY 2024 Human Service Grants**

DATE: November 9, 2023

Attached is a schedule of the FY 2024 Human Service Grants, as well as an overview of the program. On Tuesday, Sophia Chilelli and I will be recommending Council to approve the grants listed for payment.

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

pc: Todd F. Lawson

FY 2024 Human Service Grants

Name of Organization	Project	Last Year's Grant	Grant Request	Recommended Grant
American Legion Auxiliary, Department of Delaware	ALA Delaware Girls State	\$ 1,000	\$ 2,000	\$ 1,780
Barbara K Brooks Transition House, Inc	Barbara K. Brooks Transition House	\$ 2,060	\$ 4,000	\$ 2,330
Best Buddies International, Inc.	Best Buddies Sussex County Inclusion Project	\$ 1,850	\$ 1,850	\$ 1,850
Bridgeville Senior Citizens Center Inc.	Homebound/Congregate Program	\$ 5,550	\$ 11,700	\$ 5,600
Calliope Project Inc.	Milton Theatre Youth Arts Programming Space	\$ 2,310	\$ 5,000	\$ 2,930
Cancer Support Community Delaware	Hybrid Programming for Cancer Support Community DE	\$ 3,160	\$ 4,000	\$ 3,530
Cape Henlopen Senior Center	Cape Henlopen Senior Center	\$ 5,550	\$ 5,600	\$ 5,600
CHEER, Inc	Georgetown CHEER Activity Center	\$ 5,550	\$ 7,000	\$ 5,600
CHEER, Inc	Greenwood CHEER Activity Center	\$ 5,550	\$ 7,000	\$ 5,600
CHEER, Inc	Harbor Lights CHEER Activity Center	\$ 5,550	\$ 7,000	\$ 5,600
CHEER, Inc	Long Neck Cheer Activity Center	\$ 5,550	\$ 7,000	\$ 5,600
CHEER, Inc	Milton CHEER Activity Center	\$ 5,550	\$ 7,000	\$ 5,600
CHEER, Inc	Ocean View CHEER Activity Center	\$ 5,550	\$ 7,000	\$ 5,600
CHEER, Inc	Roxana CHEER Activity Center	\$ 5,550	\$ 7,000	\$ 5,600
Clothing Our Kids	Clothe A Kid	\$ 2,860	\$ 3,030	\$ 2,380
Community Resource Center, Inc.	Homeless Day Center Washing Machine	\$ 2,110	\$ 2,250	\$ 2,250
Dagsboro Boys & Girls Club	Dagsboro Club Power Hour	\$ 2,250	\$ 5,000	\$ 2,350
Delaware Adolescent Program, Inc.	Family Connections (FamCo)		\$ 25,000	\$ 2,480
Delaware American Legion Foundation, Inc.	Delaware Boys State		\$ 2,500	\$ 1,580
Delaware Breast Cancer Coalition, Inc.	Yes2Health	\$ 2,260	\$ 5,000	\$ 2,380
Delaware Community Reinvestment Action Council, Inc.	Low Income Tax Clinic	\$ 2,010	\$ 3,000	\$ 1,980
Delaware Crime Stoppers	Delaware Crime Stoppers 2024	\$ 3,210	\$ 3,210	\$ 2,730
Delaware HIV Services, Inc.	Michael Brossette Memorial Fund	\$ 1,600	\$ 3,000	\$ 1,680
Delaware Hospice, Inc.	Delaware Hospice New Hope	\$ 2,010	\$ 2,000	\$ 2,000
Delaware Lions Foundation Inc.	Service Projects Matching Grants	\$ 1,710	\$ 4,000	\$ 2,380
Delaware Senior Olympics, Inc.	Delaware Senior Olympics	\$ 500	\$ 500	\$ 500
DFRC, Inc.	DFRC Blue-Gold Hand-in-Hand Program	\$ 2,010	\$ 5,000	\$ 2,880
Down Syndrome Association of Delaware	Down Syndrome Association Sussex County Office	\$ 2,010	\$ 3,500	\$ 3,430
Dry Dock Recovery Inc.	Dry Dock Recovery - 12 Step Program		\$ 4,900	\$ 1,380
Easter Seals Delaware & Maryland's Eastern Shore	Outpatient Rehab Therapy purchases	\$ 1,000	\$ 1,000	\$ 1,000
Everlasting Hope Ministries	Dream Center	\$ 2,250	\$ 5,000	\$ 2,550
Family Outreach Multipurpose Community Center, Inc.	Equipment	\$ 3,550	\$ 3,000	\$ 3,000
Food Bank of Delaware	Backpack Program	\$ 2,860	\$ 5,000	\$ 3,330
Georgetown Boys & Girls Club	Georgetown Power Hour	\$ 2,250	\$ 5,000	\$ 2,350
Harry K Foundation	Halting Hunger and Food Insecurity	\$ 2,410	\$ 3,500	\$ 1,780
Housing Alliance Delaware	Sussex Housing Group	\$ 1,710	\$ 5,000	\$ 2,380
Indian River Senior Center, Inc	Maintenance of the Center	\$ 5,550	\$ 6,170	\$ 5,600
Junior Achievement of Delaware, Inc.	Work Based Learning, Financial Literacy & Entrepreneurship Experiences for Students	\$ 3,150	\$ 3,150	\$ 3,150
Just a Hand Up Community Navigation Association	"Just a Hand Up Resource Shack Program"	\$ 2,160	\$ 1,860	\$ 1,860
Kent-Sussex Industries, Inc.	Artist Residency Program	\$ 1,750	\$ 2,770	\$ 1,400
La Esperanza Inc.	Victims' Services	\$ 2,360	\$ 5,000	\$ 2,380
La Red Health Center	La Red Health Center Dental Program		\$ 3,200	\$ 2,950
Laurel Senior Center	Meal Program	\$ 5,550	\$ 8,000	\$ 5,600
Lewes Senior Citizens Center Inc	Center Improvement-Phones, Computers, Internet, Camera Surveillance, Pool Table	\$ 5,550	\$ 25,000	\$ 5,600
Lighthouse For Broken Wings	Sheltering Hearts		\$ 5,000	\$ 2,630
Literacy Delaware Inc.	Supporting Adults with Low Literacy Skills	\$ 2,010	\$ 5,000	\$ 2,080

FY 2024 Human Service Grants

Love INC of Mid-Delmarva	Caring for those in Need	\$ 3,550	\$ 5,000	\$ 4,480
Mid-Atlantic Symphony Orchestra	Holiday Joy Symphonic Music Concert	\$ 1,000	\$ 5,000	\$ 3,230
Milford Housing Development Corporation	Home Repair Program	\$ 2,010	\$ 3,550	\$ 2,430
Milford Senior Center, Inc.	Breakfast Program	\$ 5,550	\$ 10,000	\$ 5,600
Milton Community Food Pantry	Milton Community Food Pantry Distribution Center	\$ 3,160	\$ 3,788	\$ 3,050
Multiplying Good	Delaware Students In Action Fall Leadership Conference 2023	\$ 1,500	\$ 1,500	\$ 1,500
Nanticoke River Watershed Conservancy, Inc.	NRWC Boundary and Maintenance Needs	\$ 3,100	\$ 2,270	\$ 2,270
Nanticoke Senior Center	Purchase chairs and up-grade seating for members	\$ 5,550	\$ 5,600	\$ 5,600
New Hope Recreation and Development Center, Inc.	New Hope After School Program	\$ 1,500	\$ 1,700	\$ 1,700
Oak Orchard Riverdale Boys & Girls Club	Oak Orchard Club Power Hour	\$ 2,250	\$ 5,000	\$ 2,350
Primeros Pasos Early Learning Center	Early Care and Education Curriculum for Underserved Students	\$ 1,310	\$ 2,000	\$ 2,000
Read Aloud Delaware	Read Aloud Rally	\$ 2,650	\$ 3,500	\$ 3,050
Redemption City	Sunshine House		\$ 4,000	\$ 2,580
Rehoboth Beach Boys & Girls Club	Rehoboth Beach Club Power Hour	\$ 2,250	\$ 5,000	\$ 2,300
Richard Allen Coalition, Inc	Carpet	\$ 2,800	\$ 5,000	\$ 3,200
Ronald McDonald House Charities of Greater Delaware	Housing & Support Services for Sussex County Families	\$ 1,910	\$ 5,000	\$ 2,630
Shoes That Fit	2023/2024 School Year Shoe Program		\$ 3,000	\$ 1,480
Southern Delaware Therapeutic Riding	Expanded Therapeutic Riding Opportunities for Sussex County Residents with Disabilities	\$ 1,810	\$ 2,500	\$ 2,380
Sussex County Habitat for Humanity, Inc.	Sussex County Family Empowerment	\$ 3,100	\$ 10,000	\$ 3,430
Sussex County Volunteer Delaware 50 Plus Advisory Council	The CareWear Project (formerly Nimble Fingers)		\$ 5,000	\$ 3,450
The Arc of Delaware	Social and Recreational Activities for Individuals with I/DD		\$ 2,500	\$ 1,730
The ARK Educational Consulting, Inc.	The ARK Educational Resource Center	\$ 2,110	\$ 5,000	\$ 2,630
The Way Home, Inc	Stop and Go	\$ 2,350	\$ 50,760	\$ 3,280
West Side New Beginnings, Inc.	West Side New Beginnings, Inc.	\$ 1,000	\$ 3,000	\$ 1,550
Western Sussex Boys & Girls Club at Laurel	Laurel Club Power Hour	\$ 2,250	\$ 5,000	\$ 2,350
Western Sussex Boys & Girls Club at Seaford	Seaford Club Power Hour	\$ 2,250	\$ 5,000	\$ 2,350
What Is Your Voice, Inc.	Utility Connection Project	\$ 3,200	\$ 15,000	\$ 3,200
YMCA of Delaware	Sussex County Balance Masters	\$ 2,060	\$ 5,000	\$ 1,600
YWCA Delaware	YWCA'S Sexual Assault Response Center (SARC)	\$ 2,460	\$ 2,000	\$ 2,000
			\$ 429,358	\$ 224,240

The seal of the County of Sussex, Delaware, is a circular emblem. It features a central shield with a tree, a crescent moon, and a sun. The shield is surrounded by a blue border with the text "GOVERNOR" and "PROPRIETOR". The outermost ring of the seal is gold and contains the text "COUNTY OF SUSSEX" at the top, "WILLIAM" on the right, "AND" on the left, and "1683" at the bottom. The seal is partially obscured by a blue horizontal band.

Sussex County Human Service Grant Program

Fiscal Year 2024

Human Service Grant Purpose

Grants to countywide non-profit agencies for the purpose of enhancing health and human services, which contribute to a safe, healthy and self-sufficient community. Funds provide grants that assist organizations with resources in support of programs or capital purchases.



Process

- Organizations submitted application online
- Finance reviewed
 - Organizations' statuses (IRS, Delaware Division of Corporation, year of formation)
 - Organization's most current 990
 - Past due County obligations
 - Scope of request
- Finance created a formula, based on number of verified beneficiaries, other financial support and financial need, to best utilize the grant funds

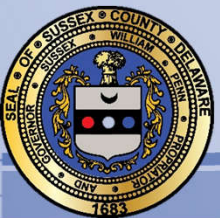


Formula to Distribute (Budget of \$225,000)

Sussex County Beneficiary Criteria	Base Grant Amount	Additional Amount if main operations are in Sussex County	Additional Amount if other funding is 25% or greater	Additional Amount if need is \$5,000 or greater	Additional Amount if need is \$15,000 or greater	Additional Amount if loss on last IRS Form 990	Maximum Grant Amount
10 to 49 Beneficiaries	\$1,500	\$550	\$80	\$200	\$250	\$500	\$3,080
50 to 249 Beneficiaries	\$1,750	\$550	\$80	\$250	\$300	\$500	\$3,430
250 to 499 Beneficiaries	\$2,000	\$550	\$80	\$300	\$350	\$500	\$3,780
500 to 999 Beneficiaries	\$2,250	\$550	\$80	\$350	\$400	\$500	\$4,130
1,000 or more Beneficiaries	\$2,500	\$550	\$80	\$400	\$450	\$500	\$4,480

CHEER & Senior Centers	\$5,600
Boys and Girls Clubs	\$2,350
Organizations were capped at their demonstrated need and request.	

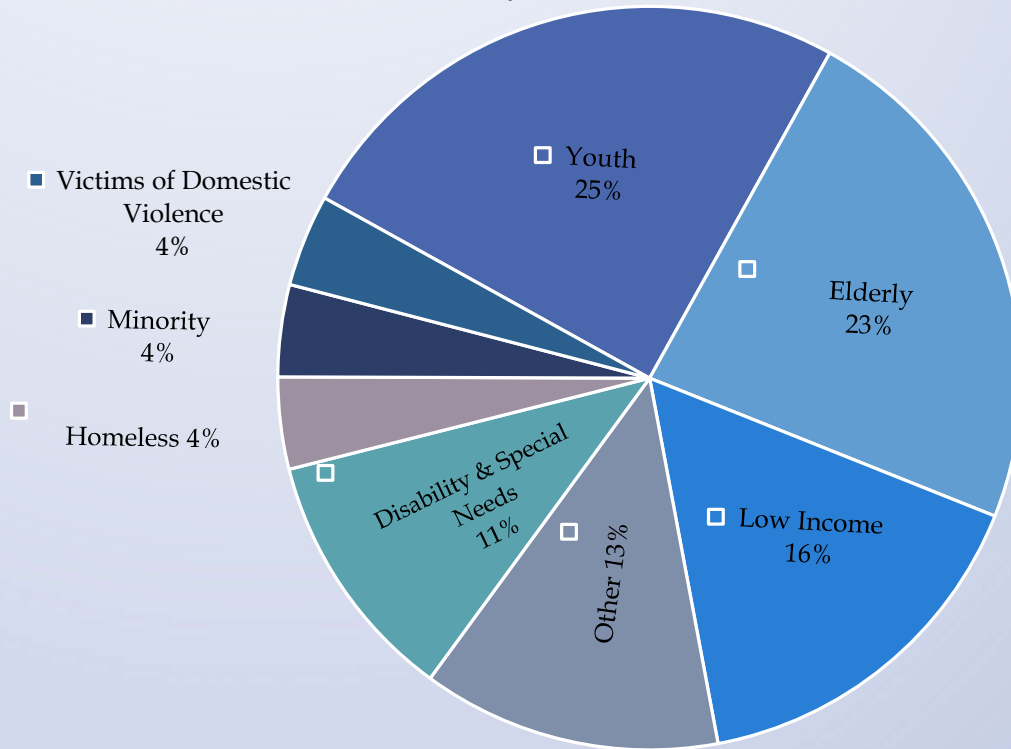
If another County grant was awarded within the last 12 months, 50% of the original grant, up to \$750, was deducted. If the organization had over \$500,000 in cash/investments on their last 990, \$100 was deducted.



Application Statistics

- Received \$429,358 in requests from 75 qualified organizations
- 9 new recipients
- 82,145 Sussex County beneficiaries
- Organizations raise approximately \$6.2 million in other types of support for these projects

Type of Beneficiaries

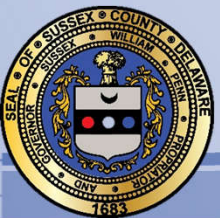


Fiscal Year 2024 Recipients

American Legion Auxiliary, Department of Delaware	Delaware Community Reinvestment Action Council, Inc.	Love INC of Mid-Delmarva
Barbara K Brooks Transition House, Inc.	Delaware Crime Stoppers	Mid-Atlantic Symphony Orchestra
Best Buddies International, Inc.	Delaware HIV Services Inc.	Milford Housing Development Corporation
Boys & Girls Club of Dagsboro	Delaware Hospice, Inc.	Milford Senior Center, Inc.
Boys & Girls Club of Georgetown	Delaware Lions Foundation, Inc.	Milton Community Food Pantry
Boys & Girls Club of Laurel	Delaware Senior Olympics	Multiplying Good
Boys & Girls Club of Oak Orchard/Riverdale	DFRC Inc.	Nanticoke River Watershed Conservancy
Boys & Girls Club of Rehoboth Beach	Down Syndrome Association of Delaware	Nanticoke Senior Center
Boys & Girls Club of Seaford	Dry Dock Recovery Inc.	New Hope Recreation and Development Center
Bridgeville Senior Citizens Center Inc.	Easterseals Delaware & Maryland's Eastern Shore	Primeros Pasos Early Learning Center
Calliope Project Inc.	Everlasting Hope Ministries	Read Aloud Delaware
Cancer Support Community Delaware	Family Outreach Multipurpose Community Center, Inc.	Redemption City
Cape Henlopen Senior Center	Food Bank of Delaware	Richard Allen Coalition, Inc.
CHEER Inc. - Georgetown	Harry K Foundation	Ronald McDonald House of Delaware
CHEER Inc. - Greenwood	Housing Alliance Delaware	Shoes That Fit
CHEER Inc. - Harbor Lights (Lewes)	Indian River Senior Center, Inc.	Southern Delaware Therapeutic Riding
CHEER Inc. - Long Neck	Junior Achievement of Delaware, Inc.	Sussex County Habitat for Humanity
CHEER Inc. - Milton	Just a Hand Up Community Navigation Association	Sussex County Volunteer Delaware 50 Plus Advisory Council
CHEER Inc. - Ocean View	Kent-Sussex Industries, Inc.	The Arc of Delaware
CHEER, Inc. - Roxana	La Esperanza Inc.	The ARK Educational Consulting, Inc.
Clothing Our Kids	La Red Health Center	The Way Home, Inc.
Community Resource Center	Laurel Senior Center	West Side New Beginnings, Inc.
Delaware Adolescent Program, Inc.	Lewes Senior Citizens Center Inc.	What Is Your Voice, Inc.
Delaware American Legion Foundation, Inc.	Lighthouse For broken Wings	YMCA of Delaware
Delaware Breast Cancer Coalition, Inc.	Literacy Delaware Inc.	YWCA Delaware

Motion

Be it moved that the Sussex County Council, approve the Fiscal Year 2024 Human Service Grant allocation as presented.



ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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

hans.medlarz@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

RE: ***EMS Public Safety Building – Project C19-04***
A. Change Order No. 26

DATE: November 14, 2023

The single Public Safety Building concept was introduced in the FY 2019 Budget Ordinance consolidating all EMS training, administration, and logistics functions. The costs were updated in accordance with a space allocation programming effort in the FY 2020 Budget Ordinance and further refined based on design stages in the FY 2021 & FY 2022 Budget Ordinances reflecting a total project expense of \$12.00 million. The final overall project costs are 5% below budget as per the attached summary.

Following a publicly advertised process, Council awarded the EMS Department's - Architectural Consulting Services base contract to the George, Miles and Buhr, Inc. The subsequent Public Safety Building Project C19-04 base agreement covered professional services for an initial not to exceed amount of \$300,000.00.

The State's fire prevention regulations required a single-entry point necessitating a full sprinkler distribution system design and due to the critical nature of the facility, a secondary air conditioning backup in the form of a cooling tower was desired. Council authorized a \$31,720.00 stand-alone purchase order to RMF Engineering for these specialty designs.

In October of 2020, the Departments presented the 60% design review to County Council followed by a 75% design presentation in March of 2021. Based on the County's request, GMB was asked to create fiber optic cabling, audio/visual, security/alarm and fit out specialty scopes for procurement under Cooperative Purchasing Agreements, increasing the project design complexity. Hence, Council approved on March 23, 2021, GMB's Amendment No.1 increasing the not to exceed threshold by \$61,500.00.

Subsequently the scope evolved further due to design revisions and added design features. Consequently, GMB and its subconsultants exceeded the previously approved allocations bringing



the project to bid. GMB offered a discounted fee of \$75,000.00 to cover these services. In addition, they proposed a construction services fee of \$244,500.00. Overall, the professional services were well below 10% of construction, comparing favorably with industry standards and on August 10, 2021, County Council authorized issuance of GMB's Amendments No. 2 & 3 increasing the overall not to exceed amount to \$681,000.00.

In June the Public Safety Building, Project C19-04 was publicly advertised, on July 14, 2021, eight (8) bids were received and on August 10, 2021, Council awarded the project to Bancroft Construction Company in the amount of \$8,282,169.00.

The bid documents included provisions to recover pandemic related price increases between *bid and award* for structural and light weight steel material costs. Therefore, on August 31, 2021, Council approved Change Order No. 1 in the not to exceed amount of \$40,000 for structural and Change Order No. 2 in the amount of \$8,800 for light weight steel material price increases.

The structural steel material change order no.1 was based on August 12, 2021, pricing. When Bancroft transmitted the "letter of intent to award", their subcontractor Iron Works, Inc. on August 30th in turn issued material purchase orders. However, the material suppliers responded that material quotations were only binding for one week due to supply chain impacts and volatile steel markets. In consultation with County Leadership, the Engineering Department authorized Bancroft to lock in at the August 30th material costs triggering a \$22,829.00 revision to change order no. 1 approved by Council on September 14, 2021.

When the project bid, the Fire Marshall site permit had been issued but the associated building permit was still under review. By the time it was finalized two issues had to be addressed (i) fire protection details in the plenum and (ii) a secondary emergency egress from the mezzanine.

The plenum needed to be either sprinkled or all materials had to be fire rated. The only material not meeting the rating was the water piping. The County requested the PVC piping for ease of maintenance and the mechanical subcontractor suggested to add fire rated insulation but switch the valving to PVC under a partial credit for a net Change Order No. 3 cost of \$13,554.94. In addition, the County EMS team had initiated a proposed Change Order No. 4 for air filtration system safety upgrades, paid for through American Rescue Plan Act funds in the amount of \$4,740.28. On November 20, 2021, County Council approved both change orders.

The change order scope associated with the emergency mezzanine exit was complex requiring scope modifications for eight (8) trades. The electrical trade also included some minor changes to the outlet configurations to accommodate the selected A/V equipment for a total \$58,245.80 which County Council approved under Change Order No. 5 on January 11, 2022.

The existing EOC allegedly had dual primary electric power feeds based on original design drawings, staff recollection as well as DP&L records. Upon examination of the actual EOC transformer by DP&L, it was determined that the facility had only one feed. Prior to that, the electrical sub-contractor had initiated some limited conduit installations, Council issued a reimbursement Change Order No. 6 in the amount of \$1,905.85.

However, for the project to proceed, DP&L and the County's General Labor & Equipment contractor had to extend primary power to the existing transformer from the opposite side of Rudder Lane. In addition, the transformer and generator location for the building was revised, as

well as vehicle charging circuits added. These changes were priced out and approved by Council on March 1, 2022, under Change Order No. 9 in the amount of \$56,830.98.

In December 2021, following a detailed Miss Utility locate, the Team recognized that there were conflicts between the proposed gravity storm drainage pipe and the existing high voltage lines off site. The stormwater management design had the stormwater pipe system crossing the intersection of Airport Road and Aviation Avenue. Close examination revealed that this crossing was not plausible as the stormwater pipe intersected approximately eight other utilities primarily high voltage electric lines and sewer force mains at different elevations.

While investigating stormwater options, two existing roof drainage pipe conflicts came to light. The combination of both these impacts required a re-work of the entire grading plan, along with the redirection of the storm drainage piping along Airport Road. The Department and the contractor agreed on the scope and pricing, including the required fill and on March 1, 2022, Council issued the associated Change Order No. 7 in the amount of \$62,924.75.

In the filling process of “Lake Thomas”, unsuitable soils were encountered. The site work contractor undercut these areas and restored them with suitable materials. This work was performed on a time and materials basis under Change Order No. 11. Also covered under this request is an adjustment to a drop ceiling and bulkhead location in the corridor leading to the northside of the existing EOC building. On March 22, 2022, Council accepted Change Order No. 11 in the amount of \$5,427.58.

Bancroft had submitted RFI#44 seeking clarification regarding the EOC kitchen renovations due to a lack of existing condition documentation on the mechanical drawings and insufficient detailing of connections. GMB’s plan envisioned an open ceiling concept with cabinet & countertop which was unable to incorporate the two roof drains in the existing exercise room and kitchen. With an acceptable resolution plan needed, the Department worked with Bancroft and developed the attached “Owner Resolution Plan No.3 addressing the existing conditions and on March 22, 2022, Council accepted credit Change Order No. 12 in the amount of (\$15,118.52).

The heating and hot water systems were designed based on availability of natural gas. Chesapeake Utilities’ service extension project from the Coastal Business Park to Rudder Lane is delayed and may not be ready at the time of building commissioning. The utility directed us to seek an interim solution using their subsidiary, Sharp Energy, which already supplies propane to the Joint Maintenance Facility under this arrangement. The Engineering & Finance Departments developed a purchase order for the installation.

Due to a conflict in the existing lobby, the stud wall had to be extended alongside the existing beam, allowing the proposed wall to bypass the structural steel. Bancroft submitted PCO #013 to modify said exterior stud wall framing and to extend the drywall and batt insulation to the roof deck based on a sound attenuation request from Team EMS based on sensitive medical discussions. On May 17, 2022, County Council approved Change Order No. 13 in the amount of \$16,711.84 and the unit of \$11.57/sf for additional wall sections if necessary.

On June 21, 2022, County Council approved Change Order No. 14 in the aggregate amount of \$26,371.68 addressing the modifications listed below:

1. Special floor tile color selection.
2. Separation of the decorative architectural wall from one to two location.

3. Back-up cooling tower protection by bollards.
4. Structural modifications to the primary cooling tower support.
5. Roof membrane boots to cover penetrations in six (6) locations.
6. Additional epoxy coating.
7. Lobby storefront modifications.

Change Order No. 15 is the result of RFI-60 and a field change for the gutter support in the mechanical well of the sloped roof system. The latter was needed to build out the wall section around the well to allow the installation of the gutter system. RFI-60 exposed an issue related to the door jams of the overhead door in the logistics warehouse. The original approach left an exposed brick veneer edge which was addressed by adding a secondary steel channel on each jam. On July 26, 2022, Council approved Change Order No. 15 in the aggregate amount of \$11,357.87.

The EMS team requested modifications to the room signage in February of 2022. It went through several iterations reducing the costs. The final version, Change Order 16, was approved by Council on August 23, 2022, in the amount of \$2,361.79.

On September 20, 2022, Council approved Change Order No. 17 in the aggregate amount of \$30,089.13, addressing the modifications listed below:

1. Light fixture change and deletion of ceiling baffles in Circuit Training Room.
2. Garage door manufacturer change from Dalton Door to Overhead Door due to extended lead times.
3. Replacement of damaged temporary construction fence.
4. Concrete pad for relocated MCU cabinets.
5. Flagpole model change to avoid conflict with a pole mounted LED light fixture.
6. Decorative fence extension to enclose MCU cabinets at the new location.
7. Ductwork re-routing to avoid conflict with roof access ladder.
8. Credit for deletion of HVAC transfer ducts and grilles in Logistics Warehouse offices.

On November 15, 2022, County Council approved Change Order Nos. 18 and 20 in the respective amounts of \$19,574.73 and \$10,330.17 which addressed the modifications and issues listed below.

1. Modification of the concrete slab in the plaza to support the new EMS memorial.
2. A removable bollard was added in the plaza area.
3. Additional demolition of sidewalk and new concrete underneath the new supplemental chiller.
4. Concrete apron modification outside the Logistics Warehouse.
5. Raising a section of sprinkler main in an EMS office corridor.
6. Electrical credit for scope reduction and additional work for plaza lighting revisions.

On December 13, 2022, Council approved Change Order No. 19 in the aggregate amount of \$31,724.89. Included were site design changes at the Rudder Lane intersection for drainage

improvements. Along with the installation of a gate in the ornamental fence enclosing the restricted, employee only areas.

On February 7, 2023, Council approved Change Order No. 21 in the aggregate amount of \$40,127.15 which addressed the modifications and issues listed below.

1. An additional 6’ section of solar on the West side of the new lobby area.
2. A credit by Bear Industries for the deletion of the dry sprinkler system serving the exterior entrance canopy no longer required by code.
3. The ductwork changes in Corridors 118, 134 and 159 which the Department has been tracking for several months was included.
4. Several miscellaneous site work changes were addressed including, such as additional striping, raising the lid of a County fiber-optic manhole, and additional sidewalk section to mechanical/electrical room.
5. The electrical requirements for the cooling tower and rooftop unit differed slightly from the breaker and disconnect sizes shown in the electrical drawings. Because of this, new circuit breakers and disconnects were required for the units to function.

On February 28, 2023, Council approved Change Order No. 22 in the aggregate amount of \$104,368.86 consisting of multiple PCOs tracked by the Department and summarized below.

PCO #22:

- Additional material/labor required for the new Delaware Coastal Airport sign, and the lettering for the sign.
- Additional landscaping work including several arborvitaes to help conceal the generator and landscape boulders along Airport Road near the intersection and the new Airport sign.

PCO #23:

- Additional wood blocking was required in the EMS offices to provide greater flexibility in mounting the wall mounted displays in each room.
- An electric unit heater was added to the mechanical/electrical room to provide backup heat in the room to prevent any water piping from freezing.
- Natural gas to propane conversion for rooftop HVAC unit.
- Acrylic lettering credit for the EMS Awards wall.

PCO #24:

- Painting in the existing EOC corridors tying the buildings together.

PCO #25:

- A small charge to change the color of the suspension grid for the acoustic baffles and lights in the lobby area from white to black.
- Replacement of the interior room signage in the existing EOC to match the layout and design of the signage in the new building.

PCO #26:

- Minor revision to the casework/cabinetry in the EMS Copy Room to allow for placement of the paper shredder in the room.

PCO #27:

- Additional fencing with privacy screening around the dumpster area in the staff parking lot, along with privacy screening help conceal the condensing units, electrical cabinets, and transformer on the East side of the EOC.

On March 21, 2023, Council approved Change Order No. 23 in the aggregate amount of \$19,180.00 which addressed the modifications and issues listed below.

- 1) When Change Order No. 5 was presented, an estimation was used for the canopy cost over the mezzanine fire exit. However, the actual amount turned out to be higher and the delta is trued up under Change Order 23.
- 2) A Bancroft accounting error in the backup documentation for Change Order No. 15 resulted in the omission of the electrical subcontractor's overhead & profit for the light fixture change in the Circuit Training Room. It is reflected in Change Order No. 23 w/o Bancroft markup.
- 3) Re-caulking of deteriorated masonry expansion joints on the existing EOC, and around solar shade brackets, which was a previously tracked item.
- 4) The plaza bench wall had been shifted slightly to avoid an underground duct bank which affected the height above grade. At the direction of the Department, the contractor raised the bench wall with two courses of brick.

On April 23, 2023, Council approved Change Order No. 24 in the aggregate amount of \$32,358.12 which addressed the modifications and issues listed below.

- 1) Replacement of the five (5) storefront doors previously being tracked by the Department. Once the existing doors are replaced, they will be stored and will be used in one or more of the future EMS stations.
- 2) At the Department's direction the electrical subcontractor added numerous wall sleeves allowing a path from the cable tray to the inside of various rooms. This allowed Advantech, Assurance Media and Visual Sound to keep their cabling out of sight for an improved finished look.
- 3) New building lettering for the Airport Terminal side and lettering modification for the Airport Road side to read "Emergency Operations Complex."
- 4) Additional wood trim around the perimeter of the Awards Wall to provide a cleaner finished product. The cost for this item was shared 50% with Bancroft.
- 5) Credit for deletion of conductors to the wireless access points throughout the building which are powered over the ethernet cable.

On June 6, 2023, Council approved Change Order No. 25 in the aggregate amount of \$42,416.59. The items 1-7 were previously tracked while items 8-10 were new.

- 1) Painting of exposed galvanized steel columns at the entrance matching the canopy since no painting was specified in the contract documents.
- 2) The window blinds in the Simulation Lab were specified incorrectly and do not block 100% of the light which was an EMS requirement.
- 3) Wear pads to be located on the rubber roofing from the roof access hatch to and around the rooftop HVAC equipment.
- 4) Included in change order #22 was additional fencing around the dumpster and privacy screening panels. Unfortunately, the screening that was installed did not

- meet the dimensions listed in the proposal and the finished product was removed for full credit.
- 5) The light fixtures in the sim rooms are capable of being dimmed, but some additional low voltage wiring was required to allow the full dimming capability.
 - 6) Additional light fixtures are required in the Memorial Corridor above the actual Memorial panels and in the display cases for proper illumination w/o shadows.
 - 7) Additional light fixtures above the display case top shelf in the Memorial Corridor.
 - 8) The coffee maker selected for the Meal Prep Room, adjacent to the Lobby and large Classroom, requires a 208v electrical circuit, however only a 120v circuit was provided. A new electrical feed was pulled for the coffee maker to function.
 - 9) An electrical subpanel located on the exterior wall of the existing EOC was removed because it protruded into the walkway under the entrance canopy. Affected masonry must be replaced in the vicinity of the wall penetration.
 - 10) In order to achieve the UL Master Label approval of the overall lightning protection system, the existing system on the EOC roof was inspected by the lightning protection sub-contractor revealing a need for additional “air terminals”.

On June 6, 2023, Council also granted substantial completion as of June 5th, 2023.

During the construction process, some areas in the plaza were stained. A chemically based power washing attempt was unsuccessful, and Bancroft brought in ProCoat a specialty remediation company to demonstrate two options. The County EMS/EOC staff preferred one option and requested an expanded scope to include the entire plaza and the staff entrance area on the back of the building. In addition, the Engineering Department requested upgraded expansion joint treatment.

Bancroft solicited a proposal from ProCoat and submitted a change order request which included a deduct of \$6000.00 or 30.6% of the total square footage to cover the damage. However, it also included a 10% mark up on the balance per the contract documents as well as two weeks of site supervision and project coordinator costs. Upon review, the Engineering and Finance Departments decided to avoid the additional costs associated with running this scope through Bancroft and performed the site supervision in house. Therefore, the Engineering Department issued a direct purchase order to ProCoat and accepted a deduct of (\$6000.00) against the contract.

The Engineering Department requests acceptance of the Credit Change Order No. 26 in the amount of \$6000.00 and granting of final project acceptance including retainage release.



Bancroft Construction
 2324 W Zion Rd, Suite 108
 Salisbury, Maryland 21801
 Phone: (410) 844-8080

Project: CSED0001 - Public Safety Bldg. Addition
 21911 Rudder Lane
 Georgetown, Delaware 19947

Prime Contract Change Order #022: Reduce Final Contract for Plaza Rework

TO:	Sussex County Delaware 2 The Circle P.O. Box 589 Georgetown, Delaware 19947	FROM:	Bancroft Construction Company 1300 N. Grant Avenue Suite 101 Wilmington, Delaware 19806
DATE CREATED:	9/29/2023	CREATED BY:	Cheryl Fearn (Bancroft Construction Company)
CONTRACT STATUS:	Approved	REVISION:	0
DESIGNATED REVIEWER:		REVIEWED BY:	
DUE DATE:		REVIEW DATE:	10/10/2023
INVOICED DATE:		PAID DATE:	
SCHEDULE IMPACT:		EXECUTED:	No
REVISED SUBSTANTIAL COMPLETION DATE:		SIGNED CHANGE ORDER RECEIVED DATE:	
CONTRACT FOR:	CSED001:Public Safety Bldg. Addition Prime Contract	TOTAL AMOUNT:	(\$6,000.00)

DESCRIPTION:

ATTACHMENTS:

POTENTIAL CHANGE ORDERS IN THIS CHANGE ORDER:

PCO #	Title	Schedule Impact	Amount
035	Reduce Contract for Plaza Finish Correction		(\$6,000.00)
Total:			(\$6,000.00)

CHANGE ORDER LINE ITEMS:

PCO # 035: Reduce Contract for Plaza Finish Correction

#	Budget Code	Description	Amount
1	90-999.10 Fee.Fee & Field Cost	Backcharge for Plaza Finish	\$(6,000.00)
Grand Total:			\$(6,000.00)

The original (Contract Sum)	\$8,282,169.00
Net change by previously authorized Change Orders	\$647,113.48
The contract sum prior to this Change Order was	\$8,929,282.48
The contract sum will be decreased by this Change Order in the amount of	(\$6,000.00)
The new contract sum including this Change Order will be	\$8,923,282.48
The contract time will not be changed by this Change Order.	

Morgan Helfrich (George, Miles & Buhr, LLC)

400 High Street
 Seaford, Delaware 19973

Sussex County Delaware

2 The Circle P.O. Box 589
 Georgetown, Delaware 19947

Bancroft Construction Company

1300 N. Grant Avenue Suite 101
 Wilmington, Delaware 19806

SIGNATURE

DATE

SIGNATURE

DATE

John H Sauter II 11/09/2023

SIGNATURE

DATE



Bancroft Construction
2324 W Zion Rd, Suite 108
Salisbury, Maryland 21801
Phone: (410) 844-8080

Project: CSED0001 - Public Safety Bldg. Addition
21911 Rudder Lane
Georgetown, Delaware 19947

Prime Contract Potential Change Order #035: Reduce Contract for Plaza Finish Correction

Table with 4 columns: Field Name, Value, Field Name, Value. Includes fields like TO, FROM, PCO NUMBER/REVISION, CONTRACT, REQUEST RECEIVED FROM, CREATED BY, STATUS, CREATED DATE, REFERENCE, PRIME CONTRACT CHANGE ORDER, FIELD CHANGE, LOCATION, ACCOUNTING METHOD, SCHEDULE IMPACT, PAID IN FULL, and TOTAL AMOUNT.

POTENTIAL CHANGE ORDER TITLE: Reduce Contract for Plaza Finish Correction

CHANGE REASON: Backcharge

POTENTIAL CHANGE ORDER DESCRIPTION: (The Contract Is Changed As Follows)

CE #140 - Plaza Finish Backcharge

The county has rejected the end product of the Plaza and has sought out a finish product to top the concrete with for an acceptable finish. In doing so they are directly deducting from Bancroft the \$6,000 for this work to be completed.

ATTACHMENTS:

Table with 5 columns: #, Cost Code, Description, Type, Amount. Row 1: 1, 90-999 - Fee, Backcharge for Plaza Finish, Fee & Field Cost, \$(6,000.00). Grand Total: \$(6,000.00)

Morgan Helfrich (George, Miles & Buhr, LLC)

400 High Street
Seaford Delaware 19973

Sussex County Delaware

2 The Circle P.O. Box 589
Georgetown Delaware 19947

Bancroft Construction Company

1300 N. Grant Avenue Suite 101
Wilmington Delaware 19806

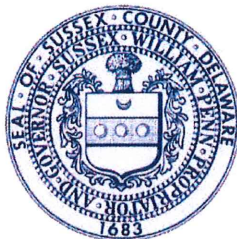
SIGNATURE DATE

SIGNATURE DATE

John H Sauter ii 11/09/2023
SIGNATURE DATE

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & BUSINESS 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) 855-7773



Sussex County


DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

ROBERT L. BRYANT, A.A.E.
AIRPORT MANAGER

Memorandum

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

FROM: Robert L. Bryant, A.A.E., Airport Manager 

RE: ***Construct General Aviation Apron Expansion, Phase IV, Project A20-36
Change Orders 1 & 2 and Substantial Completion***

DATE: November 14, 2023

The Engineering Department, on behalf of the Airport & Business Park (Delaware Coastal Airport), is seeking Sussex County Council's acceptance on two (2) Change Orders associated with the Construct General Aviation Apron Expansion Project.

Change Order No. 1 Contract Price Decrease by -\$268.00

Included – Original cement estimated as-bid quantities were not needed to construct the project and an increase in the number of Ground Rods were necessary.

Change Order No. 2 Contract Price Decrease by -\$169,506.07

Included – Field Quality Adjustments for actual quantities/materials installed within the contract requirements.

On August 10, 2021, Sussex County Council accepted a bid for the construction phase of the project from George & Lynch, Inc., in the bid amount \$1,933,799.00. With application of the two (2) Change Orders, the George & Lynch, Inc., project construction final cost totals \$1,764,024.93.

The Sussex County Engineering Department, on behalf of the Delaware Coastal Airport, is seeking approval of Change Order No. 1, Change Order No. 2 and grant substantial completion as of August 24, 2023.



CHANGE ORDER NO. 1
August 22, 2022

OWNER: Sussex County, Delaware OWNER'S ADDRESS: 2 The Circle (PO Box 589), Georgetown, DE 19947
 NAME OF AIRPORT: Delaware Coastal Airport LOCATION OF AIRPORT: 21653 Rudder Lane, Georgetown, Delaware 19947
 NAME OF CONTRACTOR: George & Lynch, Inc. ADDRESS OF CONTRACTOR: 150 Lafferty Lane, Dover, Delaware 19901

DESCRIPTION OF WORK IN CONTRACT:
Construct GA Apron Expansion

Delta Project No. 20038
 PennDOT Agreement No. 3-10-0007-039-2021
 Original Contract Amount: \$1,933,799.00
 Previous Change Orders: \$0.00
 Est. Cost This Change: (\$268.00)
 New Contract Amount: \$1,933,531.00

CHANGES ORDERED: See backup attached.

Item No.	Spec No.	Description	Unit	Original Unit Price	Revised Unit Price	Original Contract Quantity	Revised Contract Quantity	Original Contract Amount	Revised Contract Amount	Increase or Decrease
22	P-156	CEMENT	TN	\$600.00	\$600.00	160	97	\$96,000.00	\$58,200.00	(\$37,800.00)
CO1.1	L-125	GROUND RODS	EA	\$0.00	\$375.32	0	100	\$0.00	\$37,532.00	\$37,532.00
Total:										(\$268.00)

REASON(S) FOR CHANGE ORDER:

Item	Description
22	Cement - The original estimated as-bid quantity was not needed to construct the project. A field adjustment has been reflected.
CO1.1	Ground Rods - The Contractor has driven two (2) ground rods as required by the project Specifications and test results are still above 25 ohms. An increase in grounds rods above two (2) per location are necessary to lower the ohms and meet testing requirements. The Contractor submitted a proposed price of \$375.32 per ground rod (see attached) and estimates approx. 100 additional ground rods will be needed as well as an additional 20 CDs for installation. The Owner and Engineer reviewed the proposed price and found it to be reasonable. The Engineer coordinated this issue and contract adjustment with Tim DeWire of the FAA/HADO to obtain verbal approval to proceed with a Change Order to the grant. Additional Contract time of 20 CDs is associated with this change and work.

Original Contract Time: 75 CD
 Changes Previous Change Orders: 0 CD
 Change in Contract Time This Change Order: 20 CD
 New Contract Time: 95 CD

Subject to conditions set forth below, an equitable adjustment is established as follows:

CONTRACT PRICE
 Not Changed _____
 Increased by _____
 x Decreased by (\$268.00)

CONTRACT TIME
 Not Changed _____
 x Increased by 20 CD
 Decreased by _____ CD

The foregoing is in accordance with your contract dated August 31, 2021 and as listed below.

- A. The aforementioned change and work affected thereby are subject to all contract stipulations and covenants,
- B. The rights of the OWNER are not prejudiced, and
- C. All claims against the OWNER which are incidental to or as a consequence of the aforementioned change are satisfied
- D. This Change Order shall not be final or binding unless and until approved and executed by all parties and funding agencies listed below

ACCEPTED: George & Lynch, Inc. TITLE Sr. Project Manager DATE 8/22/2022

* ACCEPTED: Sussex County, Delaware TITLE Asst. County Engineer DATE 25 AUG. 2022

APPROVED: Delta Airport Consultants, Inc. TITLE PROJECT ENGINEER DATE 8/23/2022

APPROVED: FEDERAL AVIATION ADMINISTRATION - HADO TITLE _____ DATE _____

* ADMINISTRATIVE APPROVAL SUBJECT TO COUNTY COUNCIL APPROVAL

CHANGE ORDER NO. 2
December 22, 2022

OWNER: Sussex County, Delaware OWNER'S ADDRESS: 2 The Circle (PO Box 589), Georgetown, DE 19947
 NAME OF AIRPORT: Delaware Coastal Airport LOCATION OF AIRPORT: 21553 Rudder Lane, Georgetown, Delaware 19947
 NAME OF CONTRACTOR: George & Lynch, Inc. ADDRESS OF CONTRACTOR: 150 Lafferty Lane, Dover, Delaware 19901

DESCRIPTION OF WORK IN CONTRACT: Construct GA Apron Expansion
 Delta Project No. 20038
 PennDOT Agreement No. 3-10-0007-039-2021
 Original Contract Amount: \$1,933,799.00
 Previous Change Orders: (\$268.00)
 Est. Cost This Change: (\$169,506.07)
 New Contract Amount: \$1,764,024.93

CHANGES ORDERED: See attached.

REASON(S) FOR CHANGE ORDER:

Item	Description
2,4,5,7,8,9,10, 11,12,13,18, 19,20,21,22, 23,24,25,28, 29,30,31,32, 33,34,36,37, 38,39,40,41, 42,43,47,49, 50,51,52,53, 54,55,58,62, CO1.1	Field Quantity Adjustments - These items represent adjustments for actual quantities installed within the Contract requirements due to field conditions. These changes revise the final Contract quantities for these items to the actual quantities installed and accepted, and allows the new Contract amount to equal the final construction cost. An additional 20 CD's of Contract time is associated with this change due to the increased amount of ground rods needed to meet the project requirements.

Original Contract Time: 75 CD
 Changes Previous Change Orders: 20 CD
 Change in Contract Time This Change Order: 20 CD
 New Contract Time: 115 CD

Subject to conditions set forth below, an equitable adjustment is established as follows:

CONTRACT PRICE		CONTRACT TIME	
<u>Not Changed</u>		<u>Not Changed</u>	
<u>Increased by</u>		<u>X</u> Increased by <u>20</u>	CD
<u>X</u> Decreased by <u>(\$169,506.07)</u>		Decreased by	CD

The foregoing is in accordance with your contract dated August 31, 2021 and as listed below:

- A. The aforementioned change and work affected thereby are subject to all contract stipulations and covenants,
- B. The rights of the OWNER are not prejudiced; and
- C. All claims against the OWNER which are incidental to or as a consequence of the aforementioned change are satisfied.
- D. This Change Order shall not be final or binding unless and until approved and executed by all parties and funding agencies listed below.

ACCEPTED: George & Lynch, Inc. ST Project Manager 1/9/2023
 TITLE DATE
 ACCEPTED: SUSSEX COUNTY, DELAWARE AIRPORT MANAGER 2/1/2023
 TITLE DATE
 APPROVED: DELTA AIRPORT CONSULTANTS, INC. Project Manager, Delta 1/18/2023
 TITLE DATE
 APPROVED: FEDERAL AVIATION ADMINISTRATION - HADO DEPT. OF TRANSPORTATION
Federal Aviation Administration
Harrisburg Airports District Office
 APPROVED Timothy P. DeWire Reviewed and approved.
 DATE 02/02/2023 TPD 02/02/2023

Certificate of Final Acceptance

Expand GA Apron (Construction) - Phase IV

Delaware Coastal Airport
Georgetown, Delaware

AIP Project No. 3-10-0007-036-2020 (Design)

AIP Project No. 3-10-0007-039-2021 (Construction)

Contract Date: August 31, 2021

Contract Amount: \$ 1,933,799.00

Final Construction Cost: \$ 1,764,024.93

This Certificate of Final Acceptance applies to all Work under the Contract Documents and approved Change Orders for the Expand GA Apron (Construction) - Phase IV project completed by George & Lynch, Inc. (Contractor) for Sussex County, Delaware (Owner).

The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR, and ENGINEER, and that Work is hereby accepted as complete on February 17, 2023.

The following documents and information are attached to and made a part of this Certificate:

1. Warranty of Construction
2. Lien and Claims Release
3. Final DBE Accomplishments

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

Executed by ENGINEER Delta Airport Consultants, Inc.

By: [Signature] Date: 3/20/2023

Accepted by CONTRACTOR George & Lynch, Inc.

By: [Signature] Date: 3/17/2023

Accepted by OWNER Sussex County, Delaware

By: [Signature] Date: 4/27/2023

Warranty of Construction

Expand GA Apron (Construction) - Phase IV

Delaware Coastal Airport
Georgetown, Delaware

AIP Project No. 3-10-0007-036-2020 (Design)
AIP Project No. 3-10-0007-039-2021 (Construction)

Date of Final Acceptance: February 17, 2023

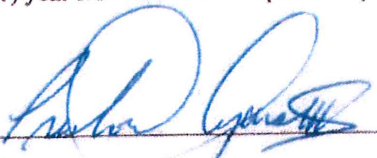
George & Lynch, Inc., 150 Lafferty Lane, Dover, Delaware 19901 (Contractor, Address) hereby guarantees that all labor and material furnished and work performed under the above Contract are in accordance with the contract drawings and specifications and authorized alterations and additions thereto, and that all of the work under the Contract is free from faulty materials and improper workmanship, and guaranteed against injury from proper and usual wear, and agreeing (and we do hereby so agree) that should any defect develop during the contract guarantee period, as hereinafter defined, due to improper materials, workmanship or arrangement, we will, upon written notice, replace or re-execute such defective work, together with any other work affected in making good such defects, at the convenience of, and without expense to the Owner.

The Contractor further warrants that all manufacturer's or other warranties on all materials and equipment furnished by Contractor shall run directly to or be specifically assigned to Owner on demand. The Contractor warrants that the installation of any and all materials and equipment shall be in strict accordance with manufacturer's requirements. In the event Owner seeks to enforce a claim based upon a manufacturer's warranty and should such manufacturer then fail to honor its warranty based, in whole or in part, on a claim of defective installation, Owner shall be entitled to enforce said warranty against Contractor in accordance with the terms of said warranty, except that a claim of defective installation shall not be a defense to any such warranty claim by Owner against Contractor.


The contract guarantee period shall be a period of one (1) year from final acceptance, as noted above, except in the cases of LED light fixtures, manufacturer's or other required extended warranties that extend for periods greater than one year from final acceptance, whereby the contract guarantee period shall extend to match for the items that are so warranted.

All LED light fixtures with the exception of obstruction lighting (AC 150/5345-43) must be warranted for a minimum of four(4) years after date of installation inclusive of all electronics.

The warranty for any work repaired or replaced during the guarantee period shall run for a period of one (1) year from the date of repair or replacement.


Contractor 3/17/23

Subscribed and sworn before me in the State (or Commonwealth) of Delaware, this
17th day of March, 2023.


Notary Public

04-30-2025
My Commission Expires



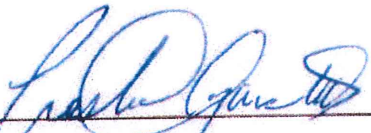
Lien and Claims Release

Expand GA Apron (Construction) - Phase IV

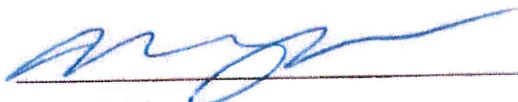
Delaware Coastal Airport
Georgetown, Delaware

AIP Project No. 3-10-0007-036-2020 (Design)
AIP Project No. 3-10-0007-039-2021 (Construction)

George & Lynch, Inc., 150 Lafferty Lane, Dover, Delaware 19901 (Contractor, Address) hereby certifies that the work for the above project has been completed in accordance with the Contract Documents, and that all previous progress payments received from the Owner on account of work performed under the Contract referred to has been applied by the undersigned to discharge in full all obligations of the undersigned incurred in connection with the work covered by prior requisitions for payment under said Contract and that all materials and equipment covered by the final requisition for payment are free and clear of all liens, claims, security interests and encumbrances. All persons, firms and partnerships who have furnished labor and/or material to date on said project have been paid.


Contractor 3/17/23

Subscribed and sworn before me in the State (or Commonwealth) of Delaware, this
17th day of MARCH, 2023.


Notary Public
04-30-2025
My Commission Expires



Tracking Payments to DBE Subcontractors	
Airport Name:	Delaware Coastal Airport (GED)
City, State:	Georgetown, Delaware
Sponsor:	Sussex County, Delaware
AIP Number:	3-10-0007-039-2021
Delta Proj Number:	20038
Prime Contractor Name:	George & Lynch, Inc.
Through Pay Request #:	FINAL

DBE Contractor (Name, Address, Phone #)	Contract Amount Payable to DBE Contractor	Date of Paid Invoice to DBE Contractor	Amount Paid
American Flag Inc. P.O. Box 614 115 Pine Tree Rd Townsend, Delaware 19734 (302) 743-6146	\$30,564.05	9/8/2022	\$3,596.05
		9/8/2022	\$8,424.15
		9/22/2022	\$5,040.06
		10/6/2022	\$3,717.95
		12/8/2022	\$5,677.45
		Total Paid to Date:	\$26,455.66

DBE Contractor (Name, Address, Phone #)	Contract Amount Payable to DBE Contractor	Date of Paid Invoice to DBE Contractor	Amount Paid
Atlantic Surveying & Mapping, LLC P.O. Box 247 26373 Lewes Georgetown Hwy Harbeson, Delaware 19951 (302) 684-2924	\$14,260.00	8/18/2022	\$4,537.00
		9/8/2022	\$4,057.50
		10/20/2022	\$2,210.55
		11/24/2022	\$1,210.00
		1/12/2023	\$850.00
		Total Paid to Date:	\$12,865.05

DBE Contractor (Name, Address, Phone #)	Contract Amount Payable to DBE Contractor	Date of Paid Invoice to DBE Contractor	Amount Paid
Curbs Etc. Inc. 3528 South Dupont Blvd Smyrna, Delaware 19977 (302) 653-5041	\$48,950.00	8/18/2022	\$6,986.20
		11/17/2022	\$21,372.80
		11/24/2022	\$14,100.27
		12/22/2022	\$19,441.00
		Total Paid to Date:	\$61,900.27

DBE Contractor (Name, Address, Phone #)	Contract Amount Payable to DBE Contractor	Date of Paid Invoice to DBE Contractor	Amount Paid
Janette Redrow, Ltd. P.O. Box 296 635 Cannery Ave Townsend, Delaware 19734 (302) 659-3534 <i>*Supplier - 60% toward goal</i>	\$47,196.72	7/7/2022	\$21,746.47
		7/14/2022	\$7,100.00
		7/14/2022	\$3,270.80
		7/14/2022	\$7,575.20
		7/14/2022	\$23,303.63
		Total Paid to Date:	\$62,996.10
60% Eligible Amount:	\$37,797.66		

SUMMARY				
(A) Total Contract Amount	(B) Total Contract Amount Payable toward DBE Goal	(C) Total Paid toward DBE Goal To Date	% DBE Accomplishment To Date (C divided by A)	% of Contract Target (B divided by A)
\$1,764,024.93	\$122,092.08	\$139,018.64	7.88%	6.92%

Final Project Report



Expand General Aviation Apron (Construct),
Phases III and IV
Delaware Coastal Airport

Prepared for: Sussex County, Delaware
Prepared by: Delta Airport Consultants, Inc.
July 2023

1. INTRODUCTION

The Expand General Aviation Apron project included the construction of a new general aviation aircraft parking apron located adjacent to and southeast of Taxiway "A" and bounded on the southwest edge by existing Taxiway "B" and the northeast edge by future Taxiway "L".

2. SUMMARY OF SIGNIFICANT DATES

Table 1. Significant Dates

DATE	EVENT
05/14/2020	Engineering Agreement – Design & Bidding
09/28/2020	Design Notice-to-Proceed (NTP)
10/09/2020	Pre-Design Meeting
02/26/2021	Final Review Plans and Specifications
03/21/2021	Advertise Plans and Specifications
03/23/2021	As-Bid Plans and Specifications forwarded to Owner and FAA
04/01/2021	Pre-Bid Meeting
04/09/2021	Addendum No. One (1)
04/19/2021	Addendum No. Two (2)
04/21/2021	Bid Opening
04/23/2021	Engineering Agreement – Construction Administration
04/29/2021	Bid Tabulations forwarded to Owner and FAA
07/28/2021	Grant Executed
08/25/2021	Owner Awards Construction Contract
03/18/2022	Released for Construction Plans and Specifications
04/19/2022	Pre-Construction Conference
05/31/2022	Notice-to-Proceed / Construction Started (CD 1)
08/22/2022	Change Order No. One (1) – Additional Ground Rods
10/13/2022	Stop Work / Construction Substantially Complete (CD 136)
12/16/2022	Final Inspection
12/22/2022	Change Order No. Two (2) – Final Quantity Adjustments
02/17/2023	Final Acceptance
04/07/2023	Final Record Drawings forwarded to Owner and FAA
07/31/2023	Final Project Report and Closeout Documents forwarded to Owner and FAA

3. SUMMARY OF IMPORTANT FIGURES

Contractor: George & Lynch, Inc.
150 Lafferty Lane, Dover, Delaware 19901

Original Contract Amount:	\$ 1,933,799.00
Total Change Order Amount:	\$ <u>(169,774.07)</u>
Final Contract Amount:	\$ 1,764,024.93

Actual Construction Cost:	\$ 1,764,024.93
Liquidated Damages Assessed:	\$ <u>0.00</u>
Final Construction Cost:	\$ 1,764,024.93

AIP Construction Cost:	\$ 1,764,024.93
------------------------	-----------------

Contract Time:	75 Calendar Days
Contract Time Extension:	<u>40 Calendar Days</u>
Total Contract Time:	115 Calendar Days

Contract Time Used:	136 Calendar Days
Contract Time Overrun:	21 Calendar Days

Contract Liquidated Damages:	\$ 4,000.00 per Calendar Day
Liquidated Damages Assessed (Note 1):	\$ 0.00

Note 1: The Owner determined there were no additional costs incurred and elected not to assess liquidated damages.

4. BIDDING

The bids were opened on April 21, 2021, and a summary of the Bid Tabulation is as follows:

BASE BID	
George & Lynch, Inc.	\$ 1,933,799.00
JJID, Inc.	\$ 2,059,000.00
Highway and Safety Services, Inc.	\$ 2,426,845.00
<i>Engineer's Estimate</i>	<i>\$ 1,786,910.00</i>

The Base Bid was awarded to George & Lynch, Inc. in the amount of One Million, Nine Hundred Thirty-Three Thousand, Seven Hundred Ninety-Nine Dollars and Zero Cents (\$1,933,799.00) with a Contract time of Seventy-five (75) Calendar Days.

5. DETAILED PROJECT DESCRIPTION

The project included the following major elements:

- Construction of GA Apron Expansion (approximately 9,000 SY)
- Installation of storm drainage and stormwater management systems
- Relocation, demolition, and expansion of edge lighting systems

6. SUMMARY OF CONTRACT MODIFICATIONS

Construction Contract: George & Lynch, Inc.

Bid Amount: \$ 1,933,799.00

Total Change Orders (2): \$ (169,774.07)

Final Amount: \$ 1,764,024.93

DESCRIPTION	DATE	REMARKS	AMOUNT
C.O. #1	08/22/2022	Ground Rods and Field Quantity Adjustments	\$ (268.00)
C.O. #2	12/22/2022	Additional Ground Rods and Final Installed Quantities	\$ (169,506.07)

Engineering Agreement: Delta Airport Consultants, Inc.

Original Amount: \$ 220,000.00

Amendment: \$ 0.00

Final Amount: \$ 220,000.00

7. FINAL INSPECTION

A final inspection for the Expand General Aviation Apron project at the Delaware Coastal Airport was conducted on December 16, 2022. The following outstanding items were noted during the inspection as warranty items to be addressed in Spring 2023 if necessary:

1. Seed and mulch all unestablished areas of the project to achieve acceptable stabilization in accordance with the Contract and Sussex Conservation District requirements.

All other punchlist items were completed as of February 17, 2023. The Closeout documents are included in **Appendix "A"**.

8. FINANCIAL SUMMARY

The final AIP cost for the project is as follows:

	<u>Grant Amount</u>	<u>Final Grant Cost</u>	<u>Percent</u>
AIP – 3-10-0007-038-2021	\$ 166,666.00	\$ 166,666.00	100.0%
AIP – 3-10-0007-039-2021	\$ 1,990,631.00	\$ 1,820,858.93	91.5%

A Project Cost Summary is included in **Appendix “B”**.

9. RECORD DRAWINGS

Record Drawings have been forwarded to the Sponsor and the Federal Aviation Administration. The Sponsor will retain a full-size paper copy and electronic (.pdf) files of the Record Drawings at the Airport.

10. DBE ACCOMPLISHMENTS

The DBE goal for the project was 5.8%. The final DBE Accomplishments are as follows:

PRIME	CONTRACT AMOUNT	AMOUNT PAID TO DBE FIRMS	PERCENT ACCOMPLISHED
George & Lynch, Inc.	\$ 1,933,799.00	\$ 139,018.64	7.19 %
Delta Airport Consultants, Inc.	\$ 220,000.00	\$ 7,262.00	3.30 %
Project Totals:	\$ 2,153,799.00	\$ 146,280.64	6.79 %

11. ENVIRONMENTAL REQUIREMENTS

A Documented CATEX was approved for this project on February 26, 2013. Temporary erosion and sediment control (E&SC) measures were included to prevent sediment laden runoff from exiting the project site and contaminating downstream land and water in accordance with the Delaware Erosion and Sediment Control Handbook and the Sussex Conservation District Acceptance on February 7, 2022.

During construction, biweekly and after-event inspections were conducted by a certified inspector to verify ESC measures were functioning as intended and no sediment laden runoff was leaving the project site. Any failures were reported to the Contractor and addressed immediately.

No other environmental provisions were required for the project.

12. PROJECT PHOTOS

Pre-construction and post-construction photos are included in **Appendix “C”**.

13. TESTING SUMMARY

Delta Airport Consultants, Inc. subcontracted Hillis-Carnes Engineering to complete material acceptance testing. Copies of all quality acceptance testing and associated reports for the materials summarized below are included in **Appendix "D"**.

→ **Specification:** P-152 Subgrade

- **Frequency:** Tests for moisture content and compaction will be taken at a minimum of 1,200 SY of subgrade.
- **Requirements:** The subgrade under areas to be paved and in areas outside the limits of pavement areas shall be compacted to a depth of 12 inches and to a density of not less than 98% of the maximum dry density as determined by ASTM D1557. The material to be compacted shall be within +/- 2% of optimum moisture content.
- **Summary of Results:** Areas where density tests during the course of the project that did not meet specification requirements were recompacted and retested until passing results were obtained. All final density tests met the specification requirements.

→ **Specification:** P-154 Subbase Course

- **Frequency:** Aggregate base course shall be accepted for density and thickness on an area basis. Two tests shall be made for density and thickness for each 1,200 SY.
- **Requirements:** Each area shall be accepted for density when the field density is at least 100% of the maximum density of laboratory specimens compacted and tested per ASTM D1557. The thickness of the base course shall be within +0 and -1/2 inch of the specified thickness as determined by depth tests taken by the Contractor in the presence of the Engineer for each area.
- **Summary of Results:** Areas where density tests during the course of the project that did not meet specification requirements were recompacted and retested until passing results were obtained. All final density tests met the specification requirements. All thickness tests met the specification requirements.

→ **Specification:** P-209 Crushed Aggregate Base Course

- **Frequency:** Crushed aggregate base course shall be accepted for density and thickness on an area basis. Two tests shall be made for density and thickness for each 1,200 SY.
- **Requirements:** Each area shall be accepted for density when the field density is at least 100% of the maximum density of laboratory specimens compacted and tested per ASTM D1557. The thickness of the base course shall be within +0 and -1/2 inch of the specified thickness as determined by depth tests taken by the Contractor in the presence of the Engineer for each area.

- **Summary of Results:** Areas where density tests during the course of the project that did not meet specification requirements were recompact and retested until passing results were obtained. All final density tests met the specification requirements. All thickness tests met the specification requirements.

→ **Specification:** P-401 Asphalt Surface Course

- **Frequency:** A standard lot will be equal to one day's production divided into approximately equal sublots of between 400 to 600 tons. When only one or two sublots are produced in a day's production, the sublots will be combined with the production lot from the previous or next day.
- **Requirements:** Acceptance will be based on the implementation of the Contractor Quality Control Program (CQCP) and the following characteristics of the asphalt and completed pavements: air voids, mat density, joint density, and grade. Acceptance for each lot of plant produced asphalt for mat density, joint density, and air voids will be based on the percentage of material within specification limits (PWL). If the PWL of the lot equals or exceeds 90%, the lot will be acceptable. The final finished surface of the pavement shall be surveyed to verify that the grade elevations and cross-sections shown on the plans do not deviate more than ½ inch vertically or 0.1 feet laterally.
- **Summary of Results:** Required material testing for all lots and sublots met specification requirements and were accepted. Full payment was made with no penalties.

GREEN.
YES. 11/4.

Casey Hall

From: notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE
<notifications@d3forms.com>
Sent: Monday, October 30, 2023 1:28 PM
To: Casey Hall
Subject: Sussex County DE - Council Grant Form: Form has been submitted

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Council Grant Form	
Legal Name of Agency/Organization	New Coverdale Outreach Mission Inc. ✓
Project Name	New Coverdale Outreach Mission Inc
Federal Tax ID	31-1695369 ✓
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	Yes
Organization's Mission	Feed the hungry , clothe the naked and educate the public
Address	22215 Coverdale rd
City	Seaford
State	DE

Zip Code	19973
Contact Person	Diane Lofland
Contact Phone Number	3026293036
Contact Email Address	keilijahjohnson2@gmail.com
Total Funding Request	2600
Has your organization received other grant funds from Sussex County Government in the last year?	Yes
If YES, how much was received in the last 12 months?	1100
Are you seeking other sources of funding other than Sussex County Council?	Yes
If YES, approximately what percentage of the project's funding does the Council grant represent?	85
Program Category (choose all that apply)	Health and Human Services
Primary Beneficiary Category	Low to Moderate Income

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program

1500

Scope

There are some underprivileged families that do not qualify for food assistance so we try to purchase turkeys, deer meat and other healthy foods.

Religious Components

No one is refused because of religion, nor is religion taught during any events.

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)

1,500.00

Description

electric

Amount

7,000.00

Description

building insurance

Amount

3,600.00

Description

alarm system

Amount

650.00

Description

purchasing school supplies

Amount

2,000.00

Description

telephone

Amount 1,200.00

Amount 0.00

TOTAL EXPENDITURES 14,450.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -12,950.00

Name of Organization New Coverdale Outreach Mission Inc

**Applicant/Authorized
Official** Diane Lofland

Date 10/30/2023

**Affidavit
Acknowledgement** Yes

Rizley
yes. 11/3.

Casey Hall

From: notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE <notifications@d3forms.com>
Sent: Monday, October 30, 2023 9:12 PM
To: Casey Hall
Subject: Sussex County DE - Council Grant Form: Form has been submitted

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Council Grant Form

Legal Name of Agency/Organization	Girl Scout Troop 333 Girl Scouts of the Chesapeake Bay Council, Inc. ✓
Project Name	Trip to Savannah, GA
Federal Tax ID	51-0064337 ✓
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	No
Organization's Mission	Girl Scouts of the Chesapeake Bay aims to help girls gain courage confidence and character. Girl Scout Troops 333 & 602 have been teaching our local Girl Scouts to give back through community service projects such as our kindness campaign spreading positivity and kindness during the holidays, laying wreaths for Wreaths Across America, multiple donation campaigns for local charities and more.
Address	36524 Main St

City Millsboro
State Delaware
Zip Code 19966
Contact Person Crystal Wheatley
Contact Title Troop leader
Contact Phone Number 3023816958
Contact Email Address cmwheatley928@yahoo.com

Total Funding Request

\$2500.00

Has your organization received other grant funds from Sussex County Government in the last year?

No

If YES, how much was received in the last 12 months?

N/A

Are you seeking other sources of funding other than Sussex County Council?

Yes

If YES, approximately what percentage of the project's funding does the Council grant represent?

16

**Program Category
(choose all that
apply)** Cultural
Educational

**Primary Beneficiary
Category** Youth

**Approximately the
total number of
Sussex County
Beneficiaries served,
or expected to be
served, annually by
this program**

12

Scope

Cadette, Senior and Ambassador level Girl Scouts from Girl Scout Troops 333 and 602 are traveling to Savannah Georgia in April 2024. These girls, many of whom have been Girl Scouts since kindergarten, have been giving back to their community for many years and are ready to visit the birthplace of Girl Scout Founder Juliette Gordon Low as well as the city where Girl Scouts of the USA began. We are raising funds and looking for sponsorships to help offset the cost of housing, food and activity expenses.

**Please enter the
current support your
organization receives
for this project (not
entire organization
revenue if not
applicable to request)**

3,000.00

Description Rental House

Amount 4,000.03

Description Food

Amount 5,000.00

Description	Activities
Amount	4,800.00
Description	Gas, Parking, Tolls
Amount	1,200.00
TOTAL EXPENDITURES	15,000.03
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	-12,000.03
Name of Organization	Girl Scout Troop 333
Applicant/Authorized Official	Crystal Wheatley
Date	10/30/2023
Affidavit Acknowledgement	Yes

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: November 9, 2023

RE: County Council Report for Ord. 23-09 relating to the Sewer Tier Map of the Comprehensive Plan in Relation to Tax Parcel 533-11.00-23.02.

On May 16, 2023, the County Council introduced an Ordinance to amend the Sewer Tier Map within the adopted 2018 Comprehensive Plan in relation to Tax Parcel 533-11.00-23.02.

The Planning & Zoning Commission held a Public Hearing on the application on October 12, 2023. At the meeting of October 12, 2023, the Planning & Zoning Commission recommended the adoption of the Ordinance for the reasons as outlined within the motion.

Following the Commission's recommendation to adopt the Ordinance, the Ordinance has been submitted to the State of Delaware's Preliminary Land Use Review process. The item is scheduled to be heard at the PLUS meeting on November 15, 2023. Following receipt of written PLUS comments from the State of Delaware, these will be reported to the County Council.

Below are the minutes from the Planning & Zoning Commission meeting of October 12, 2023.

Minutes of the October 12, 2023, Planning & Zoning Commission Meeting

ORD 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. The property is lying on the northeast side of Zion Church Road (Rt. 20), approximately 275 feet northwest of Deer Run Road (S.C.R. 388). 911 Address: N/A. Tax Map Parcel: 533-11.00-23.02. Zoning: AR-1 (Agricultural Residential).



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

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Concept Plan, a copy of the current Sewer Tier Map taken from the Comprehensive Plan, and a letter from the Sussex County Engineering Department. Mr. Whitehouse stated no public comment was received in relation to the Ordinance Application and stated PLUS comments had not been received, as it would not get sent to PLUS until it receives a recommendation from the Commission.

Mr. Robertson advised the Commission that typically, Mr. Hans Medlarz, Sussex County Engineer, performs the presentations for these types of Ordinance requests on behalf of the Sussex County Engineering Department, but unfortunately, he was unable to make the public hearing that evening; that historically, this type of Sewer Tier Map amendment would have been handled at the County Engineering level, but because it was placed within the Comprehensive Plan as a map, it is now required to come before the Planning & Zoning Commission, Sussex County Council, as well as PLUS. Mr. Robertson stated the request was to amend the Sewer Tier Map to bring the property into the appropriate Sewer Tier; that he did not want to diminish the role of the Commission, however, the particular request was strictly an engineering issue, and typically if the Engineering Department stated they were satisfied, the Commission and Council typically accept that approval.

The Commission found that Mr. David Hutt, Esq., with Morris James, LLP, spoke on behalf of the Ordinance Application. Mr. Hutt stated that currently the property is shown to be within a Sewer Tier 4 area, which is a "System Optional" area; that the current Application proposes a change to a Sewer Tier 2 area, which is a "Sussex County Planning Area"; that there was a previously approved Sewer Tier Map amendment, which was approved by County Council in June 2023, as Ordinance No. 2931; that this Ordinance was adopted for properties located on the western side of Zion Church Rd.; that it is an Engineering Department concern, however, it does involve Chapter 4, as it relates to areas within the Coastal Areas; that with Chapter 4 it states, that central sewer facilities are strongly encouraged within the Future Land Use Map designation of the Coastal Area; that the entire site is located within the Coastal Area, and with the approval provided in June 2023, this amendment request would simply fill in the location on the map.

Mr. Robertson stated the recommendation of the amendment to the Sewer Tier Map, will have no relation to the recommendation made for the following land use application for C/U 2389 AWH Properties, LLC, and the Ordinance would have not been introduced, had County Engineering not already signed off on it.

Mr. Whitehouse advised the Commission on the PLUS process for the Application.

The Commission found that no one wished to speak in support of or in opposition to the Ordinance Application.


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

Mr. Robertson stated he had prepared a motion and read the prepared motion into the record per the Commission's request.







Mr. Mears moved that the Commission recommend approval of ORD 23-09 to amend the Sussex County Sewer Tier Map of the Comprehensive Plan in relation to Tax Parcel 533-11.00-23.02, based on the recommendation from Sussex County Engineering, the coordination of Sussex County Engineering with the property owners, and the fact that this is an amendment to the Sewer Tier Map to reflect the sewer tiers on adjacent properties.

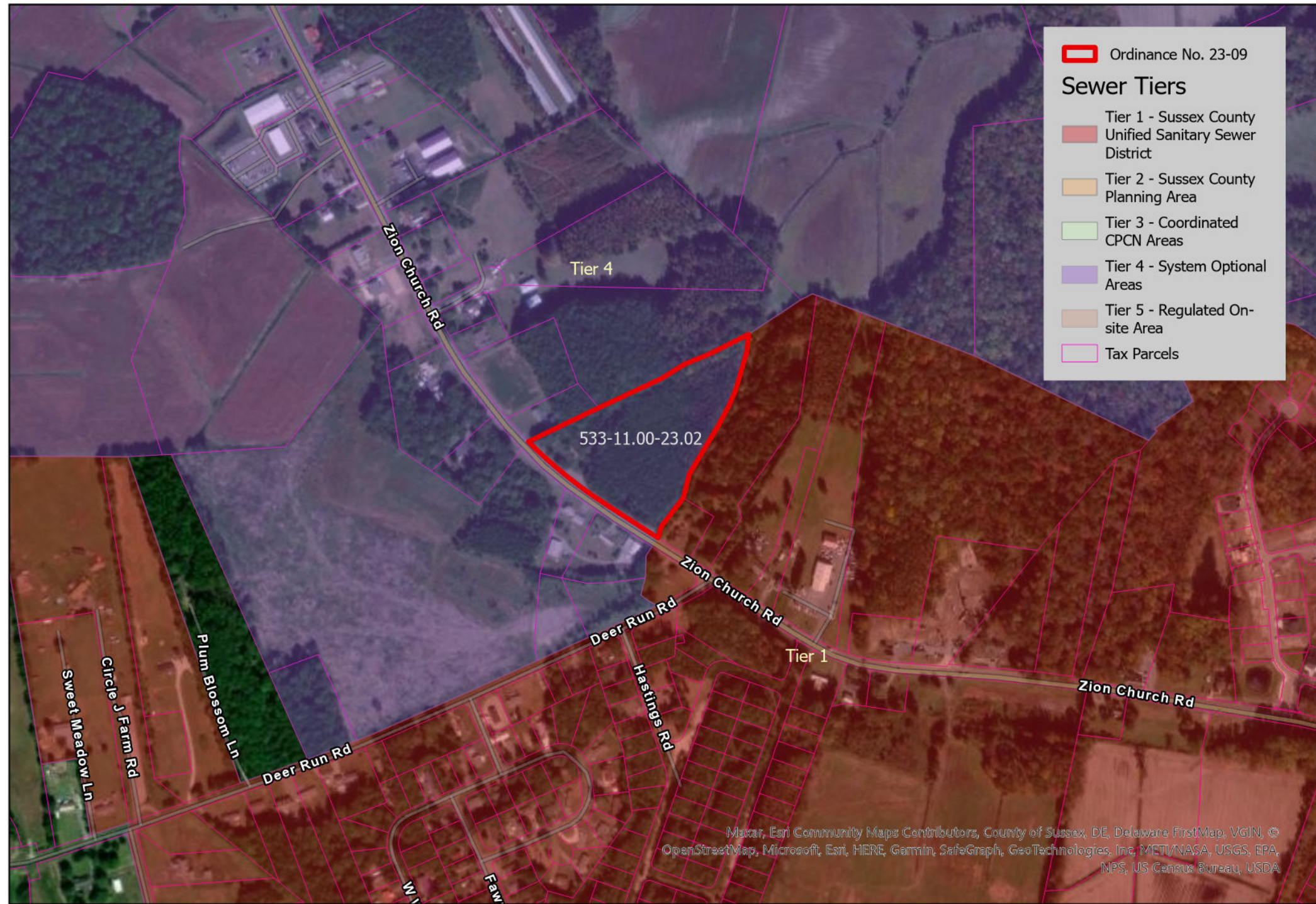
Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of ORD 23-09 to amend the Sussex County Sewer Tier Map of the Comprehensive Plan in relation to Tax Parcel No. 533-11.00-23.02 for the reasons stated in the motion. Motion carried 4-0.

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

 Ordinance No. 23-09

Sewer Tiers

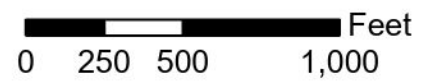
-  Tier 1 - Sussex County Unified Sanitary Sewer District
-  Tier 2 - Sussex County Planning Area
-  Tier 3 - Coordinated CPCN Areas
-  Tier 4 - System Optional Areas
-  Tier 5 - Regulated On-site Area
-  Tax Parcels



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Exhibit A
 Ordinance No. 23-09
 AWH Properties, LLC
 FLUM - 533-11.00-23.02 (Sewer Tier Amendment)

 Ordinance No. 23-09



ORDINANCE NO. _____

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 27th, 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.



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: November 9, 2023

RE: County Council Report for C/U 2389 filed on behalf of AWH Properties, LLC

The Planning and Zoning Department received an application (C/U 2389 filed on behalf of AWH Properties, LLC) for a commercial storage facility including RV/Boat storage, the storage of commercial vehicles, and an office, to be located at Tax Parcel 533-11.00-23.02. The property is located on the northeast side of Zion Church Road (Rt.20), approximately 275 feet northwest of Deer Run Road (SCR. 388). The parcel size is 6.95 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on October 12, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 8 reasons stated and subject to the 14 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 12, 2023, and October 26, 2023.

Minutes of the October 12, 2023, Planning & Zoning Commission Meeting

C/U 2389 AWH Properties, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMMERCIAL STORAGE FACILITY INCLUDING RV/BOAT STORAGE, THE STORAGE OF COMMERCIAL VEHICLES, AND AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.95 ACRES, MORE OR LESS. The property is lying on the northeast side of Zion Church Road



(Rt. 20), approximately 275 feet northwest of Deer Run Road (S.C.R. 388). 911 Address: N/A. Tax Map Parcel: 533-11.00-23.02.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Staff Analysis, the Applicant's Exhibit Booklet, a Jurisdiction Determination letter, a Soil Survey, the DelDOT Service Level Evaluation Response, and a letter received from the Sussex County Engineering Department - Utility Planning Division.

Mr. Whitehouse stated the original PLUS comments included in the record had been revised to correct a typo, and he submitted into the record the revised PLUS comments, which remain the same other than the correction of minor typographical errors.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP spoke on behalf of the owners and Applicants for C/U 2389 AWH Properties, LLC, and C/U 2392 Zion Church Ventures, LLC; that also present were Mr. Matt Williams and Mr. Brad Absher, Principals of both AWH Properties, LLC and Zion Church Ventures, LLC, and Mr. Jamie Sechler, P.E. with Davis Bowen & Friedel, Inc.

Mr. Hutt stated that the properties are located directly across from each other along Zion Church Rd.; that the property's ownership groups are the same, despite the different names of the entities; that the properties are located along Zion Church Rd. (Rt. 20), being a short distance north from Deer Run Rd; that C/U 2392 Zion Church Ventures, LLC would be the western project, and C/U 2389 AWH Properties, LLC would be the eastern project; that the Application for C/U 2389 AWH Properties, LLC is for RV, boat and self-storage, which is a permitted Conditional Use within the AR-1 (Agricultural Residential) District; that the proposed use for the western side, is a new form of self-storage; that this form of self-storage is a bit more elaborate, being where a person can buy an individual self-storage unit, that would be located within the proposed project area; that these projects are often referred to as a "Hobby Condo"; that within the surrounding area for both properties are Your Space Self Storage, European Coach Werkes, Inc., the recently approved GR-RPC known as Twin Cedars, and Hampton Park; that both properties are located within Investment Level 3, which is where the State anticipates growth in the near and long term future; that there is a portion of the western parcel, for C/U 2392 Zion Church Ventures, LLC, which is located within Investment Level 4, where the State does not anticipate growth; that the surrounding areas are generally located within Investment Levels 2 and 3; that in areas located within Investment Level 4 are areas where the State believes there may be wetlands; that neither of the Applications will involve public funds for their proposed uses; that these Applications will provide a service for the existing residents in the area to store their belongings; that according to the 2045 Future Land Use Map found in Sussex County's Comprehensive Plan both properties are located within the Coastal Area, which is a Growth Area; that properties located to the west of the sites are located within the Developing Area, which is also a Growth Area; that the permitted uses within the Coastal Area and the Developing Area are very similar; that mixed-use development is encouraged in those areas, to help provide convenient services that allow people to work close to home; that the Applications propose a mixed use for the area, to provide a service for individuals who live in communities or cluster subdivisions where they are not permitted to have an RV, boat or multiple vehicles; that these Applications will provide people a location to be able to do so; that he felt, this makes the proposed uses very consistent with the

Comprehensive Plan; that both properties are located with the AR-1 (Agricultural Residential) Zoning District; that there are a variety of zoning classifications along Zion Church Rd. consisting of C-1 (General Commercial), B-1 (Neighborhood Business), CR-1 (Commercial Residential), GR (General Residential) and HR-1 (High Density Residential); that Mr. Hutt shared a visualization of all the subdivisions located within a five mile radius of the properties, which reflected a large number of existing subdivisions within the surrounding area of the sites; that the surrounding area is a highly residential area of Sussex County, making the proposed uses a need for the area; that the objective for both Application's is to provide a location in the proximity to all the various subdivisions for those uses; that on the eastern side, for C/U 2389 AWH Properties, LLC, the primary use is for boat and RV storage, which would be stored outside; that on the western side, for C/U 2392 Zion Church Ventures, LLC, the proposed units would provide indoor, climate controlled storage space, where work could be performed, or vehicles could be washed; that the style of the two self-storage units is the biggest difference between the two Applications; that neither property is located within a flood plain, as they are both located within the Flood Zone X area; that Artesian Water Company holds the CPCN for both properties; that they have acquired a Willing & Able letter for C/U 2389 AWH Properties, LLC, however, they had not yet received the Willing & Able letter for C/U 2392 Zion Church Ventures, LLC; that both properties were right on the edge of the Sewer Tier Map; that in June 2023, through Ordinance No. 2931, the western property was brought into the Sewer Tier 2; that Ord 23-09 proposes to do the same on the eastern property; that there are no rare, threatened or endangered species likely to be located on either property; that there was a report from Watershed Eco submitted into both exhibit books; that there are no known archaeological sites or national registered, listed or eligible properties located on either site and there are no Wellhead Protection Areas or Excellent Water Recharge areas on either site.

Mr. Hutt stated that C/U 2389 AWH Properties, LLC, being the eastern property, was the subject site of the previously heard application for ORD 23-09; that this location is for the proposed use of boat and RV storage; that there would be a 2,500 sq. ft. self-storage building located to the northern end of the property; that there would be a 576 sq. ft. office located just in front of the self-storage building; that the entrance would be located off Zion Church Rd., which will align with the entrance to the western property; that one unlit sign is requested to be placed along Zion Church Rd., not to exceed 32 sq. ft.; that any security lighting would be downward screened, as to not shine onto Zion Church Rd. or onto neighboring properties; that the site was evaluated by Watershed Eco for the presence of wetlands; that a report, as well as, a Preliminary Jurisdictional Determination have been included within the project materials; that there was a recent Supreme Court decision, which reclassified wetlands and the definition of wetlands nationally; that there are two ditches that run along the boundaries of the property with a 50 ft. tax ditch right of way; that they had discussions with Mr. James McCulley and Mr. William Twupack, with Watershed Eco, who indicated the wetlands located to the rear of the property, may continue to be classified as wetlands as they have intermittent connections to the tax ditches; that there is a 25 ft. buffer proposed from the wetlands; that the Application does pre-date the adoption of the Resource Protection Buffer Ordinance; that per the DelDOT Service Level Evaluation Response, there would be a diminutive impact on traffic, which is the lowest impact a project could have, with less than 50 vehicle trips per day for the proposed use; that they have proposed a condition that no washing, cleaning or maintenance are permitted on the site and he requested to submit for the record proposed conditions and the Willing & Able letter for C/U 2389 AWH Properties, LLC at the end of his presentation.

Mr. Hutt stated that C/U 2392 Zion Church Ventures, LLC, being the western property, proposing 180,500 sq. ft. of warehouse or storage buildings; that reflected on the site plan are 19, 9,500 sq. ft. buildings, located to the rear of the property; that in addition to the proposed climate-controlled buildings, there is a proposed 2,500 sq. ft. building for a car wash, with a potential additional amenity of a clubhouse, pool and patio area, to be located just off Zion Church Rd.; that the additional amenities are optional; that the individual units are anticipated to be much like a “Man Cave; that a person would purchase a unit; that the person would then have, through that purchase, access to the car wash and amenities; that the frequent users of these types of units are people with hobbies, who desire to have their hobbies located within a climate controlled environment; that these are typically people who wish to store motorcycles, sports cars, classic cars, RVs, boats and other hobby type items; that many people who have these types of hobbies, also enjoy tinkering with those hobby items; that this proposed use will allow people to do that; that these units would allow people to work on their hobby items, and be around others who may share the same hobby interests; that this is the reasoning for the potential clubhouse, to allow for people a place to meet to discuss their similar hobbies; that the car wash amenity would not be an optional amenity and is absolutely proposed; that the car wash area would be an area for those who are a part of the condominium association to wash their vehicles; that to allow people the ability to work on their vehicles, there would be an oil recycling facility located on the site; that all work would be performed indoors; that each unit would have a regular sized door, as well as a large garage door; that because it is a condominium unit, there would be flexibility for personalization to the interior of the unit; that the entrance would be located off Zion Church Rd.; that Mr. Jamie Sechler did participate in a pre-submittal meeting with DelDOT for both properties; that there would be a fence around the entirety of the property, with a gated entrance; that a request for one unlit sign, not exceeding 32 sq. ft., would be located on Zion Church Rd.; that any security lighting would be downward screened, as to not shine onto neighboring properties or Zion Church Rd. or Deer Run Rd.; that the site was evaluated by Watershed Eco for the presence of wetlands; that a report, as well as, a Preliminary Jurisdictional Determination have been included within the project materials; that the wetland areas on the site do not have any connections, and are likely no longer regulated or jurisdictional wetlands; that this is still a determination which needs to be made; that in the case those areas are considered wetlands, a 25 ft. buffer is proposed from those areas; that in addition, there are two locations where there would be an impact to the wetlands; that per consultation with Watershed Eco, the indicated that a nationwide permit to fill the two locations, because they are less than .5 acre, would be readily available; that within the pre-submittal meetings with DelDOT the western entrance from Zion Church Rd. was required, and therefore would offer no other way to access the bulk of the property without crossing what may, or may not, be wetlands according to the Supreme Court; that according to the DelDOT Service Level Evaluation Response, the proposed use would have a negligible impact on traffic, indicating that the anticipated traffic would be less than 50 vehicles per hour and less than 500 vehicle trips per day; that he requested to submit the proposed findings and conditions for C/U 2392 Zion Church Ventures, LLC; that proposed Condition O states, *any wetlands will be delineated on the Final Site Plan, which Plan should also show a 25 ft. buffer from those wetlands or a permit from the U.S. Army Corp of Engineers for mitigate in specific locations shown on the Final Site Plan*; that proposed Condition B states, *no unit or area within the property can be used for housing or overnight accommodations*; that proposed Condition C states, *that the business may only use the area for climate controlled storage*, and goes on to state the business cannot use the units for a manufacturing or industrial uses or to be used as a mail center or mail drop off location; that business are welcome to use the units for

their self-storage needs, however they would not be permitted to conduct their business from the site; that another proposed condition states that there would be no outdoor storage; that there would be an RV sewer cleanout on the site, which would be located near the oil recycling area; that these areas would be shown on the Final Site Plan, and the car wash amenity is certain; that the other amenities would be dependent on the market, but request a place holder on the plan to prevent the Applicant from having to return for a future Conditional Use.

Mr. Hutt stated both Applications are requesting a Conditional Use; that Conditional Uses are uses that are public or semi-public in character, for the convenience and welfare of area residents, and to promote the orderly general convenience, orderly growth, and prosperity of the County; that the Commission will get to place conditions on any approval they provide for the Applications and with the specific proposed conditions, they feel both Applications will provide a valuable service to individuals who live within the area.

Mr. Mears questioned if the office would be for the use of the business or anticipated to be rented to another business, if the car wash and pool were for the exclusive use of the unit owners, and mentioned there may need to be a condition for quiet time, as there is potential for hot rods and motorcycles.

Mr. Hutt stated the office is intended to be used for the business; that it would be located outside of the gated fence as a place to sign up to purchase one of the units; that he confirmed that the car wash and pool would be only for the use of the condominium owners, and he believed the quiet time would be handled by the condominium restrictions and regulations.

Ms. Wingate questioned what the reasoning was for the proposed clubhouse and pool; that the types of people who would be drawn to use the storage units, typically already have a clubhouse and pool within their own community; that she questioned who will ensure that no one resides in any of the units, and she stated a lot of communities are beginning to offer storage facilities.

Mr. Hutt stated the Condominium Association would monitor and regulate through the monitored access gate; that the Association would be able to distinguish if a person has entered but has not left; that much like a residential condominium, there would be the management of the facilities and property as well; that the proposed clubhouse and pool are optional amenities; that he felt these amenities are offered for owners who would like to have access to those amenities, while not being home; that other option would be the unit owner may drop their significant other and/or children off at the pool while they work on their hobby in the unit, and the amenities offer owners a place to meet and socialize over common hobbies.

The Commission found that no one wished to speak in support of the Applications, and two people spoke with questions regarding the Applications.

Mr. James Frey questioned the Application. Mr. Frey questioned how a condominium could be associated with boat and RV storage and if each unit would have individual water and sewer service.

Mr. John Frey questioned the Application. Mr. Frey questioned the need for the clubhouse and pool; that he was confused regarding the wetlands, he questioned if the property could become something bigger or different in the future and requested that there be fencing, or a buffer placed between the project and his property should the Application be approved.

Mr. Hutt stated water and sewer would be available to each unit.

Chairman Wheatley questioned if someone could place a full bathroom in a unit.

Mr. Hutt stated yes, a unit owner would be permitted to place a full bath in the unit if they desired, and the Applicant would have no objection to some type of landscape buffer or fencing being placed along those boundaries of concern.

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

At the conclusion of the public hearings, the Commission discussed the Applications.

In relation to C/U 2389 AWH Properties, LLC. Motion by Mr. Mears to defer for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

C/U 2389 AWH Properties, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMMERCIAL STORAGE FACILITY INCLUDING RV/BOAT STORAGE, THE STORAGE OF COMMERCIAL VEHICLES, AND AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.95 ACRES, MORE OR LESS. The property is lying on the northeast side of Zion Church Road (Rt. 20), approximately 275 feet northwest of Deer Run Road (S.C.R. 388). 911 Address: N/A. Tax Map Parcel: 533-11.00-23.02.

The Commission discussed the Application which had been deferred since October 12, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2389 AWH Properties, LLC for a commercial storage facility including outdoor RV and boat storage and an office within the AR-1 District based upon the record made during the public hearing and for the following reasons:

1. The Applicant seeks approval for an RV and boat storage facility on approximately 6.95 acres.
2. The location is within the “Coastal Area” according to the Sussex County Comprehensive Plan. This type of use can be appropriate in this Area according to the Plan.
3. The site is in the vicinity of several areas that have developed with commercially and residential-zoned properties. This includes properties in the area with HR (High Density) Zoning, GR (General Residential) Zoning, AR-1 Zoning, and multiple business and commercial Zoning districts. This use is compatible with the surrounding uses and Zoning.

4. There is a need for the use proposed by the Applicant in this area of Sussex County. There are many nearby residential developments that prohibit the storage or parking of boats and RVs within them. This is an appropriate, convenient location that addresses the need for off-site storage of their boats and RVs.
5. The Applicant has stated that access will be limited and will be controlled by keycards. As a result, the use will not have a substantial impact on area roadways. DelDOT has also stated that the use will have a “Diminutive” impact on area roadways.
6. The project, with the conditions and stipulations imposed upon it, will not have an adverse impact on the neighboring properties or community.
7. The use is of a public or semi-public character and is desirable for the general convenience and welfare of residents in this area of Sussex County.
8. No parties appeared in opposition to this Application.
9. This recommendation for approval is subject to the following conditions:
 - A. The use shall be limited to the storage of boats and RVs, a 2,500-square-foot storage building, and a 576-square-foot office building. No other storage of vehicles or equipment shall occur on the site.
 - B. The facility shall only be accessible from 6:00 a.m. until dusk and access to the site shall be locked to prevent after-hours access.
 - C. The perimeter of the site shall be fenced with a 6-foot-high fence that screens the property from neighboring and adjacent properties and roadways. In addition, there shall be a landscaped berm along the property’s road frontage. The details of this berm shall be shown on the Final Site Plan.
 - D. No sales or maintenance of boats or RVs shall occur on the site.
 - E. All security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
 - F. Any wetlands shall be delineated on the Final Site Plan and there shall be a 25-foot buffer from those wetlands.
 - G. The site will be served with public sanitary sewer via a connection to the Sussex County regional wastewater transmission, treatment, and disposal Unified District facilities. The Applicant shall comply with all requirements and specifications of the County Engineering Department.
 - H. The Final Site Plan shall clearly show all areas for parking and these areas shall be clearly marked on the property itself. There shall be no parking within the Property’s setbacks.
 - I. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
 - J. The use shall be subject to all DelDOT requirements regarding the entrance and roadway improvements necessary to provide access to the site.
 - K. No hazardous materials or fuel shall be stored on the property other than what may be in the tanks of boats and RVs located on the site.

- L. One lighted sign shall be permitted on the site. It shall not exceed 32 square feet in size.
- M. No junked or unregistered boats, boat trailers, or RVs shall be stored on the site.
- N. The final site plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2389 AWH Properties, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

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: October 12th, 2023

Application: CU 2389

Applicant: AWH Properties, LLC
107 W. Market Street
Georgetown, DE 19947

Owner: AWH Properties, LLC
107 W. Market Street
Georgetown, DE 19947

Site Location: Located on the northeast side of Zion Church Road (Rt. 20), approximately 275 feet northwest of Deer Run Road (S.C.R. 388).

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

Proposed Use: Commercial Storage Facility to include RV/Boat Storage, Storage of Commercial Vehicles, and an Office

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Roxana Fire Co.

Sewer: Sussex County

Water: Artesian Water Company, Inc.

Site Area: 6.95

Tax Map ID.: 533-11.00-23.02



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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Mr. Michael Lowrey, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: February 2, 2023
RE: Staff Analysis for C/U 2389 AWH Properties, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application C/U 2389 AWH Properties, LLC to be reviewed during the October 12th, 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 533-11.00-23.02 to allow for a commercial storage facility to include RV/Boat Storage, storage of commercial vehicles, and an office. The Plan includes covered and uncovered RV/Boat Storage, a 2,500 square foot commercial storage building, and a 576 square foot office structure. The property is located on the northeast side of Zion Church Road (Rt. 20), approximately 275 feet northwest of Deer Run Road (S.C.R. 388). The parcel is comprised of a total of 6.95 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 (FLUM) 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 parcels have a Growth Area designation of "Coastal Area." The parcels adjacent to the subject property landward and all along Indian River Bay also have the Future Land Use Map (FLUM) designation of "Coastal Area."

Coastal Areas are growth areas that are among "the most desirable locations in Sussex County for new housing" and contain "ecologically important and sensitive characteristics." The Plan also notes that these areas have "significant impact upon water quality within the adjacent bays and inlets" (2018 Sussex County Comprehensive Plan, 4-15). The Plan includes guidelines for growth in Coastal Areas noting "retail and office uses are appropriate but larger shopping centers and office parks should be confined to selected locations with access along arterial roads" and notes that "commercial, office and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home" (2018 Sussex County Comprehensive Plan, 4-15).

Under the guidelines in the Plan, the proposed Conditional Use to permit commercial storage including the storage of RVs, boats, and commercial vehicles could be seen as appropriate at this site.

Zoning Information



The subject parcels are zoned Agricultural Residential (AR-1) District with the adjacent properties also zoned Agricultural Residential (AR-1). The extended Zion Church Road corridor east and west of the parcel also include parcels in the General Residential (GR), General Commercial (C-1), Medium Commercial (C-2), Service/Limited Manufacturing (C-5), Commercial Residential (CR-1), and Neighborhood Business (B-1) Zoning Districts.

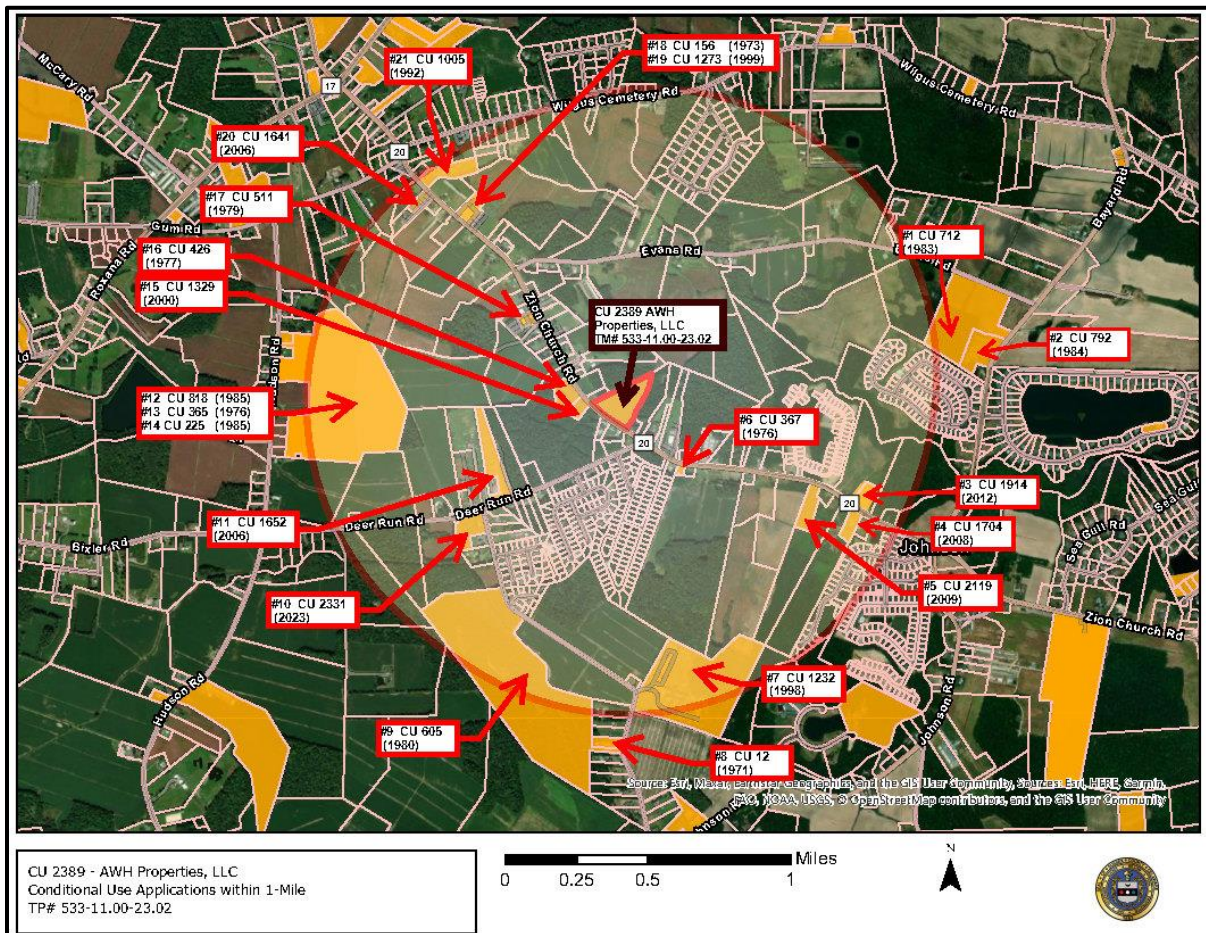
Conditional Use Applications within the Vicinity of the Subject Site
 (Within a 1-mile radius of the subject site)

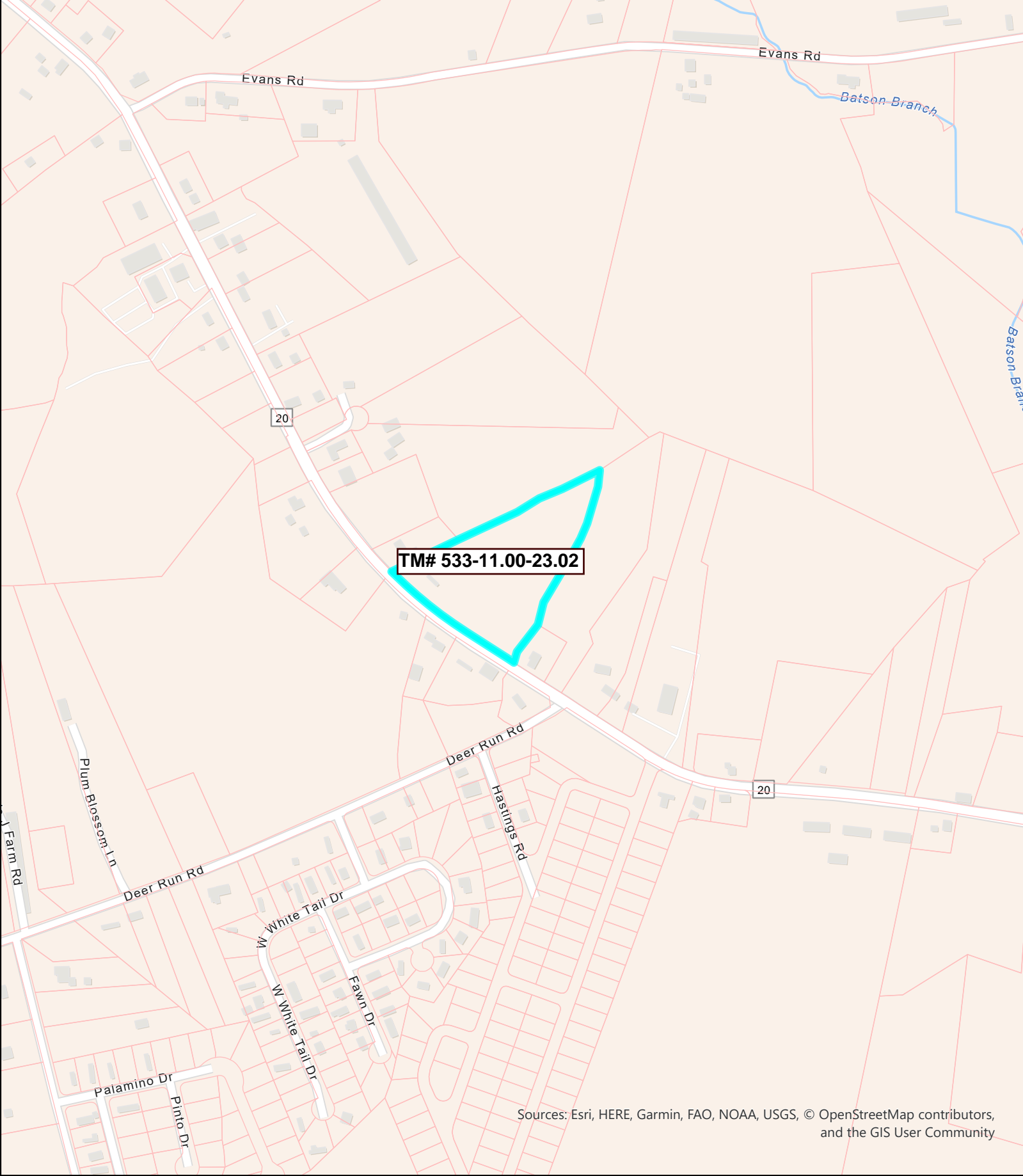
Conditional Use Applications							
(Within a 0.5-mile radius of the subject site)							
Item # on Attached Map	Application Number	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
#1	<u>CU 712</u>	Harvey C. Becker, etux.	AR-1	Manufactured Home Park	Denied	5/17/1983	N/A
#2	<u>CU 792</u>	Peter J. Berntsen,	AR-1	Appliance Repair & Sales	Approved	5/8/1984	N/A
#3	<u>CU 1914</u>	Steven Krebs & Barbara Krebs	B-1	Barbeque Prep and Sales	Approved	1/17/2012	Ord. No. 2233
#4	<u>CU 1704</u>	PMP Associates	B-1	Health Care & Medical Offices	Approved	1/8/2008	Ord. No. 1950
#5	<u>CU 1812</u>	Roxana Preferred Properties	GR	Retail & Commercial w/20 Apartment Units	Withdrawn	12/7/2009	N/A
#6	<u>CU 367</u>	George P. Fountain	C-1	Automobile & Truck Repair Shop	Approved	8/10/1976	N/A

#7	<u>CU 1232</u>	William D. & Karen L. Simpson.	GR	Recreational Vehicle Park/Campground & Boat Storage	Approved	3/17/1998	Ord. No. 1222
#8	<u>CU 12</u>	Fenwick Properties	AR-1	Manufactured Home Park	Approved	7/20/1971	Ord. No. 808
#9	<u>CU 605</u>	Cee Bee, Inc.	AR-1	Borrow Pit	Approved	11/25/1980	N/A
#10	<u>CU 2331</u>	Sweet Meadows Riding Academy	AR-1	Horse Riding Academy w. Overnight Accommodations	Approved	1/10/2023	N/A
#11	<u>CU 1652</u>	Ken Gillam & Joan Gillam	AR-1	Boat Storage	Withdrawn	6/5/2006	N/A
#12	<u>CU 818</u>	Cygnnet Construction Corp.	AR-1	Borrow Pit Expansion	Approved	5/7/1985	Ord. No. 246
#13	<u>CU 365</u>	Gladys Swann	AR-1	Manufactured Home Park	Denied	9/7/1976	N/A
#14	<u>CU 517</u>	Cygnnet Construction Corp	AR-1	Borrow Pit	Approved	03/17/81	N/A
#15	<u>CU 1329</u>	John & Mary Frey	AR-1	Used Car Sales	Denied	4/11/2000	N/A
#16	<u>CU 426</u>	Ronald Chandler	AR-1	Repair & Service All Type of Motor Vehicles	Approved	8/2/1977	N/A
#17	<u>CU 511</u>	Charles & Holly Carmack	C-1	Drywall Contractor, Building Material Sales & Warehouse of Building Materials	Approved	1/16/1979	N/A

#18	<u>CU 156</u>	Roxana Volunteer Fire Co	AR-1	Equipment Storage	Approved	8/21/1973	N/A
#19	<u>CU 1273</u>	Roxana Vol. Fire Company	AR-1	Expansion Of Fire Station	Approved	3/30/1999	Ord. No. 1296
#20	<u>CU 1641</u>	Carroll & Diane Brasure	AR-1	Service Vehicles Parking	Approved	3/28/2006	Ord. No. 1838
#21	<u>CU 1005</u>	James E. Harrington	AR-1	Boat & Trailer Storage and Farm Equipment Repair	Approved	7/14/1992	Ord. No. 843

Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use to allow for the construction of a commercial storage facility to include RV/Boat Storage and an office at this site, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

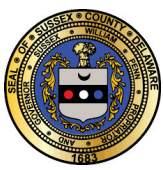
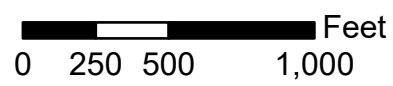




TM# 533-11.00-23.02

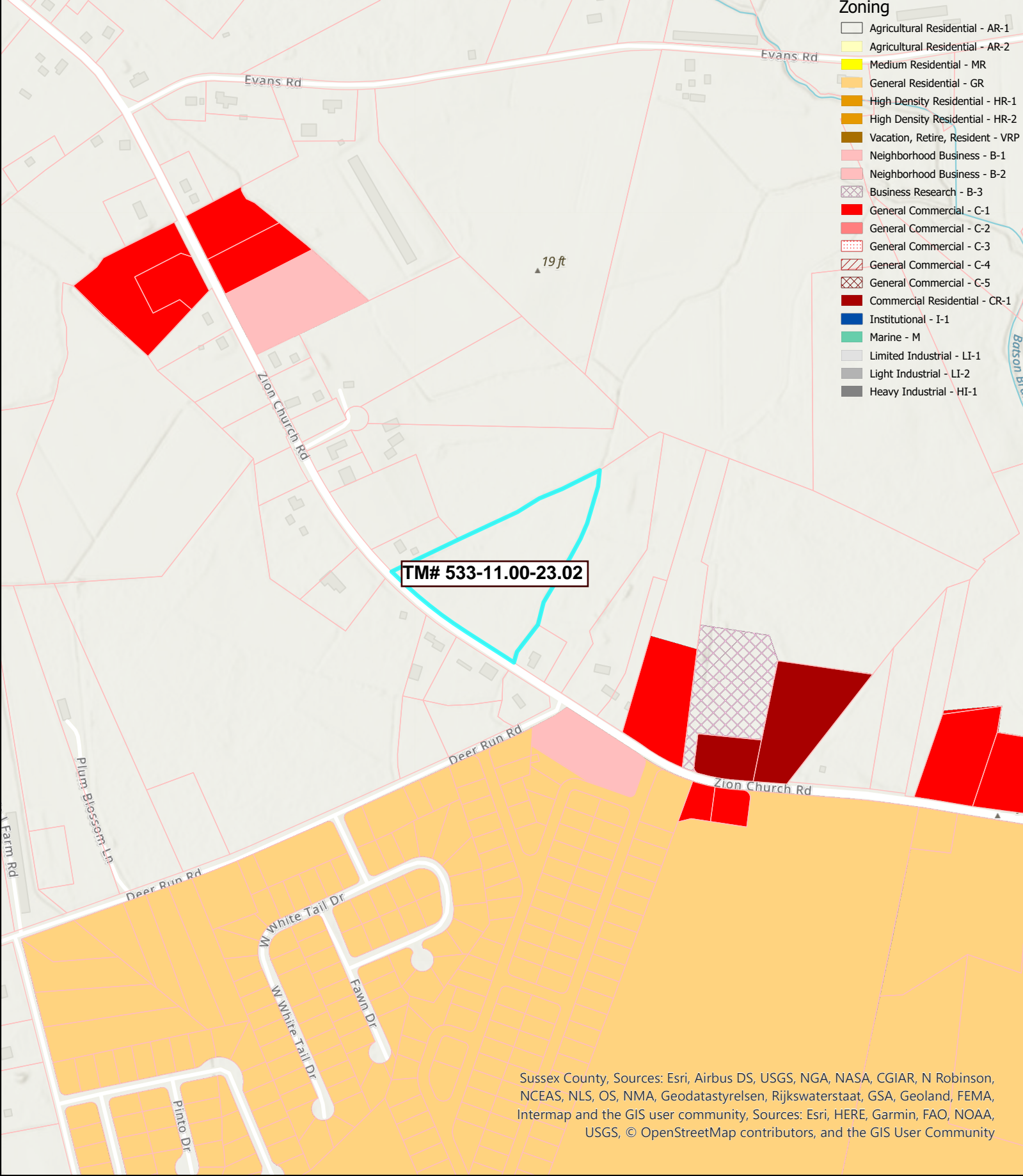
Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

CU 2389 - AWH Properties, LLC
Street Map
TP# 533-11.00-23.02



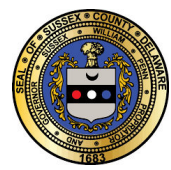
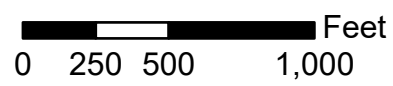
Zoning

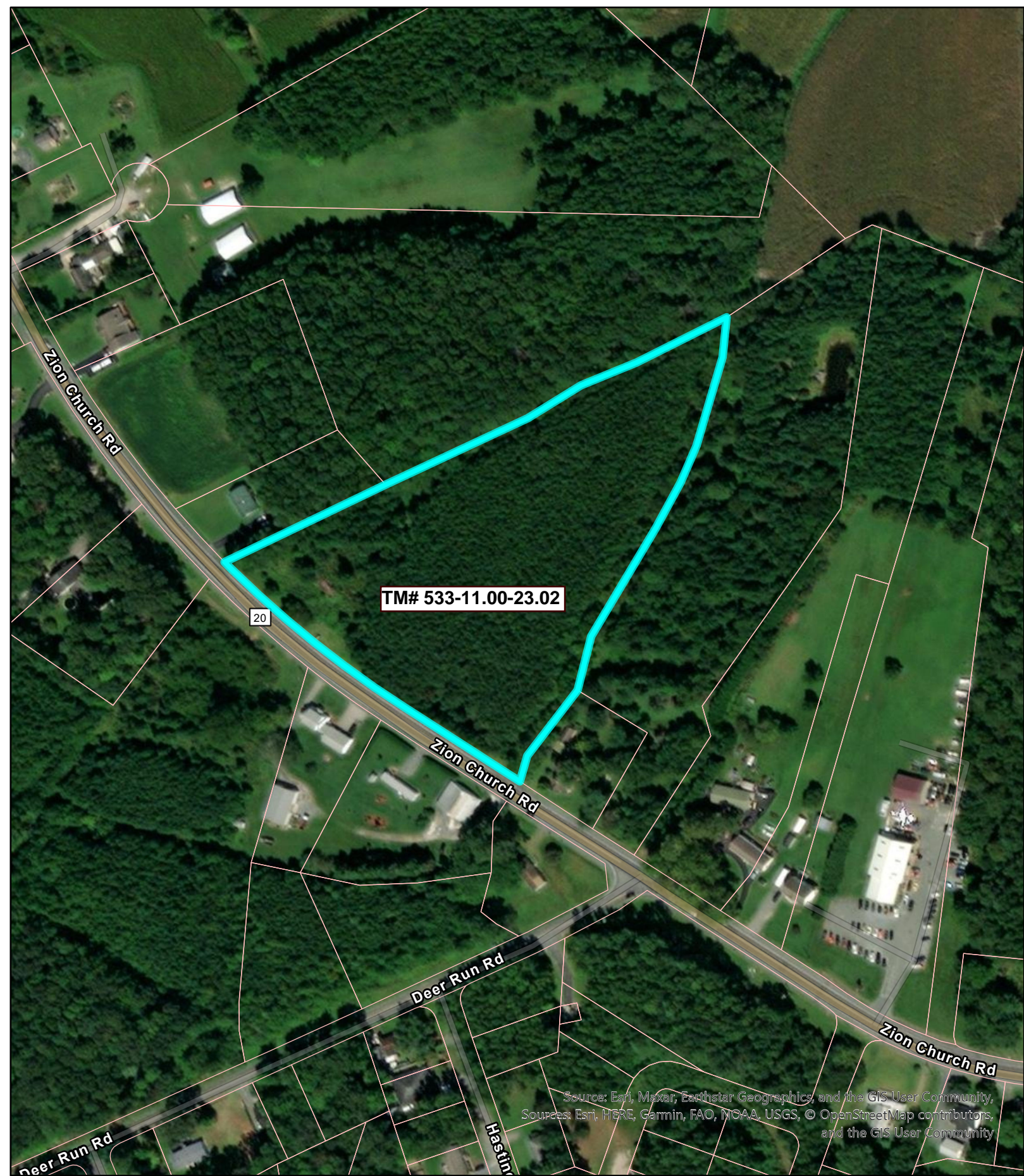
- Agricultural Residential - AR-1
- Agricultural Residential - AR-2
- Medium Residential - MR
- General Residential - GR
- High Density Residential - HR-1
- High Density Residential - HR-2
- Vacation, Retire, Resident - VRP
- Neighborhood Business - B-1
- Neighborhood Business - B-2
- Business Research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



Sussex County, Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodastystyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community, Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

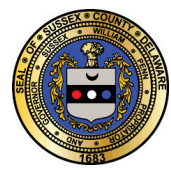
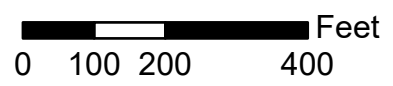
CU 2389 - AWH Properties, LLC
Zoning Map
TP# 533-11.00-23.02





Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community,
Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors,
and the GIS User Community

CU 2389 - AWH Properties, LLC
Aerial Map
TP# 533-11.00-23.02



Introduced: 5/16/23

Council District 4: Mr. Hudson
Tax I.D. No.: 533-11.00-23.02
911 Addresses: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMMERCIAL STORAGE FACILITY INCLUDING RV/BOAT STORAGE, THE STORAGE OF COMMERCIAL VEHICLES, AND AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.95 ACRES, MORE OR LESS

WHEREAS, on the 11th of July 2022, a conditional use application, denominated Conditional Use No. 2389 was filed on behalf of AWH Properties, 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. 2389 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. 2389 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the northeast side of Zion Church Road (Rt. 20), approximately 275 feet northwest of Deer Run Road (S.C.R. 388), and being more particularly described in the attached legal description prepared by Davis , Bowen, & Friedel, Inc., containing 6.95 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: November 9, 2023

RE: County Council Report for C/U 2392 filed on behalf of Zion Church Ventures, LLC

The Planning and Zoning Department received an application (C/U 2392 filed on behalf of Zion Church Ventures, LLC) for storage/warehouse buildings, a car wash & clubhouse with swimming pool, to be located at Tax Parcels 533-11.00-23.00, 23.03 & 23.04. The property is located at 36054 Zion Church Road, Frankford. The parcel size is 31.83 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on October 12, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 8 reasons stated and subject to the 19 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 12, 2023, and October 26, 2023.

Minutes of the October 12, 2023, Planning & Zoning Commission Meeting

Chairman Wheatley stated the following public hearings, C/U 2389 AWH Properties, LLC and C/U 2392 Zion Church Ventures, LLC, would be combined into one presentation per the Applicant's request.

C/U 2392 Zion Church Ventures, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE/WAREHOUSE BUILDINGS, A CAR WASH, & CLUBHOUSE WITH SWIMMING POOL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 31.83 ACRES, MORE OR LESS.



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

The properties are lying on the southwest side of Zion Church Road (Route 20), approximately 605 feet northwest of Deer Run Road (S.C.R. 388), and the north side of Deer Run Road (S.C.R. 388), approximately 159 feet southwest of Zion Church Road (Route 20). 911 Address: 36054 Zion Church Road, Frankford. Tax Map Parcel: 533-11.00-23.00, 23.03 & 23.04.

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, the PLUS response, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse stated zero comments had been received for the Application.

Mr. Whitehouse stated the original PLUS comments included in the record had been revised to correct a typo, and he submitted into the record the revised PLUS comments, which remain the same other than the correction of minor typographical errors.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP spoke on behalf of the owners and Applicants for C/U 2389 AWH Properties, LLC, and C/U 2392 Zion Church Ventures, LLC; that also present were Mr. Matt Williams and Mr. Brad Absher, Principals of both AWH Properties, LLC and Zion Church Ventures, LLC, and Mr. Jamie Sechler, P.E. with Davis Bowen & Friedel, Inc.

Mr. Hutt stated that the properties are located directly across from each other along Zion Church Rd.; that the property's ownership groups are the same, despite the different names of the entities; that the properties are located along Zion Church Rd. (Rt. 20), being a short distance north from Deer Run Rd; that C/U 2392 Zion Church Ventures, LLC would be the western project, and C/U 2389 AWH Properties, LLC would be the eastern project; that the Application for C/U 2389 AWH Properties, LLC is for RV, boat and self-storage, which is a permitted Conditional Use within the AR-1 (Agricultural Residential) District; that the proposed use for the western side, is a new form of self-storage; that this form of self-storage is a bit more elaborate, being where a person can buy an individual self-storage unit, that would be located within the proposed project area; that these projects are often referred to as a "Hobby Condo"; that within the surrounding area for both properties are Your Space Self Storage, European Coach Werkes, Inc., the recently approved GR-RPC known as Twin Cedars, and Hampton Park; that both properties are located within Investment Level 3, which is where the State anticipates growth in the near and long term future; that there is a portion of the western parcel, for C/U 2392 Zion Church Ventures, LLC, which is located within Investment Level 4, where the State does not anticipate growth; that the surrounding areas are generally located within Investment Levels 2 and 3; that in areas located within Investment Level 4 are areas where the State believes there may be wetlands; that neither of the Applications will involve public funds for their proposed uses; that these Applications will provide a service for the existing residents in the area to store their belongings; that according to the 2045 Future Land Use Map found in Sussex County's Comprehensive Plan both properties are located within the Coastal Area, which is a Growth Area; that properties located to the west of the sites are located within the Developing Area, which is also a Growth Area; that the permitted uses within the Coastal Area and the Developing Area are very similar; that mixed-use development is encouraged in those areas, to help provide convenient services that allow people to work close to home; that the Applications propose a mixed use for the area, to provide a service for individuals who live in communities or cluster subdivisions where they are not

permitted to have an RV, boat or multiple vehicles; that these Applications will provide people a location to be able to do so; that he felt, this makes the proposed uses very consistent with the Comprehensive Plan; that both properties are located with the AR-1 (Agricultural Residential) Zoning District; that there are a variety of zoning classifications along Zion Church Rd. consisting of C-1 (General Commercial), B-1 (Neighborhood Business), CR-1 (Commercial Residential), GR (General Residential) and HR-1 (High Density Residential); that Mr. Hutt shared a visualization of all the subdivisions located within a five mile radius of the properties, which reflected a large number of existing subdivisions within the surrounding area of the sites; that the surrounding area is a highly residential area of Sussex County, making the proposed uses a need for the area; that the objective for both Application's is to provide a location in the proximity to all the various subdivisions for those uses; that on the eastern side, for C/U 2389 AWH Properties, LLC, the primary use is for boat and RV storage, which would be stored outside; that on the western side, for C/U 2392 Zion Church Ventures, LLC, the proposed units would provide indoor, climate controlled storage space, where work could be performed, or vehicles could be washed; that the style of the two self-storage units is the biggest difference between the two Applications; that neither property is located within a flood plain, as they are both located within the Flood Zone X area; that Artesian Water Company holds the CPCN for both properties; that they have acquired a Willing & Able letter for C/U 2389 AWH Properties, LLC, however, they had not yet received the Willing & Able letter for C/U 2392 Zion Church Ventures, LLC; that both properties were right on the edge of the Sewer Tier Map; that in June 2023, through Ordinance No. 2931, the western property was brought into the Sewer Tier 2; that Ord 23-09 proposes to do the same on the eastern property; that there are no rare, threatened or endangered species likely to be located on either property; that there was a report from Watershed Eco submitted into both exhibit books; that there are no known archaeological sites or national registered, listed or eligible properties located on either site and there are no Wellhead Protection Areas or Excellent Water Recharge areas on either site.

Mr. Hutt stated that C/U 2389 AWH Properties, LLC, being the eastern property, was the subject site of the previously heard application for ORD 23-09; that this location is for the proposed use of boat and RV storage; that there would be a 2,500 sq. ft. self-storage building located to the northern end of the property; that there would be a 576 sq. ft. office located just in front of the self-storage building; that the entrance would be located off Zion Church Rd., which will align with the entrance to the western property; that one unlit sign is requested to be placed along Zion Church Rd., not to exceed 32 sq. ft.; that any security lighting would be downward screened, as to not shine onto Zion Church Rd. or onto neighboring properties; that the site was evaluated by Watershed Eco for the presence of wetlands; that a report, as well as, a Preliminary Jurisdictional Determination have been included within the project materials; that there was a recent Supreme Court decision, which reclassified wetlands and the definition of wetlands nationally; that there are two ditches that run along the boundaries of the property with a 50 ft. tax ditch right of way; that they had discussions with Mr. James McCulley and Mr. William Twupack, with Watershed Eco, who indicated the wetlands located to the rear of the property, may continue to be classified as wetlands as they have intermittent connections to the tax ditches; that there is a 25 ft. buffer proposed from the wetlands; that the Application does pre-date the adoption of the Resource Protection Buffer Ordinance; that per the DelDOT Service Level Evaluation Response, there would be a diminutive impact on traffic, which is the lowest impact a project could have, with less than 50 vehicle trips per day for the proposed use; that they have proposed a condition that no washing, cleaning or maintenance are permitted on the

site and he requested to submit for the record proposed conditions and the Willing & Able letter for C/U 2389 AWH Properties, LLC at the end of his presentation.

Mr. Hutt stated that C/U 2392 Zion Church Ventures, LLC, being the western property, proposing 180,500 sq. ft. of warehouse or storage buildings; that reflected on the site plan are 19, 9,500 sq. ft. buildings, located to the rear of the property; that in addition to the proposed climate-controlled buildings, there is a proposed 2,500 sq. ft. building for a car wash, with a potential additional amenity of a clubhouse, pool and patio area, to be located just off Zion Church Rd.; that the additional amenities are optional; that the individual units are anticipated to be much like a “Man Cave; that a person would purchase a unit; that the person would then have, through that purchase, access to the car wash and amenities; that the frequent users of these types of units are people with hobbies, who desire to have their hobbies located within a climate controlled environment; that these are typically people who wish to store motorcycles, sports cars, classic cars, RVs, boats and other hobby type items; that many people who have these types of hobbies, also enjoy tinkering with those hobby items; that this proposed use will allow people to do that; that these units would allow people to work on their hobby items, and be around others who may share the same hobby interests; that this is the reasoning for the potential clubhouse, to allow for people a place to meet to discuss their similar hobbies; that the car wash amenity would not be an optional amenity and is absolutely proposed; that the car wash area would be an area for those who are a part of the condominium association to wash their vehicles; that to allow people the ability to work on their vehicles, there would be an oil recycling facility located on the site; that all work would be performed indoors; that each unit would have a regular sized door, as well as a large garage door; that because it is a condominium unit, there would be flexibility for personalization to the interior of the unit; that the entrance would be located off Zion Church Rd.; that Mr. Jamie Sechler did participate in a pre-submittal meeting with DelDOT for both properties; that there would be a fence around the entirety of the property, with a gated entrance; that a request for one unlit sign, not exceeding 32 sq. ft., would be located on Zion Church Rd.; that any security lighting would be downward screened, as to not shine onto neighboring properties or Zion Church Rd. or Deer Run Rd.; that the site was evaluated by Watershed Eco for the presence of wetlands; that a report, as well as, a Preliminary Jurisdictional Determination have been included within the project materials; that the wetland areas on the site do not have any connections, and are likely no longer regulated or jurisdictional wetlands; that this is still a determination which needs to be made; that in the case those areas are considered wetlands, a 25 ft. buffer is proposed from those areas; that in addition, there are two locations where there would be an impact to the wetlands; that per consultation with Watershed Eco, the indicated that a nationwide permit to fill the two locations, because they are less than .5 acre, would be readily available; that within the pre-submittal meetings with DelDOT the western entrance from Zion Church Rd. was required, and therefore would offer no other way to access the bulk of the property without crossing what may, or may not, be wetlands according to the Supreme Court; that according to the DelDOT Service Level Evaluation Response, the proposed use would have a negligible impact on traffic, indicating that the anticipated traffic would be less than 50 vehicles per hour and less than 500 vehicle trips per day; that he requested to submit the proposed findings and conditions for C/U 2392 Zion Church Ventures, LLC; that proposed Condition O states, *any wetlands will be delineated on the Final Site Plan, which Plan should also show a 25 ft. buffer from those wetlands or a permit from the U.S. Army Corp of Engineers for mitigate in specific locations shown on the Final Site Plan*; that proposed Condition B states, *no unit or area within the property can be used for housing or overnight accommodations*; that proposed Condition C states, *that the business may only use the area for climate controlled*

storage, and goes on to state the business cannot use the units for a manufacturing or industrial uses or to be used as a mail center or mail drop off location; that business are welcome to use the units for their self-storage needs, however they would not be permitted to conduct their business from the site; that another proposed condition states that there would be no outdoor storage; that there would an RV sewer cleanout on the site, which would be located near the oil recycling area; that these areas would be shown on the Final Site Plan, and the car wash amenity is certain; that the other amenities would be dependent on the market, but request a place holder on the plan to prevent the Applicant from having to return for a future Conditional Use.

Mr. Hutt stated both Applications are requesting a Conditional Use; that Conditional Uses are uses that are public or semi-public in character, for the convenience and welfare of area residents, and to promote the orderly general convenience, orderly growth, and prosperity of the County; that the Commission will get to place conditions on any approval they provide for the Applications and with the specific proposed conditions, they feel both Applications will provide a valuable service to individuals who live within the area.

Mr. Mears questioned if the office would be for the use of the business or anticipated to be rented to another business, if the car wash and pool were for the exclusive use of the unit owners, and mentioned there may need to be a condition for quiet time, as there is potential for hot rods and motorcycles.

Mr. Hutt stated the office is intended to be used for the business; that it would be located outside of the gated fence as a place to sign up to purchase one of the units; that he confirmed that the car wash and pool would be only for the use of the condominium owners, and he believed the quiet time would be handle by the condominium restrictions and regulations.

Ms. Wingate questioned what the reasoning was for the proposed clubhouse and pool; that the types of people who would be drawn to use the storage units, typically already have a clubhouse and pool within their own community; that she questioned who will ensure that no one resides in any of the units, and she stated a lot of communities are beginning to offer storage facilities.

Mr. Hutt stated the Condominium Association would monitor and regulate through the monitored access gate; that the Association would be able to distinguish if a person has entered but has not left; that much like a residential condominium, there would be the management of the facilities and property as well; that the proposed clubhouse and pool are optional amenities; that he felt these amenities are offered for owners who would like to have access to those amenities, while not being home; that other option would be the unit owner may drop their significant other and/or children off at the pool while they work on their hobby in the unit, and the amenities offer owners a place to meet and socialize over common hobbies.

The Commission found that no one wished to speak in support of the Applications, and two people spoke with questions regarding the Applications.

Mr. James Frey questioned the Application. Mr. Frey questioned how a condominium could be associated with boat and RV storage and if each unit would have individual water and sewer service.

Mr. John Frey questioned the Application. Mr. Frey questioned the need for the clubhouse and pool; that he was confused regarding the wetlands, he questioned if the property could become something bigger or different in the future and requested that there be fencing, or a buffer placed between the project and his property should the Application be approved.

Mr. Hutt stated water and sewer would be available to each unit.

Chairman Wheatley questioned if someone could place a full bathroom in a unit.

Mr. Hutt stated yes, a unit owner would be permitted to place a full bath in the unit if they desired, and the Applicant would have no objection to some type of landscape buffer or fencing being placed along those boundaries of concern.

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

At the conclusion of the public hearings, the Commission discussed the Applications.

In relation to C/U 2392 Zion Church Ventures, LLC. Motion by Mr. Mears to defer for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

C/U 2392 Zion Church Ventures, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE/WAREHOUSE BUILDINGS, A CAR WASH, & CLUBHOUSE WITH SWIMMING POOL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 31.83 ACRES, MORE OR LESS. The properties are lying on the southwest side of Zion Church Road (Route 20), approximately 605 feet northwest of Deer Run Road (S.C.R. 388), and the north side of Deer Run Road (S.C.R. 388), approximately 159 feet southwest of Zion Church Road (Route 20). 911 Address: 36054 Zion Church Road, Frankford. Tax Map Parcel: 533-11.00-23.00, 23.03 & 23.04.

The Commission discussed the Application which had been deferred since October 12, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2392 Zion Church Ventures, LLC for 180,500 square feet of warehouse/storage building, a 2,500 square foot car wash, and a pool and clubhouse amenity based upon the record made during the public hearing and for the following reasons:

1. The purpose of this application is to create climate-controlled storage and workspace areas for individuals with boats, recreational vehicles, motorcycles, cars, and collectibles including specific areas for a car wash, proper recycling, and disposal of automobile fluids to serve the many individuals in the area who do not have room within their home and property to store or work on such items. The use also includes a pool and clubhouse amenity for the owners of the units and their guests.

2. The site is in the vicinity of several areas that have developed with commercially and residential-zoned properties. This includes properties in the area with HR (High Density) Zoning, GR (General Residential) Zoning, AR-1 Zoning, and multiple business and commercial Zoning districts. This use is compatible with the surrounding uses and Zoning.
3. Traffic generated by the proposed use will be minimal and will not have a negative impact on the neighboring properties or roadways. DelDOT has stated that the traffic generated by this use will be “negligible”.
4. The use is of a public or semi-public character that is desirable for the general convenience and welfare of the area and the County.
5. The property is located in the Coastal and Developing Areas, which are both “Growth Areas” according to the Sussex County Comprehensive Plan. The conditional use is consistent with the Plan’s guidelines for these areas since it will provide convenient areas for businesses, homeowners, and property owners in this area of Sussex County.
6. The site will be served by central water and sewer.
7. There are wetlands that have been preliminarily delineated on the Property and a 25-foot buffer is proposed from those wetlands except in two locations which will be mitigated with approval from the USACOE.
8. With conditions and limitations proposed by the applicant, the conditional use will not adversely affect the neighboring and adjacent properties.
9. This recommendation is subject to the following conditions:
 - A. This conditional use shall be limited to 180,500 square feet of warehouse/storage area, a 2,500 square foot car wash area, and a pool and clubhouse amenity for the owners of the units. The pool and clubhouse shall be for the exclusive use of the owners and their families and guests; it shall not be operated commercially or as a club for persons not otherwise affiliated with the primary use of this project. No businesses that primarily involve or are similar to the following uses shall be permitted: retail; gyms or fitness centers; breweries or brewpubs; or food service.
 - B. No unit or area within the conditional use shall be used as a dwelling or for housing. No overnight accommodation shall be allowed.
 - C. There shall not be any outside storage, including boats, materials, RVs, or equipment within the site.
 - D. If a unit is used for business purposes, that business may only use the area for climate-controlled storage. The property shall not be used by a business for manufacturing or industrial purposes. In addition, the property may not be used by a business as a “mail-drop” or pick-up or delivery location for customers.
 - E. An oil recycling and disposal facility shall be provided and its location shall be shown on the Final Site Plan.
 - F. An RV sewer cleanout shall be provided on the property and its location shall be shown on the Final Site Plan.
 - G. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
 - H. A fence shall be installed along the perimeter of this project. The location and type of fencing shall be shown on the Final Site Plan.
 - I. Any dumpsters must be screened from the view of neighboring properties and roadways. The dumpster locations shall be shown on the Final Site Plan.

- J. The applicant shall comply with all DelDOT requirements for entrance and roadway improvements.
- K. There shall be adequate parking as required by the Code. The parking areas shall be clearly shown on the Final Site Plan and on the site itself. There shall be no parking within the property's setbacks.
- L. One lighted sign, not to exceed 32 square feet per side, shall be permitted along Zion Church Road.
- M. The Applicant shall submit as part of the Final Site Plan a landscape plan showing all "Limits of Disturbance" within the Property. These "Limits of Disturbance" shall be clearly marked on the Property itself.
- N. There shall be an on-site Management Office maintaining the property and the operation of it. It shall be open during regular business hours.
- O. The units shall only have bathrooms with a sink and toilet. No showers, bathtub-type fixtures, or plumbing connections shall be permitted. Instead, any shower/bathing facilities shall be in standalone, centrally located buildings on the site.
- P. Any wetlands will be delineated on the Final Site Plan which shall also show a 25-foot buffer from those wetlands or a permit from the USACOE for mitigation (fill) in specific locations shown on the Final Site Plan.
- Q. The applicant, its successors, and/or assigns, shall cause a condominium association to be formed to be responsible for the maintenance of the roads, parking areas, amenities, stormwater management facilities, and other common areas, and the compliance with these conditions, which shall be incorporated into the condominium documents.
- R. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- S. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Butler and carried unanimously to recommend approval of C/U 2392 Zion Church Ventures, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

PLANNING & ZONING COMMISSION

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



Sussex County

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JAMIE WHITEHOUSE
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: October 12, 2023

Application: C/U 2392 Zion Church Ventures, LLC

Applicant: Zion Church Ventures, LLC
35380 Atlantic Avenue
Millville, DE 19967

Owner: Zion Church Ventures, LLC
35380 Atlantic Avenue
Millville, DE 19967

Site Location: 36054 Zion Church Road. The property is lying on the southwest side of Zion Church Road (Route 20), approximately 605 feet northwest of Deer Run Road (S.C.R. 388) and the north side of Deer Run Road (S.C.R. 388), approximately 159 feet southwest of Zion Church Road (Route 20) in Frankford, Delaware.

Current Zoning: Agricultural Residential (AR-1) District

Proposed Use: Storage/Warehouse Buildings, a Car Wash and Clubhouse with Swimming Pool

Comprehensive Land Use Plan Reference: Developing Area & Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Roxana Fire District

Sewer: Sussex County

Water: Artesian Water Company, Inc.

Site Area: 31.83 acres +/-

Tax Map ID.: 533-11.00-23.00, 23.03 & 23.04



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Memorandum

To: Sussex County Planning Commission Members
From: Ms. Lauren DeVore, AICP Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 4th, 2023
RE: Staff Analysis for C/U 2392 Zion Church Ventures, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of the Application for Conditional Use No. 2392 Zion Church Ventures, LLC to be reviewed during the October 12th, 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 IDs: 533-11.00-23.00, 23.03 and 23.04 to allow for the development of nineteen (19) 9,500 square foot +/- warehouse buildings (totaling 180,500 square feet +/-), a 2,500 square foot +/- car wash building, a 6,400 square foot +/- clubhouse with a pool and patio and other related site improvements within an Agricultural Residential (AR-1) District. The project area is comprised of a total of 31.829 acres +/- . The property is located on at 36054 Zion Church Road and is lying on the southwest side of Zion Church Road (Route 20), approximately 605 feet northwest of Deer Run Road (S.C.R. 388) and the north side of Deer Run Road (S.C.R. 388), approximately 159 feet southwest of Zion Church Road (Route 20) in Frankford, Delaware.

Further Site Considerations

Staff note that the subject properties are located within Flood Zone “X” – Areas determined to be outside the 1% annual chance flood and outside the 500-year floodplain. DNREC’s Flood Planning Tool notes that the properties are within the Inland Bays Watershed, the Little Assawoman Bay Subwatershed and that the Ground Elevation Height at the Parcel is between 14-19-ft. A separate DNREC Flood Map has been provided in the Commission’s Packet showing this information.

The County’s Online Mapping System indicates the presence of lotic wetlands on the properties, with the National Wetland Inventory indicating that there are palustrine non-tidal wetlands on the property which appear to primarily be present on the middle, southern and southeastern portions of Parcel 23.00 with intermittent streams on the western end of the property to the rear of Parcels 23.03 and 23.04.

There are two (2) separate Tax Ditch Areas which encumber Parcel 23.00. The first is the Bear Hole Tax Ditch and the second is the Batson Branch Tax Ditch. There are also two (2) related Tax Ditch Rights-Of-Way on the property which are measured 80-ft from the centerline of the ditch (the northeastern portion of the property), 50-ft from the Top of Bank as reduced through Court Order Change #16 along the west and northern portion of Parcels 23.03 and 23.04 and measured 80-ft from the Top of Bank of a small portion of Parcel 23.00 where it adjoins Parcel 23.03. A



separate Environmental Constraints Map has been included in the Commission's Packet reflecting this information.

The properties are not located within any established Transportation Improvement Districts. The Delaware Department of Transportation's (DelDOT's) Service Level Evaluation Response states that the land use is anticipated to generate fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per day and that the development's traffic impact is expected to be negligible in the context of the "Sussex County/Delaware Department of Transportation Memorandum of Understanding for Land Development Coordination." Therefore, DelDOT is not recommending that the Applicant be required to perform a Traffic Impact Study (TIS) for this project.

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 parcels have a Growth Area designation of "Coastal Area" and "Developing Area."

The Comprehensive Plan notes that Coastal Areas are growth areas which "are areas that can accommodate development provided that special environmental concerns are addressed," and "a range of housing types should be permitted in Coastal Areas, including single-family homes, townhomes and multifamily units" (2018 Sussex County Comprehensive Plan, 4-15). The plan notes that "retail uses are appropriate" with "appropriate mixed-use development also [being] allowed" (2018 Sussex County Comprehensive Plan 4-15).

The Comprehensive Plan states that Developing Areas are "newer, emerging growth areas that demonstrate the characteristics of developmental pressures" (2018 Sussex County Comprehensive Plan, 4-14). The Plan further notes that, "a careful mixture of homes with light commercial uses can be appropriate to provide convenient services and allow people to work close to home" (2018 Sussex County Comprehensive Plan, 4-14).

Zoning Information

Staff note that the subject parcels are zoned Agricultural Residential (AR-1) District. The surrounding parcels to the north, east and west of the subject properties on the north side of Deer Run Road (S.C.R. 388) and the southwest side of Zion Church Road (Route 20).

The property to the south of Deer Run Road (S.C.R. 388) consisting of the Deer Run Acres Subdivision and the Hampden Park Subdivision are zoned General Residential (GR) District. There is a single parcel to the south of Deer Run Road and Zion Church Road that is zoned Neighborhood Business (B-1 & B-2). There are also commercially zoned properties on the north side of Zion Church Road to the southwest of the subject properties.

Applicability to Comprehensive Plan

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 Agricultural Residential (AR-1) District is listed as an Applicable Zoning District within the Coastal Area and Developing Area Future Land Use Map designations (Sussex County Comprehensive Plan, 4-25).

Conditional Use Applications within the Vicinity of the Subject Site

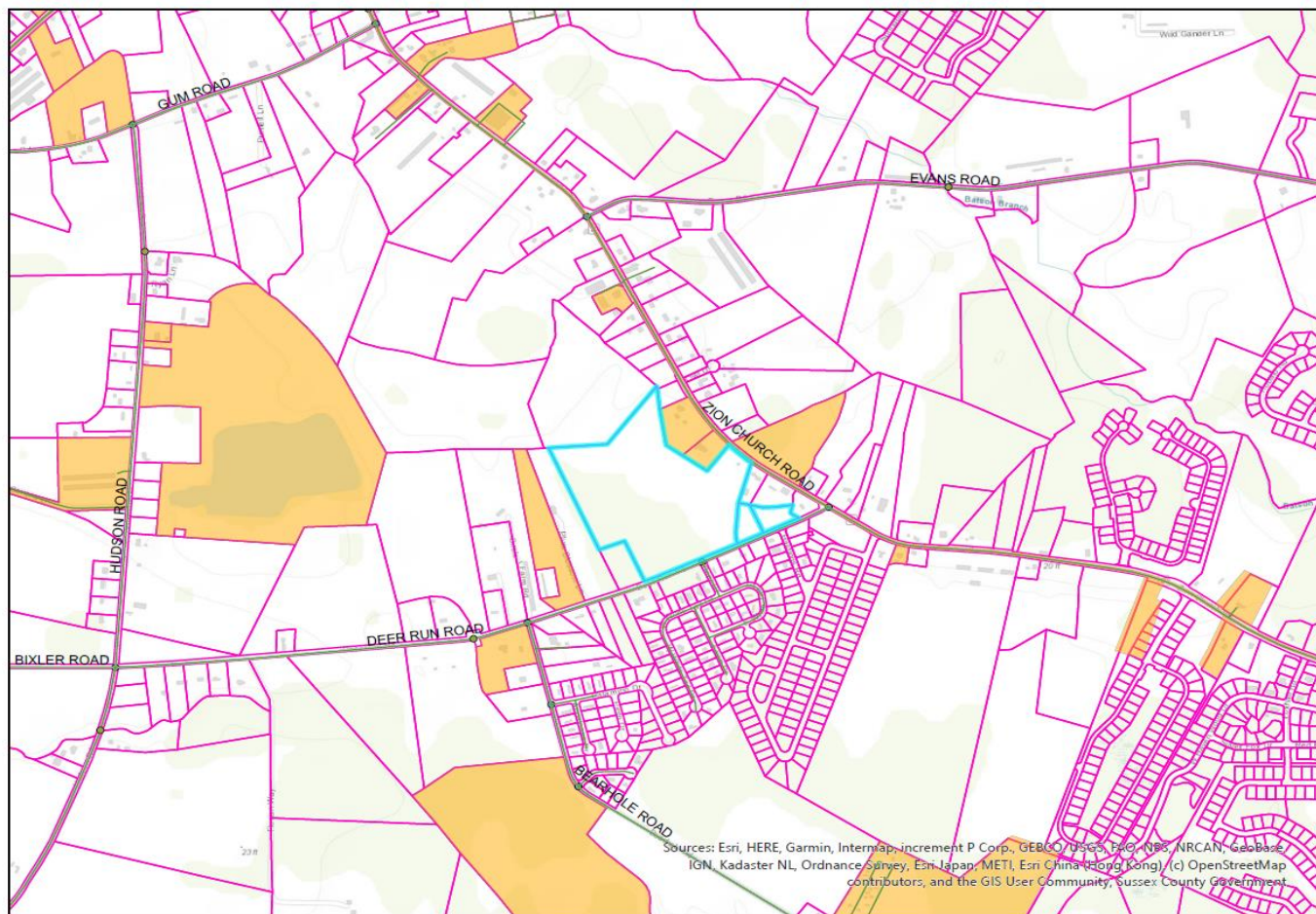
Within the last 10 years (since 2013) there has been 1 (one) Conditional Use Application within a 1-mile radius of the subject site. This Application was for Sweet Meadows Riding Academy (c/o Shelly Wright) to allow for the establishment of a horse-riding academy with overnight accommodations within an Agricultural Residential (AR-1) District.

Further details regarding this Application may be found in the table below:

Conditional Use Applications (w/in a 1-mile radius of the subject site)*								
Application Number	Applicant Name	Zoning	Proposed Use	P&Z Date	P&Z Recommendation	CC Date	CC Decision	Ordinance No.
C/U 2331	Sweet Meadows Riding Academy (c/o Shelly Wright)	AR-1	Horse Riding Academy w/overnight accommodations	11/17/2022	Recommended Approval	1/10/2023	Approved	2899

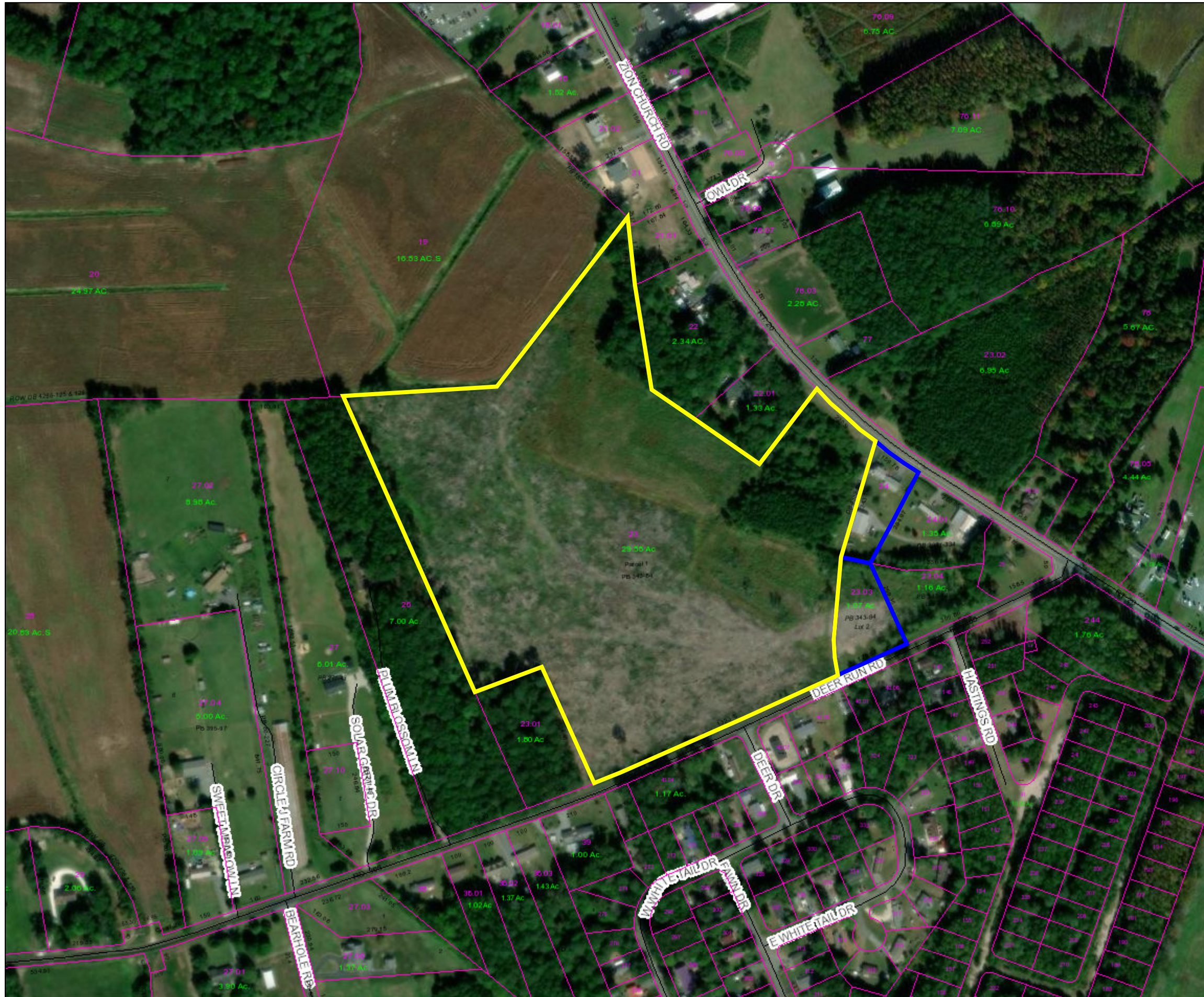
Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use for the development of nineteen (19) 9,500 square foot +/- warehouse buildings (totaling 180,500 square feet +/-), a 2,500 square foot +/- car wash building, a 6,400 square foot +/- clubhouse with a pool and patio and other related site improvements in this location, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

A Supplemental Map has been provided showing the general location of all Conditional Use Applications w/in a vicinity of the project Site. (Please note: The lands of the subject Application have been highlighted in order to provide further clarity.)





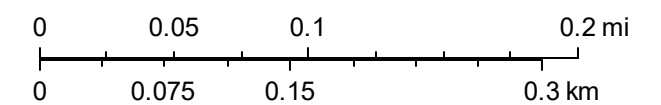
Sussex County



PIN:	533-11.00-23.00
Owner Name	ZION CHURCH VENTURES LLC
Book	5467
Mailing Address	25252 SUMMER RD
City	MILLSBORO
State	DE
Description	N/ DEER RUN RD
Description 2	PARCEL 1
Description 3	
Land Code	

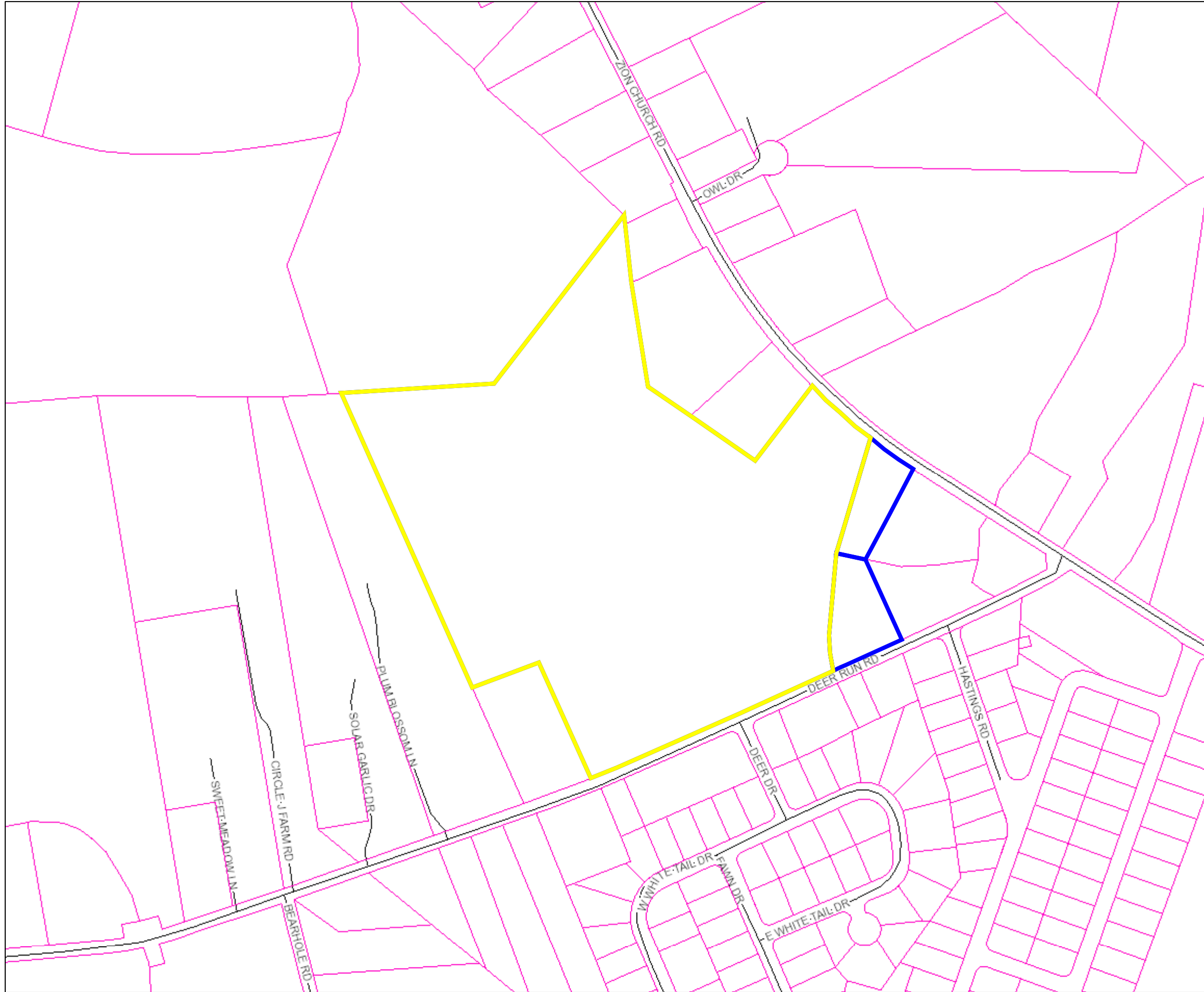
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- Override 1
- Tax Parcels
- Streets
- County Boundaries

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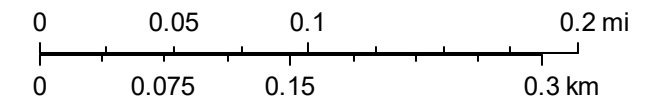
Sussex County



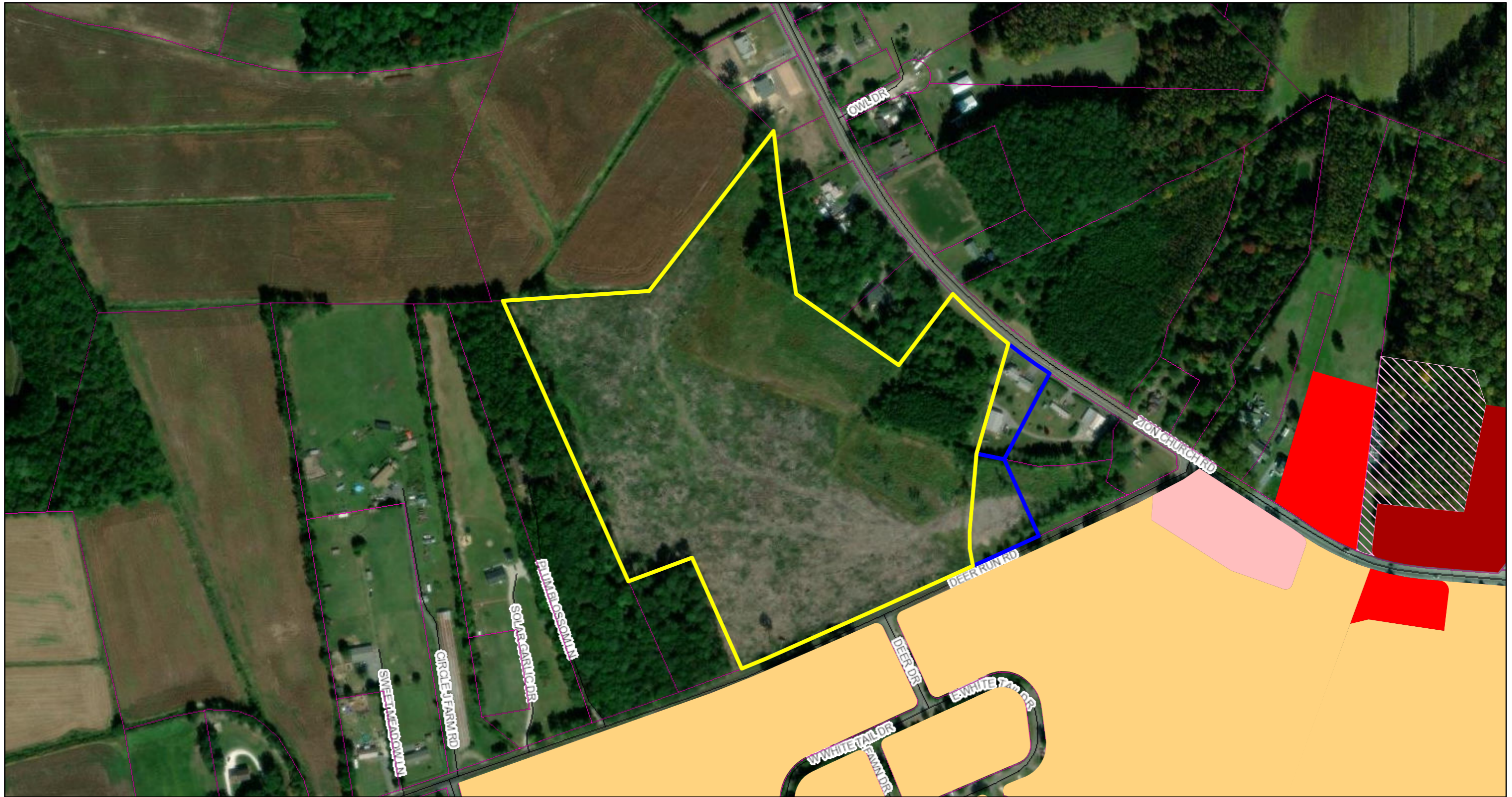
PIN:	533-11.00-23.00
Owner Name	ZION CHURCH VENTURES LLC
Book	5467
Mailing Address	25252 SUMMER RD
City	MILLSBORO
State	DE
Description	N/ DEER RUN RD
Description 2	PARCEL 1
Description 3	
Land Code	

- polygonLayer
 - Override 1
 - polygonLayer
 - Override 1
 - Tax Parcels
 - Streets
 - County Boundaries

1:4,514



Sussex County



September 13, 2023

polygonLayer

Override 1

Override 2

Zoning

Agricultural Residential - AR-1

General Residential - GR

Neighborhood Business - B-1

Business Research - B-3

General Commercial - C-1

Commercial Residential - CR-1

Tax Parcels

Streets

County Boundaries

World Imagery

Low Resolution 15m Imagery

High Resolution 60cm Imagery

High Resolution 30cm Imagery

Citations

1.2m Resolution Metadata

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0 0.04 0.09 0.17 mi

0 0.05 0.1 0.2 km

Sussex County, Sussex County Government, Maxar

Introduced: 1/3/23

Council District 4: Mr. Hudson
Tax I.D. No. 533-11.00-23.00, 23.03, & 23.04
911 Address: 36054 Zion Church Road, Frankford

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE/WAREHOUSE BUILDINGS, A CAR WASH, & CLUBHOUSE WITH SWIMMING POOL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 31.83 ACRES, MORE OR LESS

WHEREAS, on the 8th day of August 2022, a conditional use application, denominated Conditional Use No. 2392 was filed on behalf of Zion Church Ventures, 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. 2392 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. 2392 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on southwest side of Zion Church Road (Route 20), approximately 605 feet northwest of Deer Run Road (S.C.R. 388) and the north side of Deer Run Road (S.C.R. 388), approximately 159 feet southwest of Zion Church Road (Route 20) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 31.83 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
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pandz@sussexcountyde.gov



Sussex County

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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: November 9, 2023

RE: County Council Report for C/U 2448 filed on behalf of TPE DE SU75, LLC

The Planning and Zoning Department received an application (C/U 2448 filed on behalf of TPE DE SU75, LLC) for a solar farm, to be located at Tax Parcel 131-15.00-24.00. The property is located on the northeast side of Seashore Highway (Rt.18 and SCR 404), approximately 0.67 mile southeast of Sussex Highway (Rt.13). The parcel size is 75.62 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on October 12, 2023. At the meeting of October 12, 2023, the Planning & Zoning Commission recommended approval of the application for the 9 reasons stated and subject to the 8 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 12, 2023.

Minutes of the October 12, 2023, Planning & Zoning Commission Meeting

C/U 2448 TPE DE SU75, LLC

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. The property is 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). 911 Address: N/A. Tax Map Parcel: 131-15.00-34.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Preliminary Site Plan, the property legal description, the DelDOT Service Level Evaluation Response,



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the Staff Analysis, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated the Application had received one letter of support and one mail return.

The Commission found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, Inc., spoke on behalf of the Applicant and that also present was Mr. Jordan Belknap, with Turning Point Energy. Mr. Falkowski stated the property is in Bridgeville, bound between Rifle Range Rd. and Rt. 404; that the site is accessed from an existing gravel road from Rt. 404; that the site consists of 75.62 acres; that the proposed Conditional Use area will be comprised of 35 acres; that the site is located within the AR-1 (Agricultural Residential) Zoning District, and is mostly used for agricultural purposes, and the proposed use is for a community solar facility, made up of four megawatt ground-mounted tracking system.

Mr. Jordan Belknap, Managing Director of Turning Point Energy, spoke on behalf of the Applicant. Mr. Belknap stated Turning Point Energy is an experience community solar developer, who is active in Delaware; that they believe their projects should create economic, environmental and community values; that they create economic value through their construction of community solar projects, which allow residents to sign up to participate in the project, helping them to save money on their electric bills; that they create an environmental value by creating renewable energy solar facilities which replace more carbon intensive forms of electricity generation; that they create community value by making charitable contributions for every project constructed within the local communities; that in September 202, Senate Bill 2 passed allowing solar facilities in Delaware; that they are a model to allow residents, businesses and municipalities to sign up, subscribed to the facility, to provide them a credit on their electric bill; that the project will allow residents to achieve the same savings, as those who have solar on their roof, without changing any of their infrastructure; that it additionally provides the opportunity to those residing in low-income housing, or in household that are not capable of placing solar on their home; that the subject project will create multiple benefits for the residents of Sussex County, not only by providing renewable energy, but by also providing construction and engineering jobs at the local level to construct the facilities; that the project will not create any long term increase in traffic; that there will be an initial construction period last a few months, but beyond that, it would only be occasional traffic for maintenance purposes; that the site and arrays are monitored remotely; that the local nature of the energy production eases the burden on the transmission system; that a pollinator friendly ground cover is planted underneath the facility; that this creates a habitat for birds and bees; that the facility is not a permanent development; that after the life cycle of the project, the site can be returned to its current use and the current land owners; that the project was designed in compliance with the recently adopted Solar Ordinance and they feel the project meets the objectives of Goal 7.3 of the Comprehensive Plan.

Mr. Jon Falkowski stated the arrays are proposed to be placed on 35 acres, located to the north of the site; that they are proposing a landscaping buffer be placed around the entire array, except for an opening for the gravel access road; that the array will have a perimeter fence surrounding the entire perimeter, with a gate and a Knox box for emergency personnel; that there will be a turn-around for fire apparatuses; that there are wetlands located in the corner, closest to the ditch; that the wetlands were delineated by Watershed Eco; that the wetland portion of the property is located within the AE Flood Zone; that the Conditional Use area is located outside of the wetland and AE Flood Zone areas; that the ditch and flood zone does come up to the area of existing road; that they will use the existing ditch crossing culverts to cross the ditch; that they will be upgrading the existing farm road to a 16 ft. wide gravel road to allow for emergency fire access; that the project will not produce any increased

traffic; that there will only be one to two trucks per month; that the project does not produce any odor, dust, gas, smoke or fumes; that the project produces low to no noise from the power inverters; that the project will reduce stormwater runoff by providing the pollinator friendly ground cover and plantings, in which they are working with Sussex Conservation District to achieve; that they will be providing the 25 ft. landscape buffer screening with perimeter fencing; that a Decommissioning Plan will be provided for the project; that the facility is a public utility use under the Sussex County Zoning Code; that it meets the purposes of a Conditional Use in that it is a public or semi-public character, that is essential and desirable for the general convenience and welfare of Sussex County residents; that the facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options; that the proposed use will not have any adverse impact on the neighboring and adjacent properties, with the provided landscape buffers and perimeter fencing; that the facility will not result in any noticeable increase in traffic on adjacent and neighboring roadways; that there are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels; that there is no significant noise, dust, or odor generated by the use, and the project is compliant with Ordinance No. 2920, and complies with all buffer and setback requirements.

The Commission found that one person spoke in support of the Application, and no one spoke in opposition to the Application.

Ms. Pam Tull spoke in support of the Application; that also present with her was her husband, Mr. Jeff Tull. Ms. Tull stated she and her husband were gifted the property from her grandfather, Mr. Bill Passwaters, who was a farmer; that they support the Application as a way to honor her grandfather and his family's legacy; that she and her husband desire to be good stewards of the land; that they did not make the decision lightly; that they believe their property is the perfect plot to give back as solar energy; that the proposed use honors the past, present and the future; that through the project they desire to give back to their grandchildren, their neighbors and their community; that they plan to till the remainder of the land, which will help the other farm families they rent to, and they feel the proposed project is a great way to give back.

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

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

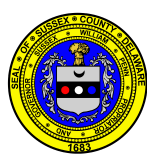
Mr. Collins moved that the Commission recommend approval of C/U 2448 TPE DE SU75, LLC for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 35 acres of a larger 75.62-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.

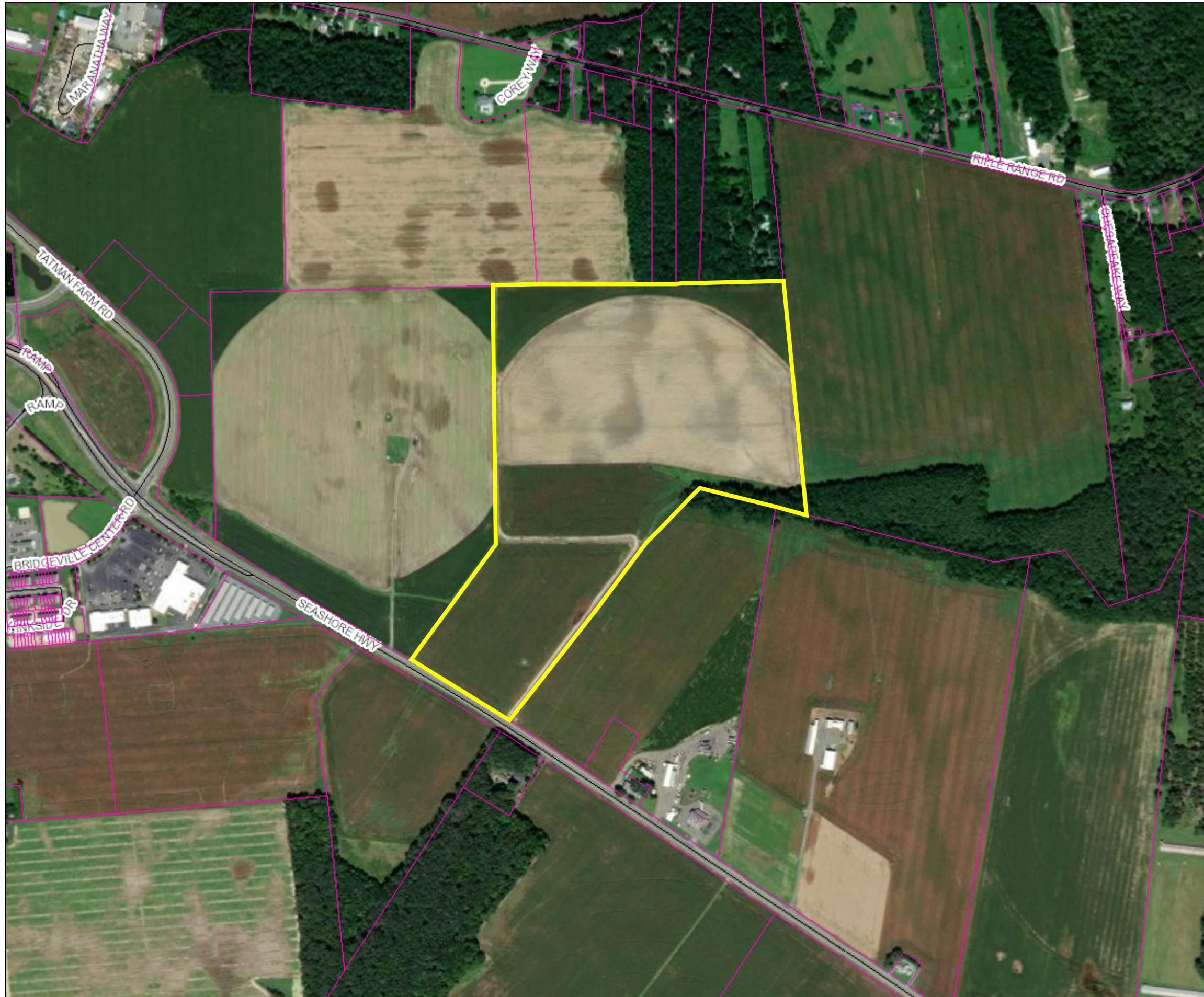
4. This Application complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
5. The solar array is located in an area that primarily consists of tilled agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
8. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
9. There was no opposition to this Application.
10. This recommendation is subject to the following conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
 - C. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - D. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - E. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - F. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - G. The Final Site Plan shall include a Decommissioning Plan that includes financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2448 TPE DE SU75, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

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



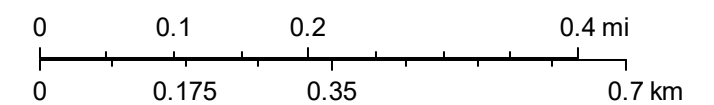
Sussex County



PIN:	131-15.00-34.00
Owner Name	TULL FARMS LIMITED PARTNERSHIP
Book	3505
Mailing Address	421 S MAIN ST
City	BRIDGEVILLE
State	DE
Description	BRIDGEVILLEGEORGETN
Description 2	N/RT.404 2100'
Description 3	E/RT 13 FX
Land Code	

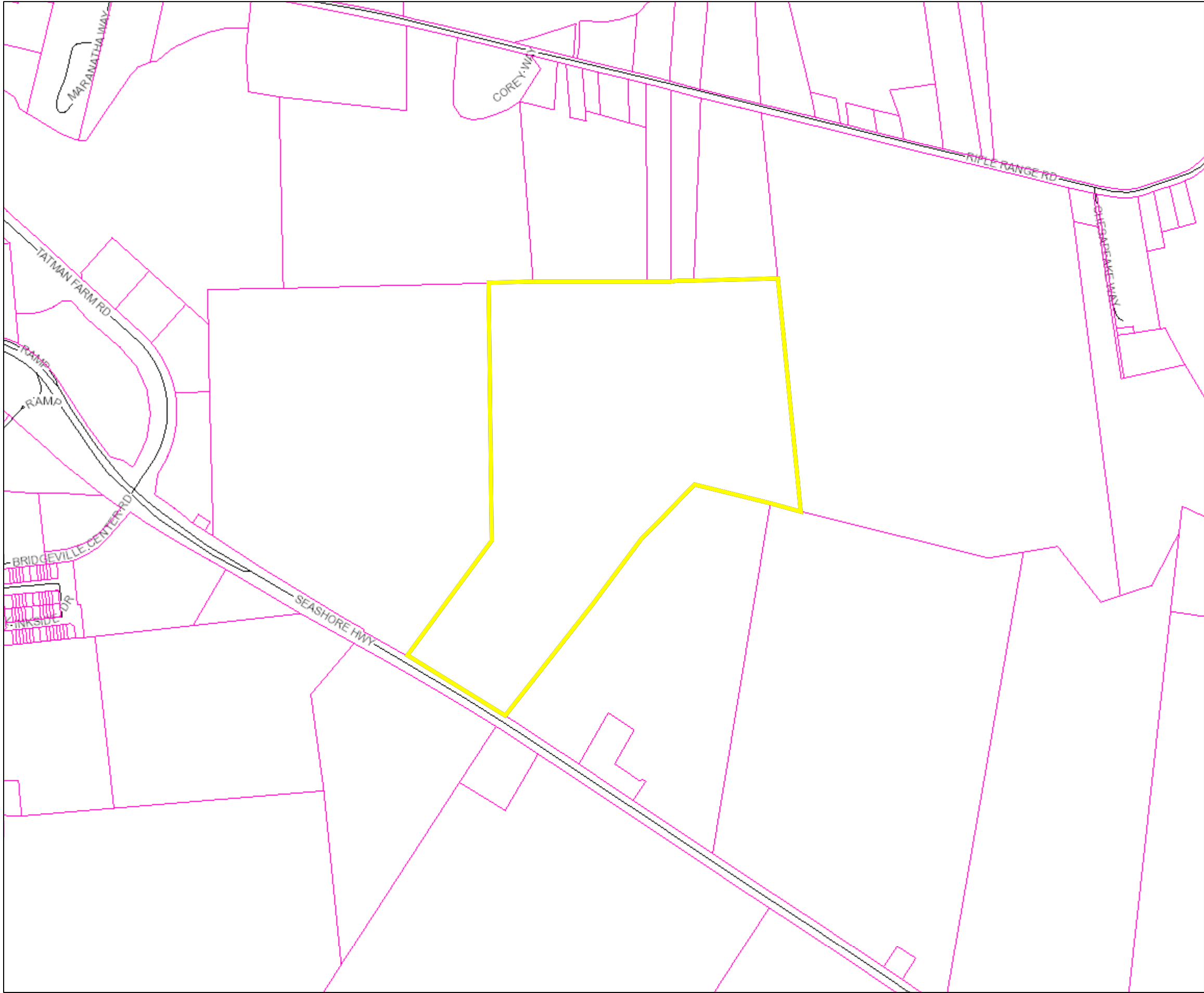
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- polygonLayer**
- Override 1
- Tax Parcels
- Streets
- County Boundaries

1:9,028





Sussex County



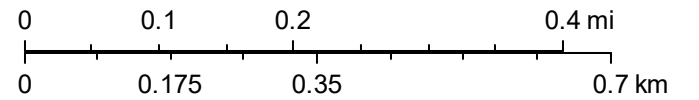
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- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
 - Tax Parcels
 - Streets
 - County Boundaries

1:9,028



PLANNING & ZONING COMMISSION

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



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JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: October 12th, 2023

Application: CU 2448 TPE DE SU75, LLC

Applicant: TPE DE SU75, LLC (c/o Adam Beal)
3720 South Dalia Street
Denver, CO 80237

Owner: Tull Farms Limited Partnership
421 South Main Street
Bridgeville, DE 19933

Site Location: Lying on the northeast side of Seashore Highway (Rt. 404) approximately 0.73-mile southeast of the intersection between Sussex Highway (Rt. 13) and Seashore Highway.

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

Proposed Use: Solar Farm

Comprehensive Land Use Plan Reference: Low Density Area

Councilmanic District: Mrs. Green

School District: Bridgeville School District

Fire District: Bridgeville Fire Co.

Sewer: N/A

Water: N/A

Site Area: 35.00 acres +/-

Tax Map ID: 131-15.00-34.00 (p/o)



JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
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Sussex County

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Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Elliott Young, Planner I
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 4, 2023
RE: Staff Analysis for CU 2448 TPE DE SU75, LLC

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2448 (TPE DE SU75, LLC) to be reviewed during the October 12th, 2023, Planning and Zoning 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: 131-15.00-34.00 to allow for a solar farm. The property is lying on the northeast side of Seashore Highway (Rt. 404), approximately 0.73-mile(s) southeast of the intersection of Sussex Highway (Rt. 13) and Seashore Highway. The applicant is applying for 35.00-acres +/- out of 73.83-acres +/- to be included in the Conditional Use area.

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 adjoining parcels to the north and east also have a Future Land Use Map designation of “Low Density.” The adjoining parcel to the west and south of Seashore Highway (Rt. 404) have a Future Land Use Map designation of “Developing Area.”

As outlined in the 2018 Sussex County Comprehensive Plan, Low Density Areas are areas that the County envisions as “a predominantly rural landscape where farming co-exists with appropriate residential uses and permanently preserved property” (Sussex County Comprehensive Plan, 4-18). The Plan also notes that commercial uses “should be limited in their location, size and hours of operation” and “more intense commercial uses should be avoided” and commercial uses “may be appropriate depending on surrounding uses” (Sussex County Comprehensive Plan, 4-19).

Zoning Information

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

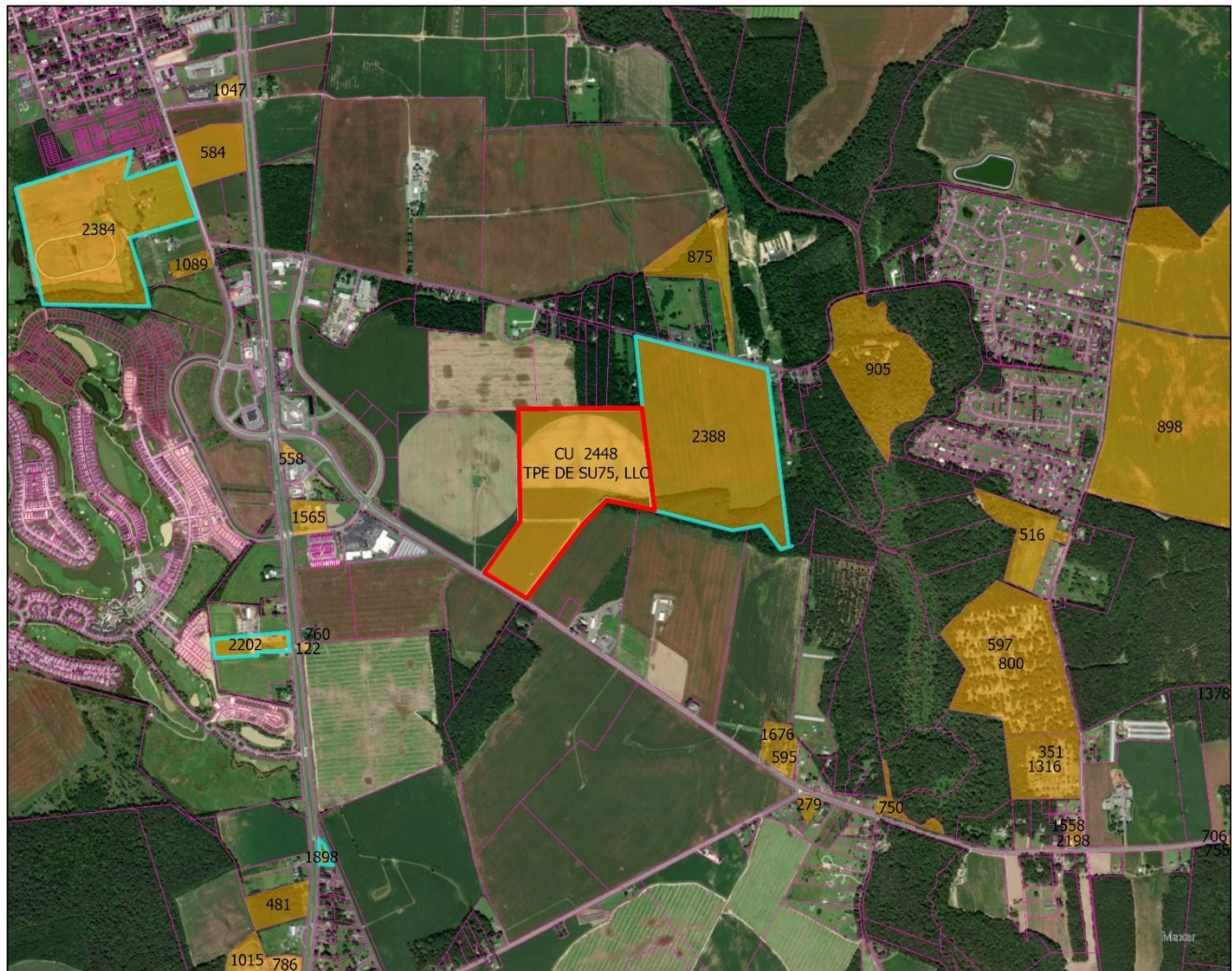
Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories” in the 2018 Sussex County Comprehensive Plan notes that the Agricultural Residential District is an applicable Zoning District within the “Low Density” Future Land Use Map Designation.



Existing Conditional Uses within the Vicinity of the Subject Property

Although there have been multiple applications in this area, since 2011, there have been four (4) Conditional Use applications within a one (1) mile radius of the Application Site.

CU	Applicant	Proposed Use	CC Decision Date	Ordinance No.
1898	Bruce Fisher	Professional Offices	6/14/2011	2203
2202	John Passwaters	Landscaping Business	2/4/2020	2705
2384	Consolidated Edison Development, Inc.	Solar Farm	N/A (Public hearing with CC on 12/5/2023)	N/A (Public hearing with CC on 12/5/2023)
2388	Rifle Range Road Solar, LLC	Solar Farm	N/A (Public Hearing with P&Z Commission on 10/26/2023)	N/A (Public Hearing with P&Z Commission on 10/26/2023)



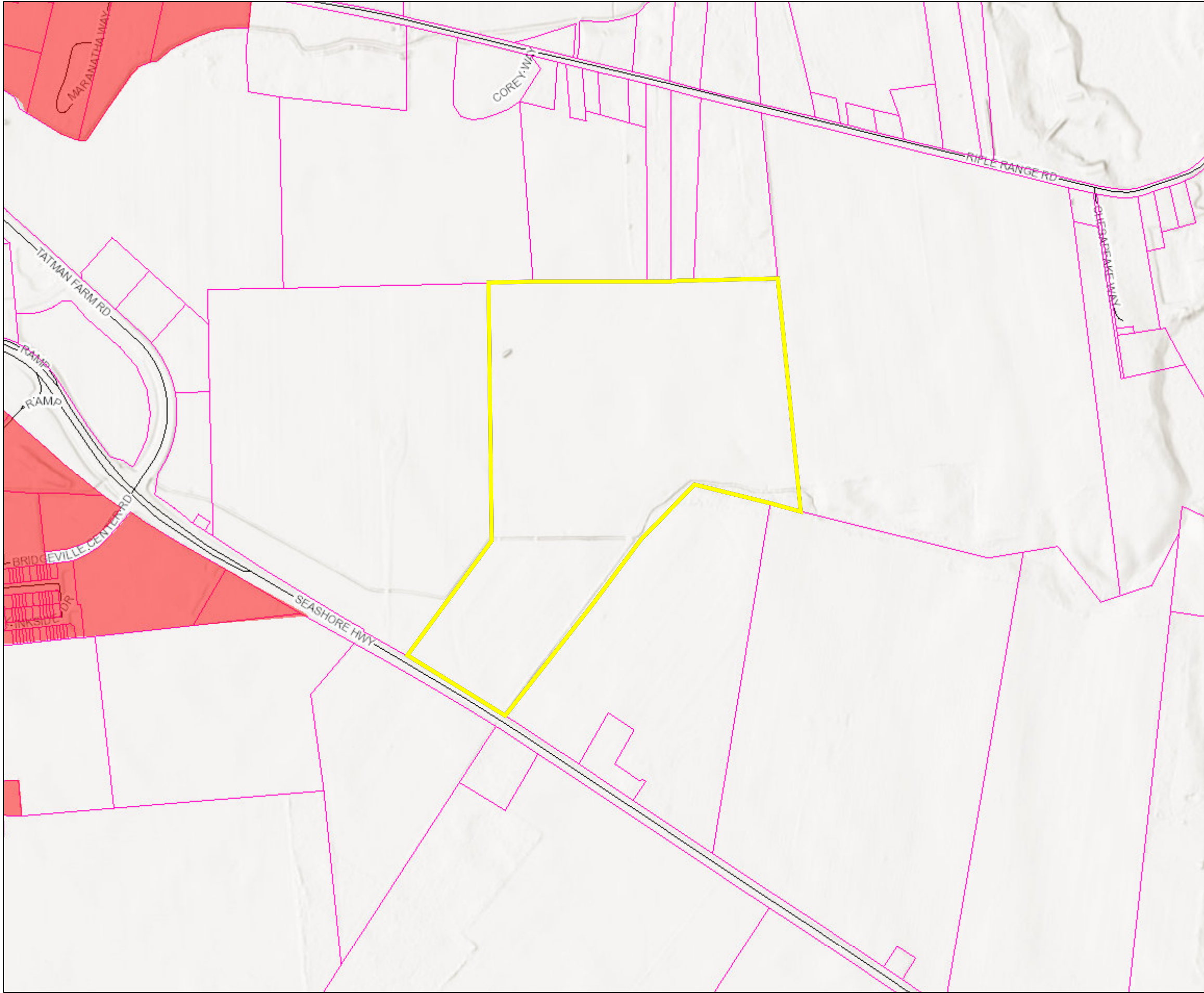
Site Considerations

- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** The site is within the vicinity of active agricultural lands. The subject parcel currently adjoins the “Corey Expansion” agricultural preservation area, located at the southeast corner where the subject parcel intersects with Ake Ditch.
- **Interconnectivity:** N/A
- **Transportation Improvement District (TID):** N/A
- **Forested Areas:** N/A
- **Wetlands Buffers/Waterways:** N/A
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The property is located within Flood Zone AE and currently has a Tax Ditch that runs through the southeastern part of the subject parcel and crosses west to adjoining parcels. The subject parcel is for the most part located in a “fair” groundwater recharge area, with some minor areas showing “poor” or “good”.

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



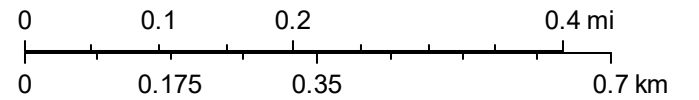
Sussex County



PIN:	131-15.00-34.00
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Description	BRIDGEVILLEGEORGETN
Description 2	N/RT.404 2100'
Description 3	E/RT 13 FX
Land Code	

- Zoning**
- General Commercial - C-1
 - Tax Parcels
 - Streets
 - County Boundaries
 - World Hillshade

1:9,028



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 4th 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.



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: November 9, 2023

RE: County Council Report for C/U 2470 filed on behalf of CI Renewables, LLC (Formerly Known as CI Solar DP, LLC)

The Planning and Zoning Department received an application (C/U 2470 filed on behalf of CI Renewables, LLC, formerly known as CI Solar DP, LLC) for a solar farm, to be located at Tax Parcel 135-15.00-8.00. The property is located on the east side of Savannah Road (SCR 246), approximately 0.85 mile south of Rudd Road (SCR.245). The parcel size is 64.59 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on October 12, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 11 reasons stated and subject to the 10 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 12, 2023, and October 26, 2023.

Minutes of the October 12, 2023, Planning & Zoning Commission Meeting

C/U 2470 CI Renewables, LLC [F.K.A. CI Solar DP, LLC]

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. The property is lying on the east side of Savannah Road (S.C.R. 246), approximately 0.85 mile south of Rudd Road (S.C.R. 245). 911 Address: N/A. Tax Map Parcel: 135-15.00-8.00.



Mr. Whitehouse advised the Commission that submitted into the record were the Preliminary Site Plan, the Applicant's Exhibit Booklet, the legal description of the property, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated the Application had received zero comment letters.

The Commission found that Mr. David Hutt, Esq., with Morris James, LLP. Spoke on behalf of the Applicant; that also present were Mr. Walter Serafyn with CI Renewables, LLC, Mr. Mark Davidson with Pennoni, and Mr. Michael Marra, Wetland Scientist with Pennoni. Mr. Hutt stated the influx of solar applications was due to the bill signed by Governor Carney in 2021, which increased the standard for Delaware's portfolio of how much renewable energy the State must have by 2035; that as part of that legislation, solar facilities became part of Title 26, Chapter 10 of the Delaware Code; that the subject application is slightly different than some of the other solar applications seen by the Commission recently; that the subject Application proposes an 18 megawatt facility to be located on approximately 64 acres, to help create a clean, renewable supply of electricity; that the Application is a combination of a community solar facility, as well as a net-metering facility; that the customer of the net-metering facility will be the nearby Georgetown Perdue Processing Plant; that the site consists of 64.5 acres, along the eastern side of Savannah Rd.; that the property is located within the AR-1 (Agricultural Residential) Zoning District; that the site is located adjacent to the municipality of the Georgetown; that there are GR (General Residential) zoned properties located to the north and west of the site; that to the west of the site there is an Industrial zoned property; that along Rt. 113 and Rt. 9 there are commercially zoned properties; that according to the Future Land Use Map, the site is located within a Developing Area; that within the municipality of Georgetown, adjacent to the site is the Perdue plant, which is located within the Town's LI-2 (Limited Industrial) Zoning District; that other Town of Georgetown zoning within the surrounding area are UR-1 (Urban Residential) and URC-RPC (Neighborhood Residential – Residential Planned Community); that Mr. Hutt presented to the Commission time lapse aerial photos from 1937 to 2022, which reflected that the site was farmed and wooded as far back as 1937; that the photos also reflect wet areas located on the property, which seemed to have always present a challenge for farming; that the surrounding location of the site has become developed and is no longer a farming area; that to the east of the site, is the location of the Sandhill Sports Complex; that to the east of the sports complex is the location of the Cheer Center; that to the north and west of the property are wooded areas; that south of the site there are a few residential homes; that the site is located with Investment Levels 1 & 2, according to the State Strategies Map, being levels where the State anticipates growth within the near and long term future; that the solar facility will not require public funding, therefore will not burden the public with extra assistance from the schools, police, and emergency responders; that the project does not require public utilities such as water and sewer; that the site is located within Flood Zone A, which indicates that the site is located within the 100 Year Floodplain; that this is likely the reason the site is no longer prime farmland; that the floodplain will not impact the proposed solar facility use; that there are no jurisdictional or regulated wetlands located on the site; that there are a few low-lying areas located on the site; that these low-lying areas do not qualify as jurisdictional or regulated wetlands; that there is no traffic associated with the proposed use; that DelDOT stated the traffic impact would be diminutive; that the site will require very minimal grading, as it is already a flat site, being ideal for the installation of solar arrays; that the solar arrays would be installed to withstand hurricane force winds; that the solar arrays are ground-mounted tracking systems, which move throughout the day to capture the most amount of sun; that inverters would be located to the center of the site, being away from adjacent properties; that the operational life of these systems begin at 20 years, but could as long as

30 years; that the Applicant, CI Renewables, LLC is a private, non-utility affiliated developer and are the owner and operator of the commercial and industrial solar facilities; that they are the contract purchaser of the property; that as the operator of the site, they would be fully responsible for constructing, ensuring and decommissioning the system at the end of the solar arrays life span; that a Decommissioning Plan was submitted as part of the Exhibit Book materials; that the three concerns most often heard in relation to solar projects are sound, visual impacts and the impact to adjacent properties; that the sound generated from the project is minimal, being equal to a small appliance or an HVAC system; that a data sheet was included in the Exhibit Booklet which address the sound proposed to be generated by the project; that any sound would be generated during the daytime; that the inverters are centrally located away from any populated areas; that a Glare Study was included within the Exhibit Booklet; that solar panels are intended to absorb sunlight, not to reflect sunlight, therefore there will be no negative impact from glare; that the Application is subject to the recently adopted solar Ordinance, and the project does comply with the requirements of the Ordinance; that there would be a 100 ft. space between the roadway and the solar arrays; that a 50 ft. distance is provided between the arrays and adjacent properties; that where there is existing vegetation, it would be utilized as part of the buffer, and would be filled in as need to comply with the Code requirements; that a pollinator mix would be placed in the location of the solar arrays; that there will be little visual impact to anyone along Savannah Rd.; that the surrounding area is not a highly residential area; that there are a few homes along Savannah Rd.; that within the Exhibit Booklet there is information as to where CI Renewables, LLC is in their process with DP&L, Inc.; that there will be a fence surrounding the entire perimeter with a knox box for emergency responders; that there are two parts to the proposed project; that to the left of the site will be the location of the community energy facility portion, which will allow individuals to subscribe to obtain credits to their electric bill; that a certain percentage, being up to 15%, must be allotted to low income housing; that the right side of the site will be the location for the net metered facility, which would be connected to the Georgetown Perdue Processing Plant; that §115-171, the proposed use is an appropriate Conditional Use, as they are public or semi-public use utilities; that Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options, such as solar farms and that as required, the solar arrays will be located at least 200 ft. from any dwelling not located on the property. Mr. Hutt requested to submit proposed findings and conditions into the record.

The Commission found that no one wished to speak 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 C/U 2470 CI Renewables, LLC [F.K.A. CI Solar DP, LLC]. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

C/U 2470 CI Renewables, LLC [F.K.A. CI Solar DP, LLC]

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. The property is lying on the east side of Savannah Road (S.C.R. 246), approximately 0.85 mile south of Rudd Road (S.C.R. 245). 911 Address: N/A. Tax Map Parcel: 135-15.00-8.00.

The Commission discussed the Application which had been deferred since October 12, 2023.

Mr. Butler stated he was not present for the public hearing however he did listen online and was prepared to make a motion.

Mr. Collins moved that the Commission recommend approval of C/U 2470 CI Renewables, LLC [formally known as CI Solar DP, LLC] for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 64.59 acres.
3. The proposed use will be an 18-megawatt facility that will be a facility combining a Community Energy facility and a Net Metered Facility. The anticipated customer for the Net Metered Facility is the adjacent Perdue poultry plant.
4. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
5. The proposed solar array is located adjacent to the Town of Georgetown and the land is designated as being within the “Developing Area” according to Sussex County’s Future Land Use Map.
6. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
7. The solar array is located in an area that primarily consists of tilled agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
8. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels. DelDOT has determined that the proposed conditional use would have a “Diminutive” impact on traffic.
9. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
10. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
11. There was no opposition to this Application.
12. This recommendation is subject to the following conditions set forth in Ordinance No. 2920 and the following additional conditions:

- A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
- B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
- C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
- D. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
- F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
- G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
- H. There shall be a 25-foot-wide buffer of planted vegetation along the northern, eastern, and southern sides of the solar facility which shall use existing vegetated areas and supplement it as necessary with native plantings. There shall be a 25-foot-wide buffer created using native species along the eastern boundary of the property (Savannah Road). These buffer areas shall be clearly shown on the Final Site Plan. These buffers shall screen solar arrays while allowing them to function properly. The Final Site Plan shall include a landscape plan showing the proposed tree and shrub landscape design in these buffer areas.
- I. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2470 CI Renewables, LLC [F.K.A. CI Solar DP, LLC], for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

PLANNING & ZONING COMMISSION

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



Sussex County

DELAWARE
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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: October 12th, 2023

Application: C/U 2470 CI Renewables, LLC

Applicant: CI Renewables, LLC (c/o Luke Smith)
1340 Smith Avenue, Suite 200
Baltimore, MD 21209

Owner: Citation 49 Farms, LLC
25154 DuPont Boulevard
Georgetown, DE 19947

Site Location: The property is lying on the east side of Savannah Road (S.C.R. 246), approximately 0.85 mile south of Rudd Road (S.C.R. 245). 911 Address: N/A.

Current Zoning: AR-1 (Agricultural Residential)

Proposed Use: Solar Farm

Comprehensive Land Use Plan Reference: Developing Area

Councilmanic District: Mr. Rieley

School District: Indian River

Fire District: Georgetown Fire Company

Sewer: N/A

Water: N/A

Site Area: 64.59 acres +/-

Tax Map ID: 135-15.00-8.00



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 and Zoning Commission Members
From: Elliott Young, Planner I
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 4, 2023
RE: Staff Analysis for CU 2470 CI Renewables, LLC

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2470 (CI Renewables, LLC) to be reviewed during the October 12th, 2023, Planning and Zoning 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: 135-15.00-8.00 to allow for a solar farm. The property is lying on the east side of Savannah Road (S.C.R. 246), approximately 0.85-mile(s) south of the intersection of Rudd Road (S.C.R. 245) and Savannah Road. The applicant is applying for 64.59-acres +/- to be included in the Conditional Use area.

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 “Developing Area.” The adjoining parcels to the north and west across Savannah Road also have a Future Land Use Map designation of “Developing Area.” The adjoining parcels to the east and south of the subject parcel have a Future Land Use Map designation of “Municipality”, these parcels are located within the town jurisdiction of Georgetown, DE.

As outlined in the 2018 Sussex County Comprehensive Plan, “Developing Areas are newer, emerging growth areas that demonstrate the characteristics of developmental pressures” and are “adjacent to municipalities within or adjacent to potential future annexation areas of a municipality” (2018 Sussex County Comprehensive Plan, 4-14). The proposal is in proximity to and adjoins the Town of Georgetown.

The adjoining parcels to the east and south of the subject parcel have a Future Land Use Map designation of “Municipality”, these parcels are located within the town jurisdiction of Georgetown, DE. Sussex County strongly favors directing development towards the municipalities that desire it (2018 Sussex County Comprehensive Plan, 4-13).

Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. All adjacent properties to the north and west across Savannah Road of the subject parcel are also zoned AR-1. The adjoining



parcels to the south and east of the subject parcel are within the jurisdiction of the Town of Georgetown, therefore, Sussex County Zoning codes do not apply to these parcels.

Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories” in the 2018 Sussex County Comprehensive Plan notes that the Agricultural Residential District is an applicable Zoning District within the “Developing Area” Future Land Use Map Designation.

Existing Conditional Uses within the Vicinity of the Subject Property

Although there have been multiple applications in this area, since 2011, there have been seven (7) Conditional Use applications within a one (1) mile radius of the Application Site.

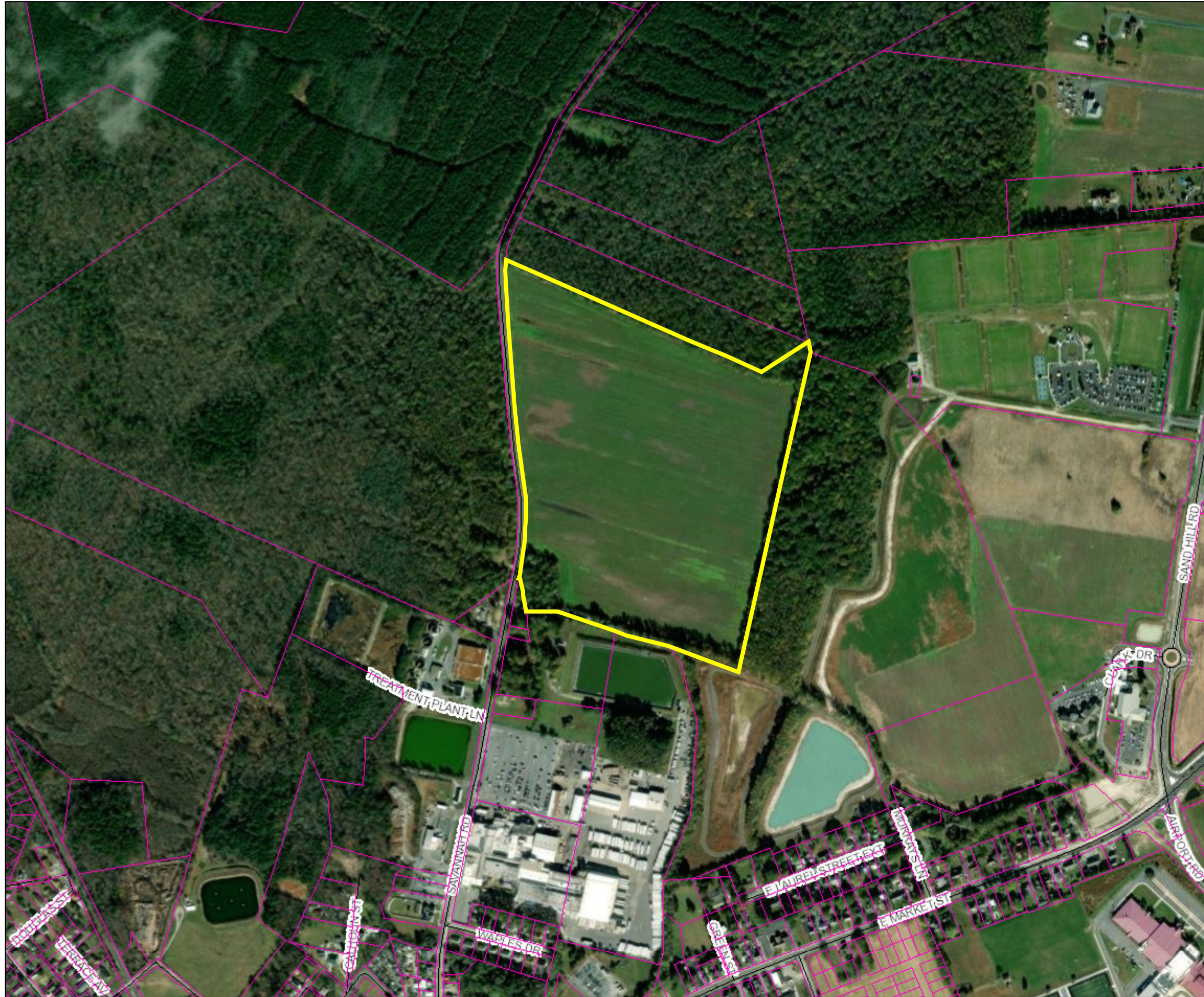
CU	Applicant	Proposed Use	CC Decision Date	Ordinance No.
2079	Clean Bay Renewables, LLC Sussex II	Electrical generation and nutrient recovery facility	Withdrawn	N/A
2080	Clean Bay Renewables, LLC Sussex I	Electrical generation and nutrient recovery facility	Withdrawn	N/A
2119	Chad Hayes	Automotive sales with minor repair and contractor office with storage	4/17/2018	2571
2228	M.L. Joseph Heirs Farm Account, LLC	Campground	11/17/2020	2755
2369	Leeward Chase DE, LLC	Multi-Family (106 Units)	Deferred	N/A
2410	Nicasia Chavez Reyes	Grocery Store	N/A (Date for hearing TBD)	N/A
2412	Marco Morales	Professional Office for Construction	N/A (Date for hearing TBD)	N/A

the most part located in a “fair” groundwater recharge area, while the southwestern portion of the parcel shows a “poor” recharge area.

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



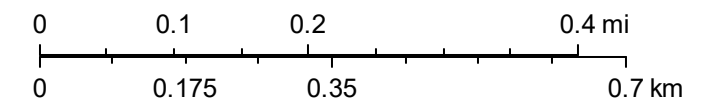
Sussex County

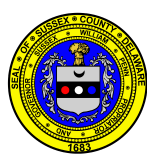


PIN:	135-15.00-8.00
Owner Name	CITATION 49 FARMS LLC JOE ANN ADAMS
Book	5557
Mailing Address	25154 DUPONT BLVD
City	GEORGETOWN
State	DE
Description	SAVANNAH RD
Description 2	E/RT 246
Description 3	3550'S/RT 245
Land Code	

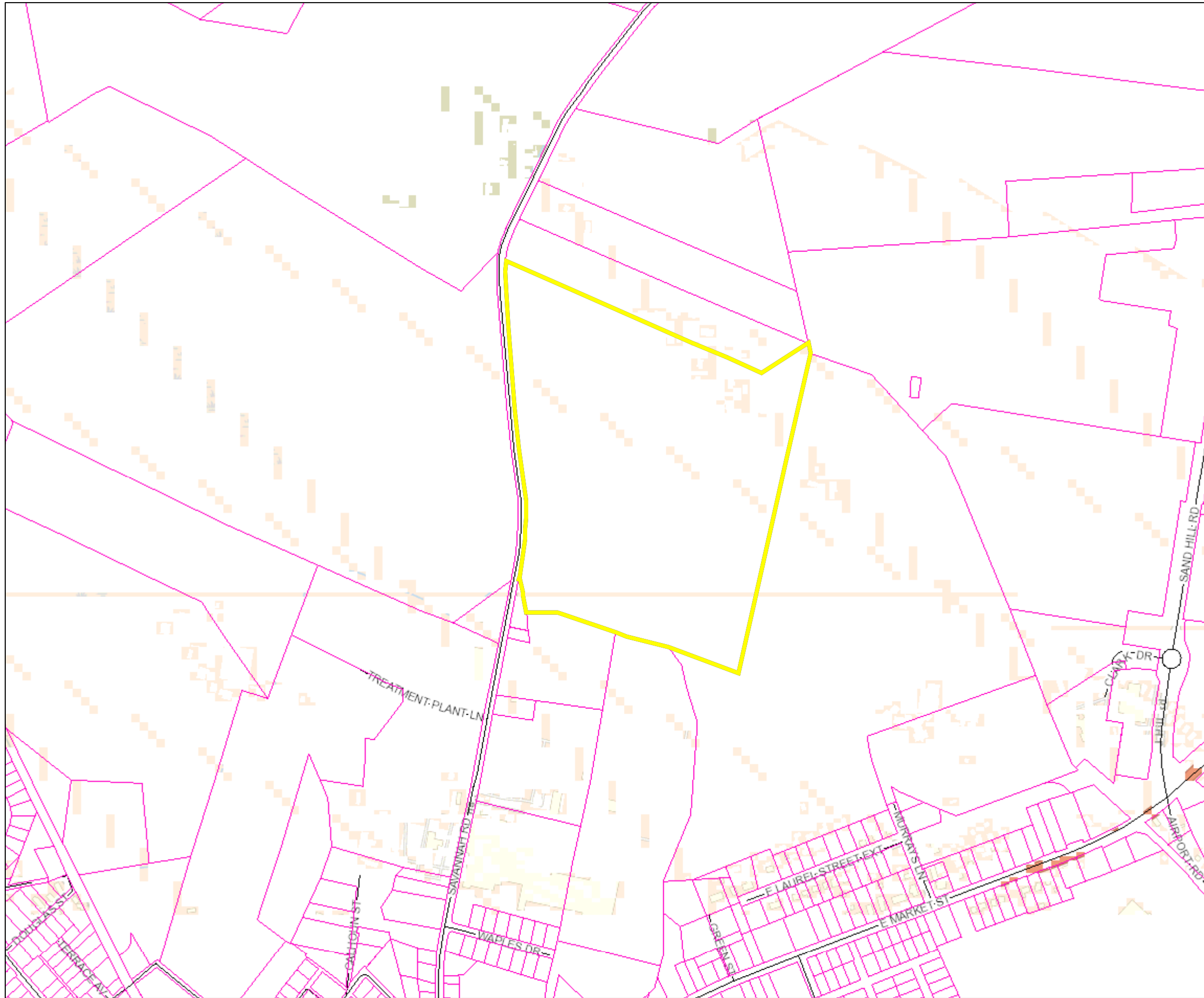
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- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- Streets
- County Boundaries

1:9,028





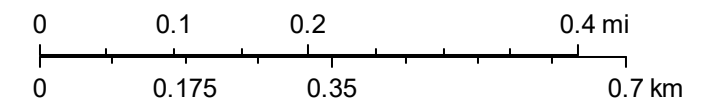
Sussex County



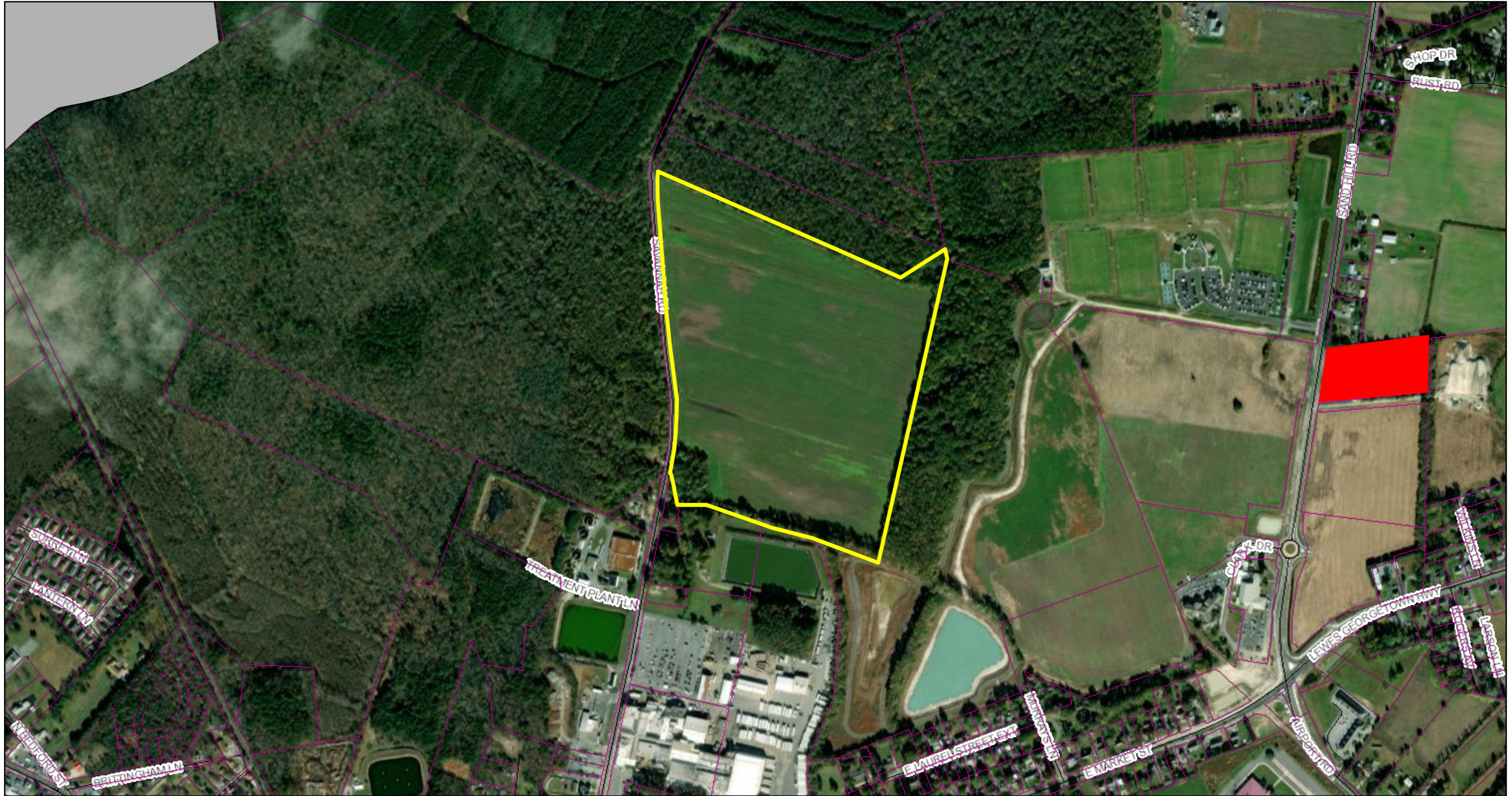
PIN:	135-15.00-8.00
Owner Name	CITATION 49 FARMS LLC JOE ANN ADAMS
Book	5557
Mailing Address	25154 DUPONT BLVD
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Description 3	3550'S/RT 245
Land Code	

- polygonLayer
 - Override 1
- polygonLayer
 - Override 1
 - Tax Parcels
 - Streets
 - County Boundaries

1:9,028



Sussex County

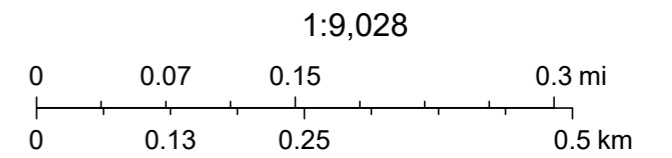


September 13, 2023

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|--------------|--------------------------|
| polygonLayer | Zoning |
| Override 1 | General Commercial - C-1 |
| Override 2 | Light Industrial - LI-2 |
| | Tax Parcels |

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|----------------------------|
| Streets |
| County Boundaries |
| World Imagery |
| Low Resolution 15m Imagery |

- | |
|------------------------------|
| High Resolution 60cm Imagery |
| High Resolution 30cm Imagery |
| Citations |
| 2.4m Resolution Metadata |



Sussex County Government, Maxar

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 24th 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.



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: November 9, 2023

RE: County Council Report for C/U 2452 filed on behalf of Community Lutheran Church

The Planning and Zoning Department received an application (C/U 2452 filed on behalf of Community Lutheran Church) for an on-premises electronic message center sign, to be located at Tax Parcel 533-2.00-8.00. The property is located 30897 Omar Road, Frankford. The parcel size is 3.99 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on October 12, 2023. At the meeting of October 12, 2023, the Planning & Zoning Commission recommended approval of the application for the 6 reasons as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 12, 2023.

Minutes of the October 12, 2023, Planning & Zoning Commission Meeting

C/U 2452 Community Lutheran Church

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. The property is lying on the 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). 911 Address: 30897 Omar Road, Frankford. Tax Map Parcel: 533-2.00-8.00.

Mr. Whitehouse advised the Commission that submitted into the record were the property deed, the DelDOT Service Level Evaluation Response, the Site Plan, Applicant photos, and a letter from the



Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated the Application had received zero comment letters and zero main returns.

The Commission found that Mr. Ed Evans, Vice President of the Church Council for Community Lutheran Church, spoke on behalf of the Application; that also present was Mr. Lynn Rogers, President of Rogers Sign Co., Inc. Mr. Evans stated their church is best known as being the church located at the blinking light of Armory Rd. and Omar Rd.; that the Application is requesting an upgrade to an already existing sign; that they are requesting to upgrade from clay tablets to new LED technology; that the current sign has existed for over two decades; that they do not wish to relocate the sign or change the size of the sign; that they are requesting to utilize the existing sign housing, upgrade the 36"x72" portion of the sign to an LED sign which will be mounted in the existing sign frame; that the existing sign frame is 36"x121"; that the current "Community Lutheran Church" portion of the sign will remain as is, and if the Application were approved, Rogers Sign Co., Inc. would perform the work.

The Commission found that no one wished to speak 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.

Mr. Robertson stated he had prepared a motion and read the motion into the record per Ms. Wingate's request.

Ms. Wingate moved that the Commission recommend approval of C/U 2452 Community Lutheran Church for an on-premises Electronic Message Center based on the record made during the public hearing and for the following reasons:

1. The Electronic Message Center, or EMC will be located on the Church property and will be utilized for advertising church activities.
2. The EMC will be located within the frame of an existing sign that has been in existence for over two decades. This is just an upgrade of that existing sign. The existing signboard of the sign that has lettering changed manually will be replaced by a new EMC.
3. The proposed sign will not have any adverse impact on neighboring properties or communities.
4. The EMC will comply with the requirements of Article XXI of the Sussex County Zoning Code regarding its operating and lighting requirements.
5. No parties appeared in opposition to this Application.
6. No conditions are necessary since the sign is regulated by Article XXI of the Sussex County Zoning Code.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2452 Community Lutheran Church for the reasons stated in the motion. Motion carried 4-0.

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

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: October 12th, 2023

Application: C/U 2452 Community Lutheran Church

Applicant: Community Lutheran Church – Ed Evans
30897 Omar Road
Frankford, DE 19945

Owner: Community Lutheran Church – Pastor Karis Graham
30897 Omar Road
Frankford, DE 19945

Site Location: The property is lying on the 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). 911 Address: 30897 Omar Road, Frankford.

Current Zoning: AR-1 (Agricultural Residential)

Proposed Use: On-Premises Electronic Message Center

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Frankford Fire Department

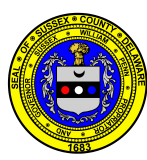
Sewer: On-Site Septic

Water: On-Site Well

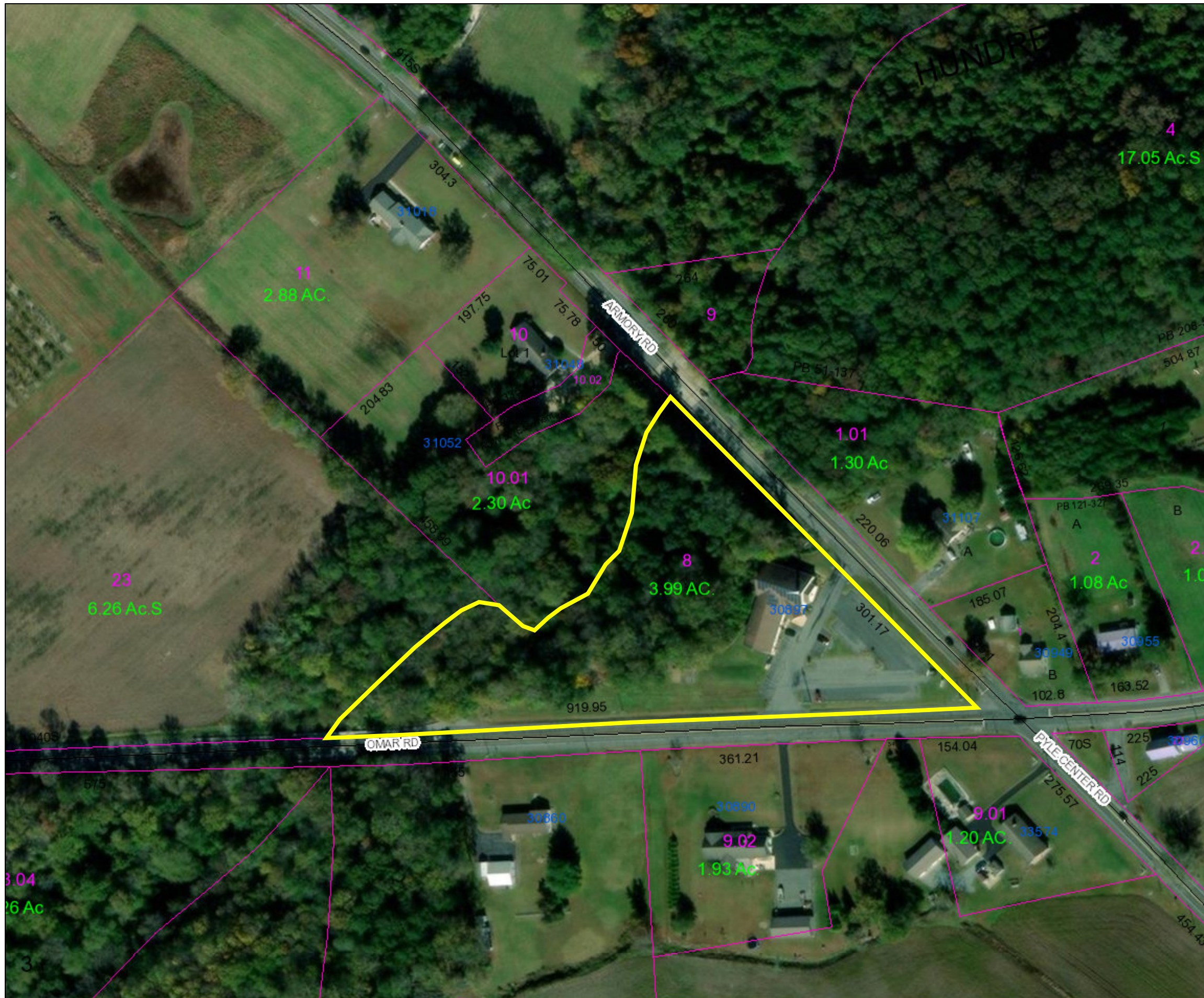
Site Area: 3.99 acres

Tax Map ID: 533-2.00-8.00



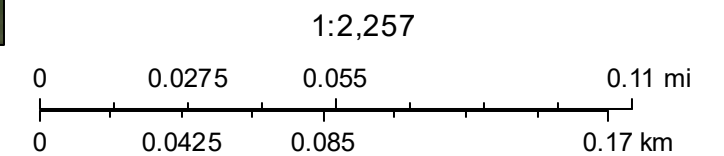


Sussex County



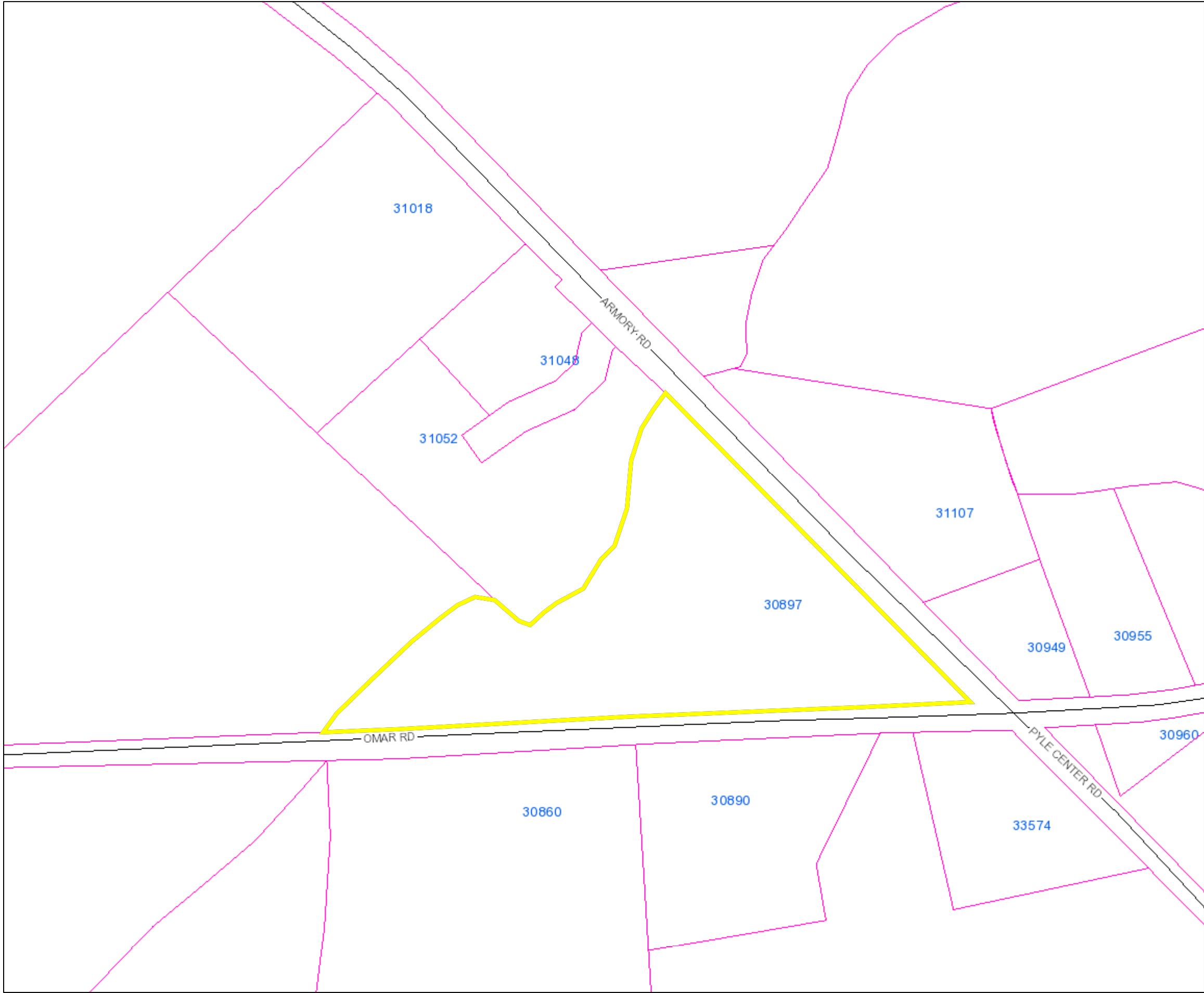
PIN:	533-2.00-8.00
Owner Name	CHURCH COMMUNITY LUTHERAN
Book	2237
Mailing Address	30897 OMAR RD
City	FRANKFORD
State	DE
Description	RD 381
Description 2	74000
Description 3	
Land Code	

- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries





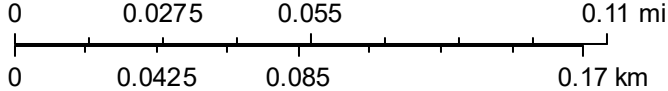
Sussex County



PIN:	533-2.00-8.00
Owner Name	CHURCH COMMUNITY LUTHERAN
Book	2237
Mailing Address	30897 OMAR RD
City	FRANKFORD
State	DE
Description	RD 381
Description 2	74000
Description 3	
Land Code	

Tax Parcels
 911 Address
 Streets
 County Boundaries

1:2,257



Sussex County

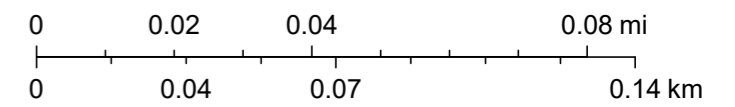


September 13, 2023

- polygonLayer
- Override 1
- Override 2
- Tax Parcels
- Streets
- County Boundaries
- World Imagery
- Low Resolution 15m Imagery
- 911 Address

- High Resolution 60cm Imagery
- High Resolution 30cm Imagery
- Citations
- 60cm Resolution Metadata

1:2,257



Maxar, Microsoft, Sussex County Government

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 22nd 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.



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: November 9, 2023

RE: County Council Report for C/Z 1984 filed on behalf of Carl M. Freeman Companies

The Planning and Zoning Department received an application (C/Z 1984 filed on behalf of Carl M. Freeman Companies) for a change of zone from an AR-1 Agricultural Residential District to MR Medium Density Residential Zoning District for Tax Parcels 533-20.00-22.00 and 20.00. The property is located on the north side of Lighthouse Road (Rt. 54) and the west side of Bennett Ave., approximately 350 feet west of Madison Avenue. The parcel size is 9.2 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on October 12, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 8 reasons as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 12, 2023, and October 26, 2023.

Minutes of the October 12, 2023, Planning & Zoning Commission Meeting

Chairman Wheatley advised the Commission that the next two applications, C/U 2368 and C/Z 1984 for Carl M. Freeman Companies are in relation to the same property and the public hearings would be combined into one presentation. Chairman Wheatley stated the Commission would act on each application separately.

C/Z 1984 Carl M. Freeman Companies

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING



9.20 ACRES, MORE OR LESS. The properties are lying on the north side of Lighthouse Road (Route 54), and the west side of Bennett Avenue, approximately 350 feet west of Madison Avenue. 911 Address: N/A. Tax Map Parcels: 533-20.00-22.00 & 20.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Change of Zone Plan, the Staff Analysis, the PLUS comments, the Applicant's Traffic Operational Analysis, the DelDOT Service Level Evaluation Response, the Planning & Zoning Commission Meeting Minutes of June 10, 2021, and July 8, 2021, and the Sussex County Council Meeting Minutes of July 27, 2021, and October 12, 2021. Mr. Whitehouse stated the Application had received 31 comments.

The Commission found Mr. James Fuqua, Esq., with Fuqua, Willard & Schab, P.A., was present to represent the Applicant, Carl M. Freeman Companies; that also present was Mr. Josh Mastrangelo, the Sr. Vice President of Freeman Companies, Ms. Katja Kalinski and Mr. Steve Marsh with George, Miles & Buhr, LLC, and Mr. Edward Launay with Environmental Resources, Inc. Mr. Fuqua stated there was an exhibit booklet submitted for the record; that there are two land use applications before the Commission for the site; that one application is a Change of Zone requesting a zoning change from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that the second application is a Conditional Use request for 23 townhouse units; that the development is proposed to be called Channel Pointe Villas; that he will be addressing both applications within his one presentation. Mr. Fuqua stated that both Applications involve a 9.2-acre parcel, located on the north side of Rt. 54; that the site is adjacent to Bennett Ave., being located one mile west of Rt. 1 and Rt. 54 intersection; that the 9.2-acre parcel was historically involved with a 128 acre parcel, which was purchased by the Freeman Companies in March 2022; that the company previously had a contract to purchase the property; that in 2018 had applied for 70 single-family lot, cluster subdivision to be located on the majority of the site, which consisted of uplands and wetlands; that the previous application was designated as Subdivision 2018-18; that Preliminary Subdivision approval was granted in November 2018, with Final Subdivision approval being granted in February 2022; that the subject 9.2-acre property was not part of the previous 70 lot subdivision application; that in 2020, Freeman Companies applied for a Conditional Use for the 9.2 acre parcel for a 70 room hotel and a 8,500 sq. ft. restaurant; that the Planning & Zoning Commission held a public hearing in June 2021, and took action in July 2021; that only four Commissioners participated in the decision; that a motion was made to recommend denial of the application, which resulted in a two in-favor and a two-against vote; that due to this, the recommendation to deny failed, and no motion was made to recommend approval at that time; that Mr. James Sharp, Esq., the attorney representing the Planning & Zoning Commission for that hearing, indicated that the Application would proceed to County Council without a recommendation; that County Council held the application hearing in July 2021; that County Council action was taken in October 2021, which also resulted in a two in-favor and a two-against vote; that three votes are required for the approval of an application, and therefore the application was denied; that Mr. Mears made the initial recommendation to deny; that he believed the Commission and Council voted to deny based on the reasons that a hotel and restaurant are not a residential project, but more of a commercial enterprise in a predominantly residential area, the proposed use was too intense, being out of character, and therefore not compatible with the existing residential uses that largely surrounded the property; that the Applicant disagrees with those opinions; that based on the previously made comments, the Applicant proposes the two subject Applications, which do not propose an intense commercial use, but a residential use which is in character and compatible with

the residential uses that already exist in the area; that located to the south of the property, on the other side of Rt. 54, is the location of Edgewater Acres and Cape Windsor developments, which are composed of single-family lots, where the majority of the lots are located along man-made canals; that to the west of Cape Windsor is the Veranda Bay community, which is zoned MR (Medium-Density Residential), and was approved as Conditional Use, C/U 1523, in 2004 for 12 multi-family units; that Veranda Bay as a density of 4.8 units to the acre; that located on the west side of the site is a broad expansive open tidal and non-tidal wetlands, which stretches over .5 mile westward to the next development property, Treasure Beach RV Park & Campground; that located north and to the rear of the site is the location of the Channel Pointe subdivision; that located to the east of the site is a mixture of zoning and uses; that there are a couple single-family homes fronting onto Bennett Ave, on lots zoned as AR-1; that the northern portion of the remaining adjacent land is zoned M (Marine), which is currently developed with a marina and boat slips, the Catch 54 Fish House restaurant, and the multi-family townhouse development, Fenwick Landing; that Fenwick Landing is 26 townhomes, located on 1.49 acres of land, equaling a density of 17.4 units per acre; that the remaining portion of adjacent land, fronting along Rt. 54 and Bennett Ave., is zoned B-1 (Neighborhood Business) and is the location of an existing spa facility, the Papa Grande restaurant, and a large parking lot; that the Application site will be served central water by Artesian Water Company, who hold the CPCN for the site; that the site is located within Sussex County's West Fenwick Sanitary Sewer District; that Sussex County Engineering Department confirmed that there is adequate sewer capacity available for the development; that stormwater management facilities will be designed and constructed in compliance with DNREC regulations, and will be reviewed and approved by Sussex Conservation District; that the entire 128 acre property, including the 9.2 acre parcel, had a Wetland Delineation performed by Mr. Edward Launay of Environmental Resources, Inc.; that the delineation was reviewed by the U.S. Army Corp of Engineers, who issued a Jurisdictional Determination Letter; that the delineation found that the 9.2 acre site contained 3.88 acres of tidal wetlands and 4.2 acres of non-tidal wetlands; that all of the wetlands are located along the western side of the parcel; that the site design provides a minimum 50 ft. buffer from the tidal wetland line to the lot lines; that the tidal wetland buffer average is 72 ft., with a minimum of 50 ft.; that additionally there is a voluntary 20 ft. minimum buffer from the non-tidal wetland line, with an average width of 36 ft; that the applications were filed before the recent Resource Buffer Ordinance was adopted; that contrary to allegations made by some of the submitted public comment letters, no wetlands will be disturbed, filled, or encroached upon; that Environmental Resources, Inc. also confirmed with the U.S. Fish & Wildlife Service that there were no federally listed, threatened or endangered species or critical habitats found on the site; that per the FEMA Flood Zone Maps, the majority of the site, which is proposed to be developed, is located within Flood Zone X, being located outside of the 100 Year Floodplain; that historically, the site was used as an area to store fill when Rt. 54 was being rebuilt, which led to the site being at a higher grade than much of the surrounding area; that the western portion of the site being developed, being the area located adjacent to the wetlands, is located within Flood Zone AE; that any development within the Flood Zone AE area will comply with the construction elevations and other FEMA requirements, which are also requirements of the Sussex County Building Code; that DelDOT indicated that in accordance with DelDOT's Development Coordination Manual, the trips generated by a 23 townhouse development did not warrant a Traffic Impact Study (TIS); that DelDOT further indicated that they had already reviewed and commented on a Traffic Operational Analysis (TOA), which Freeman Companies had completed through their engineering consultant, Century Engineering, Inc.;

that the TOA was completed in relation to the 70 lot subdivision and the originally proposed hotel and restaurant, which was much more intensive in terms of traffic impacts; that the improvements recommended by the TOA, are the improvements which will be required by the Applicant for the subject Applications and the 70 lot subdivision, despite the significantly lessened impact of the proposed Applications; that the required improvement will include the realignment of Bennett Ave. to intersection with Rt. 54 on a right angle, and is located directly opposite Monroe Ave. on the south side of Rt. 54; that this improvement will create a more standard four-legged intersection; that the location of the realigned road will be constructed on land that is owned by the Applicant; that the Applicant will be dedicating that area to DelDOT; that the new intersection will have turn lanes and pedestrian, bike and transit improvements as recommended by DelDOT; that it will include a 10 ft. wide shared-use path along the Rt. 54 road frontage; that it will provide a pad site for a DART bus stop along Rt. 54; that as recommended by DelDOT's 2021 SR54 Corridor Study, the Applicant will be responsible for the installation of a traffic signal at the realigned Rt. 54, Bennett Ave, and Monroe Ave. intersection; that the development will have access from Bennett Ave. at a new traffic circle on Bennett Ave. at Madison Ave., and will also be the entrance to the approved subdivision; that there will be an interior drive, which will terminate at a cul-de-sac; that the 23 townhouse units will be located within four buildings; that the buildings will front along the internal drive, which will have sidewalks along both sides; that the 23 units proposed for the site is a density permitted by the MR Zoning District; that the density was determined by deducting the 3.8 acres of tidal wetlands from the 9.2 acre parcel size, which resulted in a net developable area of 5.32 acres, which supports the proposed 23 townhomes units; that the townhouse lots will be individually owned; that the townhomes will have sprinkler systems; that they will have three parking spaces for each unit, comprised of a one vehicle garage and two parking spaces in the driveway; that there will also be seven additional guest parking spaces located adjacent to a recreational amenity; that recreational amenities will consist of an outdoor swimming pool, a deck area, a bathhouse, and the central mailbox area; that they propose the recreational amenity area would be required to be completed by the issuance of 18th Certificate of Occupancy, equaling to the completion of the third building; that the stormwater management ponds are located along Bennett Ave. near the entrance and the development entrance along Rt. 54; that the development will be attractively landscaped with trees and other plantings along Bennett Ave., Rt. 54, along the northern boundary of the site, located adjacent to the subdivision and internally; that a detailed landscaping plan will be submitted as part of the Final Site Plan review; that not wetlands will be impacted by the site design; that to the western portion of the site there will be a minimum 50 ft. buffer from the tidal wetland and a minimum 20 ft. buffer from the non-tidal wetlands; that the townhouse lots and road right-of-way occupy approximately 2.34 acres of the site, resulting in 7.04 acres for the remainder of the site; that the remainder of the site will be open space comprised of the recreational amenity area, stormwater management areas, common areas, and wetlands; that there will be a Homeowners Association formed that will manage and maintain the common areas of the community; that the purposed of the MR Zoning District is to provide Medium-Density Residential development in areas which are expected to be urban in character and where public central sewer and water are available; that townhouses are an authorized Conditional Use within the MR District; that the surrounding area is largely developed; that central water and sewer are available to the site; that under the 2019 Comprehensive Land Use Plan, the Future Land Use Map designates the 9.2 acre parcel as being located within the Coastal Area, which is considered a Growth Area within the Comprehensive Plan; that the Plan states on Page 4-9 that it seeks to encourage the County's most

concentrated forms of new development, including most higher density residential development in Growth Areas, such as the Coastal Area; that the Plan further states on Page 4-15 & 16, that a range of housing types should be permitted within the Coastal Area, including single-family homes, townhouses and multi-family units; that the Plan also states that medium and higher density development of four to 12 units per acre can be appropriate in certain locations, where central water and sewer are available, near existing commercial uses and employment centers, where the use is in character of the area and located along main roads, and based on all the facts provided within the submitted exhibits and stated within the presentation, the Conditional Use and Change of Zone Applications are in accordance with the Comprehensive Plan, and are in character with the nature of the area. Mr. Fuqua requested to submit the proposed Findings and Conditions into the record.

Mr. Mears questioned how Bennett Ave. impacts the parking lot, located along Rt. 54, which is used by existing businesses, if there would be access to the parking lot from Bennett Ave., and when the traffic signal is anticipated to be constructed. Mr. Mears stated he would like to see additional parking provided, as multiple people could reside in one house when renting.

Mr. Fuqua stated there would be access to the realigned parking lot, which would come across lands owned by Freeman Companies, Inc., and that he believed there would be a private restriction against short-term rentals,

Mr. Josh Mastrangelo stated the traffic signal is part of a larger DelDOT project along Rt. 54 to replace the bridges on both sides; that as a part of that project, they are coordinating with DelDOT to avoid prolonged construction, and the timing of the traffic signal will largely be dictated by DelDOT.

Mr. Collins stated the roads in the area tend to become flooded; that the road improvements will be beneficial, and he questioned if some of the development would be located within the flood plain, requiring the townhomes to obtain flood insurance.

Mr. Fuqua stated due to the historical use of the site, the site location is the highest-grade property in that location, which resulted in the majority of the development being located outside of the flood plain; that there is a small portion of the piece being development that is located within the flood zone, which will be required to comply with elevation requirements, and all of the surrounding areas are also under the same elevation requirements.

Mr. Mears stated there is a berm constructed on the property, and he questioned if development will be built on top of the berm.

Mr. Fuqua stated the site would be reconfigured by the engineers.

Ms. DeVore stated it was proposed that the amenities were to be completed by the issuance of the 18th Certificate of Occupancy, and she questioned the total number of building permits that would represent the project.

Mr. Fuqua stated he roughly estimated it to be 75 building permits; that with subdivisions, he would strive for 50%; that with the current application, it consists of four buildings, which would be constructed around the same time, and this requirement would ultimately be at the Commission's discretion.

Mr. Collins questioned if there would be a prohibition on rentals and/or seasonal rentals.

Mr. Fuqua stated that his previous statement was more of a personal statement; that Freeman Companies, Inc. would ultimately be developing a high-end, residential development to the rear of the site, with the proposed project to be a companion to the development, and he believed he would be fairly restricted and Freeman Companies, Inc. is not looking for mass quantities of rentals.

The Commission found that no one wished to speak in support of the Application and one person wished to speak in opposition to the Application.

The Commission found that Mr. Brian Radcliffe spoke in opposition to the Application. Mr. Radcliffe spoke with concerns regarding the change from the initial intense commercial development to an intense residential development, not repeating the same zoning mistakes made in the past, the lack of infrastructure along Rt. 54 and Rt. 20, the lack of trees in the area, and the negative traffic impacts.

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

At the conclusion of the public hearings, the Commission discussed the Applications.

In relation to C/Z 1984 Carl M. Freeman Companies. Mr. Mears motioned to defer for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 3-0. Ms. Wingate abstained.

Ms. Wingate returned to the Council Chambers.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

C/Z 1984 Carl M. Freeman Companies

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.20 ACRES, MORE OR LESS. The properties are lying on the north side of Lighthouse Road (Route 54), and the west side of Bennett Avenue, approximately 350 feet west of Madison Avenue. 911 Address: N/A. Tax Map Parcels: 533-20.00-22.00 & 20.00 (p/o).

The Commission discussed the Application which had been deferred since October 12, 2023.

Mr. Mears moved that the Commission recommend approval of C/Z 1984 Carl M. Freeman Companies for a change in zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area that is expected to become urban in character and where central water and sewer are available.

2. The stated purpose of the MR District is satisfied for this site. Both central water and central sewer will be available.
3. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
4. This location is appropriate for MR Zoning. The property is in the vicinity of a variety of residential uses including an existing 26-unit townhouse development. The site is also adjacent to land that is Zoned M (Marine) and B-1 (Neighborhood Business) which has developed with restaurants and other commercial businesses, and it is in close proximity to the Town of Fenwick Island. This rezoning is consistent with other zoning and land uses in the area.
5. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. MR Zoning is appropriate in this Area according to the Plan.
6. The Comprehensive Plan suggests that higher densities such as those permitted in the MR District can be appropriate where there is water and sewer available, there are appropriate roadways to handle the density, and there are nearby commercial or employment centers. All of those factors are satisfied with regard to this application.
7. Significant roadway improvements as recommended by DelDOT will be completed by the Applicant upon the development of this property. These improvements include the realignment of Bennett Avenue and the signalization of the Route 54/Bennett Avenue intersection. These improvements will result in improved and safer traffic control at this intersection.
8. For all of these reasons, MR zoning is appropriate for this site.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of C/Z 1984 Carl M. Freeman Companies for the reasons stated in the motion. Motion carried 4-0.

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

PLANNING & ZONING COMMISSION

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



Sussex County

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JAMIE WHITEHOUSE
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: September 14th, 2023

Application: C/Z 1984 Carl M. Freeman Companies (Coastal Villas at Channel Pointe)

Applicant: Carl M. Freeman Companies – Attn: Mr. Joshua Mastrangelo
21 Village Green Drive, Suite 200
Ocean View, DE 19970

Owner: Mr. Everett Clifton & Ms. Allie Cannon
38876 Bennett Avenue
Selbyville, DE 19975

Site Location: The properties are lying on the north side of Lighthouse Road (Route 54), and the west side of Bennett Avenue, approximately 350 feet west of Madison Avenue in Selbyville, Delaware.

Current Zoning: Agricultural Residential (AR-1) District

Proposed Zoning: Medium Density Residential (MR) District

Proposed Use: Multifamily Dwellings (23 Units) (accompanying Application for C/U 2368).

Future Land Use Map Designation: Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Roxana Fire Company/District

Sewer: Sussex County Public Works

Water: Artesian Water Company

Site Area: 9.20 acres +/-

Tax Map IDs: 533-20.00-20.00 (/p/o) & 22.00



JAMIE WHITEHOUSE, AICP MRTPI
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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Ms. Lauren DeVore, AICP Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: September 11th, 2023
RE: Staff Analysis for C/Z 1984 Carl M. Freeman Companies (Coastal Villas at Channel Pointe)

This memo is to provide background and analysis for the Planning Commission to consider as a part of the Application for Change of Zone No. 1984 Carl M. Freeman Companies (Coastal Villas at Channel Pointe) to be reviewed during the October 12th, 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 Change of Zone for Tax Parcel IDs: 533-20.00-20.00 and p/o 22.00 from Agricultural Residential (AR-1) District to a Medium Density Residential (MR) District to allow for the development of twenty-three (23) townhomes on fee simple lots. The properties are located on the north side of Lighthouse Road (Route 54) and the west side of Bennett Avenue, approximately 350-ft. west of Madison Avenue in Selbyville, Delaware. The parcel is comprised of a total area of 9.20 acres +/-.

Further Site Considerations

Staff note that the subject properties are located within Flood Zone “AE” – Areas subject to inundation by the 1% annual chance flood zone, where base flood elevations are determined with a portion of the properties being within Flood Zone “X” – Areas determined to be outside the 1% annual chance flood and outside the 500-year floodplain. DNREC’s Flood Planning Tool notes Base Flood Elevations in this area of approximately 5-ft.

The County’s Online Mapping System indicates the presence of regulatory tidal wetlands under the jurisdiction of the Army Corps of Engineers on the property. The Plans note that there are 3.88 acres +/- of tidal wetlands on the properties and 0.42 acres +/- of non-tidal wetlands on the properties.

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 Growth Area designation of “Coastal Area.”

The Comprehensive Plan notes that Coastal Areas are growth areas which “are areas that can accommodate development provided that special environmental concerns are addressed,” and “a



range of housing types should be permitted in Coastal Areas, including single-family homes, townhomes and multifamily units” (2018 Sussex County Comprehensive Plan, 4-15). The Plan also notes, “a base density of 2 unit per acre is appropriate throughout this classification; however, medium and higher density (4-12 units per acre) can be appropriate in certain locations” to include areas where there are “central water and sewer, sufficient commercial uses and employment centers, along a main road” and “where it is in keeping with the character of the area” (2018 Sussex County Comprehensive Plan, 4-16).

Zoning Information

The subject parcel is zoned Agricultural Residential (AR-1) District and is proposed to be zoned Medium Density Residential (MR) District. The adjacent properties to the north (to include the adjacent Channel Pointe (2018-18) (F.K.A. Bishop’s Pointe & Cannon Property) cluster subdivision,) east, south and west of the subject property are also zoned Agricultural Residential (AR-1) District.

There are five (5) Parcels to the southeast of the subject property and on the south side of Madison Avenue which are currently zoned Neighborhood Business (B-1) District to include a shopping center which currently houses the Aesthetic Center, Zen Spa Fenwick and Papa Grande’s Coastal Taqueria. There are two Parcels on the north and east sides of Madison Avenue that are currently zoned Marine (M) District) and include the Fenwick Landing Condominiums, Catch 54 Seafood Restaurant and Shark’s Cove Watersports Marina.

Applicability to Comprehensive Plan

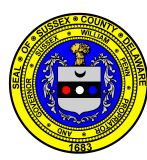
The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories,” the Medium Density Residential (MR) District is listed as an Applicable Zoning District within the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

Changes of Zone Applications within the Vicinity of the Subject Site

Staff confirms that there has been one (1) Change of Zone Application within a 2-mile radius of the Application Site. This Application was for Change of Zone No. 1783 Cauthen Ventures DE, LLC for a Change of Zone from an Agricultural Residential (AR-1) District to a Medium Density Residential (MR) District. Please find further information regarding this Application in the Table provided below:

Change of Zone Applications (w/in a 2-mile radius of the subject site)*								
Application Number	Applicant Name	Previous Zoning	Proposed Zoning	P&Z Date	P&Z Recommendation	CC Date	CC Decision	Ordinance No.
C/Z 1738	Cauthen Ventures DE, LLC	AR-1	MR	10/15/2015	Recommended Approval	12/15/2015	Approved	2431

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone to Medium Density Residential (MR) District for the development of twenty-three (23) townhomes on fee simple lots, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.



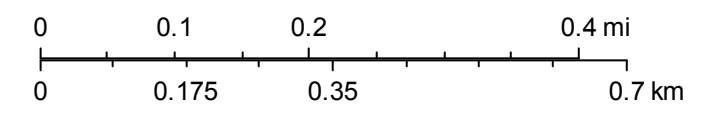
Sussex County



PIN:	533-20.00-20.00
Owner Name	CMF CANNON LLC
Book	5657
Mailing Address	111 ROCKVILLE PIKE SUITE
City	ROCKVILLE
State	MD
Description	CHANNEL POINTE
Description 2	OPEN SPACE
Description 3	LOTS 3000-3003
Land Code	

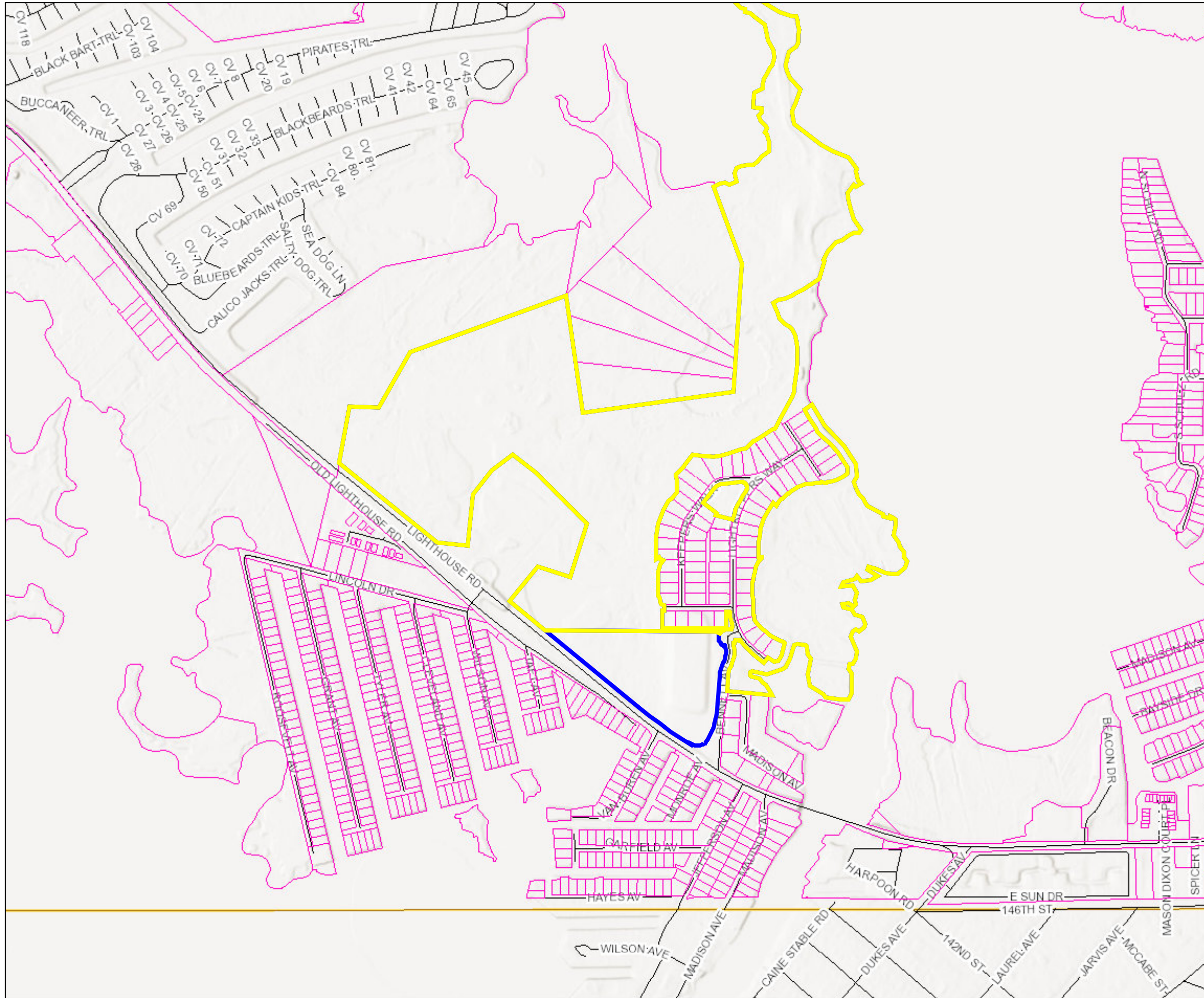
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- ⋯ Tax Parcels
- Streets
- ⋯ County Boundaries

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Sussex County



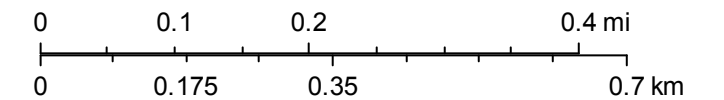
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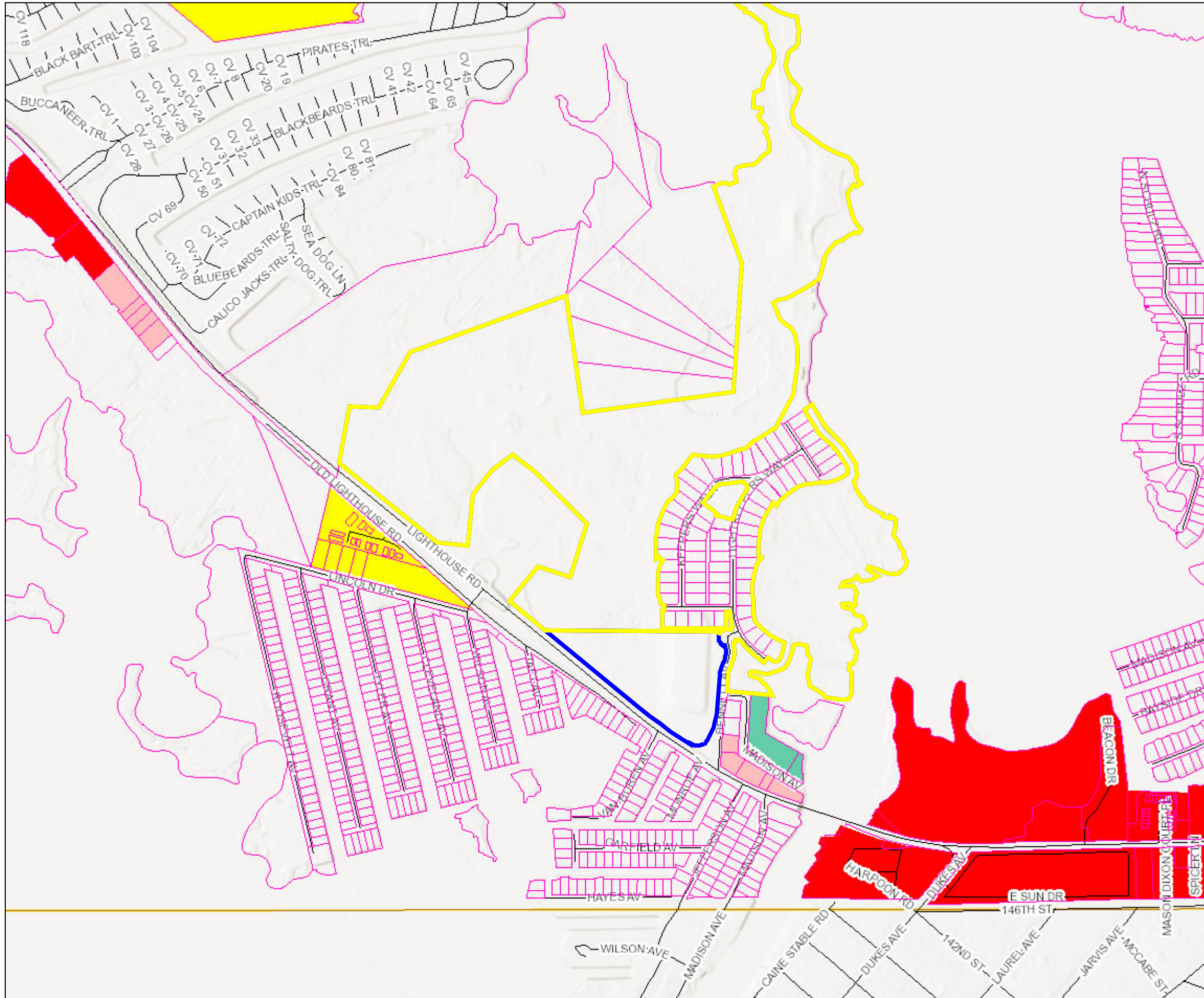
 - Override 1
- ⋯ Tax Parcels
- Streets
- ⋯ County Boundaries

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Sussex County



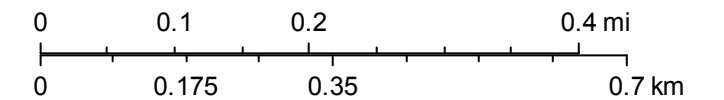
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Description 2	OPEN SPACE
Description 3	LOTS 3000-3003
Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- Tax Parcels
- Streets

1:9,028



Introduced: 01/10/23

Council District 4: Mr. Hudson
Tax I.D. No. 533-20.00-22.00 & (p/o) 20.00
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.2 ACRES, MORE OR LESS

WHEREAS, on the 27th day of April 2022, a Zoning Application, denominated Change of Zone No. 1984 was filed on behalf of Carl M. Freeman Companies; 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. 1984 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 [Agricultural Residential District] and adding in lieu thereof the designation Medium Residential District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the north side of Lighthouse Road (Route 54) and the west side of Bennett Avenue approximately 350 ft. west of Madison Avenue and being more particularly described in the attached legal description prepared by Scott and Shuman, P.A., said parcel containing 9.2 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.



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: November 9, 2023

RE: County Council Report for C/U 2368 filed on behalf of Carl M. Freeman Companies

The Planning and Zoning Department received an application (C/U 2369 filed on behalf of Carl M. Freeman Companies) for multi-family dwellings (23 units), to be located at Tax Parcel 533-20.00-22.00 and 20.00. The property is located on the west side of Bennett Ave., approximately 200 feet west of Deer Run Road (SCR 388). The parcel size is 9.2 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on October 12, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 8 reasons and subject to the 13 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 12, 2023, and October 26, 2023.

Minutes of the October 12, 2023, Planning & Zoning Commission Meeting

Chairman Wheatley advised the Commission that the next two applications, C/U 2368 and C/Z 1984 for Carl M. Freeman Companies are in relation to the same property and the public hearings would be combined into one presentation. Chairman Wheatley stated the Commission would act on each application separately.

C/U 2368 Carl M. Freeman Companies

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. The properties are lying on the north side of Lighthouse Road (Route 54), and the west side of Bennett Avenue, approximately 200 feet west of Deer Run Road (S.C.R. 388). 911 Address: N/A. Tax Map Parcels: 533-20.00-22.00 & 20.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Staff Analysis, a letter from the Sussex County Engineering Department, Utility Planning Division, the DelDOT Service Level Evaluation Response, the Applicant's Traffic Operational Analysis, the DelDOT response to the Traffic Operational Analysis, the PLUS comments, the Planning & Zoning Commission Meeting Minutes of June 10, 2021, and July 8, 2021, and the Sussex County Council Meeting Minutes of July 27, 2021, and October 12, 2021. Mr. Whitehouse advised the Commission that 48 comments had been received for the Application, however, some of the comments appeared to be duplicates.

The Commission found Mr. James Fuqua, Esq., with Fuqua, Willard & Schab, P.A., was present to represent the Applicant, Carl M. Freeman Companies; that also present was Mr. Josh Mastrangelo, the Sr. Vice President of Freeman Companies, Ms. Katja Kalinski and Mr. Steve Marsh with George, Miles & Buhr, LLC, and Mr. Edward Launay with Environmental Resources, Inc. Mr. Fuqua stated there was an exhibit booklet submitted for the record; that there are two land use applications before the Commission for the site; that one application is a Change of Zone requesting a zoning change from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that the second application is a Conditional Use request for 23 townhouse units; that the development is proposed to be called Channel Pointe Villas; that he will be addressing both applications within his one presentation. Mr. Fuqua stated that both Applications involve a 9.2-acre parcel, located on the north side of Rt. 54; that the site is adjacent to Bennett Ave., being located one mile west of Rt. 1 and Rt. 54 intersection; that the 9.2-acre parcel was historically involved with a 128 acre parcel, which was purchased by the Freeman Companies in March 2022; that the company previously had a contract to purchase the property; that in 2018 had applied for 70 single-family lot, cluster subdivision to be located on the majority of the site, which consisted of uplands and wetlands; that the previous application was designated as Subdivision 2018-18; that Preliminary Subdivision approval was granted in November 2018, with Final Subdivision approval being granted in February 2022; that the subject 9.2-acre property was not part of the previous 70 lot subdivision application; that in 2020, Freeman Companies applied for a Conditional Use for the 9.2 acre parcel for a 70 room hotel and a 8,500 sq. ft. restaurant; that the Planning & Zoning Commission held a public hearing in June 2021, and took action in July 2021; that only four Commissioners participated in the decision; that a motion was made to recommend denial of the application, which resulted in a two in-favor and a two-against vote; that due to this, the recommendation to deny failed, and no motion was made to recommend approval at that time; that Mr. James Sharp, Esq., the attorney representing the Planning & Zoning Commission for that hearing, indicated that the Application would proceed to County Council without a recommendation; that County Council held the application hearing in July 2021; that County Council action was taken in October 2021, which also resulted in a two in-favor and a two-against vote; that three votes are required for the approval of an application, and therefore the application was denied; that Mr. Mears made the initial recommendation to deny; that he believed the Commission and Council voted to deny based on the reasons that a hotel and restaurant are not a residential project, but more of a commercial enterprise in a predominantly residential area, the proposed use was too intense, being out of character, and therefore not compatible with the existing residential uses that

largely surrounded the property; that the Applicant disagrees with those opinions; that based on the previously made comments, the Applicant proposes the two subject Applications, which do not propose an intense commercial use, but a residential use which is in character and compatible with the residential uses that already exist in the area; that located to the south of the property, on the other side of Rt. 54, is the location of Edgewater Acres and Cape Windsor developments, which are composed of single-family lots, where the majority of the lots are located along man-made canals; that to the west of Cape Windsor is the Veranda Bay community, which is zoned MR (Medium-Density Residential), and was approved as Conditional Use, C/U 1523, in 2004 for 12 multi-family units; that Veranda Bay as a density of 4.8 units to the acre; that located on the west side of the site is a broad expansive open tidal and non-tidal wetlands, which stretches over .5 mile westward to the next development property, Treasure Beach RV Park & Campground; that located north and to the rear of the site is the location of the Channel Pointe subdivision; that located to the east of the site is a mixture of zoning and uses; that there are a couple single-family homes fronting onto Bennett Ave, on lots zoned as AR-1; that the northern portion of the remaining adjacent land is zoned M (Marine), which is currently developed with a marina and boat slips, the Catch 54 Fish House restaurant, and the multi-family townhouse development, Fenwick Landing; that Fenwick Landing is 26 townhomes, located on 1.49 acres of land, equaling a density of 17.4 units per acre; that the remaining portion of adjacent land, fronting along Rt. 54 and Bennett Ave., is zoned B-1 (Neighborhood Business) and is the location of an existing spa facility, the Papa Grande restaurant, and a large parking lot; that the Application site will be served central water by Artesian Water Company, who hold the CPCN for the site; that the site is located within Sussex County's West Fenwick Sanitary Sewer District; that Sussex County Engineering Department confirmed that there is adequate sewer capacity available for the development; that stormwater management facilities will be designed and constructed in compliance with DNREC regulations, and will be reviewed and approved by Sussex Conservation District; that the entire 128 acre property, including the 9.2 acre parcel, had a Wetland Delineation performed by Mr. Edward Launay of Environmental Resources, Inc.; that the delineation was reviewed by the U.S. Army Corp of Engineers, who issued a Jurisdictional Determination Letter; that the delineation found that the 9.2 acre site contained 3.88 acres of tidal wetlands and 4.2 acres of non-tidal wetlands; that all of the wetlands are located along the western side of the parcel; that the site design provides a minimum 50 ft. buffer from the tidal wetland line to the lot lines; that the tidal wetland buffer average is 72 ft., with a minimum of 50 ft.; that additionally there is a voluntary 20 ft. minimum buffer from the non-tidal wetland line, with an average width of 36 ft; that the applications were filed before the recent Resource Buffer Ordinance was adopted; that contrary to allegations made by some of the submitted public comment letters, no wetlands will be disturbed, filled, or encroached upon; that Environmental Resources, Inc. also confirmed with the U.S. Fish & Wildlife Service that there were no federally listed, threatened or endangered species or critical habitats found on the site; that per the FEMA Flood Zone Maps, the majority of the site, which is proposed to be developed, is located within Flood Zone X, being located outside of the 100 Year Floodplain; that historically, the site was used as an area to store fill when Rt. 54 was being rebuilt, which led to the site being at a higher grade than much of the surrounding area; that the western portion of the site being developed, being the area located adjacent to the wetlands, is located within Flood Zone AE; that any development within the Flood Zone AE area will comply with the construction elevations and other FEMA requirements, which are also requirements of the Sussex County Building Code; that DelDOT indicated that in accordance with DelDOT's Development Coordination Manual, the trips generated by a 23

townhouse development did not warrant a Traffic Impact Study (TIS); that DelDOT further indicated that they had already reviewed and commented on a Traffic Operational Analysis (TOA), which Freeman Companies had completed through their engineering consultant, Century Engineering, Inc.; that the TOA was completed in relation to the 70 lot subdivision and the originally proposed hotel and restaurant, which was much more intensive in terms of traffic impacts; that the improvements recommended by the TOA, are the improvements which will be required by the Applicant for the subject Applications and the 70 lot subdivision, despite the significantly lessened impact of the proposed Applications; that the required improvement will include the realignment of Bennett Ave. to intersection with Rt. 54 on a right angle, and is located directly opposite Monroe Ave. on the south side of Rt. 54; that this improvement will create a more standard four-legged intersection; that the location of the realigned road will be constructed on land that is owned by the Applicant; that the Applicant will be dedicating that area to DelDOT; that the new intersection will have turn lanes and pedestrian, bike and transit improvements as recommended by DelDOT; that it will include a 10 ft. wide shared-use path along the Rt. 54 road frontage; that it will provide a pad site for a DART bus stop along Rt. 54; that as recommended by DelDOT's 2021 SR54 Corridor Study, the Applicant will be responsible for the installation of a traffic signal at the realigned Rt. 54, Bennett Ave, and Monroe Ave. intersection; that the development will have access from Bennett Ave. at a new traffic circle on Bennett Ave. at Madison Ave., and will also be the entrance to the approved subdivision; that there will be an interior drive, which will terminate at a cul-de-sac; that the 23 townhouse units will be located within four buildings; that the buildings will front along the internal drive, which will have sidewalks along both sides; that the 23 units proposed for the site is a density permitted by the MR Zoning District; that the density was determined by deducting the 3.8 acres of tidal wetlands from the 9.2 acre parcel size, which resulted in a net developable area of 5.32 acres, which supports the proposed 23 townhomes units; that the townhouse lots will be individually owned; that the townhomes will have sprinkler systems; that they will have three parking spaces for each unit, comprised of a one vehicle garage and two parking spaces in the driveway; that there will also be seven additional guest parking spaces located adjacent to a recreational amenity; that recreational amenities will consist of an outdoor swimming pool, a deck area, a bathhouse, and the central mailbox area; that they propose the recreational amenity area would be required to be completed by the issuance of 18th Certificate of Occupancy, equaling to the completion of the third building; that the stormwater management ponds are located along Bennett Ave. near the entrance and the development entrance along Rt. 54; that the development will be attractively landscaped with trees and other plantings along Bennett Ave., Rt. 54, along the northern boundary of the site, located adjacent to the subdivision and internally; that a detailed landscaping plan will be submitted as part of the Final Site Plan review; that not wetlands will be impacted by the site design; that to the western portion of the site there will be a minimum 50 ft. buffer from the tidal wetland and a minimum 20 ft. buffer from the non-tidal wetlands; that the townhouse lots and road right-of-way occupy approximately 2.34 acres of the site, resulting in 7.04 acres for the remainder of the site; that the remainder of the site will be open space comprised of the recreational amenity area, stormwater management areas, common areas, and wetlands; that there will be a Homeowners Association formed that will manage and maintain the common areas of the community; that the purposed of the MR Zoning District is to provide Medium-Density Residential development in areas which are expected to be urban in character and where public central sewer and water are available; that townhouses are an authorized Conditional Use within the MR District; that the surrounding area is largely developed; that central water and sewer are available to the site; that

under the 2019 Comprehensive Land Use Plan, the Future Land Use Map designates the 9.2 acre parcel as being located within the Coastal Area, which is considered a Growth Area within the Comprehensive Plan; that the Plan states on Page 4-9 that it seeks to encourage the County's most concentrated forms of new development, including most higher density residential development in Growth Areas, such as the Coastal Area; that the Plan further states on Page 4-15 & 16, that a range of housing types should be permitted within the Coastal Area, including single-family homes, townhouses and multi-family units; that the Plan also states that medium and higher density development of four to 12 units per acre can be appropriate in certain locations, where central water and sewer are available, near existing commercial uses and employment centers, where the use is in character of the area and located along main roads, and based on all the facts provided within the submitted exhibits and stated within the presentation, the Conditional Use and Change of Zone Applications are in accordance with the Comprehensive Plan, and are in character with the nature of the area. Mr. Fuqua requested to submit the proposed Findings and Conditions into the record.

Mr. Mears questioned how Bennett Ave. impacts the parking lot, located along Rt. 54, which is used by existing businesses, if there would be access to the parking lot from Bennett Ave., and when the traffic signal is anticipated to be constructed. Mr. Mears stated he would like to see additional parking provided, as multiple people could reside in one house when renting.

Mr. Fuqua stated there would be access to the realigned parking lot, which would come across lands owned by Freeman Companies, Inc., and that he believed there would be a private restriction against short-term rentals,

Mr. Josh Mastrangelo stated the traffic signal is part of a larger DelDOT project along Rt. 54 to replace the bridges on both sides; that as a part of that project, they are coordinating with DelDOT to avoid prolonged construction, and the timing of the traffic signal will largely be dictated by DelDOT.

Mr. Collins stated the roads in the area tend to become flooded; that the road improvements will be beneficial, and he questioned if some of the development would be located within the flood plain, requiring the townhomes to obtain flood insurance.

Mr. Fuqua stated due to the historical use of the site, the site location is the highest-grade property in that location, which resulted in the majority of the development being located outside of the flood plain; that there is a small portion of the piece being development that is located within the flood zone, which will be required to comply with elevation requirements, and all of the surrounding areas are also under the same elevation requirements.

Mr. Mears stated there is a berm constructed on the property, and he questioned if development will be built on top of the berm.

Mr. Fuqua stated the site would be reconfigured by the engineers.

Ms. DeVore stated it was proposed that the amenities were to be completed by the issuance of the 18th Certificate of Occupancy, and she questioned the total number of building permits that would represent the project.

Mr. Fuqua stated he roughly estimated it to be 75 building permits; that with subdivisions, he would

strive for 50%; that with the current application, it consists of four buildings, which would be constructed around the same time, and this requirement would ultimately be at the Commission's discretion.

Mr. Collins questioned if there would be a prohibition on rentals and/or seasonal rentals.

Mr. Fuqua stated that his previous statement was more of a personal statement; that Freeman Companies, Inc. would ultimately be developing a high-end, residential development to the rear of the site, with the proposed project to be a companion to the development, and he believed he would be fairly restricted and Freeman Companies, Inc. is not looking for mass quantities of rentals.

The Commission found that no one wished to speak in support of the Application and one person wished to speak in opposition to the Application.

The Commission found that Mr. Brian Radcliffe spoke in opposition to the Application. Mr. Radcliffe spoke with concerns regarding the change from the initial intense commercial development to an intense residential development, not repeating the same zoning mistakes made in the past, the lack of infrastructure along Rt. 54 and Rt. 20, the lack of trees in the area, and the negative traffic impacts.

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

At the conclusion of the public hearings, the Commission discussed the Applications.

In relation to C/U 2368 Carl M. Freeman Companies. Mr. Mears motioned to defer for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 3-0. Ms. Wingate abstained.

Ms. Wingate returned to the Council Chambers.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

C/U 2368 Carl M. Freeman Companies

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL 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. The properties are lying on the north side of Lighthouse Road (Route 54), and the west side of Bennett Avenue, approximately 350 feet west of Madison Avenue. 911 Address: N/A. Tax Map Parcels: 533-20.00-22.00 & 20.00 (p/o).

The Commission discussed the Application which had been deferred since October 12, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2368 Carl M. Freeman Communities, for 23 Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. The purpose of the MR zone is to provide housing in an area that is expected to become urban in character and where central water and sewer are available. This conditional use application for multi-family units is in compliance with the purposes of the MR zone.
2. This site is located along Route 54, directly in front of the 70-lot subdivision that is also being developed by this Applicant.
3. The property is in the immediate vicinity of other properties with a variety of residential and commercial uses including other MR-Zoned land as well M (Marine) and B-1 (Neighborhood Business) that have developed residentially and with restaurants and other commercial uses. Nearby residential uses include the Fenwick Landing Townhouse development which has a density of 17.4 units per acre. The project is also in close proximity to the City of Fenwick Island. This relatively small multi-family conditional use at approximately 4.3 units per acre is consistent with other zoning and multi-family developments in the area.
4. DelDOT has determined that a new TIS is not required for this site since it already reviewed and commented on the TOA for the adjacent 70 lots plus the more intensive hotel and restaurant use that was proposed for this site. Also, significant roadway improvements will be required by DelDOT including the realignment of Bennett Avenue and the signalization of the Route 54/Bennett Avenue intersection. This will result in a safer intersection for current and future residents of the area.
5. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
6. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.
7. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.
8. This recommendation is subject to the following conditions:
9.
 - a. There shall be no more than 23 Units within the development.
 - b. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 - c. All recreational amenities including the pool, deck, and bathhouse shall be completed within the development on or before the issuance of the 18th Certificate of Occupancy.
 - d. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
 - e. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - f. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - g. Interior street design shall comply with or exceed Sussex County standards.

- h. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- i. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday, and on Saturdays between October 1 and April 30. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- j. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas. The landscape plan shall identify all “Limits of Disturbance” within the site and these “Limits of Disturbance” shall be clearly marked on the site itself.
- k. The Applicant shall form a Homeowners Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.
- l. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
- m. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Butler and carried unanimously to recommend approval of C/U 2368 Carl M. Freeman Companies for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

PLANNING & ZONING COMMISSION

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



Sussex County

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JAMIE WHITEHOUSE
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: September 14th, 2023

Application: C/U 2368 Carl M. Freeman Companies (Coastal Villas at Channel Pointe)

Applicant: Carl M. Freeman Companies – Attn: Mr. Joshua Mastrangelo
21 Village Green Drive, Suite 200
Ocean View, DE 19970

Owner: Mr. Everett Clifton & Ms. Allie Cannon
38876 Bennett Avenue
Selbyville, DE 19975

Site Location: The properties are lying on the north side of Lighthouse Road (Route 54), and the west side of Bennett Avenue, approximately 350 feet west of Madison Avenue in Selbyville, Delaware.

Current Zoning: Agricultural Residential (AR-1) District

Proposed Zoning: Medium Density Residential (MR) District (accompanying Application for C/Z 1984.)

Proposed Use: Multifamily Dwellings (23 Units)

Future Land Use Map Designation: Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Roxana Fire Company/District

Sewer: Sussex County Public Works

Water: Artesian Water Company

Site Area: 9.20 acres +/-

Tax Map IDs: 533-20.00-20.00 (/p/o) & 22.00



JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
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Sussex County

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Memorandum

To: Sussex County Planning Commission Members
From: Ms. Lauren DeVore, AICP Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: September 11th, 2023
RE: Staff Analysis for C/U 2368 Carl M. Freeman Companies (Coastal Villas at Channel Pointe)

This memo is to provide background and analysis for the Planning Commission to consider as a part of the Application for Conditional Use No. 2368 Carl M. Freeman Companies (Coastal Villas at Channel Pointe) to be reviewed during the October 12th, 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 IDs: 533-20.00-20.00 and p/o 22.00 to allow for the development of twenty-three (23) townhomes on fee simple lots. The properties are located on the north side of Lighthouse Road (Route 54) and the west side of Bennett Avenue, approximately 350-ft. west of Madison Avenue in Selbyville, Delaware. The parcel is comprised of a total area of 9.20 acres +/-.

Further Site Considerations

Staff note that the subject properties are located within Flood Zone “AE” – Areas subject to inundation by the 1% annual chance flood zone, where base flood elevations are determined with a portion of the properties being within Flood Zone “X” – Areas determined to be outside the 1% annual chance flood and outside the 500-year floodplain. DNREC’s Flood Planning Tool notes Base Flood Elevations in this area of approximately 5-ft.

The County’s Online Mapping System indicates the presence of regulatory tidal wetlands under the jurisdiction of the Army Corps of Engineers on the property. The Plans note that there are 3.88 acres +/- of tidal wetlands on the properties and 0.42 acres +/- of non-tidal wetlands on the properties.

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 Growth Area designation of “Coastal Area.”

The Comprehensive Plan notes that Coastal Areas are growth areas which “are areas that can accommodate development provided that special environmental concerns are addressed,” and “a range of housing types should be permitted in Coastal Areas, including single-family homes,



townhomes and multifamily units” (2018 Sussex County Comprehensive Plan, 4-15). The Plan also notes, “a base density of 2 unit per acre is appropriate throughout this classification; however, medium and higher density (4-12 units per acre) can be appropriate in certain locations” to include areas where there are “central water and sewer, sufficient commercial uses and employment centers, along a main road” and “where it is in keeping with the character of the area” (2018 Sussex County Comprehensive Plan, 4-16).

Zoning Information

Staff note that the subject parcel is zoned Agricultural Residential (AR-1) District and that there is a corresponding proposal to rezone these lands to Medium Density Residential (MR) District as a part of Change of Zone No. 1984 Carl M. Freeman Companies (Coastal Villas at Channel Pointe) which is travelling in tandem with this Application.

The adjacent properties to the north (to include the adjacent Channel Pointe (2018-18) (F.K.A. Bishop’s Pointe & Cannon Property) cluster subdivision,) east, south and west of the subject property are also zoned Agricultural Residential (AR-1) District.

There are five (5) Parcels to the southeast of the subject property and on the south side of Madison Avenue which are currently zoned Neighborhood Business (B-1) District to include a shopping center which currently houses the Aesthetic Center, Zen Spa Fenwick and Papa Grande’s Coastal Taqueria. There are two Parcels on the north and east sides of Madison Avenue that are currently zoned Marine (M) District) and include the Fenwick Landing Condominiums, Catch 54 Seafood Restaurant and Shark’s Cove Watersports Marina.

Applicability to Comprehensive Plan

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 Future Land Use Map designation (Sussex County Comprehensive Plan, 4-25).

Conditional Use Applications within the Vicinity of the Subject Site

Staff note there have been twenty-two (22) Conditional Use Applications within a 2-mile radius of the Application Site. Four (4) Applications were located within a 210-ft radius of the Application Site. These Application are detailed in the Table below.

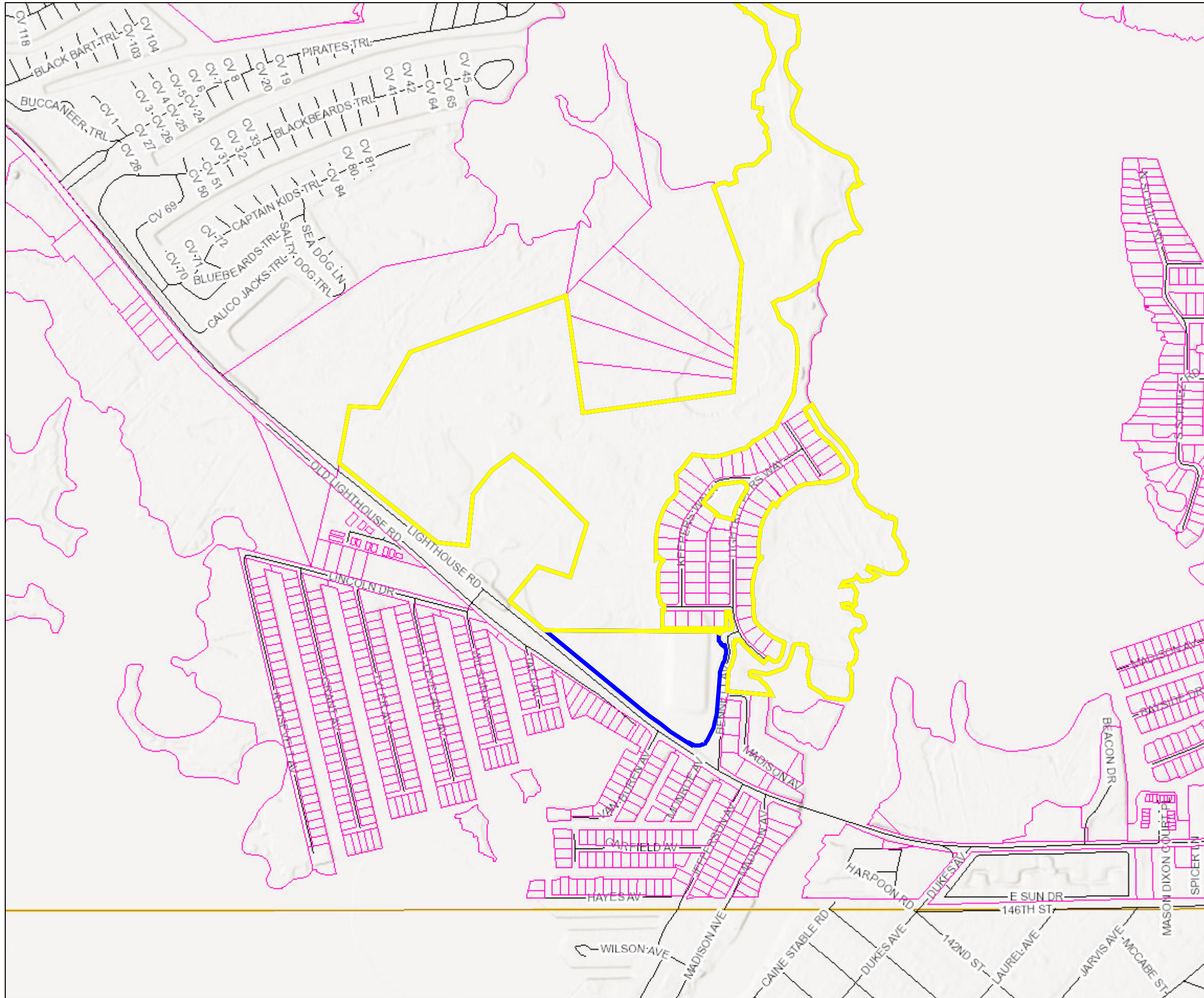
Of these Applications, three (3) were approved by the Sussex County Council and one (1) was denied. The one (1) previous Conditional Use which was denied on this same Parcel was Conditional Use No. 2236 Carl M. Freeman Companies for the construction of a hotel and restaurant on the property. The Conditional Use was forwarded to Council with no recommendation/motion by the Planning and Zoning Commission due to a lack of three affirmative votes pursuant to 5.5 of the Planning and Zoning Commission Rules of Procedure and was subsequently denied by the Sussex County Council at their meeting of Tuesday, October 12th, 2021.

Conditional Use Applications (w/in a 210-ft radius of the subject site)*								
Application Number	Applicant Name	Zoning	Proposed Use	P&Z Date	P&Z Recommendation	CC Date	CC Decision	Ordinance No.
591	J. Edward Shockley	AR-1	Sandwich Shop & Boat Repair	N/A	N/A	N/A	Approved	—
610	Richard Lyman Sr. & Kathryn Lyman	AR-1	Antique Shop	N/A	N/A	1/6/1981	Approved	—
1721	Ralph N. Krum	AR-1	Multifamily dwelling	2/14/2008	Recommended Approval	4/1/2008	Approved	1963
2236	Carl M. Freeman Companies	AR-1	Hotel & Restaurant	7/8/2021	No Recommendation	10/12/2021	Denied	N/A

Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use for the development of twenty-three (23) townhomes on fee simple lots in this location, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.



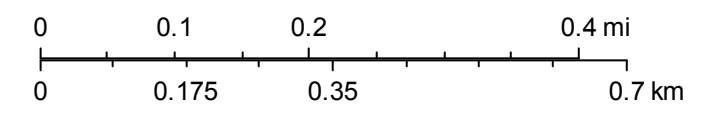
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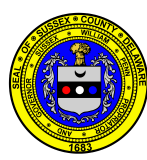


PIN:	533-20.00-20.00
Owner Name	CMF CANNON LLC
Book	5657
Mailing Address	111 ROCKVILLE PIKE SUITE
City	ROCKVILLE
State	MD
Description	CHANNEL POINTE
Description 2	OPEN SPACE
Description 3	LOTS 3000-3003
Land Code	

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- Override 1
- Tax Parcels
- Streets
- County Boundaries

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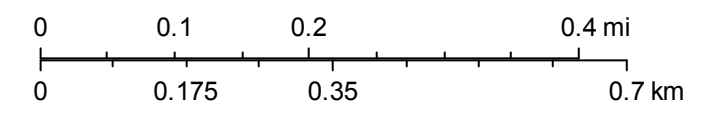
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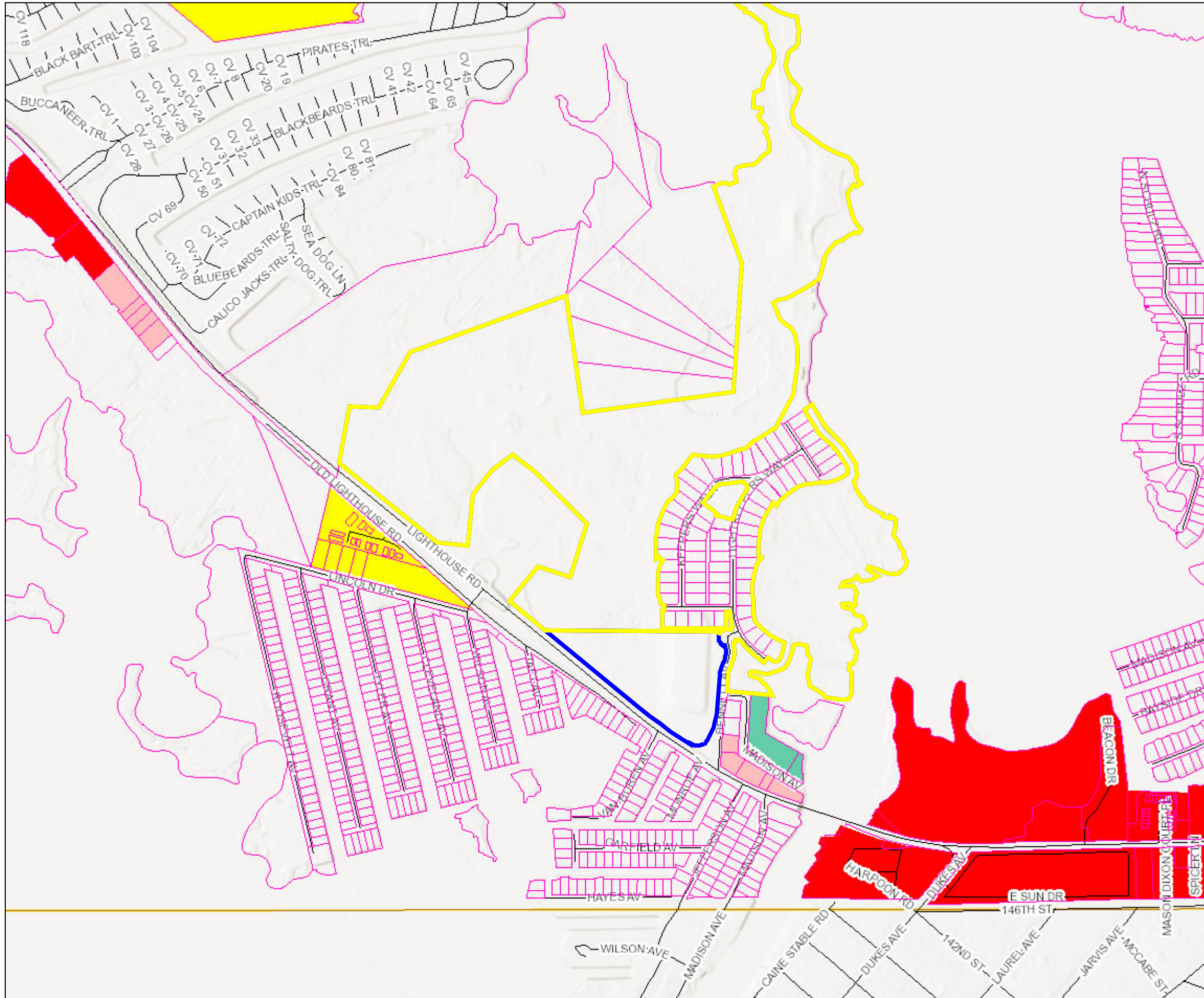
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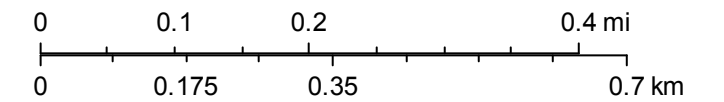
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Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- ⋯ Tax Parcels
- Streets

1:9,028



Reintroduced: 9/12/23

Council District 4: Mr. Hudson
Tax I.D. No. 533-20.00-22.00 & p/o 20.00
911 Address: N/A

ORDINANCE NO. ____

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

WHEREAS, on the 27th day of April 2022, a Conditional Use Application, denominated Conditional Use No. 2368 was filed on behalf of Carl M. Freeman Companies; 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. 2368 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 V, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2368 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the north side of Lighthouse Road (Route 54) and the west side of Bennett Avenue, approximately 350 feet west of Madison Avenue and being more particularly described in the attached legal description prepared by Scott and Shuman, P.A., said parcel containing 9.20 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.