

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

January 9, 2024

1:00 P.M.

Call to Order

Approval of Agenda

Approval of Minutes - January 2, 2024

[Draft Minutes 010224](#)

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

1. **Recognition of Retiree – Susan A. Wise**
2. **Administrator’s Report**

Gina Jennings, Finance Director

1. **Fiscal Year End 2023 Financial Report**

John Ashman, Director of Utility Planning & Design Review

1. **Permission to Prepare and Post Notices for Beaver Dam Road Annexation into the Sussex County Unified Sanitary Sewer District (Millville Area)**

[Prepare & Post Notices Beaver Dam Road](#)



Old Business

1. [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])

[Old Business CZ1984](#)

2. [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])

[Old Business CU2368](#)

Introduction of Proposed Zoning Ordinances

[Ord Intros CU2429 CU2430](#)

Council Members' Comments

1:30 p.m. Public Hearings

1. [Conditional Use No. 2404 filed on behalf of Elk Development, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 20.57 ACRES, MORE OR LESS” (property lying on the northwest side of Thorogoods Road [S.C.R. 333], approximately 0.5 mile southwest of Iron Branch Road [S.C.R. 331]) (911 Address: N/A) (Tax Map Parcel: 233-5.00-69.00)

[Public Hearing CU2404](#)

2. [Conditional Use No. 2405 filed on behalf of Elk Development, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 22.97 ACRES, MORE OR LESS” (property lying on the southeast side of Thorogoods Road [S.C.R. 333], approximately 0.5 mile southwest of Iron Branch Road [S.C.R. 331]) (911 Address: N/A) (Tax Map Parcel: 233-5.00-187.01)

[Public Hearing CU2405](#)

3. [Conditional Use No. 2447 filed on behalf of Elk Development, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 51.83 ACRES, MORE OR LESS” (properties lying on the east side of River Road [S.C.R. 490], at the intersection of Morgan Branch Road and River Road [S.C.R. 490]) (911 Addresses: N/A) (Tax Map Parcels: 132-1.00-5.00 [p/o] & 132-6.00-78.03)

[Public Hearing CU2447](#)

4. [Conditional Use No. 2456 filed on behalf of Elk Development, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 67.72 ACRES, MORE OR LESS” (property lying on the north side of Oneals Road [S.C.R. 485], approximately 0.26 mile southwest of Seaford Road [Rt. 13A]) (911 Address: 28270 Oneals Road, Seaford) (Tax Map Parcel: 132-6.00-92.01)

[Public Hearing CU2456](#)

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on January 2, 2024 at 4:15 p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

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

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

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

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

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

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

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 2, 2024

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 2, 2024, at 10:00 a.m., in Council Chambers, with the following present:

Michael H. Vincent	President
John L. Rieley	Vice President
Cynthia C. Green	Councilwoman
Douglas B. Hudson	Councilman
Mark G. Schaeffer	Councilman
Todd F. Lawson	County Administrator
Gina 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 001 24
Approve
Agenda**

Mr. Lawson reported that Executive Session and possible action on Executive Session Items can be removed from the Agenda. A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to approve the Agenda, as amended.

Motion Adopted: 5 Yeas

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

**Election
Officers**

of Mr. Lawson noted the requirement that the County Council must elect officers for 2024.

**M 002 24
Appoint
President**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson that Mr. Vincent serve as President of the Sussex County Council in 2024.

Motion Adopted: 4 Yeas, 1 Nay

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

**M 003 24
Appoint
Vice
President**

A Motion was made by Mr. Hudson that Mr. Rieley serve as Vice President of the Sussex County Council in 2024.

Motion Adopted: 4 Yeas, 1 Nay

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

**Council
Member
Appoint-
ments**

Mr. Lawson noted the requirement that Council appoint members to the various boards and committees and he referenced the recommendations included in Council packets for this meeting, as follows: Cynthia Green to the Delaware Association of Counties (County Director); Doug Hudson to the Delaware Association of Counties (Executive Board); Michael Vincent to the Delaware League of Local Governments; Michael Vincent to the Salisbury/Wicomico MPO (District Specific); John Rieley to the Sussex Conservation District Board; Doug Hudson to the Sussex County Airport Committee; and John Rieley and Mark Schaeffer to the Sussex County Land Trust.

**M 004 24
Approve
Council
Member
Appoint-
ments**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that the Sussex County Council approves the 2024 Member appointments 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**

**Legal
Counsel
Appoint-
ments**

Mr. Lawson referenced the appointment of Legal Counsel and the recommendation included in Council packets for this meeting, as follows: County Attorney – J. Everett Moore, Jr.; Assistant County Attorney – Vincent Robertson; and legal representation for the Board of Adjustment, Planning and Zoning Commission, and Sussex County Council/Government, as follows: Ballard Spahr LLP, Barnes & Thornburg, Moore & Rutt, P.A.; Parkowski, Guerke and Swayze, P.A.; Potter Anderson & Corroon LLP, and Young Conaway Stargatt & Taylor, LLP. Mr. Lawson noted the addition of Porter Anderson & Corroon LLP who will assist with personnel matters should the need arise.

**M 005 24
Approve
Appoint-
ment
of
Legal
Counsel**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that the Sussex County Council approves the 2024 appointment of Legal Counsel, 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**

**Rules
of
Procedure**

Mr. Lawson presented the Rules of Procedure which were included in Council packets for this meeting which were unchanged.

M 006 24 **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer that the**
Approve **Sussex County Council approves the 2024 Rules of Procedure, as presented.**
2024 Rules
of Procedure **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 December 12, 2023, were approved by consensus.**

Corre- **Mr. Moore read correspondence received from Shoes That Fit, Ronald**
spondence **McDonald House Charities, the Greater Lewes Foundation, Food Bank of**
Delaware, and Delaware Breast Cancer Coalition thanking Council for
their donation.

Public **Public comments were heard, and the following people spoke:**
Comments

Ms. Jill Hicks spoke about perimeter buffers.

Mr. Sergei Boboshko spoke about development and Land Use Ordinance
steps.

Ms. Susan Rosenblum spoke about flooding issues.

Mr. Oliver Gumbs spoke about the Voluntary School Assessment.

Dept. of **Mr. Jamie Mack and Ms. Jennifer Carlson from Department of Education**
Education/ **provided a presentation on Voluntary School Assessments.**
Voluntary

School **Mr. Mack explained that Voluntary School Assessments are a fee paid by**
Assessment **residential developers to support school construction in impacted school**
Discussion **districts. Developers have the option to pay per residential unit fee or**
donate land for use by the school district. Funds can be used for major and
minor capital projects and may serve as local match for construction
projects.

Mr. Mack reported that 14 Del. C. § 103 provides that DOE shall calculate
VSA on a per unit basis:

- **Calculate the average cost per child for new public schools.**
- **Multiply the cost per child by the local percentage share for the relevant local district.**
- **Multiply the result by 0.50, representing the average number of school-aged-children projected for each residential unit.**

Each spring, VSA fees are updated for the following fiscal year.

- Dept. of Education/
Voluntary School
Assessment
Discussion
(continued)**
- In addition, 9 Del. C. § 6961 establishes authority for Sussex County Council to implement VSA in Sussex County:**
- **Implementation of Sussex County VSA program is contingent on the County adopting 9 Del. C. § 6961.**
 - **If adopted, the County may require certification of adequate school capacity for new residential developments recorded as major record subdivision plan.**

Mr. Mack explained that Municipal VSA requirement is provided in 22 Del. C. § 842 and that requirement would be triggered with Sussex County requirement of VSA. In addition, VSA requirement apply to any: “residential subdivision plan for over 5 units in size for any lands in any municipality located in a county that utilizes voluntary school assessments as set forth in Title 9 and notwithstanding any home rule or charter provision to the contrary”.

Mr. Mack reported that County or municipalities identify the need for VSA at filing of a major record subdivision plan. The developer then contacts DOE and provides the location, site plan and planned development size (number and type of units). Once that information is received, they reach out to the school district for their current capacity and add the additional students from the proposed development based on the calculation. At that point, an answer is provided back to DOE with the capacity of all the feeder schools in that pattern for that development. If any feeder pattern is over 85% capacity with additional students, VSA is required for the development. If the district confirms adequate capacity is available, VSA is not required. DOE will notify the developer of the VSA requirement based on the school capacity.

Once DOE confirms VSA is required and provides a draft VSA agreement to the developer, the developer can opt to receive credit for free market value of donated to the school district or pay per unit assessment calculated for the development.

All VSA payment amounts are based on the fee calculated for the impacted school district at the time the first residential unit building permit is issued. The payment amount remains unfixed for up to five years. If construction is still continuing after five years, the fee is recalculated based on current VSA fees. The fee recalculated repeats every five years until construction is complete. All payments are made directly to Delaware DOE and districts can request a transfer of the funding.

Mr. Schaeffer questioned the exclusions. Mr. Mack stated that VSA does not apply to developments that are primarily 55+ communities or targeted for low-income housing. He added that it even works if only a portion of the development is one or the other.

Dewey Mr. Lawson reported that since 2022 the Sussex County Emergency

**Beach
MOU**

Medical Services (EMS) has occupied a portion of the Town of Dewey's building located on Coastal Highway (Route 1) in the center of town. The EMS operate a seasonal unit out of this location and have found the proximity to Route 1 and the coastal towns during the summer months improves their response times exponentially.

When the Town of Dewey Beach embarked on the initiative to construct a new Town Hall and Police Department, Town officials approached the County to gauge interest in co-locating an EMS station at the new Town Hall. Based on the improvement to the EMS system as a whole, County stakeholders agreed this arrangement would be worth pursuing.

Mr. Lawson reported that the MOU specifics the County's and Dewey's roles and responsibilities for the property. Dewey is responsible for all aspects of the construction of the facility as well as its long-term maintenance. The County has reviewed and approved the footprint the EMS will use in the new Town Hall as specified in Construction Drawings by George, Miles and Buhr. In general, the EMS footprint includes one bay in the garage and over 1,000 square feet of quarter space on the second floor. The County will execute a future lease agreement with Dewey specifying, among other items, these terms, and conditions.

The County will contribute one million dollars to the overall Town Hall and Police Department construction costs. The County will pay half upon Dewey's execution of a construction contract and the other half upon reaching 75 percent of construction completion.

Mr. Robbie Murray, EMS Director discussed response times and how this location is ideal to provide services in the area with the increased call volume.

Mr. Lawson noted that there will not be a reoccurring lease payment or utility payment which will be spelled out in the future lease agreement.

**M 007 24
Approve
Dewey
Beach
MOU**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved that Sussex County Council approves the Memorandum of Understanding with the Town of Dewey Beach related to the construction of the new Town Hall Police Department and the County's contribution of one million dollars to the same project as specified in the terms of the MOU.

Motion Adopted: 5 Yeas

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

**Adminis-
trator's
Report**

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

Adminis-
trator’s
Report
(continued)

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion effective December 6th: Howard Manor, and The Estuary – Phase 4A (Construction Record).

2. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for November 2023 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 190 troopers assigned to Sussex County for the month of November.

3. Robert D. Kreitzer

It is with great sadness that we inform you that County employee, Robert “Bob” Kreitzer, passed away on Saturday, December 16, 2023. Mr. Kreitzer began his career with Sussex County in 2002 as an Equipment Operator I in Environmental Services. He left the County in 2004 for several years and returned in November 2017. His last position held was Equipment Operator III. We would like to extend our condolences to the Kreitzer family.

5. Vanessa B. Pettyjohn

It is with great sadness that we inform you that County pensioner, Vanessa Pettyjohn, passed away on Wednesday, December 20, 2023. Ms. Pettyjohn began her career with Sussex County in 1976 where she worked until December 2022 for a total of 46 years of service. Her last position with the County was Billing Analyst. We would like to extend our condolences to the Pettyjohn family.

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

Bank
Resolutions

Mrs. Jennings reported that since there were no changes to leadership, no action is needed.

T-Hangar
Bldg/CO No.
2

Mark Parker, Assistant County Engineer presented Change Order No. 2 and Substantial Completion for T-Hangar Building, Project A 22-23 for Council’s consideration.

M 008 24
Approve CO
No. 2 &
Substantial
Completion

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 2 be approved adding twenty-nine (29) calendar days with no net cost change, as well as granting of Substantial Completion for the T-Hangar Building project.

Motion Adopted: 5 Yeas

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

**Airport
Advisory
Committee
Appointme-
nts**

Mr. Bob Bryant, Airport Manager, presented for Council's approval the Delaware Coastal Airport Advisory Committee members for the Year 2024 for Council's consideration.

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that the Sussex County Council appoints Dustin Berlinger, Larry Kelley, Jeffrey Reed, Rick Garner, Ezra Richards, Mark Ryan, Scott Thomas, and Ray Hopkins to the Delaware Coastal Airport Advisory Committee for 2024.

**M 009 24
Approve
Airport
Advisory
Committee
Appointme-
nts**

Motion Adopted: 5 Yeas

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

**DSP 2nd
Lease
Extension**

Mr. Bob Bryant, Airport Manager presented a second lease extension with Delaware State Police for Council's consideration.

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that the Sussex County Council approves the State of Delaware Department of Homeland Security request for a second extension for the ground lease for Lot G at the Delaware Coastal Airport for an additional 5-year period ending June 23, 2029.

**M 010 24
Approve
Second
Lease
Extension/
DSP**

Motion Adopted: 5 Yeas

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

**Grant
Requests**

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

**M 011 24
Boardwalk
Buddy Walk
Fund**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to give \$500 (\$500 from Mr. Schaeffer's Councilmanic Grant Account) to Boardwalk Buddy Walk Fund for their Uncle David's Ice Cream Shop.

Motion Adopted: 5 Yeas

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

**M 012 24
Eastern
Shore
AFRAM
Festival**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$500 (\$500 from Mr. Vincent’s Councilmanic Grant Account) to Eastern Shore AFRAM Festival for their MLK Day of Celebration.

Motion Adopted: 5 Yeas

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

**M 013 24
Bethany-
Fenwick
Chamber of
Commerce**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$1,000 (\$1,000 from Mr. Hudson’s Councilmanic Grant Account) to Bethany-Fenwick Island Chamber of Commerce for their Fire and Ice Festival.

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
Ordinance**

Mr. Rieley introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN GR GENERAL RESIDENTIAL DISTRICT FOR A GROCERY STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 0.23 ACRE MORE OR LESS” filed on behalf of Nicasia Chavez Reyes.

The Proposed Ordinance will be advertised for a Public Hearing.

**Council
Members’
Comments**

There were no Council Member comments.

**M 014 24
Adjourn**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to adjourn at 10:50 a.m.

Motion Adopted: 5 Yeas

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

Respectfully submitted,

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

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

Beaver Dam Road Expansion 2024

Expansion of the Millville Sanitary Sewer District

Public Hearing

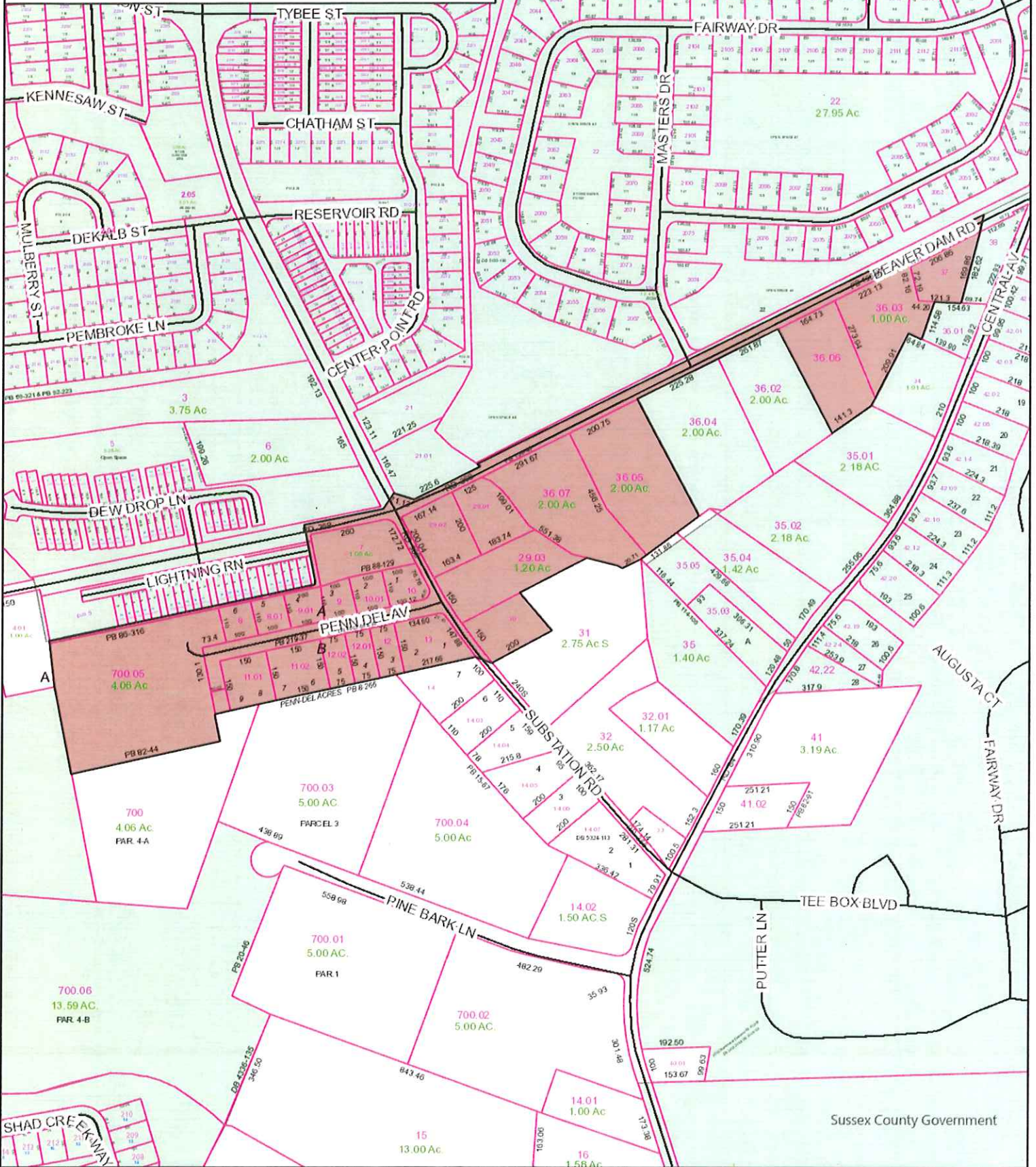
- January 11, 2011, I appeared before County Council to request permission to prepare and post notices for the Beaver Dam Road Expansion of the Millville Sanitary Sewer District.
- The area included the portion of Beaver Dam Road from Substation Road to Central Avenue, the section of Substation Road from Beaver Dam Road to Central Avenue and the Penn Del Acres Subdivision.
- On April 20, 2011, the Engineering Department held a Public Meeting at the Millville Town Hall to discuss the proposed service area, estimated costs, the sewer rate structure, construction impacts, the process for connecting to the sewer and a proposed schedule.
- On June 7, 2011, there was a Public Hearing in council chambers, based on testimony the Engineering Department completed a polling vote and re-appeared before council on July 19, 2011. The vote was deferred until July 26th at which time it was deferred indefinitely based on lack of response from the property owners.
- In 2015 the subject area again was evaluated, and it was discovered the DeIDOT had just paved Beaver Dam Road and there was a 5-year moratorium on any project impacting the roadway.
- Recently there has been renewed interest in central sewer for the area so the department distributed a new polling letter based on potential change of ownership since the original meeting and hearings.
- The polling was for a reduced area consisting of (23) properties, of those we received (11) in favor and (3) opposed to the annexation.

Permission to Prepare and Post Notices Beaver Dam Road Area

Existing SSD Proposed Area



0 125 250 500 Feet
Map created: 10/26/2023





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: January 4, 2024

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).

The County Council held a Public Hearing on the application at the meeting of November 14, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration. Below is a link to the minutes of the County Council meeting of November 14, 2023.

[Link to the Minutes of the County Council meeting of November 14, 2023](#)

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



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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.



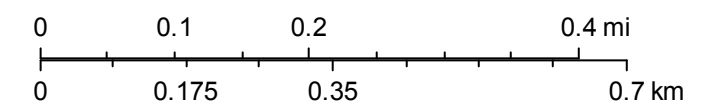
Sussex County



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	

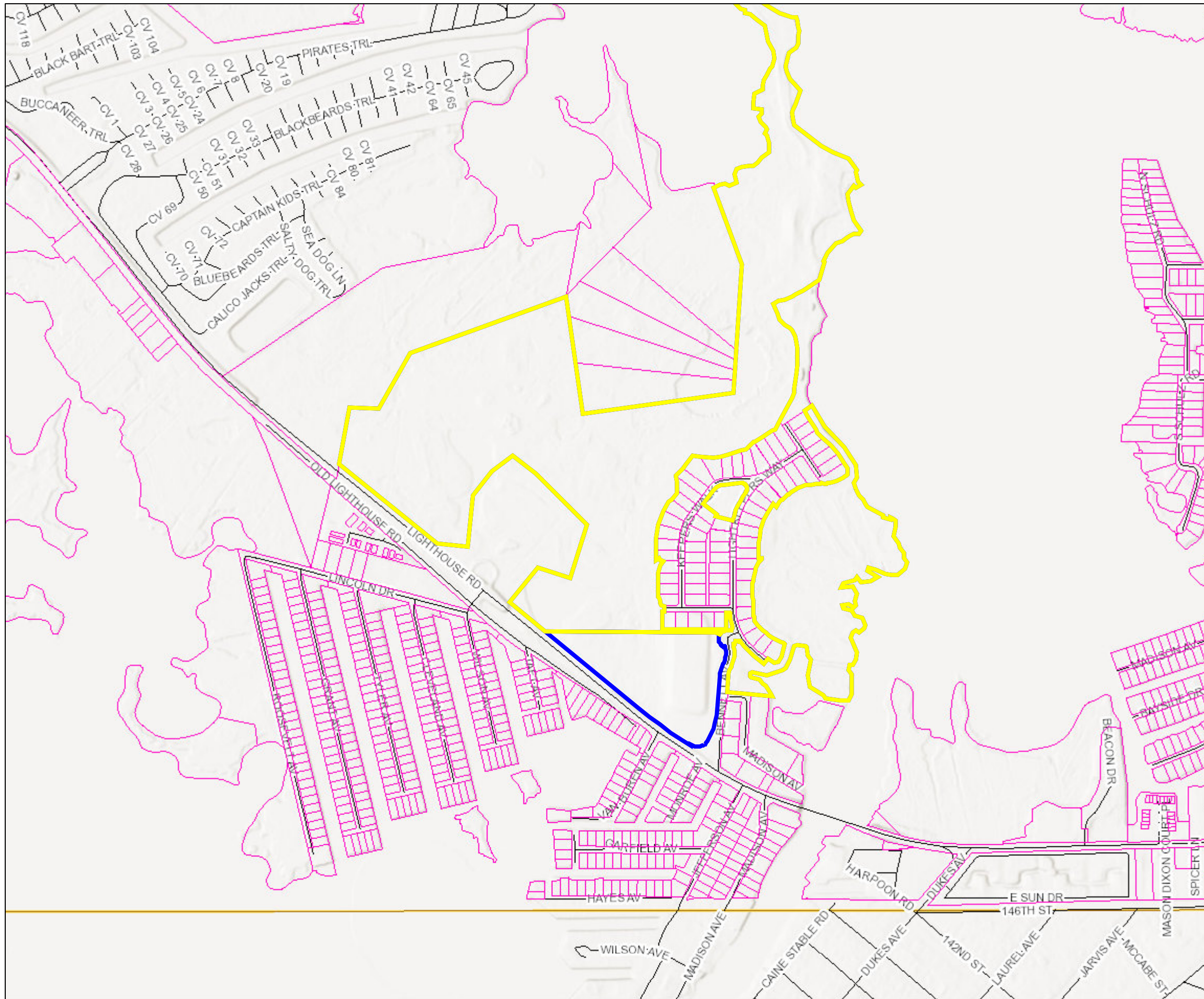
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- ⋯ Tax Parcels
- Streets
- ⋯ County Boundaries

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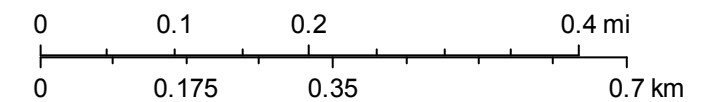
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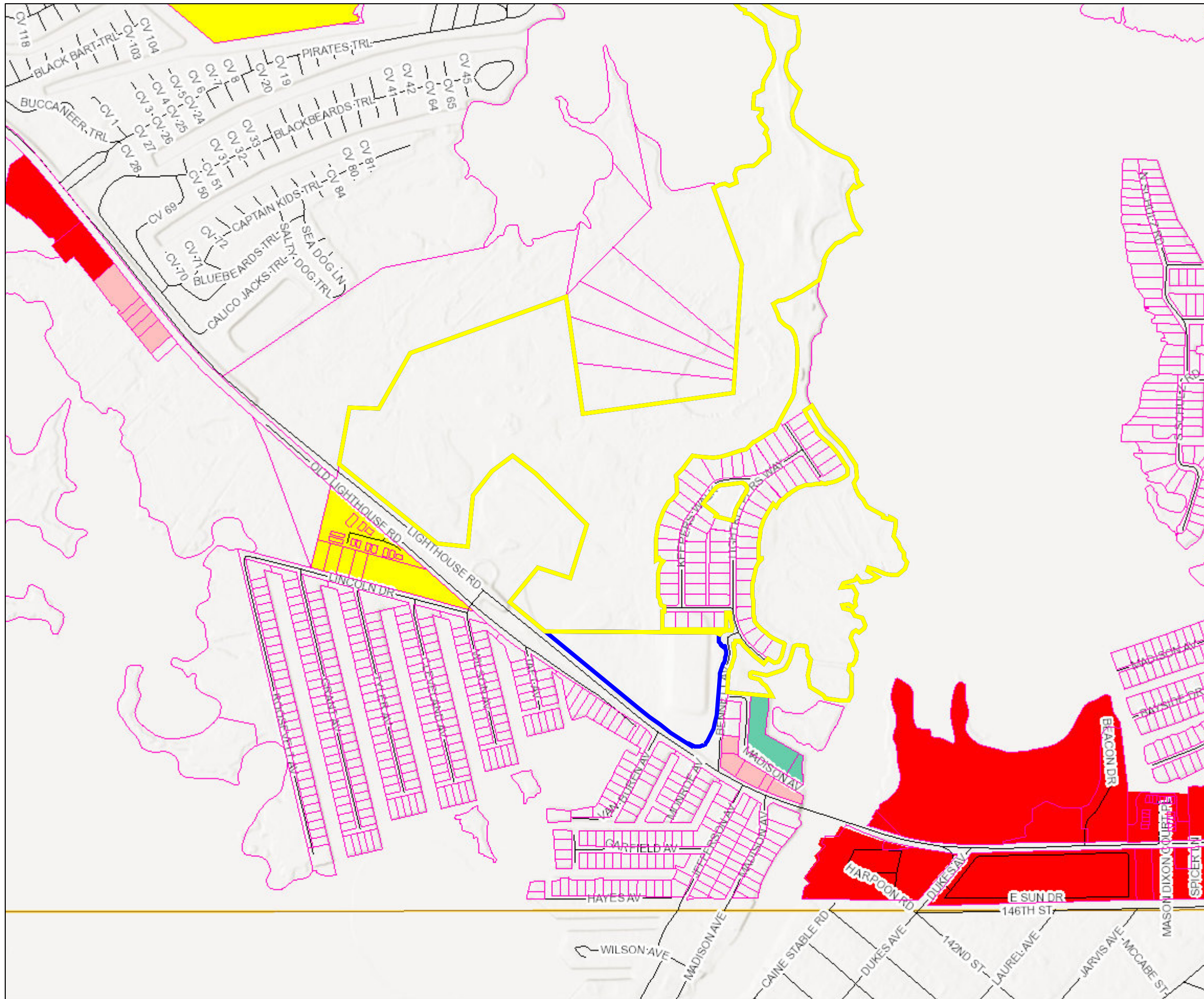
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Sussex County



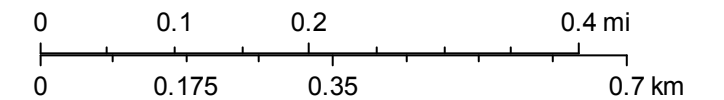
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- polygonLayer**

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- 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: January 4, 2024

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 2368 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 stated and subject to the 13 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at the meeting of November 14, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration. Below is a link to the minutes of the County Council meeting of November 14, 2023.

[Link to the Minutes of the County Council meeting of November 14, 2023](#)

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

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:
 - 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



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PLANNING & ZONING DIRECTOR
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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/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.



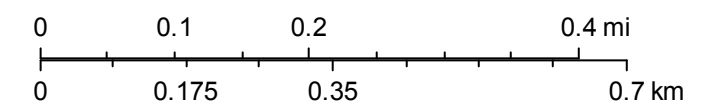
Sussex County



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	

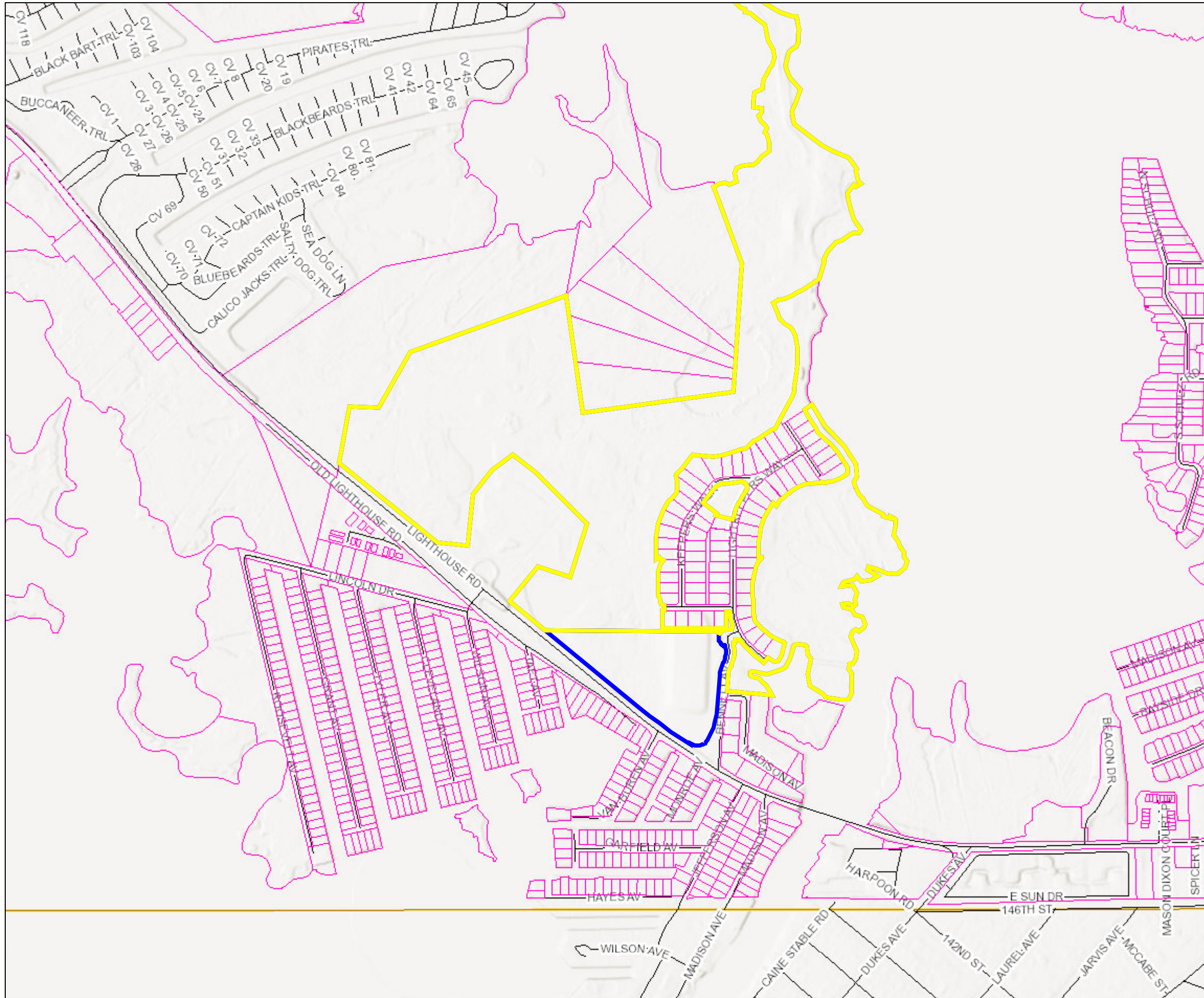
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- Override 1
- ⋯ Tax Parcels
- Streets
- ⋯ County Boundaries

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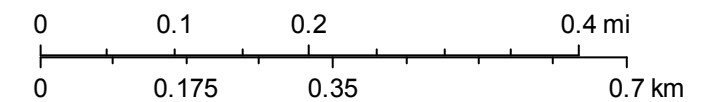
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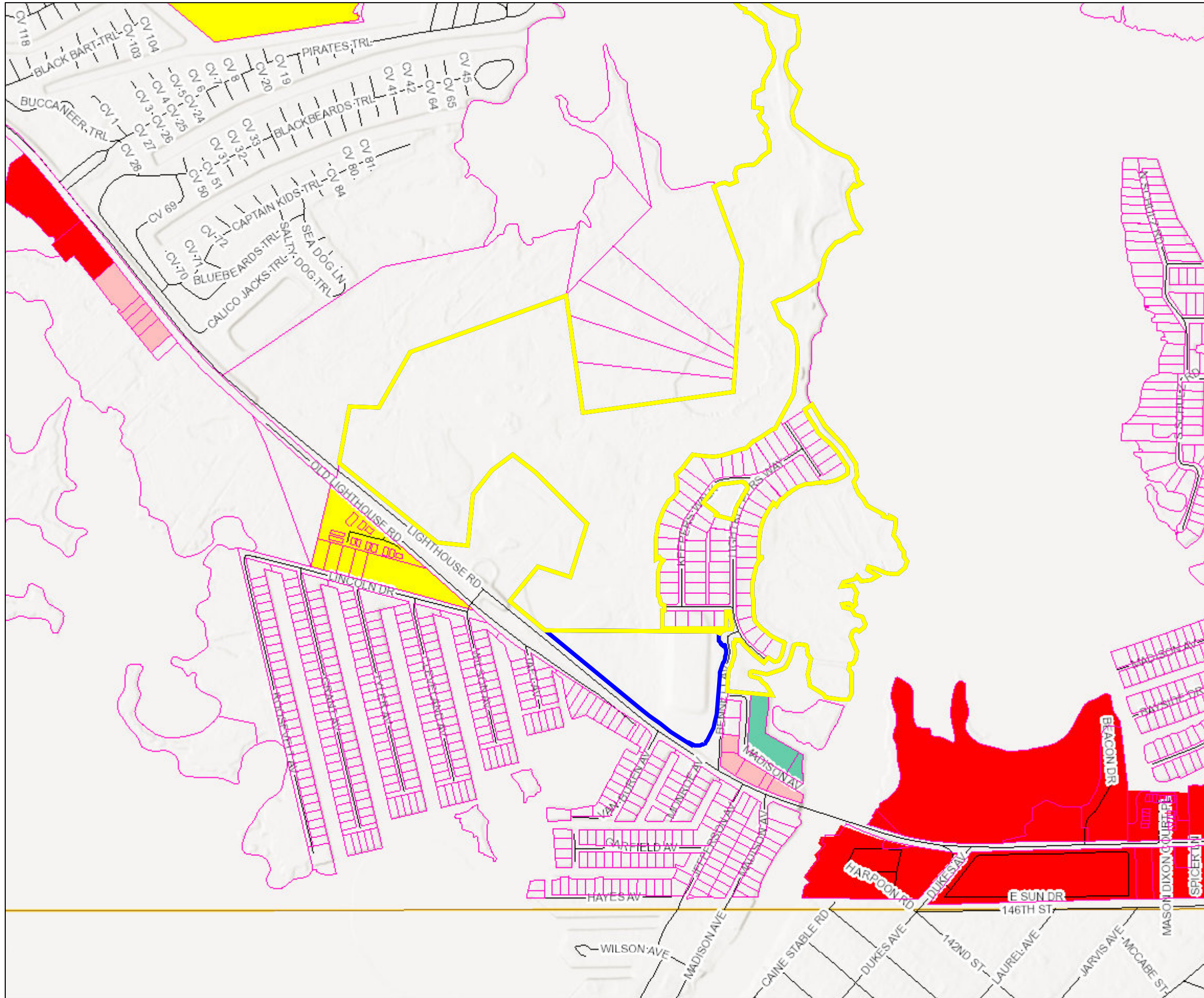
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Sussex County



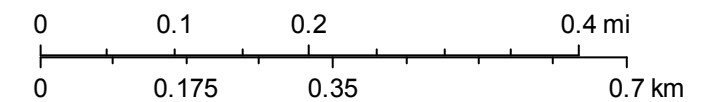
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- polygonLayer**

 - 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.

To Be Introduced: 1/9/24

Council District 2: Mrs. Green
Tax I.D. No.: 331-2.00-17.02
911 Address: 20914 Camp Road, Bridgeville

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 0.69 ACRE, MORE OR LESS

WHEREAS, on the 23rd day of March 2023, a Conditional Use Application, denominated Conditional Use No. 2429 was filed on behalf of Jason Hignutt; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2429 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2429 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 Seaford Hundred, Sussex County, Delaware, and lying on the west side of Camp Road (S.C.R. 532) approximately 0.19 mile north of Eskridge Road (S.C.R. 531) and being more particularly described in the attached legal description prepared by Ward & Taylor, LLC., said parcel containing 0.69 acre, more or less.

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

To Be Introduced: 1/9/24

Council District 4: Mr. Hudson
Tax I.D. No.: 433-1.00-7.00
911 Address: 30465 Armory Road, Frankford

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTO REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 2.045 ACRES, MORE OR LESS

WHEREAS, on the 24th day of March 2023, a Conditional Use Application, denominated Conditional Use No. 2430 was filed on behalf of Mark Baull; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2430 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22 and Article V, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2430 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on the northeast side of the intersection of Armory Road (Rt. 20) and Murray Road (S.C.R. 355) and being more particularly described in the attached legal description prepared by D. Stephen Parsons, P.A., said parcel containing 2.045 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: January 5, 2024

RE: County Council Report for C/U 2404 filed on behalf of Elk Development, LLC

The Planning and Zoning Department received an application (C/U 2404 filed on behalf of Elk Development, LLC) for a solar farm, to be located at Tax Parcel 233-5.00-69.00. The property is located on the northwest side of Thorogoods Road (S.C.R. 333), approximately 0.5 mile southwest of Iron Branch Road (S.C.R. 331). The parcel size is 20.57 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on November 9, 2023. At the meeting of November 9, 2023, the Planning & Zoning Commission recommended approval of the application for the 10 reasons stated and subject to the 9 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of November 9, 2023.

Minutes of the November 9, 2023, Planning & Zoning Commission Meeting

C/U 2404 Elk Development, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 20.57 ACRES, MORE OR LESS. The property is lying on the northwest side of Thorogoods Road (S.C.R. 333), approximately 0.5 mile southwest of Iron Branch Road (S.C.R. 331). 911 Address: N/A. Tax Map Parcel: 233-5.00-69.00.

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



and the Staff Analysis. Mr. Whitehouse advised the Commission that one letter of support had been submitted for the Application.

The Commission found that Mr. James, Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, Elk Development, LLC; that also present were Mr. Seth Shafer, P.E. with Pivot Energy, and Mr. Edward Hastings, with Becker Morgan Group. Mr. Fuqua requested that a portion of this presentation be incorporated into the following three Applications, as they share the same Applicant.

Mr. Fuqua stated an exhibit booklet was submitted for all four applications; that Elk Development, LLC is a division of Pivot Energy, Inc.; that Pivot Energy is a national company involved in the development of clean energy projects, such as on site solar facilities and small utility solar projects, which include community solar facilities; that Pivot Energy has financed and developed over 1,200 solar projects throughout the United States; that the current applications propose solar facilities as authorized, and in compliance with, the Delaware Law, which encourages a more decentralized and cleaner approach to power generation through community solar facilities; that the law provides that by subscribing to a community solar project, residential, business and educational users, who are utility customers can participate in renewable and sustainable energy production, with possible future energy costs; that the solar facilities involved in all four of the subject applications, it is anticipated that that upon final approval and required permitting, the site development and solar facility construction would take approximately four to six months to complete; that once completed and operational, the four facilities would have the following in common; that the solar array and equipment area would be enclosed in a seven foot high security fence with a gate and an emergency key box to accommodate emergency access; that one unlit sign, not exceeding 32 sq. ft. is requested; that the sign will identify the operator and the operator's contact information; that the facilities will consist of solar panel modules mounted on single axis trackers that will allow them to follow the path to the sun throughout the day; that the solar racking system itself utilizes drive steel posts or pile foundations, which anchor the racking system to the ground, and that results in minimal ground disturbance or impervious surface cover; that the solar inverters and other equipment will be located on concrete pads; that the power generated by the solar panels will be transferred to DP&L (Delmarva Power & Light grid by interconnection with the existing DP&L power lines; that the overall system and its design comply with the National Electrical Code and will be reviewed and approved by Delmarva Power & Light; that the solar array area itself will be seeded with a pollinator seed mix, which is slow growing, environmentally friendly ground cover; that there are no odors, dust, smoke, or heat associated with the solar operation; that the only sound is a minimal sound, which is a low hum from the inverters; that there is minimal to no glare from the solar panels, which are designed to absorb sunlight, not to reflect it; that there will be landscaping surrounding the fenced area, which will further shield the panels from view; that after construction is completed, traffic to the site would be minimal, as it would only be periodic equipment inspections and maintenance, as well as seasonal property maintenance and grass cuts; that there are no onsite employees, as the equipment is monitored remotely; that each application does have its own DelDOT Service Level Evaluation Response letter, which indicates that the traffic impact for all the facilities would be diminutive; that there is no proposed or need for sewer, water or trash services for the facilities; that little impervious surface will be created by the facility; that any stormwater management for the sites will comply with the applicable State and County requirements; that as part of the Final Site Plan approval, a Decommissioning Plan will be provided to ensure that upon expiration of the lease, or early termination of the Conditional Use, all equipment and materials will be removed from the site and properly disposed of; that the site will be returned to a physical condition similar to its present state; that the plan also provides for financial security and a

form acceptable to the County; that this will guarantee that the cost of the restoration will be available; that the actual estimated amount in terms of that security will be provided as part of the Final Site Plan review and approval process; that after termination of the use and restoration of the site, the land will revert back to its current condition as agricultural land; that solar facilities are permitted as an approved Conditional Use in both the AR-1 (Agricultural Residential) and GR (General Residential) Zoning Districts; that the purpose of a Conditional Use is to provide for a use that is of a public or semi-public character that is essential and desirable for the general convenience, and welfare of the County; that the Commission and County Council had previously determined that solar facilities are in accordance with the County's Comprehensive plan by promoting Goal 7.3 of the Comprehensive Plan, which encourages the use of renewable energy options, such as community solar facilities, and the use is authorized by the recent amendments to the State Law, relating to the development of community solar facilities for renewable energy protection.

Mr. Fuqua stated that specifically, C/U 2404 Elk Development LLC, is referred to as the "Thorogoods A" site; that in addition to the information already provided, the parcel is located on the north side of Thorogoods Rd.; that the site contains 20.7 acres; that approximately 16 acres of the total 20.7 acres will be leased for the use of a community solar facility; that the land is owned by SB Cordrey Farms, LLC; that the site borders the existing manufactured home community of Holiday Acres to the east; that the site is adjacent to agricultural lands located to the north; that to the west is the location of the Conrail Railroad tracks, and the Delaware Power & Light Electrical Powerline easement; that on the other side of the railroad track are existing industrial uses, being the location of Dagsboro Materials, River Asphalt, and Thorogoods Concrete; that directly across from the industrial site, is the 30 acre Cordrey family farm parcel; that the Commission recently recommended approval for a solar facility on that property on September 14, 2023, as C/U 2380; that the site has been in agricultural use; that the site is zoned GR (General Residential); that the site is located within the Developing Area, being a Growth Area according to the Future Land Use Map of the Comprehensive Plan; that lands located to the west and the north of the site are zoned heavy industrial; that there was a revised Site Plan submitted with the last exhibit; that access from the site will be provided from Thorogoods Rd.; that the access would be a 16 ft. wide gravel drive to the turn around area to be located adjacent to a 25' x 15' solar equipment pad; that the solar arrays would be a minimum of 100 ft. from Thorogoods Rd.; that the panels would be a minimum of 50 ft. from the property lines on the north and west; that the panels would be located approximately 100 ft. from the property lines on the east, adjacent to Holiday Acres; that the solar panels would be located a minimum of 200 ft. from any dwelling located within the Holiday Acres community; that there would be a 25 ft. landscape buffer along Thorogoods Rd. and along the agricultural lands along the north; that the landscape buffer would be located along the road; that the eastern boundary is already wooded and would remain as an existing wooded buffer, therefore no landscaping is proposed along the railroad tracks or the adjacent industrial uses to the west; that all buffer areas are shown on the Site Plan, which are referred to in the proposed Conditions of Approval, and it is anticipated that the facility would generate electrical power to serve the annual needs of approximately 700 residential households.

Ms. Wingate questioned where the inverter is proposed to be placed on the site.

Mr. Fuqua stated that the inverter would be placed on the pad area located along the access road, which is located on the opposite side of where the homes are located, and the small hum of the inverter would probably not be heard over the noise generated by the adjacent industrial uses and the railroad.

Mr. Collins questioned if there would be a landscape buffer provided between the project and the

mobile home community.

Mr. Fuqua stated yes that the landscape buffer would be provided by an existing wooded buffer that is proposed to remain as is.

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.

Ms. Wingate moved that the Commission recommend approval of C/U 2404 Elk Development, LLC for a solar array in the GR 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 16.32 acres of a larger 20.57-acre parcel.
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. The proposed solar array is located adjacent to railroad tracks, with industrial zoning and uses. It is near another solar array Conditional Use that recently received a recommendation of approval. The site will have access via Thorogoods Road. The land is also designated as being within the Developing Area, according to Sussex County's Future Land Use Map. Although the site is located next to an existing residential development, that development is screened by existing vegetation, plus the new buffering and separation that will be required the this use.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural and industrial 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.
7. 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.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. There was no opposition to this Application and one letter in support of the Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:

- A. The use shall be for a ground-mounted solar array. 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 the Conditional Use.
- C. The existing vegetation, located next to the residential properties shall remain undisturbed, in addition to the fencing, buffering, and separation requirements of Ordinance No. 2920. All required fencing shall require 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 an emergency.
- F. The location of all transformers, 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 by Best Management Practices.
- H. 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.
- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2404 Elk Development, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Ms. Wingate – 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
302-854-5079 F
JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: November 9th, 2023

Application: CU 2404 Elk Development, LLC

Applicant: Elk Development, LLC (30423A Thorogoods Road)
c/o Robert McNeill
6865 Deerpath Road, Suite 330
Elkridge, MD 21075

Owner: SB Cordrey Farms, LLC
30366 Cordrey Road
Millsboro, DE 19966

Site Location: Lying on the northwest side of Thorogoods Road (S.C.R. 333)
approximately (0.5) miles southwest of Iron Branch Road (S.C.R. 331).

Current Zoning: General Residential (GR) Zoning District

Proposed Use: Solar array consisting of a photovoltaic electric generation facility.

Comprehensive Land
Use Plan Reference: Developing Area

Councilmanic
District: Mr. Rieley

School District: Indian River School District

Fire District: Dagsboro Fire Department

Sewer: N/A

Water: N/A

Site Area: 20.57 acres +/-

Tax Map ID: 233-5.00-69.00



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



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: October 31st, 2023
RE: Staff Analysis for C/U 2404 Elk Development, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of Application C/U 2404 Elk Development, LLC to be reviewed during the November 30th, 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.

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

Tax Parcel ID: 233-5.00-69.00

Proposal: The request is for a Conditional Use for Tax Parcel 233-5.00-69.00 to allow for solar array on a parcel lying on the northwest side of Thorogoods Road (S.C.R. 333) approximately (0.5) miles southwest of Iron Branch Road (S.C.R. 331). The parcel is comprised of 20.57 acres +/-.

Zoning: The properties are zoned General Residential (GR) District. The adjacent parcels to the north and west of the subject property are zoned Heavy Industrial (HI-1) District with the Parcels to the east and south within the General Residential (GR) District.

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

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

As outlined in the 2018 Sussex County Comprehensive Plan, Developing Areas are “newer, emerging growth areas that demonstrate the characteristics of developmental pressures”, noting that “portions of the Developing Areas with good road access and few nearby homes should allow for business and industrial parks” (Sussex County Comprehensive Plan, 4-14).



Further Site Considerations:

- **Density: N/A**
- **Open Space Provisions: N/A**
- **Agricultural Areas:** The site is within the vicinity of active agricultural lands.
- **Interconnectivity: N/A**
- **Transportation Improvement District (TID):** The parcels are not within the Henlopen Transportation Improvement District.
- **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 Zones X with areas of “Fair” and “Poor” Groundwater Recharge Potential on the site.

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

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

Conditional Use Applications						
(Within a 1-mile radius of the subject site)						
Application Number	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
69	Bruce Moore	AR-1	Borrow Pit	Approved	8/8/1972	N/A
84	Ellison & Sara Bunting	AR-1	Automobile Repair Shop	Approved	10/1/1972	N/A
121	Richard & Connie Webb	AR-1	Small Engine Repair	Approved	N/A	N/A
133	Donald L. Atkins	AR-1	Custom Cutting & Packaging Of Meats & Retail	Approved	N/A	N/A
169	Alvin & Henrietta Daisey	AR-1	Ceramic Shop	Approved	N/A	N/A
231	Indian River Land Co	AR-1	2 Borrow Pits	Approved	8/27/1974	N/A
283	Frank Thoroughgood	AR-1	Auto Salvage, Auto Sales & Sale Of Auto Parts	Approved	7/29/1975	N/A
883	Gladys A. Swann	AR-1	Borrow Pit	Denied	12/13/1988	N/A
1031	Henry Fisher	AR-1	Repair Vacuum Cleaners	Denied	3/30/1993	N/A
1061	Gregory P. Mitchell	AR-1	Parts Storage & Truck Facility	Approved	2/1/1994	950

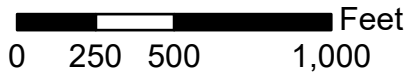
1120	Sara V. Thoroughgood	AR-1	Truck Repair Shop	Approved	6/27/1995	1039
1184	State of Delaware	AR-1	480 Ft Radio Tower	Approved	7/15/1997	1155
1301	Independent Associates, Inc.	C-1	Crematorium	Approved	8/31/1999	1339
1972	Harry G. Miller	GR	Auto Repair Shop	Approved	12/3/2013	2330
1976	Indian River School District	AR-1	Elementary School Expansion	Approved	1/7/2014	2332
2380	Dagsboro Thorogoods Solar 1, LLC	AR-1	Solar Farm	N/A	N/A	N/A
2404	Elk Development, LLC	GR	Solar Farm	N/A	N/A	N/A
2405	Elk Development, LLC	GR	Solar Farm	N/A	N/A	N/A

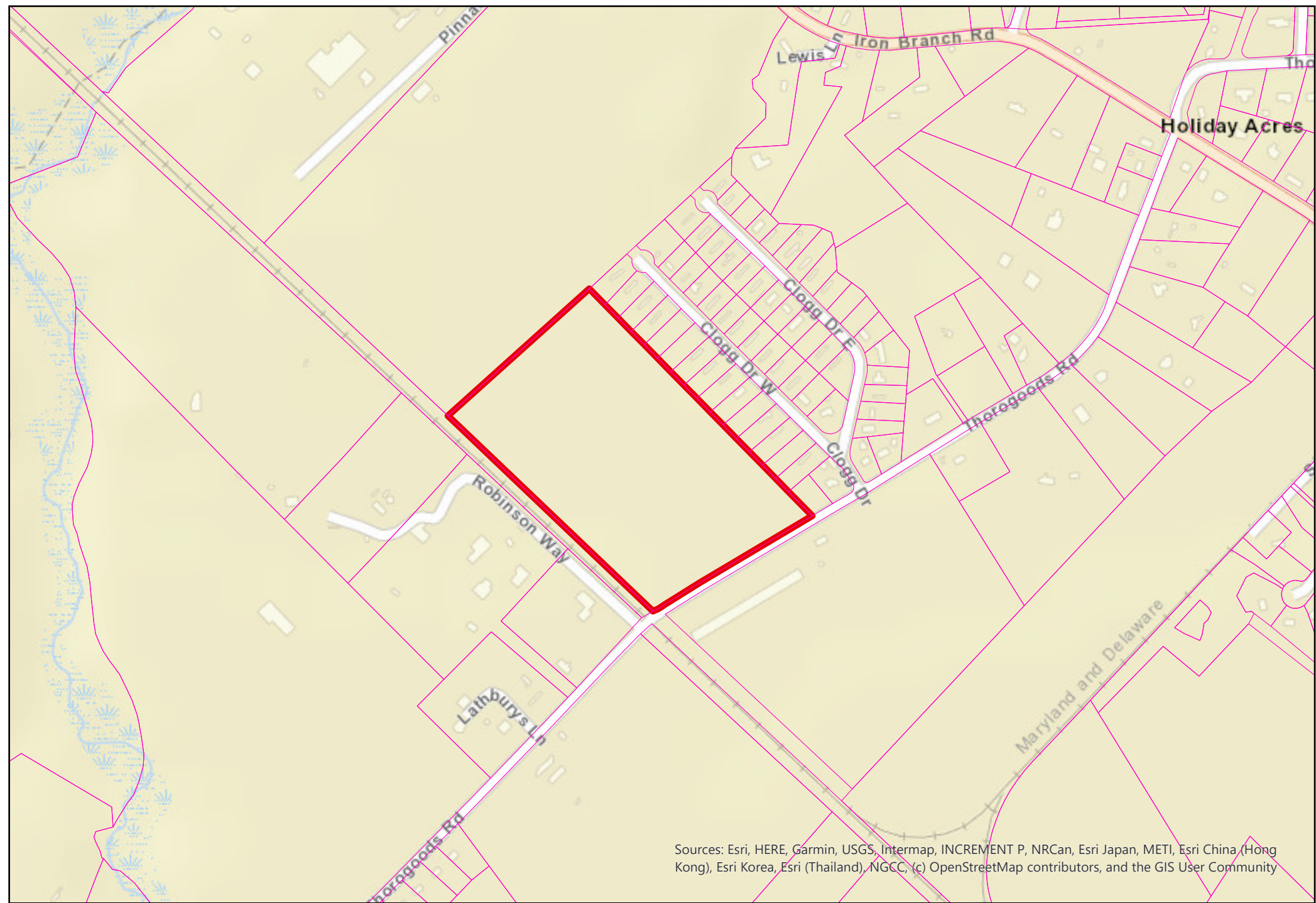


Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

CU 2404 - Elk Development, LLC
TM#233-5.00-69.00
Aerial Map

 CU 2404 - TM# 233_5.00_69.00

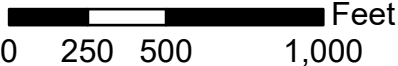


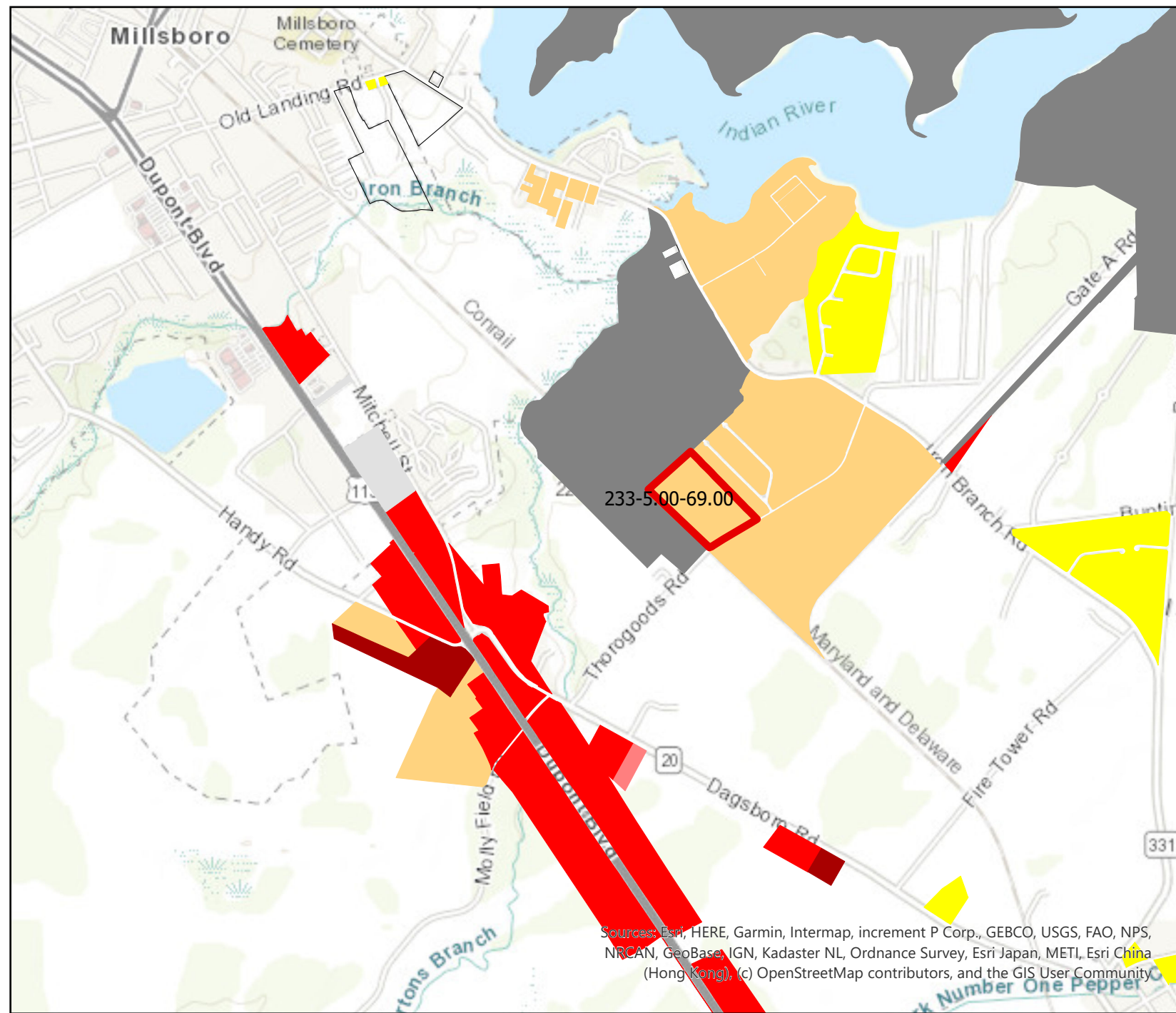


Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

CU 2404 - Elk Development, LLC
TM#233-5.00-69.00
Street Map

 CU 2404 - TM# 233_5.00_69.00



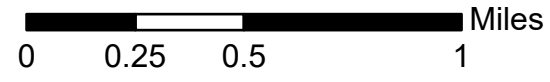


- ### Zoning
- Agricultural Residential - AR-1
 - Agricultural Residential - AR-2
 - Medium Residential - MR
 - General Residential - GR
 - High Density Residential - HR-1
 - High Density Residential - HR-2
 - Vacation, Retire, Resident - VRP
 - Neighborhood Business - B-1
 - Neighborhood Business - 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

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

CU 2404 - Elk Development, LLC
 TM#233-5.00-69.00
 Zoning Map

CU 2404 - TM# 233_5.00_69.00



Introduced: 4/25/2023

Council District 5: Mr. Rieley
Tax I.D. No.: 233-5.00-69.00
911 Addresses: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 20.57 ACRES, MORE OR LESS

WHEREAS, on the 31st day of October 2022, a conditional use application, denominated Conditional Use No. 2404 was filed on behalf of Elk Development, 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. 2404 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 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2404 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on the northwest side of Thorogoods Road (S.C.R. 333), approximately 0.5-mile southwest of Iron Branch Road (S.C.R. 331), and being more particularly described in the attached legal description prepared by Pivot Energy, Inc., said parcel containing 20.57 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: January 5, 2024

RE: County Council Report for C/U 2405 filed on behalf of Elk Development, LLC

The Planning and Zoning Department received an application (C/U 2405 filed on behalf of Elk Development, LLC) for a solar farm, to be located at Tax Parcel 233-5.00-187.01. The property is located on the southeast side of Thorogoods Road (S.C.R. 333), approximately 0.5 mile southwest of Iron Branch Road (S.C.R. 331). The parcel size is 22.97 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on November 9, 2023. At the meeting of November 9, 2023, the Planning & Zoning Commission recommended approval of the application for the 11 reasons stated and subject to the 9 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of November 9, 2023.

Minutes of the November 9, 2023, Planning & Zoning Commission Meeting

C/U 2405 Elk Development, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 22.97 ACRES, MORE OR LESS. The property is lying on the southeast side of Thorogoods Road (S.C.R. 333), approximately 0.5 mile southwest of Iron Branch Road (S.C.R. 331). 911 Address: N/A. Tax Map Parcel: 233-5.00-187.01.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the property's legal description, the DelDOT Service Level Evaluation Response, the Staff Analysis, the Applicant's Exhibits, and the Applicant's Decommissioning Plan.



Mr. Whitehouse advised the Commission that two mail returns and no comment letters were received for the Application.

The Commission found that Mr. James, Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, Elk Development, LLC; that also present were Mr. Seth Shafer, P.E. with Pivot Energy, and Mr. Edward Hastings, with Becker Morgan Group.

Mr. Fuqua requested the following information provided in the public hearing for C/U 2404 be incorporated into the record for C/U 2405 Elk Development, LLC. Mr. Fuqua stated an exhibit booklet was submitted for all four applications; that Elk Development, LLC is a division of Pivot Energy, Inc.; that Pivot Energy is a national company involved in the development of clean energy projects, such as on site solar facilities and small utility solar projects, which include community solar facilities; that Pivot Energy has financed and developed over 1,200 solar projects throughout the United States; that the current applications propose solar facilities as authorized, and in compliance with, the Delaware Law, which encourages a more decentralized and cleaner approach to power generation through community solar facilities; that the law provides that by subscribing to a community solar project, residential, business and educational users, who are utility customers can participate in renewable and sustainable energy production, with possible future energy costs; that the solar facilities involved in all four of the subject applications, it is anticipated that that upon final approval and required permitting, the site development and solar facility construction would take approximately four to six months to complete; that once completed and operational, the four facilities would have the following in common; that the solar array and equipment area would be enclosed in a seven foot high security fence with a gate and an emergency key box to accommodate emergency access; that one unlit sign, not exceeding 32 sq. ft. is requested; that the sign will identify the operator and the operator's contact information; that the facilities will consist of solar panel modules mounted on single axis trackers that will allow them to follow the path to the sun throughout the day; that the solar racking system itself utilizes drive steel posts or pile foundations, which anchor the racking system to the ground, and that results in minimal ground disturbance or impervious surface cover; that the solar inverters and other equipment will be located on concrete pads; that the power generated by the solar panels will be transferred to DP&L (Delmarva Power & Light grid by interconnection with the existing DP&L power lines; that the overall system and its design comply with the National Electrical Code and will be reviewed and approved by Delmarva Power & Light; that the solar array area itself will be seeded with a pollinator seed mix, which is slow growing, environmentally friendly ground cover; that there are no odors, dust, smoke, or heat associated with the solar operation; that the only sound is a minimal sound, which is a low hum from the inverters; that there is minimal to no glare from the solar panels, which are designed to absorb sunlight, not to reflect it; that there will be landscaping surrounding the fenced area, which will further shield the panels from view; that after construction is completed, traffic to the site would be minimal, as it would only be periodic equipment inspections and maintenance, as well as seasonal property maintenance and grass cuts; that there are no onsite employees, as the equipment is monitored remotely; that each application does have its own DelDOT Service Level Evaluation Response letter, which indicates that the traffic impact for all the facilities would be diminutive; that there is no proposed or need for sewer, water or trash services for the facilities; that little impervious surface will be created by the facility; that any stormwater management for the sites will comply with the applicable State and County requirements; that as part of the Final Site Plan approval, a Decommissioning Plan will be provided to ensure that upon expiration of the lease, or early termination of the Conditional Use, all equipment and materials will be removed from the site and properly disposed of; that the site will be returned to a physical condition similar to its present state; that the plan also provides for financial security and a form acceptable to

the County; that this will guarantee that the cost of the restoration will be available; that the actual estimated amount in terms of that security will be provided as part of the Final Site Plan review and approval process; that after termination of the use and restoration of the site, the land will revert back to its current condition as agricultural land; that solar facilities are permitted as an approved Conditional Use in both the AR-1 (Agricultural Residential) and GR (General Residential) Zoning Districts; that the purpose of a Conditional Use is to provide for a use that is of a public or semi-public character that is essential and desirable for the general convenience, and welfare of the County; that the Commission and County Council had previously determined that solar facilities are in accordance with the County's Comprehensive plan by promoting Goal 7.3 of the Comprehensive Plan, which encourages the use of renewable energy options, such as community solar facilities, and the use is authorized by the recent amendments to the State Law, relating to the development of community solar facilities for renewable energy protection.

Mr. Fuqua stated that specifically, C/U 2405 Elk Development LLC, is referred to as the "Thorogoods B" site; that the site is located on the south side of Thorogoods Rd.; that it is directly across the road from Thorogoods A Site, related to C/U 2404; that the subject site is comprised of approximately 22.9 acres; that approximately 11 acres of the total 22.9 acres would be leased; that the land is currently owned by SB Cordrey Farm, LLC; that on the east and south of the site there are existing woods; that there are some non-tidal wetlands located within the wooded area and part of the property located on the opposite side of the woodlands; that to the west the site is located adjacent to the Conrail Railroad tracks, and the Delaware Power & Light Electrical Powerline easement; that on the other side of the railroad tracks is the location of C/U 2380, which was the community solar application the Commission recommended for approval in September 2023; that the land is currently in agricultural use; that the site is zoned GR (General Residential); that the site is located within the Coastal Area according to the Future Land Use Map of the Comprehensive Plan; that the Coastal Area is considered a Growth Area; that currently there is an old chicken house located on the property; that the chicken house is proposed to be removed; that the site's access will be from Thorogoods Rd.; that the access would be provided by a 16 ft. wide gravel drive, with a turnaround located next to a 15' x 25' equipment pad; that the closest solar array from Thorogoods Rd. would be located 133 ft. from the road; that on the east and the south, the security fence would be located approximately 75 ft. from the existing wood line located on the site; that in the southwest corner of the site the closest solar array would be 62 ft. from the property line; that to the west, the closest array is located 75 ft. from the property line adjacent to the railroad; that there would be a 25 ft. wide landscape buffer, which would be set back approximately 100 ft. from Thorogoods Rd.; that no buffer is proposed along the other sides of the site, as there is existing woods proposed to remain, and along the areas adjacent to the railroad tracks and the Delaware Power & Light Electrical Powerline easement located to the west; that the buffers will be as reflected on the Site Plan; that no landscape buffers are proposed to the east and south due to the existing trees; that it is anticipated that the facility would generate electrical power to serve the annual needs of approximately 410 residential households and he stated he had already submitted the Application's proposed Conditions of Approval for consideration.

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.

Ms. Wingate moved that the Commission recommend approval of C/U 2405 Elk Development, LLC

for a solar array in the GR 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 11.2 acres of a larger 22.97-acre parcel.
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. The proposed solar array is located adjacent to railroad tracks, with industrial zoning and uses located diagonally across these tracks from this site. It is also near another solar array that recently received a recommendation of approval. The site will have access via Thorogoods Road. The closest solar array to Thorogoods Road will be more than 100 feet from the road. A landscape buffer will also be installed along Thorogoods Road. The land is also designated as being within the Coastal Area, according to Sussex County's Future Land Use Map.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural and industrial 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.
7. 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.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. There was no opposition to this Application and one letter in support of the Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for a ground-mounted solar array. 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 the Conditional Use.
 - C. A landscape buffer shall be installed along Thorogoods Road, as shown on the Applicant's Site Plan presented during the public hearing. In addition, 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 an emergency.
- F. The location of all transformers, 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 by Best Management Practices.
 - H. 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.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2405 Elk Development, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Ms. Wingate – 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

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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: November 9th, 2023

Application: CU 2405 Elk Development, LLC

Applicant: Elk Development, LLC (30423B Thorogoods Road)
c/o Robert McNeill
6865 Deerpath Road, Suite 330
Elkridge, MD 21075

Owner: SB Cordrey Farms, LLC
30366 Cordrey Road
Millsboro, DE 19966

Site Location: Lying on the southeast side of Thorogoods Road (S.C.R. 333) approximately (0.5) miles southwest of Iron Branch Road (S.C.R. 331).

Current Zoning: General Residential (GR) Zoning District

Proposed Use: Solar array consisting of a photovoltaic electric generation facility.

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Dagsboro Fire Department

Sewer: N/A

Water: N/A

Site Area: 22.97 acres +/-

Tax Map ID: 233-5.00-187.01



JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
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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: October 31st, 2023
RE: Staff Analysis for C/U 2405 Elk Development, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of Application C/U 2405 Elk Development, LLC to be reviewed during the November 30th, 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.

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

Tax Parcel ID: 233-5.00-187.01

Proposal: The request is for a Conditional Use for Tax Parcel 233-5.00-187.01 to allow for solar array on a parcel lying on the southeast side of Thorogoods Road (S.C.R. 333) approximately (0.5) miles southwest of Iron Branch Road (S.C.R. 331). The parcel is comprised of 22.97 acres +/-.

Zoning: The Parcel is zoned General Residential (GR) District. The adjacent parcels to the north and east of the subject property are General Residential (GR) District, parcels to the west are zoned Heavy Industrial (HI-1) District and Agricultural Residential (AR-1) with the Parcels to the south within the General Residential (GR) District.

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

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

As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas contain “ecologically important and sensitive characteristics as well as other coastal lands”, noting that “region is among the most desirable locations in Sussex County for new housing” and “light commercial, office and institutional uses can be appropriate” (Sussex County Comprehensive Plan, 4-15).



Further Site Considerations:

- **Density: N/A**
- **Open Space Provisions: N/A**
- **Agricultural Areas:** The site is within the vicinity of active agricultural lands.
- **Interconnectivity: N/A**
- **Transportation Improvement District (TID):** The parcels are not within the Henlopen Transportation Improvement District.
- **Forested Areas:** A limited amount of existing trees exist parallel to the agricultural drainage on the site.
- **Wetlands Buffers/Waterways:** The site appears to contain a drainage ditch or similar bisecting the Parcel from north to south on the western portion of the site.
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The property is located within Flood Zones X with areas of “Fair” and “Good” Groundwater Recharge Potential on the site.

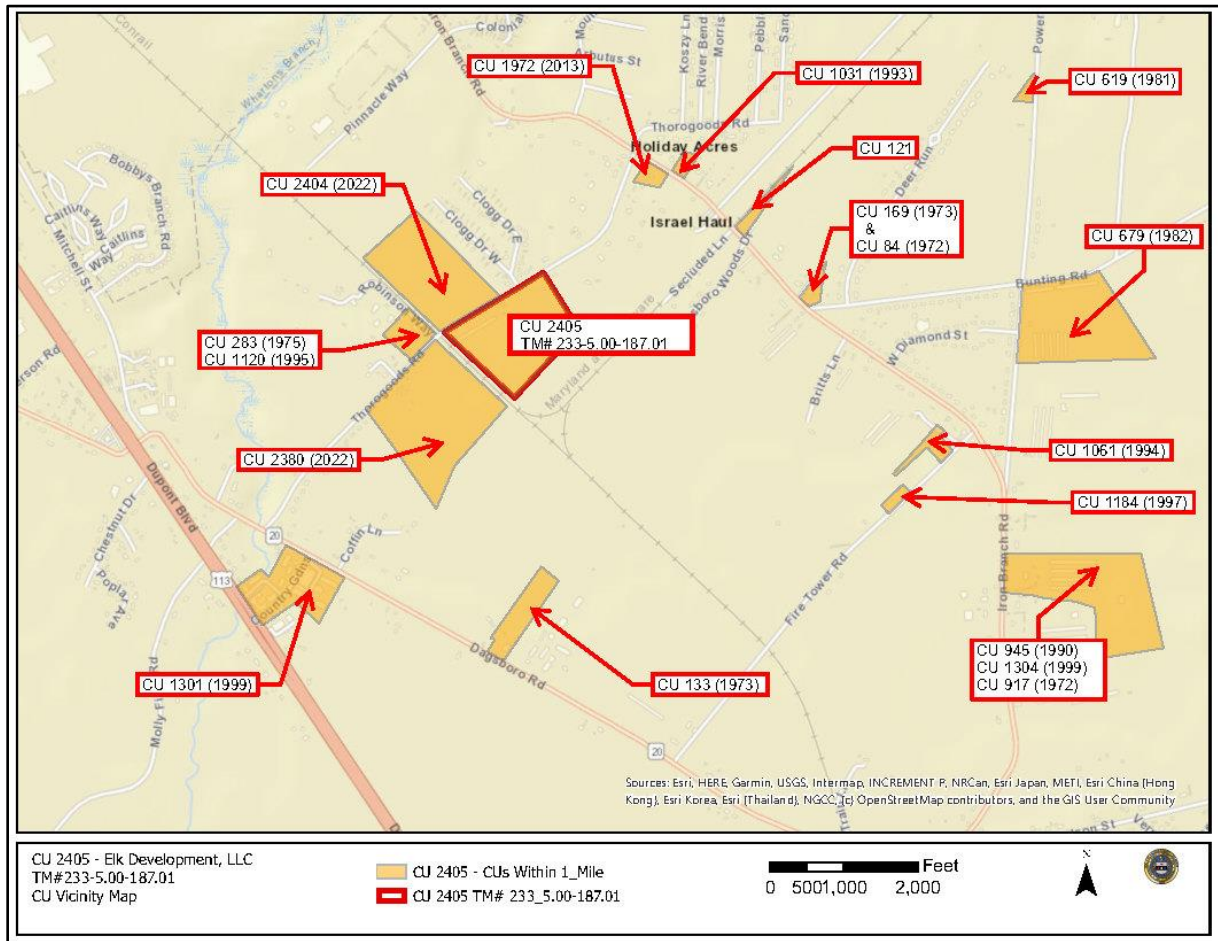
Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use Application to allow for a solar array, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

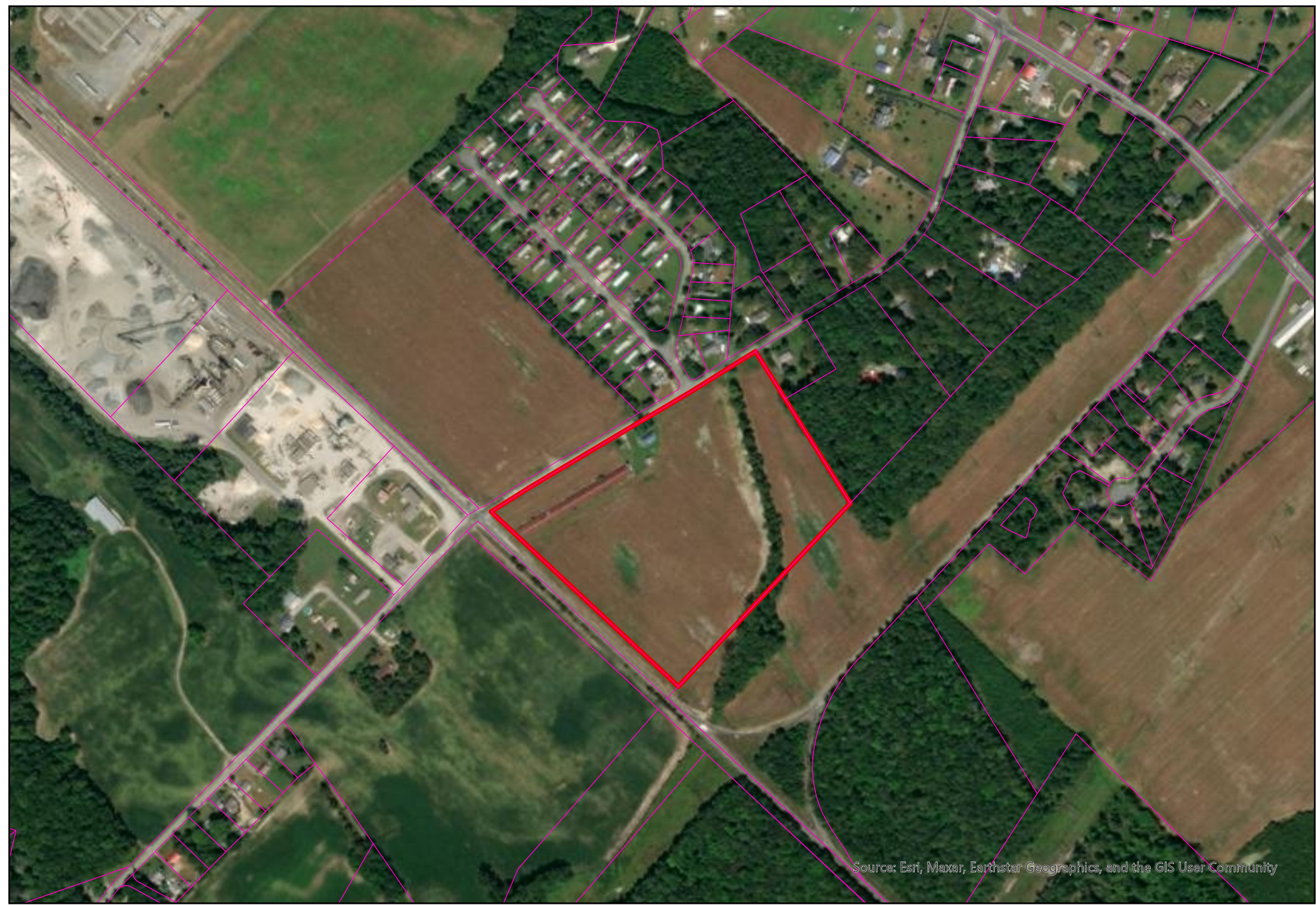
Existing Conditional Uses within the Vicinity of the Subject Site: A Data Table and Supplemental Map have been supplied which provide further background regarding the approval status of Applications in the area, including the location of all other Conditional Use Applications that are less than 1 mile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

Conditional Use Applications						
(Within a 1-mile radius of the subject site)						
Application Number	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
84	Ellison & Sara Bunting	AR-1	Automobile Repair Shop	Approved	10/1/1972	N/A

121	Richard & Connie Webb	AR-1	Small Engine Repair	Approved	4/24/1973	N/A
133	Donald L. Atkins	AR-1	Custom Cutting & Packaging Of Meats & Retail	Approved	5/22/1973	N/A
169	Alvin & Henrietta Daisey	AR-1	Ceramic Shop	Approved	10/23/1973	N/A
283	Frank Thoroughgood	AR-1	Auto Salvage, Auto Sales & Sale Of Auto Parts	Approved	7/29/1975	N/A
619	Ralph C. Short	AR-1	Auto Repair Shop	Approved	3/31/1981	N/A
679	Coastal Supply Co	AR-1	Light Manufacturing	Approved	5/11/1982	N/A
917	Curtis Steen	AR-1	Borrow Pit	Withdrawn	N/A	N/A
1031	Henry Fisher	AR-1	Repair Vacuum Cleaners	Denied	3/30/1993	N/A
1061	Gregory P. Mitchell	AR-1	Parts Storage & Truck Facility	Approved	2/1/1994	950
1120	Sara V. Thoroughgood	AR-1	Truck Repair Shop	Approved	6/27/1995	1039
1184	State of Delaware	AR-1	480 Ft Radio Tower	Approved	7/15/1997	1155
1301	Independent Associates, Inc.	C-1	Crematorium	Approved	8/31/1999	1339


1304	Harry G. Miller	GR	Auto Repair Shop	Approved	12/3/2013	2330
1972	Indian River School District	AR-1	Elementary School Expansion	Approved	1/7/2014	2332
2380	Dagsboro Thorogoods Solar 1, LLC	AR-1	Solar Farm	N/A	N/A	N/A
2404	Elk Development, LLC	GR	Solar Farm	N/A	N/A	N/A
2405	Elk Development, LLC	GR	Solar Farm	N/A	N/A	N/A

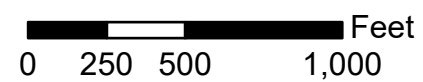


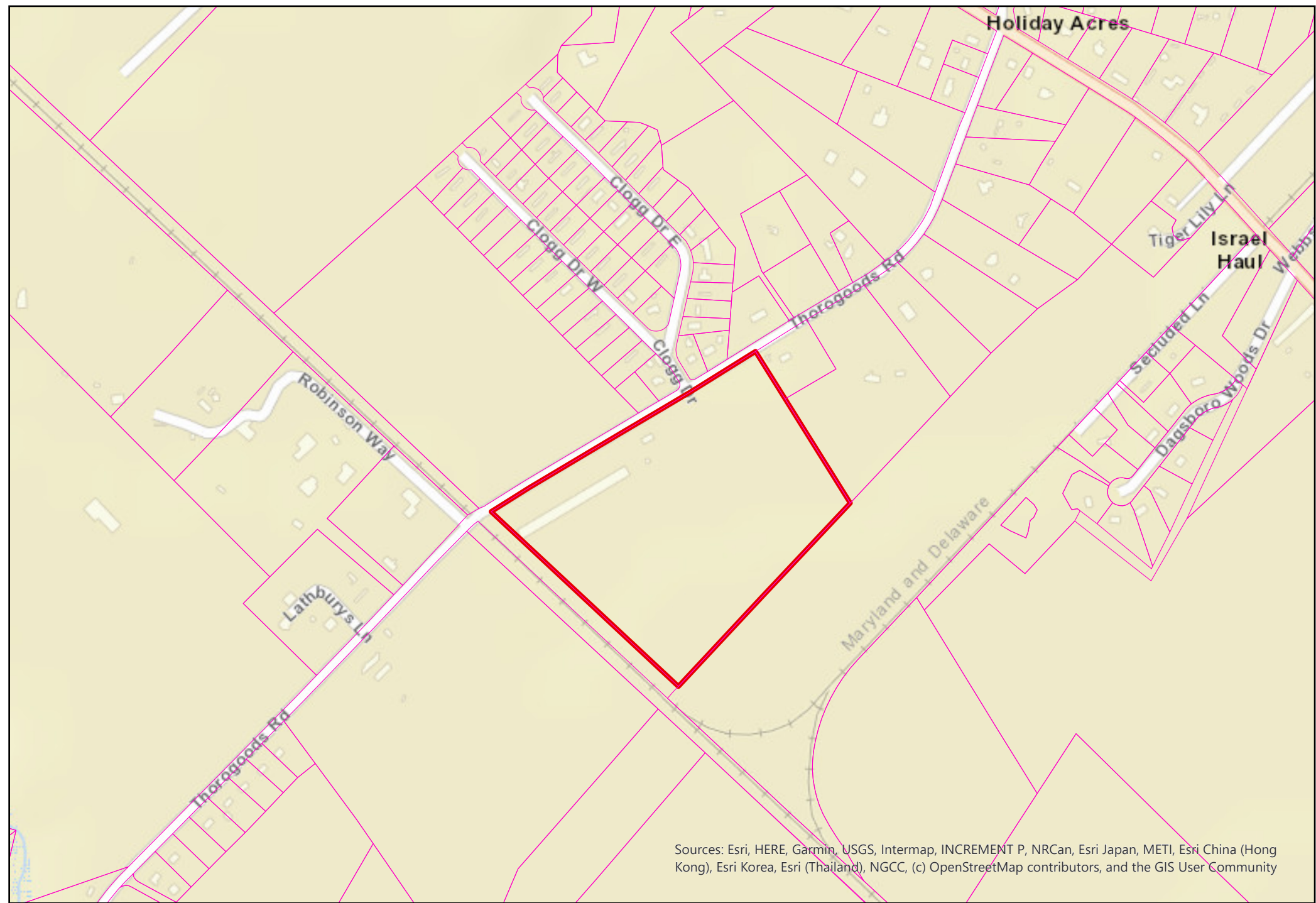


Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

CU 2405 - Elk Development, LLC
TM#233-5.00-187.01
Aerial Map


 CU 2405 TM# 233_5.00-187.01

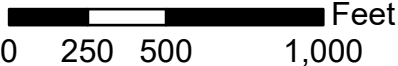


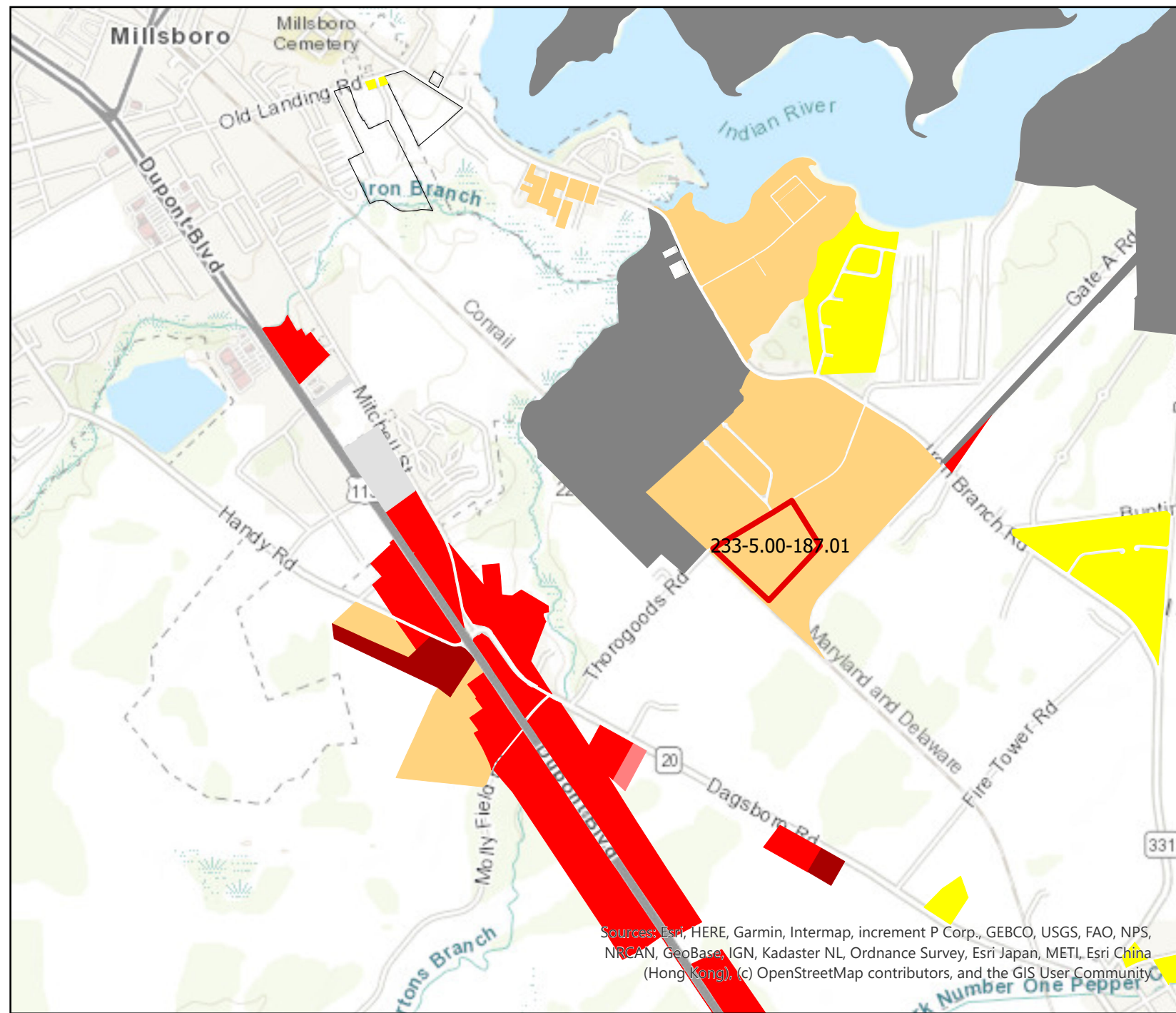


Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

CU 2405 - Elk Development, LLC
TM#233-5.00-187.01
Streets Map

 CU 2405 TM# 233_5.00-187.01



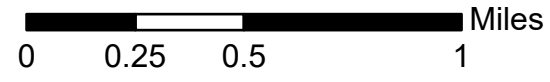


- ### Zoning
- Agricultural Residential - AR-1
 - Agricultural Residential - AR-2
 - Medium Residential - MR
 - General Residential - GR
 - High Density Residential - HR-1
 - High Density Residential - HR-2
 - Vacation, Retire, Resident - VRP
 - Neighborhood Business - B-1
 - Neighborhood Business - B-2
 - Business Research - B-3
 - General Commercial - C-1
 - General Commercial - C-2
 - General Commercial - C-3
 - General Commercial - C-4
 - General Commercial - C-5
 - Commercial Residential - CR-1
 - Institutional - I-1
 - Marine - M
 - Limited Industrial - LI-1
 - Light Industrial - LI-2
 - Heavy Industrial - HI-1
 - CU 2405 TM# 233_5.00-187.01

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

CU 2405 - Elk Development, LLC
 TM#233-5.00-187.01
 Zoning Map

CU 2405 TM# 233_5.00-187.01



Introduced: 4/25/2023

Council District 4: Mr. Hudson
Tax I.D. No.: 233-5.00-187.01
911 Addresses: 30423 Thorogoods Road, Dagsboro

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 22.97 ACRES, MORE OR LESS

WHEREAS, on the 31st day of October 2022, a conditional use application, denominated Conditional Use No. 2405 was filed on behalf of Elk Development, 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. 2405 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 VI, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2405 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on the southeast side of Thorogoods Road (S.C.R. 333), approximately 0.5-mile southwest of Iron Branch Road (S.C.R. 331), and being more particularly described in the attached legal description prepared by Pivot Energy, Inc., said parcel containing 22.97 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: January 5, 2024

RE: County Council Report for C/U 2447 filed on behalf of Elk Development, LLC

The Planning and Zoning Department received an application (C/U 2447 filed on behalf of Elk Development, LLC) for solar arrays, to be located at Tax Parcels 132-1.00-5.00 and 132-6.00-78.03. The property is located on the east side of River Road (S.C.R. 490), at the intersection of Morgan Branch Road and River Road (S.C.R. 490). The parcel size is 51.83 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on November 9, 2023. At the meeting of November 9, 2023, a motion was made and carried to defer action on the application for further consideration, leaving the record open to receive information from the Applicant, in the form of written comment, regarding the safety and operation of the pending solar array, which was to be submitted by the close of business on Friday, November 17, 2023. The motion outlined that the record was subsequently to be left open for 15 calendar days for the submission of written public comment regarding the submitted information.

At the Planning & Zoning Commission meeting of January 3, 2024, as Ms. Wingate was absent, a motion was made and carried to defer action on the application until the next regularly scheduled meeting. Once a recommendation is received from the Planning & Zoning Commission, it will be reported to County Council.

Below are the minutes from the Planning & Zoning Commission meeting of November 9, 2023.

Minutes of the November 9, 2023, Planning & Zoning Commission Meeting

C/U 2447 Elk Development, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED



ON CERTAIN PARCELS OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 51.83 ACRES, MORE OR LESS. The properties are lying on the east side of River Road (S.C.R. 490), at the intersection of Morgan Branch Road and River Road (S.C.R. 490). 911 Addresses: N/A Tax Map Parcels: 132-1.00-5.00 (p/o) & 132-6.00-78.03.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Applicant's Exhibits, the DelDOT Service Level Evaluation Response, the Staff Analysis, and Applicant's Decommissioning Plan. Mr. Whitehouse advised the Commission that one mail return and no comment letters had been received for the Application.

The Commission found that Mr. James, Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, Elk Development, LLC; that also present were Mr. Seth Shafer, P.E. with Pivot Energy, and Mr. Edward Hastings, with Becker Morgan Group.

Mr. Fuqua requested the following information provided in the public hearing for C/U 2404 be incorporated into the record for C/U 2447 Elk Development, LLC. Mr. Fuqua stated an exhibit booklet was submitted for all four applications; that Elk Development, LLC is a division of Pivot Energy, Inc.; that Pivot Energy is a national company involved in the development of clean energy projects, such as on site solar facilities and small utility solar projects, which include community solar facilities; that Pivot Energy has financed and developed over 1,200 solar projects throughout the United States; that the current applications propose solar facilities as authorized, and in compliance with, the Delaware Law, which encourages a more decentralized and cleaner approach to power generation through community solar facilities; that the law provides that by subscribing to a community solar project, residential, business and educational users, who are utility customers can participate in renewable and sustainable energy production, with possible future energy costs; that the solar facilities involved in all four of the subject applications, it is anticipated that that upon final approval and required permitting, the site development and solar facility construction would take approximately four to six months to complete; that once completed and operational, the four facilities would have the following in common; that the solar array and equipment area would be enclosed in a seven foot high security fence with a gate and an emergency key box to accommodate emergency access; that one unlit sign, not exceeding 32 sq. ft. is requested; that the sign will identify the operator and the operator's contact information; that the facilities will consist of solar panel modules mounted on single axis trackers that will allow them to follow the path to the sun throughout the day; that the solar racking system itself utilizes drive steel posts or pile foundations, which anchor the racking system to the ground, and that results in minimal ground disturbance or impervious surface cover; that the solar inverters and other equipment will be located on concrete pads; that the power generated by the solar panels will be transferred to DP&L (Delmarva Power & Light grid by interconnection with the existing DP&L power lines; that the overall system and its design comply with the National Electrical Code and will be reviewed and approved by Delmarva Power & Light; that the solar array area itself will be seeded with a pollinator seed mix, which is slow growing, environmentally friendly ground cover; that there are no odors, dust, smoke, or heat associated with the solar operation; that the only sound is a minimal sound, which is a low hum from the inverters; that there is minimal to no glare from the solar panels, which are designed to absorb sunlight, not to reflect it; that there will be landscaping surrounding the fenced area, which will further shield the panels from view; that after construction is completed, traffic to the site would be minimal, as it would only be periodic equipment inspections and maintenance, as well as seasonal property maintenance and grass cuts; that there are no onsite employees, as the equipment is monitored remotely; that each application does have its own

DelDOT Service Level Evaluation Response letter, which indicates that the traffic impact for all the facilities would be diminutive; that there is no proposed or need for sewer, water or trash services for the facilities; that little impervious surface will be created by the facility; that any stormwater management for the sites will comply with the applicable State and County requirements; that as part of the Final Site Plan approval, a Decommissioning Plan will be provided to ensure that upon expiration of the lease, or early termination of the Conditional Use, all equipment and materials will be removed from the site and properly disposed of; that the site will be returned to a physical condition similar to its present state; that the plan also provides for financial security and a form acceptable to the County; that this will guarantee that the cost of the restoration will be available; that the actual estimated amount in terms of that security will be provided as part of the Final Site Plan review and approval process; that after termination of the use and restoration of the site, the land will revert back to its current condition as agricultural land; that solar facilities are permitted as an approved Conditional Use in both the AR-1 (Agricultural Residential) and GR (General Residential) Zoning Districts; that the purpose of a Conditional Use is to provide for a use that is of a public or semi-public character that is essential and desirable for the general convenience, and welfare of the County; that the Commission and County Council had previously determined that solar facilities are in accordance with the County's Comprehensive plan by promoting Goal 7.3 of the Comprehensive Plan, which encourages the use of renewable energy options, such as community solar facilities, and the use is authorized by the recent amendments to the State Law, relating to the development of community solar facilities for renewable energy protection.

Mr. Fuqua stated that specifically, C/U 2447 Elk Development LLC, is referred to as the "Morgan Branch" application; that the site is located south of Morgan Branch Dr., which is just off River Rd., west of Blades; that the site is comprised of approximately 51 acres; that approximately 40.7 acres are to be leased by the Applicant for a solar facility; that the land to the east and the south are mostly agricultural lands or are wooded; that to the west is the Hill N Dale subdivision; that the land to be leased is made up of agricultural land and woodlands; that the site is zoned AR-1 (Agricultural Residential); that the site is located within the Low Density area under the Future Land Use Map; that lands adjacent to the site are also located within the Low Density area; that access to the site will be from Morgan Branch Rd.; that the access would be a 16 ft. gravel drive, with a turn around next to two 8' x 20' equipment pads; that to the north and the east, the closest solar array would be 70.4 ft. from the property line; that to the west, adjacent to the Hill N Dale community, the closest solar array would be approximately 228 ft. from the closest dwelling in Hill N Dale; that there would be either a 25 ft. wide landscape buffer provided or an existing wooded buffer around the entire solar facility area; that to the north, there will be a new 25 ft. wide landscape buffer or it will consist of 25 ft. wide landscape of existing woodlands; that on the east, there will be a minimum 25 ft. wide landscape buffer in there area where there is currently existing field; that in this area, there is a small area of woods to be removed; that there will be a 50 ft. buffer of the existing trees to remain; that where there is currently open farm field, a 25 ft. landscape buffer will be placed in the areas where the woods exist, resulting in a total of a 50 ft. wide buffer comprised of both planted landscape and existing woodlands; that to the south, the 25 ft. landscape buffer would remain; that the proposed buffers are shown on the Site Plan; that the facility is anticipated to generate electrical power for the annual needs of approximately 850 residential customers, and proposed Conditions of Approval has previously been submitted for the Commission's consideration.

Mr. Collins questioned if the existing trees are proposed to remain for the entirety of the project.

Mr. Fuqua stated he assumed that would be made as a Condition of Approval for the project and would be reflected as such on the Final Site Plan.

The Commission found that one person spoke in support of, and people wished to speak in opposition to the Application.

Ms. Cathleen Simpler spoke in support of the Application. Ms. Simpler stated her father originally purchased the land 50 years ago; that both of her parents are well into their 80s and in declining health; that she and her brother currently care for them; that the farm historically was used to grow corn; that the farm historically was leased out; that their goal is to utilize the land to the maximum potential, while still keeping the land within the family; that they had considered subdivision of the property, however it was not feasible; that the use for solar will create a sustainable, long term revenue to help provide for their needs and she hopes the project will be an important part of Seaford for the next 40 years.

Ms. Billie Davenport spoke in opposition to the Application on behalf of herself and her husband, Mr. Eric Davenport, who was also in attendance. Ms. Davenport spoke with concerns regarding the negative impact the solar arrays will have on the beauty of the area, which is something the adjacent property owners have sought, the negative impacts on the wildlife, trees, the ecosystem, and the Nanticoke River, the negative impact on the health of adjacent property owners, as stated by the World Health Organization, the distance of the solar panels from residential homes and the negative impact from the noise and light generated by the project.

Mr. John Kissler spoke in opposition to the Application with concerns regarding the submitted Site Plan, the lack of buffering shown on the Site Plan, the negative impacts from electromagnetic radiation created by solar farms, negative impacts to native flora and fauna, filtering, drinking water, preventing erosion, preventing scenic and/or recreational benefits; that he felt solar projects should be regulated to commercial areas, and he was concerned about destruction of forest.

Mr. Gregory Fisher spoke in opposition to the Application with concerns regarding the public notice procedure for the Application, the proposed landscape buffer and the maintenance of the buffer, flooding and stormwater runoff, and the noise created by the inverter, which is to be located 150 ft from his home.

Mr. Frederick Cox, President of the Hill N Dale Homeowners Association spoke in opposition to the Application with concerns regarding the public notice procedure, the proposed buffer zones, the proposed fencing, and the ability to maintain the value of the current resident's property.

Mr. Ted (Edward) Hastings, with Becker Morgan group stated typically with stormwater management, when converting from a farm field to a solar array, the land is no longer to be used for crops; that typically a meadow mix is placed underneath, which changes the curve number; that meadow mixes reduces the curve number, which reduces the runoff from the site; that on the subject site, there are woods, which create an opposite effect; that there will be a balance on the site; that when this happens, they are required to follow the Sussex Conservation District's guidelines; that they are required to meet or reduce the runoff rates from the site pre-development to post-development; that the percentage of impervious surface is objective; that underneath the array will be a meadow; that one could argue the solar array is not impervious at all, only the post underneath it; that for stormwater management purposes, they are required to treat the solar array as impervious surface; that if they are unable to meet the runoff rates leaving the site, or have an increased amount of runoff, they will be required to place a facility on the site for stormwater management; that their requirements are held to all storm

events, including a 100 Year Storm event, and there stormwater management is not required to make the current conditions better, however, it is required not to make current conditions worse.

Mr. Young questioned if there would be access to the back end of the site, nearest to where the solar array would be placed, in the case an urgent situation arose, as he did not see provided access to the second parcel.

Mr. Ted (Edward) Hastings stated typically access is provided to the equipment on the site; that this is similar to a landscaper who would come to the site to maintain the grass; that they would use the access to the site, and use a small maintenance vehicle with adequate tires to drive throughout the whole site without issue; that there will not be a defined road per say, but there will be access to the array by the provided access, and there are no inverters located in that area, only solar array panels.

Mr. Eric Davenport spoke in opposition to the Application with concerns regarding what a safe distance from a solar array would be; that a safe distance is 1.2 miles; that he was concerned about the EMF (Electromagnetic Frequency Radiation) from a solar farm of the proposed size; that he was concerned of the negative impact to the view and the length of the lease.

Mr. Fuqua stated the standard lease with the Applicant is 20 years, with two potential 10-year extensions, resulting in a 40-year maximum lease, which is a standard time period for the industry; that he recognizes the confusion caused often by the terminology used; that he is aware of the information provided on the internet by the World Health Organization, which had been mentioned in previous solar applications; the large scale is a subjective term; that the size of the facility is not based on the average, it is based on the mega wattage, and how much energy is being produced, which determines the scale size; when the State of Delaware enacted Community Solar, they restricted the energy production, and he stated he had scientific material which he requested to submit for the record, which addresses the radiation and the electric current concerns.

Mr. Bryce Widdowson spoke in opposition to the Application with concerns regarding who would benefit from the produced energy.

Mr. Fuqua stated that the State of Delaware initiated as part of a bigger picture, getting all fossil fuels to provide more sustainable energy; that the law passed two years ago, allowing community systems, which are restricted on how large they can be, to be permitted as a subscription program that residents, businesses, and other utility consumer entities can subscribe to; that by doing so, the community solar project can benefit by providing a reduced electrical bill as they would be part of the community solar system; that the project would provide of a method of receiving the benefits of solar panels, without actually having solar panels on their roof; that subscribers would not pay, as it is free to subscribe; that only a limited amount of people can subscribe; and additionally, there is a requirement by law that 15% if the subscriptions must be provided to moderate or lower-income residents, which was an incentive when the program was established.

Mr. Seth Shafer with Pivot Energy stated that along with developing the property, they own and operate the facilities; that they have their own subscription in house; that from there they have third parties which help them obtain subscribers; that subscribers are not required to be relatively close to the project; that residents would only be required to be within the DP& L system; that he would be happy to contact the gentleman from the Homeowners Association of Hill N Dale to discuss this; that this application, as well as the following application, were scheduled earlier than anticipated; that they typically would have already held a community outreach meeting to address of some of these

questions and concerns prior to the scheduled public hearing; that their local office is outside of Baltimore, Maryland; that they have constructed several projects in Maryland; that this would be their first project in Delaware and he believed there is typically a 10% discount associated with a subscription.

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 2447 Elk Development, LLC. Motion by Ms. Wingate to defer for further consideration, leaving the record open to receive information from the Applicant, in the form of written comment, regarding the safety and operation of the pending solar array, which is to be submitted by the close of business on Friday, November 17, 2023; that the record subsequently being left open for 15 calendar days for the submission of written public comment regarding the submitted information, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

Minutes of the January 3, 2024, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since November 9, 2023.

As Ms. Wingate was absent, the Commission discussed deferring action on the application until the Commission's next regularly scheduled meeting.

Motion by Mr. Collins to defer action about C/U 2447 Elk Development, LLC, seconded by Mr. Mears. Motion carried 4-0.

PLANNING & ZONING COMMISSION

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



Sussex County

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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: November 9th, 2023

Application: CU 2447 Elk Development, LLC

Applicant: Elk Development, LLC
c/o Robert McNeill
6865 Deerpath Road, Suite 330
Elkridge, MD 21075

Owner: David W. & Marlene M. Simpler IRR TR (Attn: Bud Simpler)
7758 Morgan Branch Drive
Seaford, DE 19973

Site Location: Lying on the east side of River Road (S.C.R. 490) at the intersection of Morgan Branch Road and River Road (S.C.R. 490)

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

Proposed Use: Solar array consisting of a photovoltaic electric generation facility.

Comprehensive Land Use Plan Reference: Low Density Area

Councilmanic District: Mr. Vincent

School District: Seaford School District

Fire District: Blades Fire Department

Sewer: N/A

Water: N/A

Site Area: 51.83 acres +/-

Tax Map ID(s): 132-1.00-5.00 & 132-6.00-78.03



JAMIE WHITEHOUSE, AICP MRTPI
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Sussex County

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Memorandum

To: Sussex County Planning Commission Members
From: Mr. Michael Lowrey, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 31st, 2023
RE: Staff Analysis for C/U 2447 Elk Development, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of Application C/U 2447 Elk Development, LLC to be reviewed during the November 30th, 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.

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

Tax Parcel ID(s): 132-1.00-5.00 & 132-6.00-78.03

Proposal: The request is for a Conditional Use for Tax Parcels 132-1.00-5.00 & 132-6.00-78.03 to allow for solar array on a parcels lying on the east side of River Road (S.C.R. 490) at the intersection of Morgan Branch Road and River Road (S.C.R. 490). The parcels are comprised of 51.83 acres +/-.

Zoning: The Parcels are zoned Agricultural Residential (AR-1) District. The adjacent parcels to the north of the subject property are Agricultural Residential (AR-1) District and General Residential (GR) District, parcels to the west are zoned Medium-Density Residential (MR) District, and Parcels to the south and east are within the Agricultural Residential (AR-1) District.

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

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

As outlined in the 2018 Sussex County Comprehensive Plan, Low Density Areas are areas “Sussex County hopes to retain the rural environment and set aside significant open space” and where the



County “supports State and local land use policies that will preserve the value of farmland” (Sussex County Comprehensive Plan, 4-18).

Further Site Considerations:

- **Density: N/A**
- **Open Space Provisions: N/A**
- **Agricultural Areas:** The site is within the vicinity of active agricultural lands.
- **Interconnectivity: N/A**
- **Transportation Improvement District (TID):** The parcels are not within the Henlopen Transportation Improvement District.
- **Forested Areas:** Forested areas exist across the northern and southern portions of Parcel # 5.00 and on the northern portion of Parcel #78.03.
- **Wetlands Buffers/Waterways:** The site appears to contain regulatory wetlands along the northern boundary of Parcel #5.00 on the portion of the Parcel lying north of Morgan Branch Drive.
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The property is located within Flood Zones AE along the northern boundary of Parcel #5.00 on the portion of the Parcel lying north of Morgan Branch Drive. There are areas of “Fair”, “Good”, “Poor”, and “Excellent” Groundwater Recharge Potential on the Parcels.

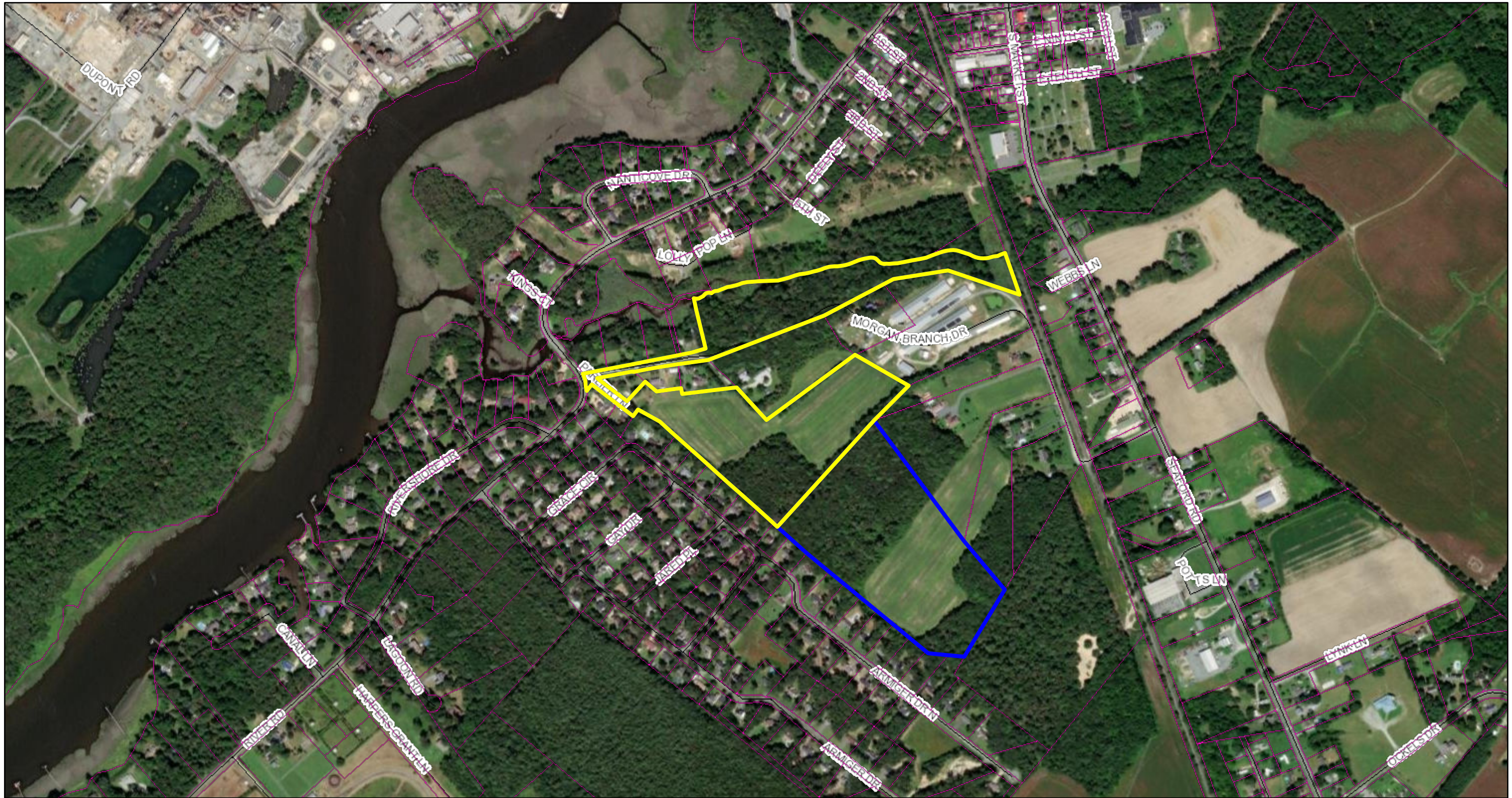
Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use Application to allow for a solar array, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

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






Conditional Use Applications						
(Within a 1-mile radius of the subject site)						
Application CU Number	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
207	Blades Volunteer Fire Co	UR	Fire House	Approved	5/21/1974	N/A
210	US Plywood Division	AR-1	Warehouse & Wholesale Of Wood Products	Approved	5/21/1974	N/A
238	Betty Walmsley	AR-1	Ceramic Shop	Approved	10/15/1974	N/A
243	B&B Mobile Court Inc	AR-1	Extend Manufactured Home Park	Approved	11/12/1974	N/A
308	Elwood Waldridge	UR	Convert Fire House Into Auto Body Shop & 2 Apartments	Approved	12/9/1975	N/A
339	John Benson	AR-1	Office & Warehouse	Approved	4/27/1976	N/A
509	Aubrey Murray & Helen	AR-1	Signal Tower	Denied	12/19/1978	N/A
512	B & B Mobile Home Court Inc	AR-1	Extension Of Existing Manufactured Home Park	Approved	1/16/1979	N/A
1197	Harry & Sally Daisy	AR-1	Auto Repair Shop	Approved	9/23/1997	1176

1217	Trinity Land Company	AR-1	Warehousing, Light Manufacturing, Welding, Pre-Fab201 & Metal Duct	Approved	1/6/1998	1202
1233	Eddie French	AR-1	Plumbing & Heating Business	Approved	3/31/1998	1223
1314	Perdue-AgriRecycle LLC	AR-1	Micro-Nutrient Plant for Poultry Litter	Approved	12/21/1999	1354
1388	Advanced Motorsports Inc.	AR-1	Retail & Wholesale Racing Parts	Approved	3/27/2001	1439
1691	Perdue Farms AgriRecycle, LLC	AR-1	Amend/Pelletizing	Approved	7/25/2006	1865
2258	Bioenergy Development Group, LLC	AR-1	Amend CU 1314 To Permit Nutrient Recovery For Natural Gas And Electrical Generation	Approved	4/20/2021	2769

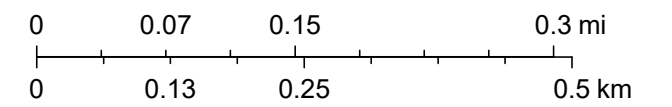
Sussex County



October 6, 2023

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

1:9,028



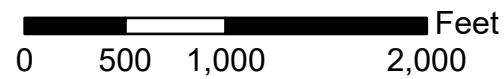
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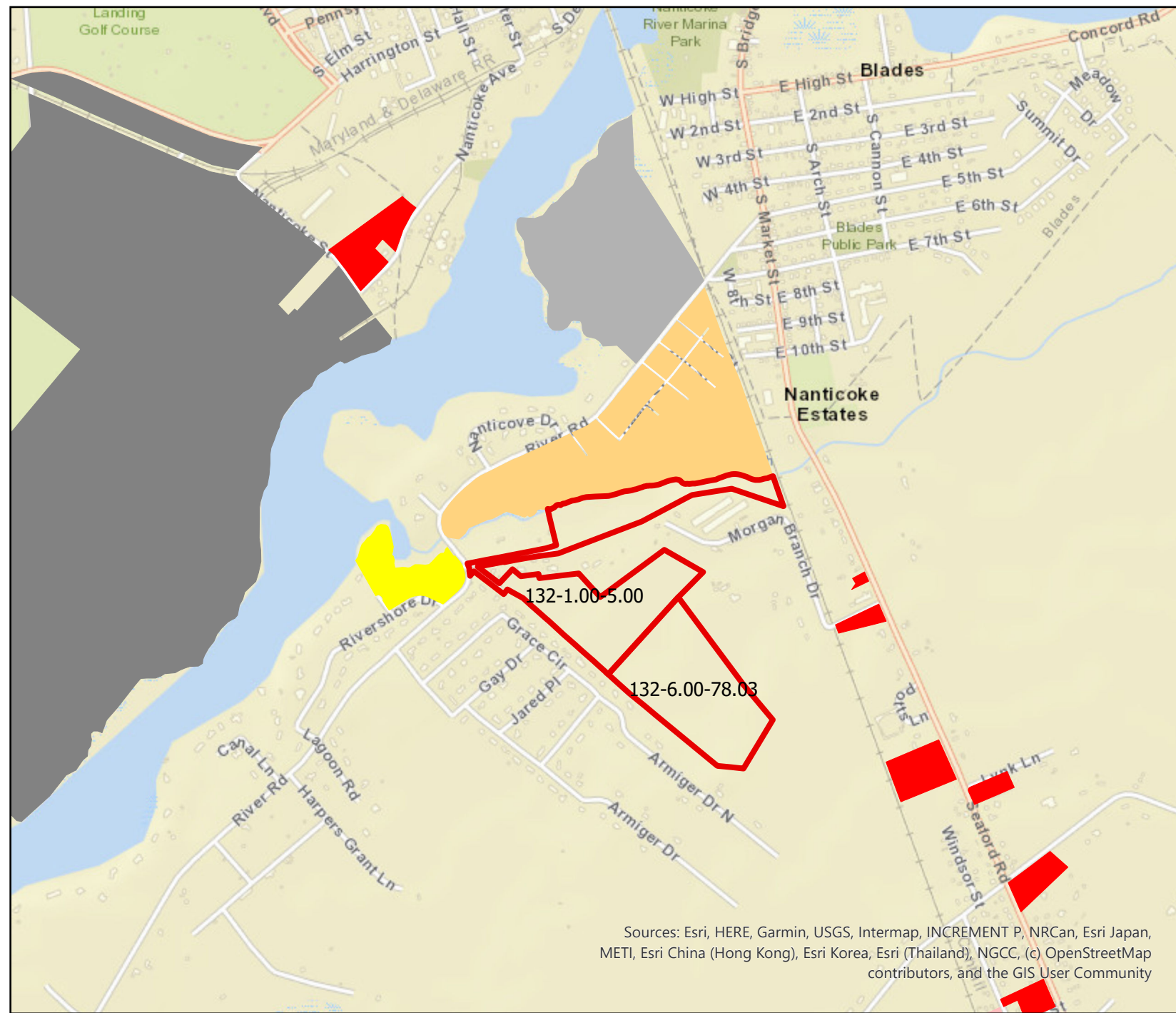
Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

CU 2447 - Elk Development, LLC
TMs# 132-1.00-5.00 & 132-6.00-78.03
Streets Map

 CU 2447 - Parcels#s 5.00 & 78.03

 Feet
0 500 1,000 2,000



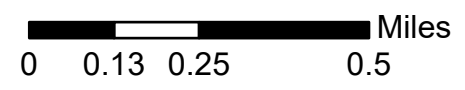


- ### Zoning
- Agricultural Residential - AR-1
 - Agricultural Residential - AR-2
 - Medium Residential - MR
 - General Residential - GR
 - High Density Residential - HR-1
 - High Density Residential - HR-2
 - Vacation, Retire, Resident - VRP
 - Neighborhood Business - B-1
 - Neighborhood Business - B-2
 - Business Research - B-3
 - General Commercial - C-1
 - General Commercial - C-2
 - General Commercial - C-3
 - General Commercial - C-4
 - General Commercial - C-5
 - Commercial Residential - CR-1
 - Institutional - I-1
 - Marine - M
 - Limited Industrial - LI-1
 - Light Industrial - LI-2
 - Heavy Industrial - HI-1
 - CU 2447 - Parcels#s 5.00 & 78.03

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

CU 2447 - Elk Development, LLC
 TMs# 132-1.00-5.00 & 132-6.00-78.03
 Zoning Map

CU 2447 - Parcels#s 5.00 & 78.03



Introduced: 10/17/23

Council District 1: Mr. Vincent

Tax I.D. No.: 132-1.00-5.00 (p/o) & 132-6.00-78.03

911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 51.83 ACRES, MORE OR LESS

WHEREAS, on the 3rd day of May 2023, a Conditional Use Application, denominated Conditional Use No. 2447 was filed on behalf of Elk Development, 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. 2447 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. 2447 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcels of land, lying and being situate in Broad Creek Hundred, Sussex County, Delaware, and lying on the east side of River Road (S.C.R. 490) at the intersection of Morgan Branch Road and River Road (S.C.R. 490), and being more particularly described in the attached legal description prepared by Pivot Energy, Inc., said parcels containing 51.83 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
(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: January 5, 2024

RE: County Council Report for C/U 2456 filed on behalf of Elk Development, LLC

The Planning and Zoning Department received an application (C/U 2456 filed on behalf of Elk Development, LLC) for solar arrays, to be located at Tax Parcel 132-6.00-92.01. The property is located at 28270 Oneals Road, Seaford. The parcel size is 67.72 acres +/-

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

Below are the minutes from the Planning & Zoning Commission meeting of November 9, 2023.

Minutes of the November 9, 2023, Planning & Zoning Commission Meeting

C/U 2456 Elk Development, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 67.72 ACRES, MORE OR LESS. The property is lying on the north side of Oneals Road (S.C.R. 485), approximately 0.26 mile southwest of Seaford Road (Rt. 13A). 911 Address: 28270 Oneals Road, Seaford. Tax Map Parcel: 132-6.00-92.01.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the property's legal description, the DelDOT Service Level Evaluation Response, a letter from the Sussex County Engineering Department Utility Planning Division, the Staff Analysis, the Applicant's Exhibit Booklets, and the Applicant's Decommissioning Plan. Mr.



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

Whitehouse advised the Commission that zero comments had been received for the Application.

The Commission found that Mr. James, Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, Elk Development, LLC; that also present were Mr. Seth Shafer, P.E. with Pivot Energy, and Mr. Edward Hastings, with Becker Morgan Group.

Mr. Fuqua requested the following information provided in the public hearing for C/U 2404 be incorporated into the record for C/U 2405 Elk Development, LLC. Mr. Fuqua stated an exhibit booklet was submitted for all four applications; that Elk Development, LLC is a division of Pivot Energy, Inc.; that Pivot Energy is a national company involved in the development of clean energy projects, such as on site solar facilities and small utility solar projects, which include community solar facilities; that Pivot Energy has financed and developed over 1,200 solar projects throughout the United States; that the current applications propose solar facilities as authorized, and in compliance with, the Delaware Law, which encourages a more decentralized and cleaner approach to power generation through community solar facilities; that the law provides that by subscribing to a community solar project, residential, business and educational users, who are utility customers can participate in renewable and sustainable energy production, with possible future energy costs; that the solar facilities involved in all four of the subject applications, it is anticipated that that upon final approval and required permitting, the site development and solar facility construction would take approximately four to six months to complete; that once completed and operational, the four facilities would have the following in common; that the solar array and equipment area would be enclosed in a seven foot high security fence with a gate and an emergency key box to accommodate emergency access; that one unlit sign, not exceeding 32 sq. ft. is requested; that the sign will identify the operator and the operator's contact information; that the facilities will consist of solar panel modules mounted on single axis trackers that will allow them to follow the path to the sun throughout the day; that the solar racking system itself utilizes drive steel posts or pile foundations, which anchor the racking system to the ground, and that results in minimal ground disturbance or impervious surface cover; that the solar inverters and other equipment will be located on concrete pads; that the power generated by the solar panels will be transferred to DP&L (Delmarva Power & Light grid by interconnection with the existing DP&L power lines; that the overall system and its design comply with the National Electrical Code and will be reviewed and approved by Delmarva Power & Light; that the solar array area itself will be seeded with a pollinator seed mix, which is slow growing, environmentally friendly ground cover; that there are no odors, dust, smoke, or heat associated with the solar operation; that the only sound is a minimal sound, which is a low hum from the inverters; that there is minimal to no glare from the solar panels, which are designed to absorb sunlight, not to reflect it; that there will be landscaping surrounding the fenced area, which will further shield the panels from view; that after construction is completed, traffic to the site would be minimal, as it would only be periodic equipment inspections and maintenance, as well as seasonal property maintenance and grass cuts; that there are no onsite employees, as the equipment is monitored remotely; that each application does have its own DelDOT Service Level Evaluation Response letter, which indicates that the traffic impact for all the facilities would be diminutive; that there is no proposed or need for sewer, water or trash services for the facilities; that little impervious surface will be created by the facility; that any stormwater management for the sites will comply with the applicable State and County requirements; that as part of the Final Site Plan approval, a Decommissioning Plan will be provided to ensure that upon expiration of the lease, or early termination of the Conditional Use, all equipment and materials will be removed from the site and properly disposed of; that the site will be returned to a physical condition similar to its present state; that the plan also provides for financial security and a form acceptable to the County; that this will guarantee that the cost of the restoration will be available; that the actual

estimated amount in terms of that security will be provided as part of the Final Site Plan review and approval process; that after termination of the use and restoration of the site, the land will revert back to its current condition as agricultural land; that solar facilities are permitted as an approved Conditional Use in both the AR-1 (Agricultural Residential) and GR (General Residential) Zoning Districts; that the purpose of a Conditional Use is to provide for a use that is of a public or semi-public character that is essential and desirable for the general convenience, and welfare of the County; that the Commission and County Council had previously determined that solar facilities are in accordance with the County's Comprehensive plan by promoting Goal 7.3 of the Comprehensive Plan, which encourages the use of renewable energy options, such as community solar facilities, and the use is authorized by the recent amendments to the State Law, relating to the development of community solar facilities for renewable energy protection.

Mr. Fuqua stated that specifically, C/U 2456 Elk Development LLC, is referred to as the "O'Neal's Road" Application; that that site is comprised of 67 acres; that the site is located on the northside of O'Neals Rd.; that the site is located south of Blades, being in closer proximity to Laurel; that approximately 35 acres of the site would be leased for the solar facility; that the land is currently owned by Javed Farm, LLC; that the leased portion of the site borders the new existing chicken houses, located on the southeast portion of the site; that along the eastern boundary is the location of the Conrail Railroad tracks; that to the north of the site is some wooded land and agricultural land; that to the west of the site is the location of the Bioenergy Innovation Center, which recycles organic waste from the poultry industry into renewable energy and nutrient rich compost; that the land to be leased as been in agricultural use; that the site is zoned AR-1 (Agricultural Residential); that the area is located within the Low Density area according to the Future Land Use Map; that the lands to the north and west are also zoned AR-1; that the land to the north and the west are designated within the Industrial Area according to the Future Land Use Map of the Comprehensive Plan; that the site's access will be from the existing site entrance off O'Neals Rd.; that the access will be a 16 ft. wide gravel drive, which would lead back into the middle of the solar array field, being adjacent to two 15' x 20' equipment pads; that the closest solar arrays are set back over 500 ft. from O'Neals Rd. and a minimum of 88 ft. from the closest property line; that there would be a 25 ft. landscape buffer along the southern, eastern and northern boundaries of the solar array area; that the buffer will extend around the northwest corner of the site; that the remaining portion of the western boundary is wooded and would remain as an existing wooded buffer; that the proposed buffers are shown on the Site Plan; that the facility is anticipated to generate electric power to serve the annual needs of almost 900 residential households and proposed Conditions of Approval were submitted for the Commission's consideration.

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.

Mr. James Hoskins spoke in opposition to the Application with concerns regarding the proposed buffers, the potential of the buffers never being installed and the potential negative impacts on his property value.

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

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

Ms. Wingate moved that the Commission recommend approval of C/U 2456 Elk Development, 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 26 acres of a larger 67-acre parcel.
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. The proposed solar array is located adjacent to a railroad, and next to new chicken houses, with woods to the east. It is also next to the BioEnergy site, which recycles poultry waste. The closest array is located at least 500 feet from the county road. The land is also designated as being within the Low-Density Area, according to Sussex County's Future Land Use Map, and there are nearby Industrial Areas according to the map as well.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural and industrial 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.
7. 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.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for a ground-mounted solar array. 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 the Conditional Use.
 - C. All existing wooded buffers shall remain and shall be identified as non-disturbance areas on the Final Site Plan. Additional buffering shall be provided as shown on the Becker Morgan Group Site Plan, dated September 14, 2023, as submitted during the public hearing. In addition, 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 an

emergency.

- F. The location of all transformers, 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 by Best Management Practices.
- H. 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.
- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2456 Elk Development, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Ms. Wingate – 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: November 9th, 2023

Application: C/U 2456 Elk Development, LLC (Oneals Road)

Applicant: Elk Development, LLC (c/o Robert McNeil, Development Project Manager)
6865 Deerpath Road, Suite 330
Elkrdige, MD 21075

Owner: Javed Farm, LLC
14214 Woodbridge Road
Bridgeville, DE 19950

Site Location: The property is lying on the north side of Oneals Road (S.C.R. 485), approximately 0.26 mile southwest of Seaford Road (Route 13A) and is located at 28270 Oneals Road, Seaford.

Current Zoning: Agricultural Residential (AR-1) District

Proposed Zoning: Agricultural Residential (AR-1) District

Proposed Use: Construct a community solar array with equipment pad, access road, security fencing and landscaping.

Future Land Use Map Designation: Low Density Area

Councilmanic District: Mr. Vincent

School District: Seaford School District

Fire District: Blades Fire Company/District

Sewer: N/A

Water: N/A

Site Area: 67.72 acres +/-

Tax Map IDs: 132-6.00-92.01 (p/o)



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



Sussex County

DELAWARE
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Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Lauren DeVore, AICP Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: November 3rd, 2023
RE: Staff Analysis for C/U 2456 Elk Development, LLC (Oneals Road)

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application C/U 2456 Elk Development, LLC (Oneals Road) to be reviewed during the November 9th, 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: 132-6.00-92.01 to allow for solar arrays to be located within an Agricultural Residential (AR-1) District. The property is lying on the north side of Oneals Road (S.C.R. 485), approximately 0.26 mile southwest of Seaford Road (Route 13A) at 28270 Oneals Road in Seaford, Delaware.

The Site Plan for the Application indicates that a 27.31 acre +/- portion of the site will be utilized for the solar arrays, which will be fenced, and that the same acreage (27.31 acres +/-) will be utilized for the Conditional Use Area (leased area) out of the larger 67.72 acre +/- parcel.

Further Site Considerations

Staff note that the property is part of the Mount Zion Tax Ditch Area and contains a Tax Ditch ROW that runs into the western portion of the property of which the Right-Of-Way is measured 300-ft from the Top of Bank (TOB) of the Ditch on either side and 25-ft from "MT." The County's Online Mapping System notes that the Tax Ditch ROW was amended to this smaller ROW through Court Order Change #21.

The property is located within Flood Zone "X" – Areas determined to be outside the 1% annual chance flood zone and outside the 500-year floodplain. The County's Online Mapping System indicates that the property is not located within any Wellhead Protection Areas.

According to the Delaware Department of Natural Resources and Environmental Control's (DNREC's) Flood Planning Tool, the property is located within the Upper Nanticoke River Watershed, the Butler Mill Branch-Nanticoke River Subwatershed and has a Ground Elevation Height at the Parcel of approximately 30-35-ft. A Supplemental Map has been provided which details this information.

It should be noted that the property is not located within any established Transportation Improvement Districts (TIDs). DelDOT stated as part of the Service Level Evaluation Response that the project is anticipated to generate less than 50 vehicle trips per peak hour or 500 vehicle



trips per day, meaning that the project would have a diminutive impact within the context of the County's MOU with DelDOT.

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 Area." The property immediately to the east of the subject property and the property to the south on the opposite side of Oneals Road (S.C.E. 485) also have a Future Land Use Map designation of "Low Density Area." The Parcel is on the west side of the Norfolk Southern Rail Line.

As outlined in the 2018 Sussex County Comprehensive Plan, "The primary uses envisioned in Low Density Areas are agricultural activities and homes" (2018 Sussex County Comprehensive Plan, 4-19). The Plan further stipulates that, "Business development should be largely confined to businesses addressing the needs of these two uses" (2018 Sussex County Comprehensive Plan, 4-19).

The subject property is bordered on the west and north sides by Parcels which have a Future Land Use Map designation of "Industrial Area." Industrial Areas are "lands devoted to concentrations of larger industrial uses including heavier industry, light industry, warehousing, and flex space" (2018 Sussex County Comprehensive Plan, 4-17).

Zoning Information

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

There is a single Parcel to the east at the intersection of Oneals Road (S.C.R. 485) and Seaford Road that is zoned General Commercial (C-1) District.

Existing Conditional Uses within the Vicinity of the Subject Property

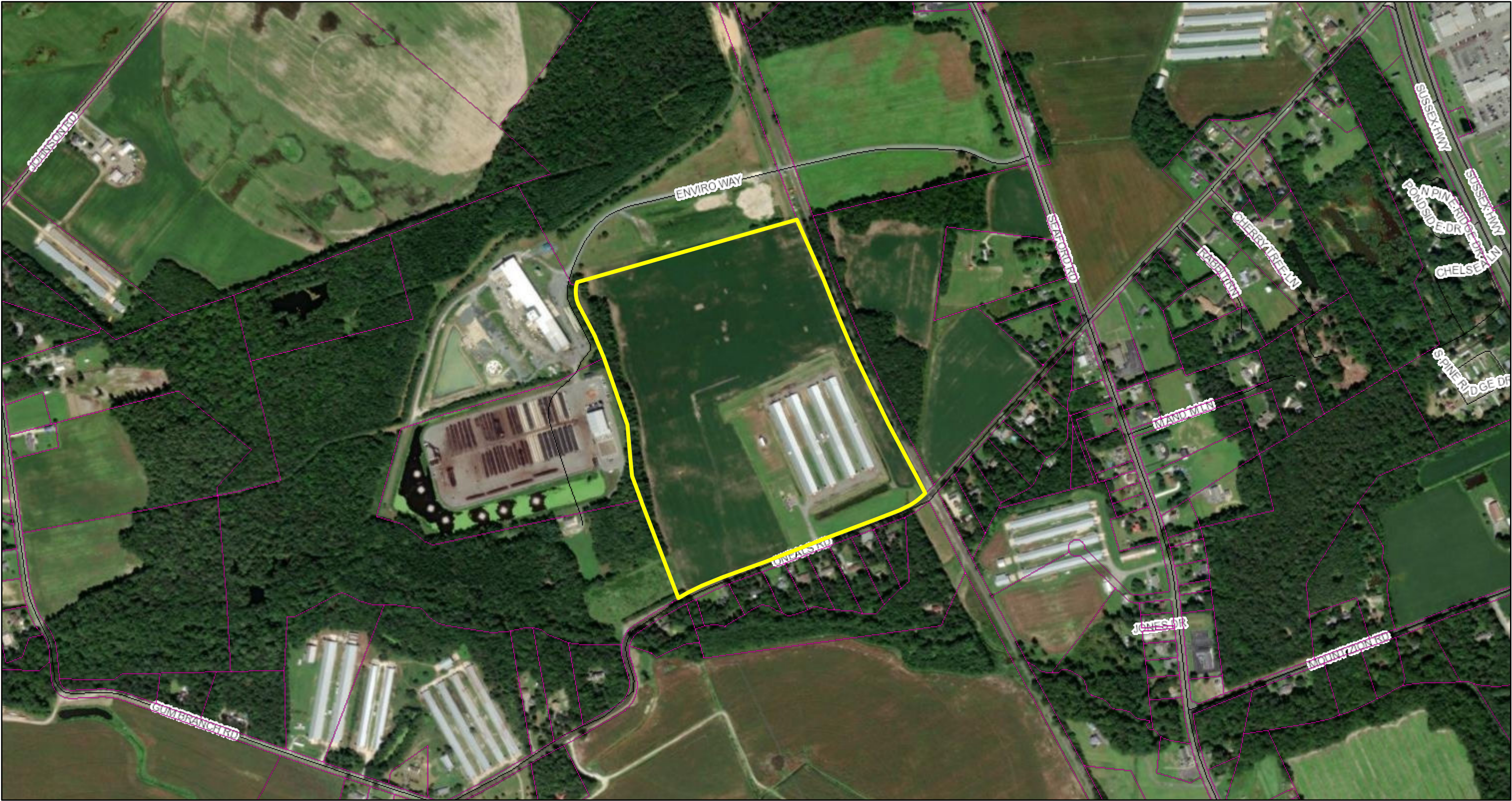
Although there have been multiple applications in this area, there have been seven (7) Conditional Use Applications within a 0.50-mile radius of the Application Site. All seven (7) of Applications were approved by the Sussex County Council.

Further information regarding these Applications may be found in the Supplemental Table provided on Page 3.

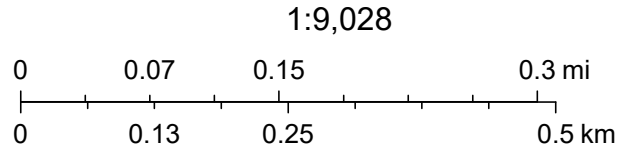
Conditional Use Applications (w/in a 0.50-mile radius of the subject site)*								
Application Number	Applicant Name	Zoning	Proposed Use	P&Z Date	P&Z Recommendation	CC Date	CC Decision	Ordinance No.
C/U 1940	Phil DePenna	AR-1	Physical Training Studio and Gym	8/23/2012	Recommended Approval	9/11/2012	Approved	2276-A
C/U 1691	Perdue Farms AgriRecycle, LLC	AR-1	Amend/pelletizing	7/6/2006	Recommended Approval	7/25/2006	Approved	1865
C/U 1582	Duane & Danielle Musser	AR-1	Sign Shop Vehicle Lettering	1/6/2005	Recommended Approval	1/18/2005	Approved	1747
C/U 1483	Comcast, Inc.	AR-1	Electronic Equipment/Storage	3/13/2003	Recommended Approval	4/1/2003	Approved	1596
C/U 1314	Perdue-AgriRecycle, LLC	AR-1	Micro-nutrient plant for poultry litter	11/18/1999	Recommended Approval	12/21/1999	Approved	1354
C/U 1197	Harry & Sally Daisey	AR-1	Auto Repair Shop	8/28/1997	Recommended Denial	9/23/1997	Approved	1176
C/U 342	Ronald Hastings	AR-1	Extension of an Existing Manufactured Home Park	N/A	Approved	5/11/1976	Approved	N/A

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

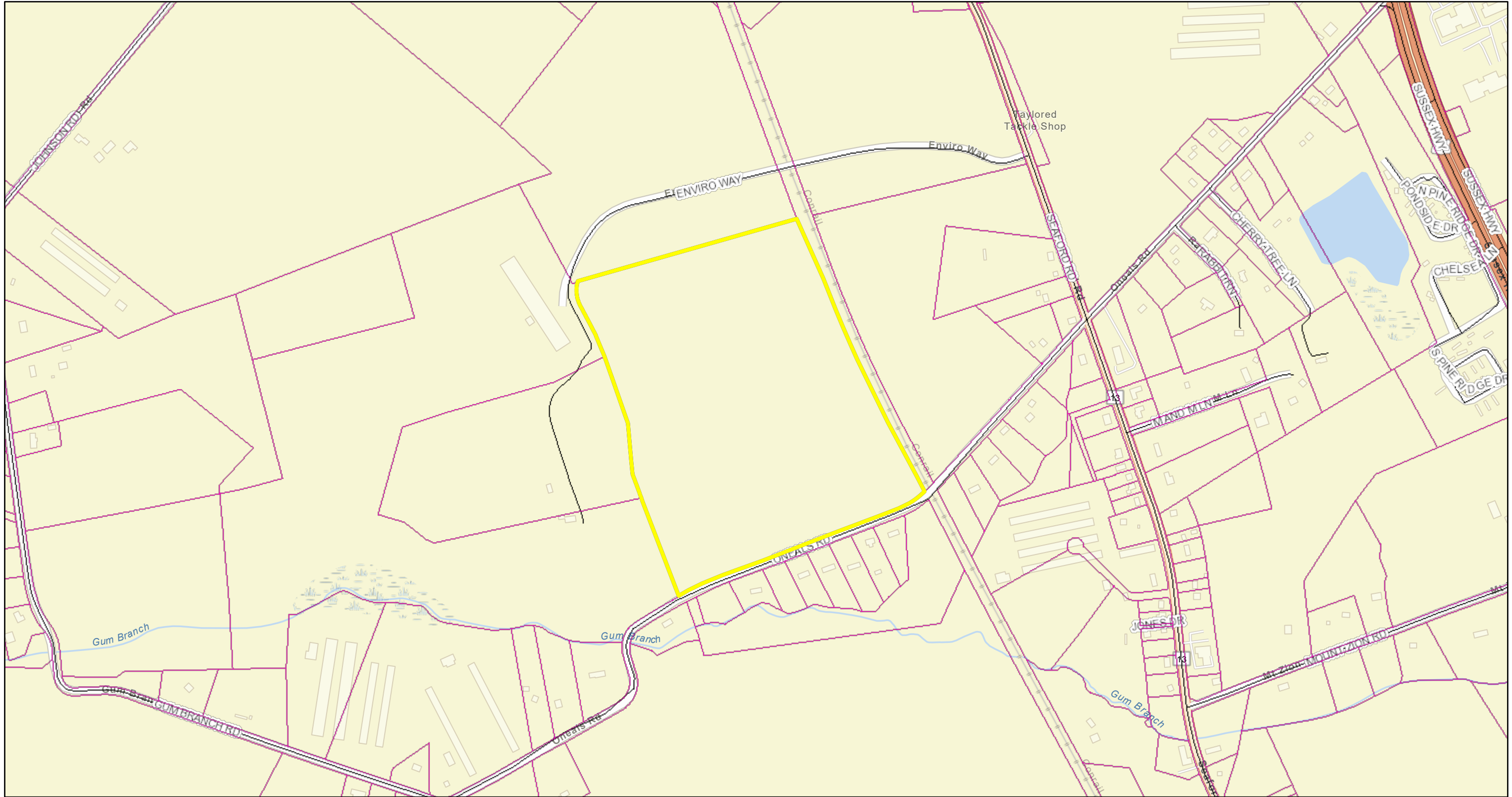
Sussex County








- October 6, 2023
- Override 1
- Override 1
- Tax Parcels
- Streets
- County Boundaries



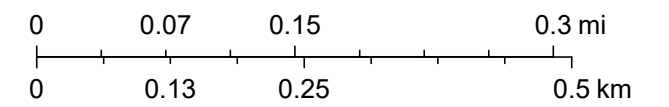
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October 6, 2023

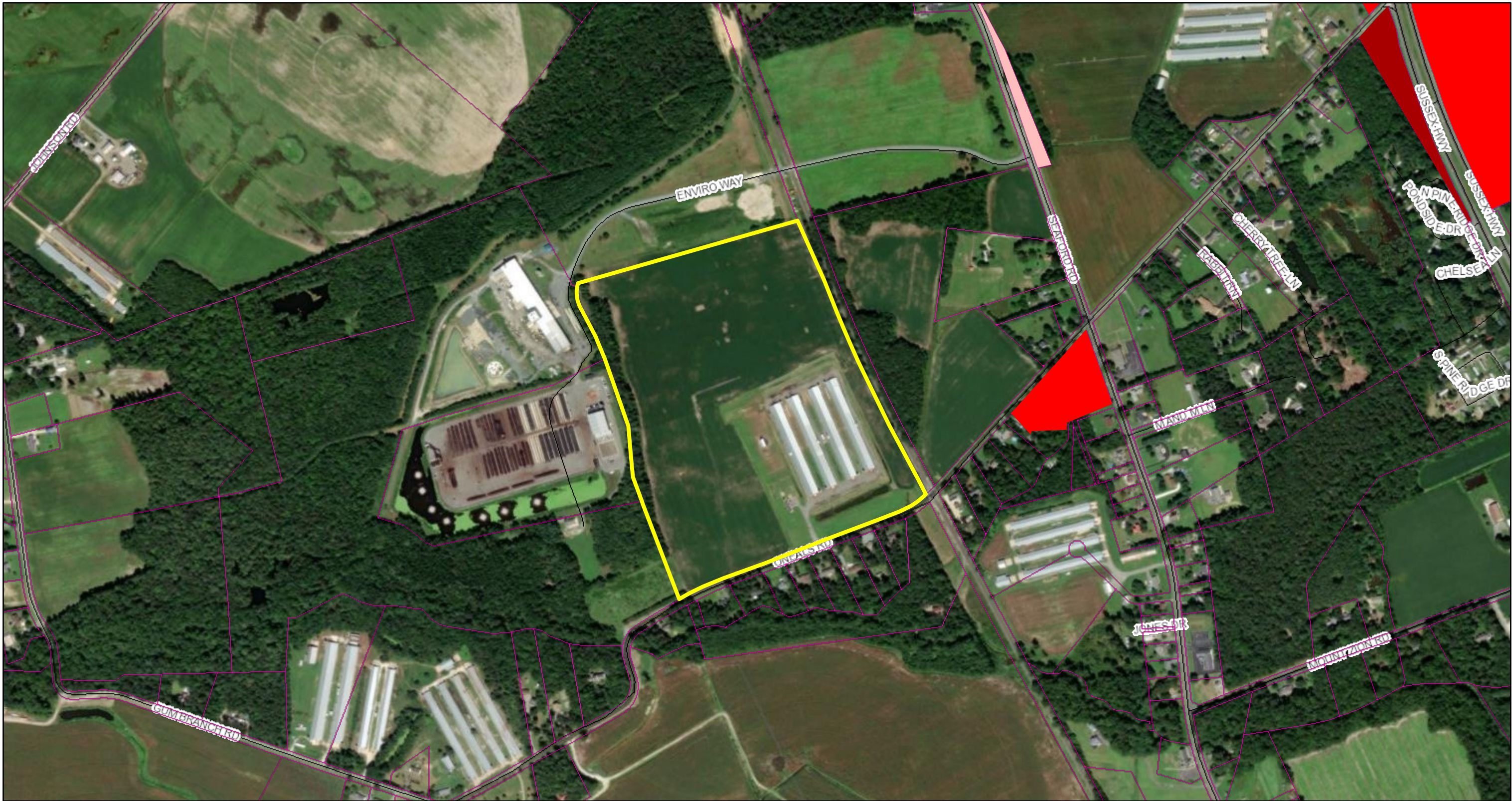
-  Override 1
-  Override 1
-  Tax Parcels
-  Streets
-  County Boundaries

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Sussex County



October 6, 2023

polygonLayer

Override 1

Override 2

Zoning

Neighborhood Business - B-1

General Commercial - C-1

Commercial Residential - CR-1

Tax Parcels

Streets

County Boundaries

World Imagery

Low Resolution 15m Imagery

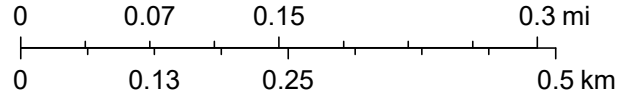
High Resolution 60cm Imagery

High Resolution 30cm Imagery

Citations

2.4m Resolution Metadata

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Sussex County, Sussex County Government, Maxar

Introduced: 10/17/23

**Council District 1: Mr. Vincent
Tax I.D. No.: 132-6.00-92.01
911 Address: 28270 Oneals Road, Seaford**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR SOLAR ARRAYS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 67.72 ACRES, MORE OR LESS

WHEREAS, on the 6th day of June 2023, a Conditional Use Application, denominated Conditional Use No. 2456 was filed on behalf of Elk Development, 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. 2456 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. 2456 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcels of land, lying and being situate in Broad Creek Hundred, Sussex County, Delaware, and lying on the north side of Oneals Road (S.C.R. 485) approximately 0.26 mile southwest of Seaford Road (Rt. 13A), and being more particularly described in the attached legal description prepared by Bonnie M. Benson, P.A., said parcel containing 67.38 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.