

COUNTY COUNCIL

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



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

AGENDA

November 7, 2023

10:00 AM

Call to Order

Approval of Agenda

Approval of Minutes - October 24, 2023

[Draft Minutes 102423](#)

Reading of Correspondence

Public Comments

Consent Agenda

1. **Use of Existing Wastewater Infrastructure Agreement, IUA 943-1
Sandy Shore Village, Johnson's Corner Area**

[Consent Agenda](#)

Discussion and possible action related to an Appeal on the Sussex County Planning and Zoning Commission's decision to deny Subdivision Application No. S-2021-23 (Stillwater Harbor Subdivision)

Karen Brewington, Human Resources Director

1. **Fourth Quarter Shining Star Awards**



Todd Lawson, County Administrator

1. Discussion related to Development Design priorities and next steps
[County Council Update - November 7, 2023](#)
2. Personnel Board Reappointments
3. Administrator's Report

10:15 a.m. Public Hearings

1. Greenwood Storage Annexation of the Sussex County Unified Sanitary Sewer District (Western Sussex Area)
[Public Hearing Greenwood Storage](#)
2. Vines Creek Crossing Annexation of the Sussex County Unified Sanitary Sewer District (Dagsboro/Frankford Area)
[Public Hearing Vines Creek Crossing](#)

Hans Medlarz, County Engineer

1. Discussion and Possible Introduction of a Proposed Ordinance entitled "AN ORDINANCE TO AMEND ORDINANCE NO. 2787 TO AUTHORIZE THE ISSUANCE OF UP TO A TOTAL OF \$5,187,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNY TO COVER THE INCREASED COSTS OF THE CONSTRUCTION AND EQUIPPING OF AN EXTENSION OF SANITARY SEWER SERVICES TO LOCHWOOD AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH"
[Lochwood Ord Intro](#)

Old Business

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

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

[CZ 1973 filed on behalf of Osprey Point Preserve, LLC](#)

2. [Ordinance No. 23-05](#)

"AN ORDINANCE TO DELETE CHAPTER 115, ARTICLE XVII VACATION RETIREMENT-RESIDENTIAL PARK DISTRICT SECTIONS 115-132 THROUGH 115-140 IN ITS ENTIRETY AND TO INSERT ARTICLE XVII MASTER PLAN ZONE, SECTIONS 115-132 THROUGH 115-140 IN ITS PLACE" (To Announce Receipt of Written Comments

and Next Steps)

[Ord 23-05 Master Planned Zone](#)

Grant Requests

1. **Pop Warner Little Scholars, Inc. (Woodbridge) for Florida Nationals**
[Pop Warner Little Scholars, Inc. \(Woodbridge\)](#)
2. **Kim and Evans Family Foundation for their Remembering the Past and Embracing the future event**
[Kim and Evans Family Foundation, Inc.](#)
3. **City of Seaford for their Annual Christmas Parade**
[City of Seaford](#)

Introduction of Proposed Zoning Ordinances

[Ord Intros CU2477 CU2491 CZ1991](#)

Council Members' Comments

Adjourn

***** Members of the Sussex County Council will attend a Grand Opening Celebration at the Sussex County Kitchen Incubator at 21179 College Drive, Georgetown, Delaware, starting at 11:30 a.m. *****

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on October 31, 2023 at 4:00 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, OCTOBER 24, 2023

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 24, 2023, at 9:00 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 507 23
Approve
Agenda**

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

Motion Adopted: 5 Yeas

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

**Appeal/
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The Council considered an Appeal on the Sussex County Planning & Zoning Commission's decision to deny Subdivision Application No. S-2021-23 (Stillwater Harbor).

Mr. Moore read the guidelines and standards that the Council uses when making any decisions on appeals.

The Honorable Charles H. Toliver, IV, Retired Superior Court Judge introduced himself.

Judge Toliver reported that this is the appeal of the decision of the Planning & Zoning Commission decision for Stillwater Harbor Subdivision Application No. S-2021-23. The appellants are Stillwater Harbor, LLC represented by Mr. Forsten and Ms. Peet and the Sussex County Planning and Zoning Commission, are the appellees represented by Mr. Robertson.

Judge Toliver reported that Stillwater Harbor filed their opening brief on

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September 29, 2023. The Planning and Zoning Commission filed its answer on October 11, 2023, and Stillwater Harbor filed its reply on October 16, 2023. The transcripts for the prior hearings of the Planning and Zoning Commission were filed, dated April 27, 2023, May 11, 2023, June 8, 2023, and June 22, 2023. The notice of appeal was properly filed. It appears to be two issues of concern that Council needs to address. The first is that no action was taken within a 45-day period set forth in 9 Del. Code § 68-11 and therefore, the plan should be deemed approved. Second, that the plan complies with the Code and should be approved.

Mr. Richard Forsten, Esq. with Saul Ewing came forward; that also present was Mackenzie Peet, Esq. with Saul Ewing, Hal Steward a representative from Stillwater Harbor, LLC, the applicant and Jim Erikson, the project's engineer were also present.

Mr. Forsten reviewed the plan; the residential subdivision consists of 123 residential units on approximately 57 acres for an overall density of just 2 units an acre. The property is zoned MR (Medium Residential) and GR (General Residential). He added that if this site was developed to the max, they could get 4.36 units an acre which would be 238 units. This does use the Coastal Area cluster option, as a result, the project has 26 almost 27 acres of open space which is about 47% of the site. Mr. Forsten noted that the Code only requires 30%. The plan was submitted prior to the Drainage and Buffer Ordinance being adopted; however, this plan does comply with the newly adopted Ordinance even though it was grandfathered. The property is located within a Growth Area and located within Investment Levels 2 and 3. Mr. Forsten shared an aerial view of the property; a quarter mile down the road is the Riverdale community consisting of about 405 units and there are other residential units in the area.

Mr. Forsten provided a brief history of the project; the plan was first filed in 2021, went through PLUS, received comments from the Planning & Zoning Department, worked through all of the issues that typical you work through, the preliminary plan was submitted earlier this year to the Planning & Zoning Commission on April 17, 2023, a public hearing was held and on April 27, 2023, the record was left open at the end of that public hearing for members of the public and the applicant to submit additional follow up comments that were due by May 5, 2023. He added that the applicant filed some post hearing comments and there were some letters submitted by the opponents. He noted that there was public opposition to this project.

Mr. Forsten noted that there is an easement associated with the entrance. There was some concerns expressed about emergency vehicle access, therefore, his client went out and bought ground that had access to an easement so that the emergency providers could get to the property.

Mr. Schaeffer asked Mr. Forsten to show the location of Jackson Draine Lane and River Road. Mr. Forsten reviewed an aerial photo to show the

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location of the two roads.

Mr. Forsten stated that the Delaware Supreme Court has said “when it comes to subdivision plans and site plans alike, when people own land zoned for a specific use, they are entitled to rely on the fact that they can implement that use provided the project complies with all of the specific criteria found in Ordinances and subject to reasonable conditions which the Planning Commission may impose in order to minimize any adverse impact on nearby land owners and residents. To hold otherwise, would subject a purchaser of land zoned for a specific use to the future whim or caprice of the Commission by clothing it with the ability to impose ad hoc requirements on the use of land not specified anywhere in the Ordinances. The result would be the imposition of uncertainty on all landowners respecting whether they can safely rely on the permitted uses conferred on their land under the Zoning Ordinances”. Mr. Forsten stated that the Supreme Court has told local jurisdictions that if a plan complies with the specific things set forth in your Ordinances, then the plan should be approved subject to only reasonable conditions that might be imposed.

Mr. Forsten reviewed the motion from the Planning & Zoning Commission meeting. He noted that the maker of the motion first stated that this project is in an ecologically important area of the County. So, that was one of her reasons that the plan should be denied. He stated that he would submit that it is in a growth area under the Comprehensive Plan and is zoned for Medium and General Residential Uses. Therefore, there is no specific criteria that allows the Planning Commission to reject a plan because it thinks the property is ecologically important. Mr. Forsten stated that the very first reason given does not comply with the law. The second reason indicated that there were several concerns or primary concerns about this application including the impact of the subdivision on the landscape and surrounding area; it stated access onto River Road, conditions of that roadway and emergency access easement. Mr. Forsten stated that he is not sure how to respond to that due to the maker of the motion did not cite any specific criteria with which the plan did not comply. Mr. Forsten asked how he was supposed to respond as a property owner to address any concerns. He added that he responded to those concerns by making sure that the criteria with the Code was complied with. However, he cannot have a Planning Commission say we have concerns about your plan, so we are going to deny it; that is not fair to property owners and that is not what the law provides.

Mr. Forsten stated that the third reason, the Planning Commission stated was that there is a lot of testimony and opposition to this plan. It is in the law that public opposition is not a reason to deny a subdivision plan; if it complies, it is entitled to approval. Reason 4 states that you have to take access off a road that is 50 feet wide and the road here is only 46 to 42 feet wide. Mr. Forsten stated that the problem with that is that it will be 50 feet wide when the final plan is recorded by dedicating frontage along the front of the property to widen the right-of-way. Therefore, at most, this is a

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technical defect that gets corrected. The plan should be approved with the conditions that you make that correction. Mr. Forsten noted that there is testimony on the record that stated that the right-of-way would be expanded along the frontage. Therefore, that is not a valid reason to deny a preliminary plan approval. In order to get final plan approval, that right-of-way will need to be 50 feet wide, and it will be as a result of the dedication.

Mr. Schaeffer pointed out that at the time of the application, the applicant did not have 50 feet. Therefore, should an application be considered as it is submitted, or should the future be looked into as in what the applicant may or may not be able to accomplish. Mr. Forsten replied that if the rule was that the right-of-way had to be 50 feet at the time of application, there are a lot of properties in Sussex County that will never be developed. The way that the problem is fixed, you make the dedication to DelDOT as part of your plan. Mr. Forsten noted that the department did not state in their comments that the plan could not be accepted because the existing right-of-way was not 50 feet wide. It was known that they planned to widen their right-of-way 50 feet along their frontage. The additional 8 feet will be created when the plan is recorded. Mr. Forsten stated that this will get addressed as part of the final plan approval and when the final plan is recorded. Mr. Forsten stated that the applicant does own the land that they are dedicating to the right-of-way because it is along the front of their property. During the public hearing, it was said that DelDOT is going to require some off-site road improvements further down and it was stated that the applicant would not be able to make those improvements because there will not be enough room in the existing right-of-way where it needs to be completed. Mr. Forsten stated that it is premature because DelDOT has not advised what off-site improvements are needed. In addition, it is not known where they will be required and if they will fit or not. As part of the final plan approval, DelDOT requirements will need to be satisfied. Therefore, it will be 50 feet which will be shown on the final site plan and that is not a reason of denial.

Mr. Forsten stated that reason 5 was given because the maker did not feel that the applicant satisfied with the various requirements. He added that they are not specific criteria because what happened in the Ashburn case, the Planning Commission denied a plan based on general reasons. The Delaware Supreme Court was careful to say that if you are going to deny a plan, it has to be based on specific criteria and conditions can be applied. At one point, the maker of the motion stated that she did not believe there was enough being done to preserve enough trees. Mr. Forsten questioned how many trees did they want preserved? He added that he complied with the code and stating that trees are being cut down is not a reason to deny the plan.

Mr. Forsten then discussed reason 6 of the motion which discusses the concerns of the regional flooding. The fire company was the one that drew attention to the flooding. Mr. Forsten noted that the County Code has

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specific requirements about what to do if there is flooding, however, none of those apply to this project because the flooding is down the road from this project. Due to the concern of the fire company, the applicant got the easement for Jackson Draine Road so that there can be emergency access. In addition, he cited the provision of Delaware law that gives emergency providers the right to trespass if needed to respond to an emergency. Mr. Forsten stated that when they saw what was done, they withdrew their objection.

Mr. Forsten stated that reason 7 was off-site road improvements that he has discussed earlier. He noted that these improvements will have to comply with DeDOT requirements in order to get final approval. At this time, they are seeking preliminary approval.

There was discussion about the easement that has been discussed and it could be used by all of the residents of the community. Mr. Forsten stated that Stillharbor has a legal opinion that it can be used, however, the Commission asked to hear from their own attorney. Their attorney presented to the Commission on June 8, 2023, and concluded that it could not be used. However, he believes that Delaware law makes it clear that emergency vehicles can use the easement which was their intent.

In the motion, reason 9 discussed flooding and stated concerns that this project could make the flooding worse. Mr. Forsten reported that their engineer testified that this project would reduce the stormwater flow to the area of River Road and Chief Road where the flooding is occurring by 21%. The reason for that is modern stormwater management regulations state that you have to contain storm events on your property and treat them for quality and quantity. Therefore, the stormwater has to be managed on their property.

For reason 10, they were told that the project didn't comply with the Comprehensive Plan. He stated that it is in a Growth Area under the Comprehensive Plan. In addition, the property complies with the existing zoning and subdivision requirements. As property owner, he would believe that the County's zoning and subdivision codes comply with the Comprehensive Plan. He noted that the Comprehensive Plan is an advisory document. He does not believe that to be a true statement or a reason for denial.

The last reason, Section 99-9C of the Sussex County Subdivision Code was addressed and listed items set forth in the Code that the maker of the motion did not feel were adequately addressed. It was stated that the applicant has not adequately address the minimization of tree vegetation; he is not sure he can respond to that requirement since nothing was cited from the Code. She also stated that removal of the forest land risks increased flooding. Mr. Forsten stated that statement is not true; it was mentioned that this plan will reduce flooding because it will make stormwater on site. Mr. Forsten noted that they are preserving 12 acres of

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trees. These are the reasons that the Planning Commission made for the denial; he submitted that none of them are relying on specific criteria that provide a basis for rejecting the plan. He requested that the Planning Commission's decision be reversed simply on the insufficient motion and deem the Preliminary Plan approve.

The second argument is that the Delaware Code states that the Planning Commission is supposed to rule on a Preliminary Plan within 45 days of receiving it. The plan was submitted on April 17th, the public hearing was held on April 27th and the record was held open until May 5th for comments to be submitted. Mr. Forsten stated that the code states that the 45 days can be extended with the agreement of the applicant. Mr. Forsten reported that they made a post hearing submission on May 5th. Therefore, if that is considered the final submission of the plan, the Planning Commission did not decide until June 22nd which was outside of the 45 days. Mr. Forsten stated their Preliminary Plan is deemed approval as a result of them taking too long according to the Code. In addition, he submits that it is approved because the reasons they gave misapplied the law or ignored the evidence.

Mr. Schaeffer asked Mr. Forsten what date he suggests that the clock started for the 45-day period. Mr. Forsten replied that the Code states that the clock starts upon the submission of the plan by the applicant which would have been April 17th. Then, the code states that the time period can be extended with the agreement of the applicant. So, the record was left open until May 5th; they submitted their comment letter on May 5th. He would say the 45 days would have started on May 5th; therefore, June 22nd was just outside of the 45 days. Mr. Schaeffer asked if it was thought that the 45-day period would start once all of the information was received by the Commission as required. Mr. Forsten replied that the Commission asked to hear from their attorney who did not get back to the Commission until June 8th which is when the Commission states the time period started. Mr. Forsten stated that they never agreed to that time frame; at most, they agreed to May 5th.

Mr. Schaeffer commented about Jackson Draine Lane, which he stated appears to look like a 12-foot-wide unimproved road which has a private easement. Mr. Forsten referenced the code provision that allows a fire company to trespass as necessary responding to a fire or other emergency.

Mr. Rieley stated that the neighbors are not in agreement about them trespassing in the event of an emergency from what he understands. Mr. Forsten stated that it would only happen for a flood event which only happens maybe 4-8 times a year. In addition, the applicant met with the fire company in length about this and it satisfied their concerns. Mr. Rieley pointed out that the residents will not be able to use that access. He questioned if they would be stranded for potentially an extended period of time with no way in or out. Mr. Forsten stated that he was unsure, his understanding is that 4-wheel drive vehicles can get through the flooded area. They are going to reduce the amount of stormwater by 21% that goes

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to that area. Mr. Rieley stated that it is his understanding that the regulations states that no more water shall leave the property after the construction is completed than did prior. So, there should be no net change; not a reduction. Mr. Forsten replied that they have to manage for quality, there is a 21% reduction. Mr. Rieley stated that would exceed what the regulation calls for. Mr. Rieley questioned how the reduction would be measured and monitored. Mr. Forsten replied that there is a lot of engineering that goes in a subdivision plan.

Mrs. Green clarified that Mr. Forsten was starting the time on May 5th for the 45-days. Mr. Forsten stated that was correct.

Judge Toliver asked if Mr. Forsten, his clients, or any representatives were present at the subsequent hearings and meetings specifically April 27th, May 11th, June 8th, and June 22nd. Mr. Forsten replied yes.

Recess

At 9:55 a.m., there was a recess.

Resume

At 10:04 a.m., the hearing resumed.

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Vince Robertson, representing the Sussex County Planning & Zoning Commission came forward to present.

Mr. Robertson asked that the Council reread the motion to see all of the thought and deliberation that went into it. For example, one of the items that Mr. Forsten brought up was the third item, that somehow this decision was public opposition to it. He quoted the fact that there was a lot of testimony and opposition to the application which was true and was listed in the motion. However, the rest of the motion in that paragraph 3 states “while much of what was stated during the public hearing and the written information is relevant, subdivisions are not popularity contests, they have to be decided based on the appropriate factors and the record before the Commission. In this case, the record does not support the approval of this particular subdivision”.

Mr. Robertson stated that Commission did not misapply the Code in this case. There is substantial evidence that exists, and the Commission’s decision was based on an orderly and logical review. Mr. Robertson stated that there is no way that you could condition this into approval. For example, if the Commission had said that they were going to approve it contingent on eliminating the flooding; that is never going to happen. Therefore, it would have been conditioned in such a way that it was in fact a denial. Under Ashburn, you cannot condition this particular application into approval. The other Ashburn criteria is if the decision was an ad-hoc one that impose uncertainty on the owner which is the answer is no. Mr. Robertson stated that Stillwater knew that the road flooded and admitted that it knew that DeIDOT closed it. The two-year delay that they mention was done so that they could figure out how to fix the flooding and they went out to acquire the additional piece of land.

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The inaccessible to the property should have been known to Stillwater when they purchased it. Mr. Robertson reported that everyone that testified in opposition knew that it flooded. Mr. Robertson referenced a comment made by Judge Clark who has lived in the area his whole life. He testified that it flooded when he was a child, and it is getting worse all of the time. There was a lot of testimony about how the flooding impacted the schools. One person stated, “during the school year there is the occurrence of sunny day flooding and storms that the school children who are normally dropped off at another point have to be dropped off at the local fire station because the buses can’t get through the flooding, and this certainly adds additional danger to the school children of the area”. Another person testified “you do get a phone call in the middle of the day, you are at work so you have to get to the firehall to pick your kids up, if you are flooded in, you can’t get to your kids to pick them up off the school bus and they are dropped out at the firehall”. A third person testified “I can testify to the fact that buses can’t get through, I have five children and I get called at 5:30 in the morning telling me that I have to drop my kids off at the fire station, you are going to have a whole another community in here and they are going to have kids and they are going to have to do the same thing and the only way that you are going to get through is the emergency access? So, in an emergency as a flood where they have to drive through salt waters, that is not ok”.

Mr. Robertson reported that DNREC did a study in 2015 about this area and River Road which is Exhibit C. The study stated that the Indian River Bay is coastal influenced and impacts several marsh areas within the community. The community is susceptible to frequent flooding due to coastal effects from the Indian River Bay and localized stormwater runoff; changes in development and the natural environment can intensify flooding issues for the community. Residential properties and roads area also flood frequently from local runoff because of stormwater drainage and transportation infrastructure that is undersized or in disrepair. The flooding can range from nuisance flooding of yards and residential roads to severe flooding of access roads which affects homes and businesses. These issues result in localized flooding and back water flooding from inland marsh.

Mr. Robertson reported that it was stated that the remedy is to raise River Road in this location from elevation of 2 feet up to a finished elevation of level 3 and 4 or to raise it 2 feet.

Mr. Robertson stated that Indian River Fire Company also knew of the issue out there. They were not just worried about emergency responders. In their first letter dated March 3, 2022, they discussed the flooding and drainage issues in the area. In addition, they stated that they remain outstanding with no corrective action. They noted that the proposed development is in an area that has been identified as one of DNREC’s high priority projects. In addition, they discussed that the proposed entrance way on River Road clearly lies in between two significant areas of roadway tidal flooding. They noted that these flooding conditions will impact safe

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passage of any perspective resident from these areas until the tidal concerns subside unless an alternative entrance or accessway is provided.

Mr. Robertson noted that on page 4, 5 and 7 of the April 27, 2023, transcript, the applicant's engineer stated, "flooding is still going to occur on that road, crest is still going to occur, but Stillwater Harbor shouldn't be impacting that, so, what are they, I'm sorry". On page 4, the engineer discussed that it is not going to make the flooding go away. He added that he knew since they have been through flood events it seems to be that when people you know, if you have heart conditions or other, you know, ailments, that is when it is going to flare up, I know you know with my experience at least that's the case. Mr. Robertson stated that the engineer summed it up by stating "we are never going to get rid of the flooding". The engineer added that the best solution was putting more people in there so that they can complain to DelDOT and DNREC to improve the situation.

Mr. Schaeffer questioned if the applicant has met the fire company's point about secondary access. Mr. Robertson responded that the fire company issued a letter stating that they had concerns about residents and EMS which is what hit the pause button the development. Mr. Robertson pointed out that it was another company that went out and purchased the other property. After that, the applicant went back to the fire company and advised them that they have an easement, and this solves the problem. Mr. Robertson stated that the fire company never looked into whether they have the right to use the easement.

Mr. Robertson reported that there was testimony from Mr. Erikson where they reviewed letters that were submitted discussing the flooding and they know about it. In addition, Commissioner Stevenson during the hearing asked if they were going to raise the road at some point and questioned where and how much of it. Mr. Erikson replied that they were not going to raise the road. In the DNREC evaluation, one of the remediation methods that they mentioned was to raise the road in several locations where the road is very low and floods. So, they attempted to acquire access to Jackson Draine Lane. Mr. Robertson shared a map that was included in the applicant's submission of the area. Mr. Robertson pointed out that the people that have a right to use Jackson Draine Lane are only the ones that signed a document. If you did not sign and own a property that is on the signature line, you did not have a right to use Jackson Draine Lane. Mr. Robertson noted that Stillwater was not one of the properties signed off on the easement and not one of the owners. Therefore, Stillwater does not have authorization to use Jackson Draine Lane. Mr. Robertson added that if it was conditioned to be able to use Jackson Draine Lane, he would submit that the County would be subjected to litigation from those property owners since they did not consent to that. The state provision as discussed by Mr. Forsten talks about fire companies and EMS being able to use roadways, however, that doesn't do anything for the residents that would live there.

Mr. Robertson reported that Stillwater knows that River Road is closed

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during flooding events. The road is undersized by County Code, Section 99-17; it does have to be 50 feet wide. Mr. Robertson pointed out that Mr. Erikson pointed out that it is undersized when he stated “the right-of-way itself in that area actually varies, it’s like 42 to 46 feet wide, so, it is an odd ball one. Normally, they are pretty standard 50, this one is variable, kind of weird dimensions”. Mr. Roberson noted that the Commission took all of this and other factors into consideration when it denied this application.

Mr. Robertson pointed out that there are 12 different findings in the motion. In number 6, about flooding has 8 sub findings and no. 8 regarding the easement has 6 sub findings. The motion considered multiple topics as reasons for denial. Of those, one of them was nonconforming with the County’s Comprehensive Plan. Mr. Robertson added that no. 10 of the motion discussed the County’s Hazard Mitigation Plan and under item 4 and 7, it discussed the issues with the roads. The developer stated that they were not going to fix or raise the road in their testimony. In addition, the private property owners in the vicinity who own land that would need to be acquired to raise or fix this road were not going to sell any land. The Commission cited the inability to use the easement in item 8 A-F. In addition, there was opposition to use the easement by everyone that had access to it which was all in the record and cited in the motion. The motion also talked about 99-9C which includes 17 specific items. The motion cited the adverse effect on area roadways and transportation and the unsafe pedestrian and vehicular movement to and from the site. In support of that, there is the documented road width, flooding, road closures and the unsafe passage for EMS and residents documented by the fire company. The lack of integration of the project into the existing terrain and landscape and that the project does not adequately address the preservation and natural feature and that the applicant has not addressed the minimization of tree vegetation and soil removal. Mr. Robertson reported that Secretary Scuse also submitted a comment into the record stating that the Delaware Department of Agriculture opposes the Stillwater Harbor development. Mr. Robertson read some of the letter that was submitted into the record. In addition, the Commission’s motion relied upon the record and the site plan that 78% of the existing forest is proposed to be removed.

Mr. Robertson reported that Stillwater is not flat; it is somewhat higher but there is a significant drop. Mr. Robertson added that the Commission had unanswered concerns about the grading that would occur at the top of the bank, the cul-de-sacs which come right up to that bank along with the tree removal and soil disturbance.

The final reason provided was the effect of the project on area schools. There was a lot of testimony about the existing problems with school children getting to and home from school. The Commission’s concern was why would they make that problem worse by adding 123 additional families with more children.

Mr. Robertson stated that there is tons of evidence in the record to support

Appeal/
Stillwater
Harbor
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S-2021-23
(continued)

the denial. The Commission considered the application and requested additional information and then they issued a 20-page motion which was detailed. Based on this, the Council cannot reweigh the Commission's decision and it must uphold the Commission's decision. During one of the conversations, Commissioner Hoey-Stevenson said, "I don't want it to be one of those cases where somebody looks back at us and goes who let this happen".

Mr. Robertson then discussed the 45-day issue which he believes that they are compliant with State law. The State Code does establish the trigger date which must be the date that the record is closed which is governed by Title 9. Mr. Robertson stated that you must also read that together with Title 9 §69-61B which says that you also have to go through the technical advisory committee process. In addition, you need to read it with Title 9 §6962 which says that you have to go through the DelDOT process along with the PLUS comments process. If the application date was the date that the 45-days start, we would never comply which is not what the code says. In addition, he noted that they would not be able to comply with FOIA on getting public notices out 20 days in advance. Mr. Robertson noted that there were many dates that provided of when the 45-days started. They stated it was the date of their last submittal which was on April 17th which is when the 45-days should start. Mr. Robertson stated that he believes that defies logic because they could have submitted it back in March which would put you out 45 days before you even got to the hearing. Mr. Robertson noted that the date of submission is when the closure of the record occurs. If not, it would be asking them to act on something while the record is still open, and all of the information is not received. Mr. Robertson noted that it is important for everyone to have all of the information prior to a decision being made. Mr. Robertson added that Stillwater took advantage of the record being held open by submitting a letter and video after the public hearing. The record was held open on April 27th for three things which was clear. These items were written comment from anyone until the close of May 5, 2023, for a report from County Engineering with regard to the Resource Buffer shown on the preliminary site plan and for an analysis of the easement that was a subject of the application. Mr. Robertson pointed out that the applicant submitted a written submission on May 5, 2023, and they did not object to any of the three reasons of why the record was left open. Then, on June 8, 2023, it was clear that the record was closed which started the 45-days. Mr. Robertson added that information was received from Stillwater and others which was announced on May 11, 2023; if that date is used, the 45-day period would still have been met. Mr. Robertson noted that this was also discussed in the Coral Lakes appeal. In that appeal, it was stated "the Commission cannot be charged with making this decision on a plan until such time as all steps in the process have been completed including the public hearing and the record has been closed". Mr. Robertson went on to read additional information about the Coral Lakes appeal and noted that it was already decided in that appeal that the 45-days starts when the record is closed which in this case was June 8, 2023, and the Commission acted 14 days later.

**Appeal/
Stillwater
Harbor
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(continued)**

Mr. Schaeffer questioned the width of the roadway. Mr. Robertson replied that it is not just the width but also the elevation because it floods. There is testimony from Mr. Erikson that states that they were not doing anything to fix the drainage on the road. Mr. Robertson said that his position that it needs to be 50 feet which is a requirement of the code.

Mr. Schaeffer asked if it was believed to be required that the applicant provides secondary access to the residents. Mr. Robertson replied that he does.

Mr. Rieley commented that an emergency is an unforeseen event; this is not an unforeseen event because we know it occurs several times a year.

Mr. Forsten commented that the emergency is the fire and the event that they are going to; not the flood. Mr. Rieley questioned how the kids would get home from school. Mr. Forsten replied that he did not know, he hadn't thought about it. Mr. Rieley stated that he believes that needs to be known. Mr. Forsten added that he is happy to have further conversations about that and he understands the concern. Mr. Forsten provided information that their engineer provided on stormwater management. He stated that the net drainage towards Chief Road and River Road intersection will go from approximately 83 acres to approximately 54.25 acres. So, the rest will be handled on site. Mr. Rieley asked if that took in account that almost 80% of the trees on the property being eliminated which also take up substantial amounts of water. Mr. Forsten replied that the flooding occurs when there are tidal events and there is a big storm. So, the stormwater management system is designed for that. Mr. Forsten noted that the property owner could clear cut this property tomorrow if desired.

Mr. Forsten pointed out that every residential project in the area used to be a farm and there will be more farms that will be developed. He added that he has a plan that complies and there is a residential community nearby, Riverdale that is three times the size of this project. A reasonable condition would be for this project to have to contribute an amount of money towards the road improvements when they are completed.

Mr. Forsten noted that there is lots of criteria included in the code about flooding and what you have to do if there is flooding on your property. If desired, an Ordinance could be adopted saying that property owners can never cut down a tree again. If there are issues that need to be addressed, that is what reasonable conditions can be placed.

Mr. Forsten stated that the road will be 50 feet wide at the entrance and along the front of the property which is included in the record. On the 45-days, the code says the Commission shall approve or disapprove a plat within 45 days after the submission thereof. Otherwise, such plat shall be deemed to have been approved. Such period may be extended by mutual agreement between the Commission and the Applicant for the Commission's approval. Mr. Rieley pointed out that historically, the

**Appeal/
Stillwater
Harbor** County runs 6-months out on applications. Mr. Forsten added that you would get the agreement of the applicant which did not happen here.

**Subdivision/
S-2021-23
(continued)** Mr. Forsten commented that when you read through the motion, there is not specific criteria that they tie their concerns to which is the only reason you can reject a plan.

At 11:04 a.m., the hearing was closed.

**M 508 23
Go Into
Executive
Session** At 11:04 a.m., a Motion was made by Mr. Hudson seconded by Mr. Rieley to recess the Regular Session and go into Executive Session to discuss matters relating to pending/potential litigation.

Motion Adopted: 5 Yeas

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

**Executive
Session** At 11:10 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to pending/potential litigation. The Executive Session concluded at 11:26 a.m.

**M 509 23
Reconvene** At 11:29 a.m. a Motion was made by Mr. Rieley, seconded by Mr. Hudson to come out of Executive Session back into Regular Session.

Motion Adopted: 4 Yeas, 1 Absent

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

E/S Action There was no action related to Executive Session matters.

**M 510 23
Recess** A Motion was made by Mr. Hudson, seconded by Mr. Rieley to recess until 1:00 p.m.

Motion Adopted: 5 Yeas

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

**M 511 23
Reconvene** At 1:00 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson to come out of Recess back into the Regular Session.

Motion Adopted: 5 Yeas

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

- Minutes** The minutes from October 17, 2023, were approved by consensus.
- Correspondence** Mr. Moore reported letters were received from Nanticoke River Arts Council and Friends of Cape Henlopen State Park thanking Council for their support.
- Public Comments** There were no public comments.
- Administrator's Report** Mr. Lawson read the following information in his Administrator's Report:
- Certificate of Achievement for Excellence in Financial Reporting**

I am pleased to announce that the Government Finance Officers Association of the United States and Canada has awarded Sussex County its Certificate of Achievement for Excellence in Financial Reporting for the 2022 Comprehensive Annual Financial Report. This is the 21st consecutive year that the County has received this prestigious award acknowledging the financial report. The award is among the highest forms of recognition for governmental accounting and financial reporting.

Congratulations to Gina Jennings, Finance Director/Chief Operating Officer, Kathy Roth, Deputy Finance Director, and the accounting staff for their efforts in achieving this award.
 - Council Meeting Schedule**

A reminder that Council will not meet on Tuesday, October 31st. The next regularly scheduled Council meeting will be held on Tuesday, November 7th at 10:00 a.m.
- [Attachments to the Administrator's Report are not attached to the minutes.]
- Old Business/
CU2350** Under Old Business, Mr. Whitehouse presented a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.144 ACRES, MORE OR LESS" (property lying on the west side of Beaver Dam Road [Rt. 23], approximately 0.50 mile north of Hopkins Road [S.C.R. 286]) (911 Address: 30857 Saddle Ridge Way, Lewes) (Tax Map Parcel: 234-6.00-6.02) filed on

Starlight Meadows Election Results **Mark Parker, Assistant County Engineer presented election results and project authorization for Starlight Meadows Road Improvements – Chapter 96 Sussex Community Improvements for Council’s consideration. Mr. Parker reported that there was a total of 20 votes casted in the election; 17 were in favor for the program to proceed and 3 votes were opposed.**

M 514 23 Adopt Resolution No. R 019 23/Starlight Meadows **A Motion was made by Mrs. Green, seconded by Mr. Hudson to Adopt Resolution No. R 019 23 entitled “A RESOLUTION AUTHORIZING THE SUSSEX COUNTY ENGINEER TO PERFORM IMPROVEMENTS, AND THE SUSSEX COUNTY ENGINEER AND FINANCE DIRECTOR TO DETERMINE A UNIFORM ASSESSMENT RATE FOR BILLING, UPON SUBSTANTIAL COMPLETION OF THE IMPROVEMENTS, FOR THE STARLIGHT MEADOWS CHAPTER 96 SUSSEX COMMUNITY IMPROVEMENT PROJECT”.**

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 Council’s consideration.**

M 515 23 Cape Henlopen High School Cheerleaders **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$2,500 (\$1,000 from Mr. Schaeffer’s Councilmanic Grant Account, \$500 from Mr. Hudson and \$1,000 for Mr. Rieley’s Councilmanic Grant Account) to Cape Henlopen High School Cheerleading for the NCA Nationals.**

Motion Adopted: 5 Yeas

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

M 516 23 Cape Henlopen Education Foundation **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$2,000 (\$1,000 from Mr. Schaeffer’s Councilmanic Grant Account and \$1,000 from Mr. Hudson’s Councilmanic Grant Account) to Cape Henlopen Educational Foundation for their Teacher Grant program.**

Motion Adopted: 5 Yeas

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

M 517 23 Mariner Middle **A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Mrs. Green’s Councilmanic Grant Account) to Mariner Middle School National Junior Society for NJHS 2023-24.**

**School
National
Junior
Society**

Motion Adopted: 5 Yeas

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

**M 518 23
Del-Mar-Va
Council Boy
Scouts of
America**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$5,000 (\$1,000 from Countywide Youth Grant Account, \$1,000 from Mr. Vincent's Councilmanic Grant Account, \$500 from Mr. Schaeffer's Councilmanic Grant Account, \$500 from Mrs. Green's Councilmanic Grant Account, \$1,000 from Mr. Rieley's Councilmanic Grant Account and \$1,000 from Mr. Hudson's Councilmanic Grant Account) to Del-Mar-Va Council Boy Scouts of America for Scouting Support.

Motion Adopted: 5 Yeas

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

**Introduction
of Proposed
Ordinances**

Mr. Rieley introduced a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 5.46 ACRES, MORE OR LESS" filed on behalf of BCB Management, LLC.

Mr. Rieley introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE SERVICE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.94 ACRES MORE OR LESS" filed on behalf of Joshua Zuppo.

The Proposed Ordinances will be advertised for a Public Hearing.

**Council
Member
Comments**

There were no Council Member comments.

**M 519 23
Recess**

At 1:17 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to recess until 1:30 p.m. Public Hearings.

Motion Adopted: 5 Yeas

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

M 520 23 Reconvene At 1:30 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to come out of Recess back into Public Hearings.

Motion Adopted: 5 Yeas

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

Rules Mr. Moore read the rules and procedures for public hearings.

**Public Hearing/
Dagsboro
Volunteer
Fire Dept.,
Inc.** A Public Hearing was held on a Proposed Resolution entitled “RESOLUTION APPROVING AGREEMENT TO PROVIDE FIRE FIGHTING SERVICES AND APPROVING ISSUANCE OF CERTAIN BONDS OR NOTES BY THE DAGSBORO VOLUNTEER FIRE DEPARTMENT, INC”.

Mrs. Jennings reported that Dagsboro Volunteer Fire Department would like to issue up to \$1,865,000 of tax-exempt bonds to refund prior debt originally issued to pay the costs for the construction of their fire station on the corner of Clayton Street and Railroad Avenue in Dagsboro.

In order for the bonds to qualify as federally tax-exempt, the bonds must be approved by the governmental unit where the fire department has entered into an agreement to furnish firefighting services. The approval can only happen once a public hearing is held.

Mrs. Jennings noted that these bonds are obligations of the Dagsboro Volunteer Fire Department and not Sussex County Government. The County Government simply provides a platform for the bonds to be tax-exempt.

There were no public comments.

The Public Hearing and public record were closed.

**M 521 23 Adopt
Resolution
No. R 018 23** A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Resolution No. R 018 23 entitled “RESOLUTION APPROVING THE AGREEMENT TO PROVIDE FIRE FIGHTING SERVICES AND APPROVING ISSUANCE OF CERTAIN BONDS OR NOTES BY THE DAGSBORO VOLUNTEER FIRE DEPARTMENT, INC”.

Motion Adopted: 5 Yeas

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

Public A Public Hearing was held on a Proposed Ordinance entitled “AN

**Hearing/
CU2351**

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 INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 12.06 ACRES, MORE OR LESS” (property lying on the east side of Gravel Hill Road [Rt. 30] approximately 1.1 mile north of Zoar Road [S.C.R. 48]) (911 Address: 22901 Gravel Hill Road, Georgetown) (Tax Map Parcel: 234-15.00-1.00) filed on behalf of Jose Velasquez

The Planning & Zoning Commission held a Public Hearing on the application on July 13, 2023. At the meeting of July 27, 2023, the Planning & Zoning Commission recommended approval of the application for the 7 reasons and subject to the 12 recommended conditions as outlined.

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Council found that Mr. Paul Nordoff spoke on behalf of the Applicant, Mr. Jose Velasquez, who was also present. Mr. Nordoff stated Mr. Velasquez seeks a Conditional Use for a property he purchased two years ago, where he intends to run a small landscape business; that his residence is also located on the property; that he and his family live on the property; that he plans to run his landscaping business on the property; that there will be no environmental hazards; that any debris is taken off site; that they are ok with the conditions placed by the Planning & Zoning Commission.

There were no public comments.

The Public Hearing and public record were closed.

**M 522 23
Adopt
Ordinance
No. 2958/
CU2351**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to Adopt Ordinance No. 2958 entitled “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 INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 12.06 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows:

- 1. The entire property is 12 acres in size, but the Applicant testified that only roughly 2 acres of the property will be occupied by the Conditional Use. With the conditions and limitations that are part of this recommendation, this is an appropriate location for this limited type of use.**
- 2. The site is located within a Low-Density Area according to the Sussex County Comprehensive Plan. This low-impact type of use is appropriate within this Area.**
- 3. The property is zoned AR-1 Agricultural Residential. The use of the property as a landscaping business is consistent with the underlying agricultural zoning of the property.**

**M 522 23
Adopt
Ordinance
No. 2958/
CU2351
(continued)**

- 4. The use will not adversely affect area roadways or neighboring properties.**
- 5. A landscaping company provides a service to a wide variety of Sussex County residents and businesses, and it has a public or semi-public character that will benefit the residents and businesses of Sussex County.**
- 6. During the hearing there was information presented that this site is currently in need of clean-up with the removal of old logs, landscaping materials, and other debris. One of the conditions of approval must be that these items are removed and that the site is cleaned up within 3 months of the County Council's approval of this ordinance or else it shall become null and void.**
- 7. No one spoke in opposition to this application.**
- 8. This recommendation is subject to the following conditions:**
 - a. This use shall be limited to a landscaping business. The area set aside for the Conditional Use shall only be roughly two acres in size, and the location of the Conditional use area shall be shown on the Final Site Plan.**
 - b. The entire site shall be cleaned up within three months of the approval of this ordinance by Sussex County Council. This shall include the removal of all logs, cut vegetation, other landscaping materials, and debris. All untagged or unregistered motor vehicles or trailers shall also be removed from the site within this time period. This condition shall be monitored by the Sussex County Constable for compliance, and if the site is not in compliance within the stated timeframe, then this Conditional Use shall become null and void.**
 - c. No manufacturing shall occur on the site. This prohibition includes the shredding, crushing, or grinding of any materials and also includes the dyeing of mulch or similar materials.**
 - d. There shall not be any retail sales occurring from the site.**
 - e. One lighted sign, not to exceed 32 square feet per side, shall be permitted.**
 - f. The hours of operation shall be limited to 7:00 am through 8:00 pm, Monday through Friday, and from 7:00 am until 3:00 pm on Saturdays. There shall not be any Sunday hours. The Applicant shall be able to operate beyond these hours on an as-needed basis for limited situations such as snow removal, storm damage cleanup, and similar events.**
 - g. All dirt, stone, mulch, or similar materials shall be stored in bins or similar containments. These storage areas shall be shown on the Final Site Plan.**
 - h. The applicant shall comply with all DeDOT requirements, including any entrance or roadway improvements.**
 - i. Since this conditional use will only occupy a small portion of the property, the Final Site Plan shall show the area where this conditional use will be located. The area of the Conditional Use shall also be completely enclosed by fencing.**
 - j. The Final Site Plan shall clearly show all areas for vehicle and**

**M 522 23
Adopt
Ordinance
No. 2958/
CU2351
(continued)**

equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking or storage within the property's setbacks.

- k. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.**
- l. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas

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

**M 523 23
Adjourn**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to adjourn at 1:44 p.m.

Motion Adopted: 5 Yeas

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

Respectfully submitted,

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

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

Consent Agenda 11-07-2023

**Sandy Shore Village (Twin Cedars) IUA-943-1
Existing Wastewater Infrastructure Use Agreement
Gulf Star Properties, LLC to pay \$27,406.00 for 259.00 EDUs.
Johnson's Corner Area**

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
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HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Memorandum

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

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

RE: *Existing Wastewater Infrastructure Use Agreement
Sandy Shore Village (Twin Cedars) IUA 943-1
File: OM 9.01*

DATE: November 7, 2023

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

The Engineering Department requests approval of an agreement for the existing wastewater infrastructure use with **Gulf Star Properties, LLC** for the **Sandy Shore Village** project in the **Johnson's Corner Area**. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, the **Sandy Shore Village** project will connect to the existing County owned wastewater infrastructure. In return for utilization of said **Gulf Star Properties, LLC** will contribute **\$27,406.00** for the financial catch-up contribution of the existing infrastructure to serve **259.00** Equivalent Dwelling Units. Payments of the contribution will be submitted prior to receiving substantial completion of the on-site collection system for the project.



EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT

Sandy Shore Village – IUA 943-1

THIS AGREEMENT (“Agreement”), made this 7TH day of NOVEMBER 2023, by and between:

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

GULF STAR PROPERTIES, LLC, a Delaware Limited Liability Company and developer of a project known as Sandy Shore Village, hereinafter called the “Developer.”

WITNESSETH:

WHEREAS, Developer is developing a tract of land identified as Tax Map parcel 533-11.00-42.00 to be known as Sandy Shore Village (“Project”) and;

WHEREAS, the Project is within the boundary of the Sussex County Unified Sanitary Sewer District (Johnson’s Corner Area) and;

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

WHEREAS, the Project has a Memorandum of Understanding (MOU) with the County for the original district area creation the infrastructure cost was reduced based on the previous contribution.

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

- (1) Developer is proposing to utilize County’s existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to 259.00 additional equivalent dwelling units to County’s existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of \$27,406.00 for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **Payment of the contribution must be submitted prior to receiving substantial completion of the on-site collection system.**

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

litigation, arising out of Developer's negligence in connection with its performance of this Agreement, including but not limited to damage to the County's infrastructure in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is **200 Weston Drive, Dover, Delaware 19904.**

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

FOR THE COUNTY:

{Seal}

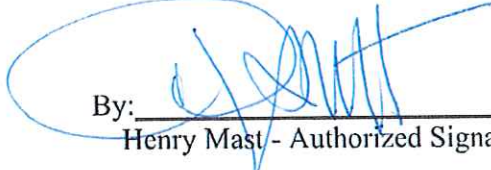
By: _____
(President - Sussex County Council)

_____ (DATE)

ATTEST:

Tracy Torbert
Clerk of the County Council

FOR GULF STAR PROPERTIES, LLC

By:  _____ (Seal)
Henry Mast - Authorized Signatory

10-18-23 (DATE)

WITNESS:

Ruth Case

SUSSEX COUNTY COUNCIL
DEVELOPMENT DESIGN IDEAS
NOVEMBER 7, 2023

DEVELOPMENT DESIGN

- September 21 – joint workshop
- October 10 – summary of ideas in 6 broad categories
- Categories:
 1. Perimeter Buffers
 2. Forest Preservation
 3. Open Space
 4. Interconnectivity
 5. County Code Updates – Miscellaneous
 6. County Code Updates – Superior Design
- Asked to rank priorities

DEVELOPMENT DESIGN

Planning & Zoning Priority Ranking

	PZ1	PZ2	PZ3	PZ4	PZ5	TOTALS
Perimeter Buffers	4	4	4	2	3	17
Forest Preservation	6	1	3	1	5	16
Open Space	3	2	2	3	4	14
Interconnectivity	2	3	1	6	6	18
County Code - Superior Design	1	5	5	5	1	17
County Code - Misc. Codes	5	6	6	4	2	23

DEVELOPMENT DESIGN

Planning & Zoning Priority Ranking

COMMISSION RANKING	
SUBJECT	RANK
Open Space	1st
Forest Preservation	2nd
County Code - Superior Design	3rd (tie)
Perimeter Buffers	3rd (tie)
Interconnectivity	5th
County Code - Misc. Codes	6th

DEVELOPMENT DESIGN

County Council Priority Ranking

	CC1	CC2	CC3	CC4	CC5	TOTALS
Perimeter Buffers	2	4	1	2	2	11
Forest Preservation	5	6	3	6	1	21
Open Space	3	3	2	1	5	14
Interconnectivity	4	2	5	5	3	19
County Code - Superior Design	6	5	4	3	4	22
County Code - Misc. Codes	1	1	6	4	6	18

DEVELOPMENT DESIGN

County Council Priority Ranking

COUNCIL RANKING	
SUBJECT	RANK
Perimeter Buffers	1st
Open Space	2nd
County Code - Misc. Codes	3rd
Interconnectivity	4th
Forest Preservation	5th
County Code - Superior Design	6th

DEVELOPMENT DESIGN

County Council & PZ Commission Priority Ranking

COUNCIL & COMMISSION RANKING	
SUBJECT	RANK
Open Space	1st (tie)
Perimeter Buffers	1st (tie)
Forest Preservation	2nd (tie)
Interconnectivity	2nd (tie)
County Code - Superior Design	5th
County Code - Misc. Codes	6th

DEVELOPMENT DESIGN NEXT STEPS

- Agree on first topic(s) to update
- Other initiatives underway or being discussed:
 - Master Plan Zoning Ordinance
 - Workforce Housing
 - Solar Arrays
- Discuss timeline

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Greenwood Storage Expansion of the Sussex County Unified Sanitary Sewer District (Western Sussex Area)

PUBLIC HEARING FACT SHEET

- County Council granted permission to prepare and post notices for a public hearing for the Greenwood Storage Expansion on September 19, 2023.
- The Engineering Department had received a request from Davis, Bowen & Friedel, Inc. on behalf of their client DESTORAGE.COM GREENWOOD, LLC owners/developers of parcels 530-10.00-55.00, 56.00 & 56.02.
- The parcels are zoned HC, Highway Commercial and are within the Greenwood Municipal Limits and Sussex County provides the sanitary sewer service for the town.
- The parcels are primarily located in the Tier 2 Area for sewer service, with (1) parcel partially in Tier 1 and will be responsible for System Connection Charges of \$7,700.00 per EDU based on current rates.
- The properties were posted on October 13, 2023, and added to the county website.
- To date we have received no correspondence either in support or opposition to this annexation.



COUNTY ADMINISTRATIVE OFFICES
2 THE CIRCLE | PO BOX 589
GEORGETOWN, DELAWARE 19947

RESOLUTION

A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD), TO INCLUDE PARCELS 530-10.00-55.00, 56.00 & 56.02 ON THE EAST SIDE OF SUSSEX HIGHWAY. THE PARCELS ARE LOCATED IN THE NORTHWEST FORK HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE.

WHEREAS, Sussex County has established the Sussex County Unified Sanitary Sewer Sanitary Sewer District (SCUSSD); and

WHEREAS, in the best interests of the present district and to enhance the general health and welfare of that portion of Sussex County in the vicinity of Sussex Highway (Rt. 13), the inclusion of this area will be beneficial; and

WHEREAS, in accordance with 9 Del.C., Section 6502 (a), the Sussex County Council may, upon request of the County Engineer, revise the boundary of an established sewer district when 50 or more houses have been connected by posting a public notice in four public places in the district describing the new or revised boundary; and

WHEREAS, the Sussex County Council has caused to be posted a public notice in at least four public places in the district, as verified by the affidavit of Phillip C. Calio, a copy of which affidavit and public notice is attached hereto and made a part hereof; and

WHEREAS, in accordance with 9 Del.C., Section 6502 (b), the Sussex County Council shall, within ninety days after posting the public notices pass a formal resolution establishing the new boundary of the district;

NOW, THEREFORE,

BE IT RESOLVED the Sussex County Council hereby revises the boundary of the SCUSSD to encompass the lands mentioned above situated on the east side of Sussex Highway, east of the Town of Greenwood, as follows:

Beginning at a point formed by the centerline of a ditch at the intersection of the northerly Right-of-Way (ROW) line of Beach Highway, with the southwesterly corner of lands Now-or-Formerly (N/F), of Brickhouse Farms LLC; thence leaving said southwesterly corner of brickhouse Farms LLC and proceeding the following nineteen (19) courses and distances; (1) N 84°37'24" W 37.80', (2) N 81°53'43" W 215.00', (3) N 02°24'17" W 373.43', (4) S 77°16'53" W 123.16', (5) S 04°12'13" W 376.84', (6) N 81°30'56" W 150.00', (7) N 03°34'36" E 358.66', (8) N 77°37'24" W 240.00', (9) with a curve to the left having a radius of 3444.03', an arc length of 1082.01', a chord bearing of N 08°09'03" W 1077.56', (10) N 87°57'04" E 801.67', (11) S 14°23'39" W 140.19', (12) S 01°12'21" W 206.90', (13) S 10°09'23" E 828.87', (14) S 01°32'27" W 36.80' (15) S 03°07'09" E 90.57', (16) S 05°31'49" E 100.28', (17) S 05°37'45" E 12.92', (18) S 02°54'24" E 94.45', (19) S 00°25'14" W 92.36' to a point, said point being the **Point of Beginning**.

NOTE: The above description has been prepared using Sussex County Tax Map 530-10.00 and Sussex County property assessment records

A map outlining and describing the extension of the SCUSSD is attached. The area involved is crosshatched.

BE IT FURTHER RESOLVED that the Sussex County Council directs the County Engineer and the Attorney for the County Council to procure the necessary lands and right-of-way by purchase, agreement, or condemnation in accordance with the existing statutes; and

BE IT FURTHER RESOLVED that the County Engineer is hereby authorized to prepare maps, plans, specifications, and estimates, let contracts for and supervise the construction and maintenance of, or enlarging and remodeling of, any and all structures required to provide for the safe disposal of sewage in the sanitary sewer district, as amended.


SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT
PROPOSED GREENWOOD STORAGE
AFFIDAVIT FOR PUBLIC HEARING

STATE OF DELAWARE)
:

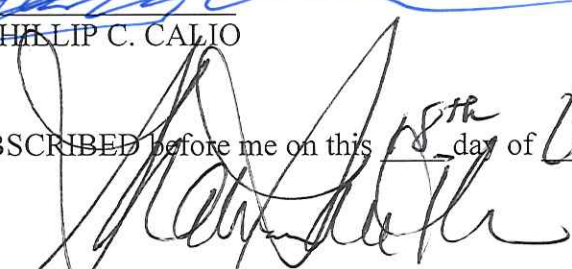
COUNTY OF SUSSEX)

BE IT REMEMBERED, That the subscriber, PHILLIP C. CALIO, personally appeared before me and known to me personally to be such, who being by me duly sworn to law did depose and say as follows:

- A. On October 13, 2023, he was a Utility Planner for the Sussex County Engineering Department, Sussex County, State of Delaware; and
- B. On October 13, 2023, he did post the attached "Public Notice," prepared by the Sussex County Engineering Department, at the following locations:
1. On a post in the northerly Right Of Way (ROW) of Beach Highway (Rt. 16) in front of a 25 mph warning sign,
 2. On a post in the northerly ROW of Beach Highway (Rt. 16) 2' west of a fire hydrant,
 3. On a post in the easterly ROW of Sussex Highway 25' east of a END OF TRUCKS KEEP RIGHT sign,
 4. On a post in the easterly ROW of Sussex Highway 25' east of mile marker 25.0,
 5. On a post in the southerly ROW of Cart Branch Circle in front of a YIELD sign at the intersection with Sussex Highway (Rt. 13),
 6. On a post in the easterly ROW of Sussex Highway (Rt. 13) in front of a YIELD sign at the intersection with Cheer Lane,
 7. On a post in the easterly ROW of Sussex Highway (Rt. 13) in front of a YIELD sign at intersection with Council Road,
 8. On a post in the southerly ROW of Beach Highway (Rt. 16) in front of a YIELD sign at the intersection with Schulz Road.


PHILLIP C. CALIO

SWORN TO AND SUBSCRIBED before me on this 18th day of Oct. A.D., 2023


NOTARY PUBLIC

My Commission Expires 6/14/2024



PUBLIC NOTICE

PROPOSED GREENWOOD STORAGE EXPANSION OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (WESTERN SUSSEX AREA)

NOTICE IS HEREBY GIVEN that the Sussex County Council voted on **September 19, 2023**, to consider extending the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD), Western Sussex Area, to include three parcels on the east side of Sussex Highway (Rt. 13), being situated in Northwest Fork Hundred and Nanticoke Hundred, Sussex County, Delaware.

This action is in conformity with 9 Del. C §6502.

A description of the area, which is contiguous to and to be added to the SCUSSD is described as follows:

Beginning at a point formed by the centerline of a ditch at the intersection of the northerly Right-of-Way (ROW) line of Beach Highway, with the southwesterly corner of lands Now-or-Formerly (N/F), of Brickhouse Farms LLC; thence leaving said southwesterly corner of brickhouse Farms LLC and proceeding the following nineteen (19) courses and distances; (1) N 84°37'24" W 37.80', (2) N 81°53'43" W 215.00', (3) N 02°24'17" W 373.43', (4) S 77°16'53" W 123.16', (5) S 04°12'13" W 376.84', (6) N 81°30'56" W 150.00', (7) N 03°34'36" E 358.66', (8) N 77°37'24" W 240.00', (9) with a curve to the left having a radius of 3444.03', an arc length of 1082.01', a chord bearing of N 08°09'03" W 1077.56', (10) N 87°57'04" E 801.67', (11) S 14°23'39" W 140.19', (12) S 01°12'21" W 206.90', (13) S 10°09'23" E 828.87', (14) S 01°32'27" W 36.80' (15) S 03°07'09" E 90.57', (16) S 05°31'49" E 100.28', (17) S 05°37'45" E 12.92', (18) S 02°54'24" E 94.45', (19) S 00°25'14" W 92.36' to a point; said point being that of the **Point of Beginning**.

NOTE: The above description has been prepared using Sussex County Tax Map 530-10.00 and Sussex County property assessment records. The annexation contains 22.07 acres more or less.

A map outlining and describing the extension of the SCUSSD is attached. The area involved is crosshatched.

The public hearing will be held on this issue at 10:15 a.m. on November 7, 2023, at the regularly scheduled Sussex County Council meeting. All interested persons, officials, residents, voters, taxpayers, property owners, or corporations in any way affected by this boundary extension are welcome to attend. There will be an opportunity for questions and answers. The Sussex County Council following the hearing, at one of their regularly scheduled meetings, will make the final decision on the boundary extension.

For further information, please call or write the Sussex County Engineering Department, 2 The Circle, Post Office Box 589, Georgetown, DE 19947 – (302) 855-7370 (option 1).

Hans M. Medlarz, P.E.
County Engineer

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountyde.gov
HANS M. MEDLARZ, P.E.
COUNTY ENGINEER
JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Vines Creek Crossing Expansion of the Sussex County Unified Sanitary Sewer District (Dagsboro/Frankford Area)

PUBLIC HEARING FACT SHEET

- County Council granted permission to prepare and post notices for a public hearing for the Vines Creek Crossing Expansion on September 12, 2023.
- The Engineering Department had received a request from Davis, Bowen & Friedel, Inc. on behalf of their client Double H Development, LLC developers of parcels 533-1.00-38.00, 533-4.00-28.00 & 28.01 located between Pepper Road and Frankford School Road.
- The parcels have been annexed into the Town of Frankford and Sussex County provides the sanitary sewer service for the town.
- The parcels are located in the Tier 2 Area for sewer service and will be responsible for System Connection Charges of \$7,700.00 per EDU based on current rates.
- The properties were posted on October 13, 2023, and added to the county website.
- To date we have received no correspondence either in support or opposition to this annexation.



COUNTY ADMINISTRATIVE OFFICES
2 THE CIRCLE | PO BOX 589
GEORGETOWN, DELAWARE 19947

RESOLUTION

A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) DAGSBORO/FRANKFORD AREA, TO INCLUDE PARCELS 533-1.00-38.00, 533-4.00-28.00 & 28.01 ON THE EAST SIDE OF PEPPER ROAD, THE SOUTH SIDE OF FRANKFORD SCHOOL ROAD, THE PARCELS ARE LOCATED IN THE DAGSBORO HUNDRED & BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE.

WHEREAS, Sussex County has established the Sussex County Unified Sanitary Sewer Sanitary Sewer District (SCUSSD); and

WHEREAS, in the best interests of the present district and to enhance the general health and welfare of that portion of Sussex County in the vicinity of Pepper Road & Frankford School Road, the inclusion of this area will be beneficial; and

WHEREAS, in accordance with 9 Del.C., Section 6502 (a), the Sussex County Council may, upon request of the County Engineer, revise the boundary of an established sewer district when 50 or more houses have been connected by posting a public notice in four public places in the district describing the new or revised boundary; and

WHEREAS, the Sussex County Council has caused to be posted a public notice in at least four public places in the district, as verified by the affidavit of Phillip C. Calio, a copy of which affidavit and public notice is attached hereto and made a part hereof; and

WHEREAS, in accordance with 9 Del.C., Section 6502 (b), the Sussex County Council shall, within ninety days after posting the public notices pass a formal resolution establishing the new boundary of the district;

NOW, THEREFORE,

BE IT RESOLVED the Sussex County Council hereby revises the boundary of the SCUSSD to encompass the lands mentioned above situated on the east side of Pepper Road and the south side of Frankford School Road, as follows:

Beginning at a point, said point being on the Sussex County Unified Sanitary Sewer District (SCUSSD) boundary, said point also being on the southernmost property corner of lands Now-or-Formerly (N/F) 1 Thatcher Street LLC, said point also being on the easterly Right-of-Way (ROW) of Pepper Road; thence leaving said ROW and proceeding by and with said SCUSSD and running along Vines Creek the following 37 courses and distances, (1) N32°48'19"E 68.67', (2) N55°13'54"E 139.85', (3) N64°21'08"E 579.46', (4) N33°42'05"E 222.12', (5) N27°50'31"E 224.52', (6) N15°54'19"E 190.08', (7) N29°48'21"E 120.57', thence leaving said Vines Creek and SCUSSD and running, (8) S54°05'04"E 77.95', (9) N48°30'56"E 425.93', (10) with a curve to the left having a radius of 853.27', an arc length of 2.52', a chord bearing and distance S70°05'03"E 22.52', (11) S01°39'07"W 77.42', (12) S37°14'55"E 102.01', (13) S65°23'23"E 22.49' (14) S78°08'34"E 123.57', (15) N79°57'00" 75.59', (16) S63°25'17"E 89.34', (17) N38°25'07"E 211.96' (18) with a non-tangent curve deflecting to the left having a radius of 1797.07', an arc length of 90.48', a chord bearing and distance of S89°52'43"E 90.47' (19) S38°28'41"E 293.65', (20) S38°48'03"E 648.12', (21) S13°40'57"E 523.83', (22) S15°00'31"E 1391.94', (23) N82°27'29"E 851.56', (24) S38°47'31"W 762.30', (25) N85°08'34"W 198.70', (26) N18°37'25"W 395.95', (27) S70°52'35"W 980.00', (28) N18°37'25"W 279.27', (29) S70°52'32"W 1451.90', (30) running by and with said ROW N18°21'14"W 1382.65', (31) N17°50'19"W 384.10', (32) N18°29'21"W 1.21', (33) with a non-tangent curve deflecting to the left having a radius of 602.92', an arc length of 186.85', a chord bearing and distance of N27°21'57"W 186.10', (34) N53°45'24"E 15.00', (35) with a non-tangent curve deflecting to the left having a radius of 617.96', an arc length of 107.86', a chord bearing and distance of N41°14'36"W 107.72', (36) N43°45'24"E 15.00', (37) with a non-tangent curve deflecting to the left having a radius of 632.92', an arc length of 48.61', a chord bearing and distance of N48°26'36"W 48.60' to a point, said point being the **Point of Beginning**.

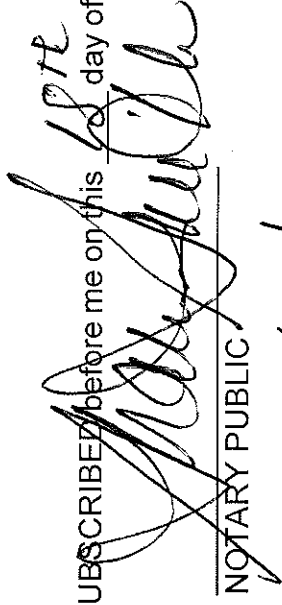
NOTE: The above description has been prepared using Sussex County Tax Map 533-1.00 & 533-4.00 and Sussex County property assessment records.

A map outlining and describing the extension of the SCUSSD is attached. The area involved is crosshatched.

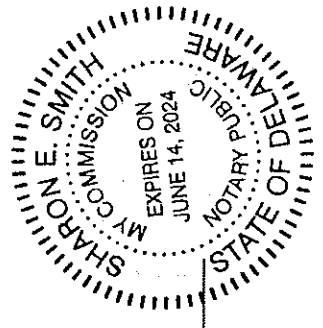
BE IT FURTHER RESOLVED that the Sussex County Council directs the County Engineer and the Attorney for the County Council to procure the necessary lands and right-of-way by purchase, agreement, or condemnation in accordance with the existing statutes; and

BE IT FURTHER RESOLVED that the County Engineer is hereby authorized to prepare maps, plans, specifications, and estimates, let contracts for and supervise the construction and maintenance of, or enlarging and remodeling of, any and all structures required to provide for the safe disposal of sewage in the sanitary sewer district, as amended.

SWORN TO AND SUBSCRIBED before me on this 6th day of Oct. A.D., 2023


NOTARY PUBLIC

My Commission Expires 6/14/2024



PUBLIC NOTICE

PROPOSED CRESS FARM EXPANSION OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (DAGSBORO/FRANKFORD AREA)

NOTICE IS HEREBY GIVEN that the Sussex County Council voted on **September 12, 2023** to consider extending the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD), Dagsboro/Frankford Area, to include the 3 parcels (533-1.00-38.00, 533-4.00-28.00 & 28.01) on the east side of Pepper Road, the south side of Frankford School Road and east of the Town of Frankford, being situate in the Dagsboro & Baltimore Hundred, Sussex County, Delaware.

This action is in conformity with 9 Del. C. §6502.

A description of the area, which is contiguous to and to be added to the SCUSSD is described as follows:

Beginning at a point, said point being on the Sussex County Unified Sanitary Sewer District (SCUSSD) boundary, said point also being on the southernmost property corner of lands Now-or-Formerly (N/F) 1 Thatcher Street LLC, said point also being on the easterly Right-of-Way (ROW) of Pepper Road; thence leaving said ROW and proceeding by and with said SCUSSD and running along Vines Creek the following 37 courses and distances, (1) N32°48'19"E 68.67', (2) N55°13'54"E 139.85', (3) N64°21'08"E 579.46', (4) N33°42'05"E 222.12', (5) N27°50'31"E 224.52', (6) N15°54'19"E 190.08', (7) N29°48'21"E 120.57', thence leaving said Vines Creek and SCUSSD and running, (8) S54°05'04"E 77.95', (9) N48°30'56"E 425.93', (10) with a curve to the left having a radius of 853.27', an arc length of 2.52', a chord bearing and distance S70°05'03"E 22.52', (11) S01°39'07"W 77.42', (12) S37°14'55"E 102.01', (13) S65°23'23"E 22.49' (14) S78°08'34"E 123.57', (15) N79°57'00" 75.59', (16) S63°25'17"E 89.34', (17) N38°25'07"E 211.96' (18) with a non-tangent curve deflecting to the left having a radius of 1797.07', an arc length of 90.48', a chord bearing and distance of S89°52'43"E 90.47' (19) S38°28'41"E 293.65', (20) S38°48'03"E 648.12', (21) S13°40'57"E 523.83', (22) S15°00'31"E 1391.94', (23) N82°27'29"E 851.56', (24) S38°47'31"W 762.30', (25) N85°08'34"W 198.70', (26) N18°37'25"W 395.95', (27) S70°52'35"W 980.00', (28) N18°37'25"W 279.27', (29) S70°52'32"W 1451.90', (30) running by and with said ROW N18°21'14"W 1382.65', (31) N17°50'19"W 384.10', (32) N18°29'21"W 1.21', (33) with a non-tangent curve deflecting to the left having a radius of 602.92', an arc length of 186.85', a chord bearing and distance of N27°21'57"W 186.10', (34) N53°45'24"E 15.00', (35) with a non-tangent curve deflecting to the left having a radius of 617.96', an arc length of 107.86', a chord bearing and distance of N41°14'36"W 107.72', (36) N43°45'24"E 15.00', (37) with a non-tangent curve deflecting to the left having a radius of 632.92', an arc length of 48.61', a chord bearing and distance of N48°26'36"W 48.60' to a point, said point **being that of the Beginning.**

NOTE: The above description has been prepared using Sussex County Tax Map 533-1.00, 533-4.00 and Sussex County property assessment records. The annexation contains 153.325 acres more or less.

A map outlining and describing the extension of the SCUSSD is attached. The area involved is crosshatched.

The public hearing will be held on this issue at 10:15 AM on November 7, 2023 in the Sussex County Council Chambers, County Administrative Offices, 2 The Circle, Georgetown, Delaware. All interested persons, officials, residents, voters, taxpayers, property owners, or corporations in any way affected by this boundary extension are welcome to attend. There will be an opportunity for questions and answers. The Sussex County Council following the hearing, at one of their regularly scheduled meetings, will make the final decision on the boundary extension.

For further information, please call or write the Sussex County Engineering Department, 2 The Circle, Post Office Box 589, Georgetown, DE 19947 – (302) 855-1299).

Hans M. Medlarz, P.E.
County Engineer

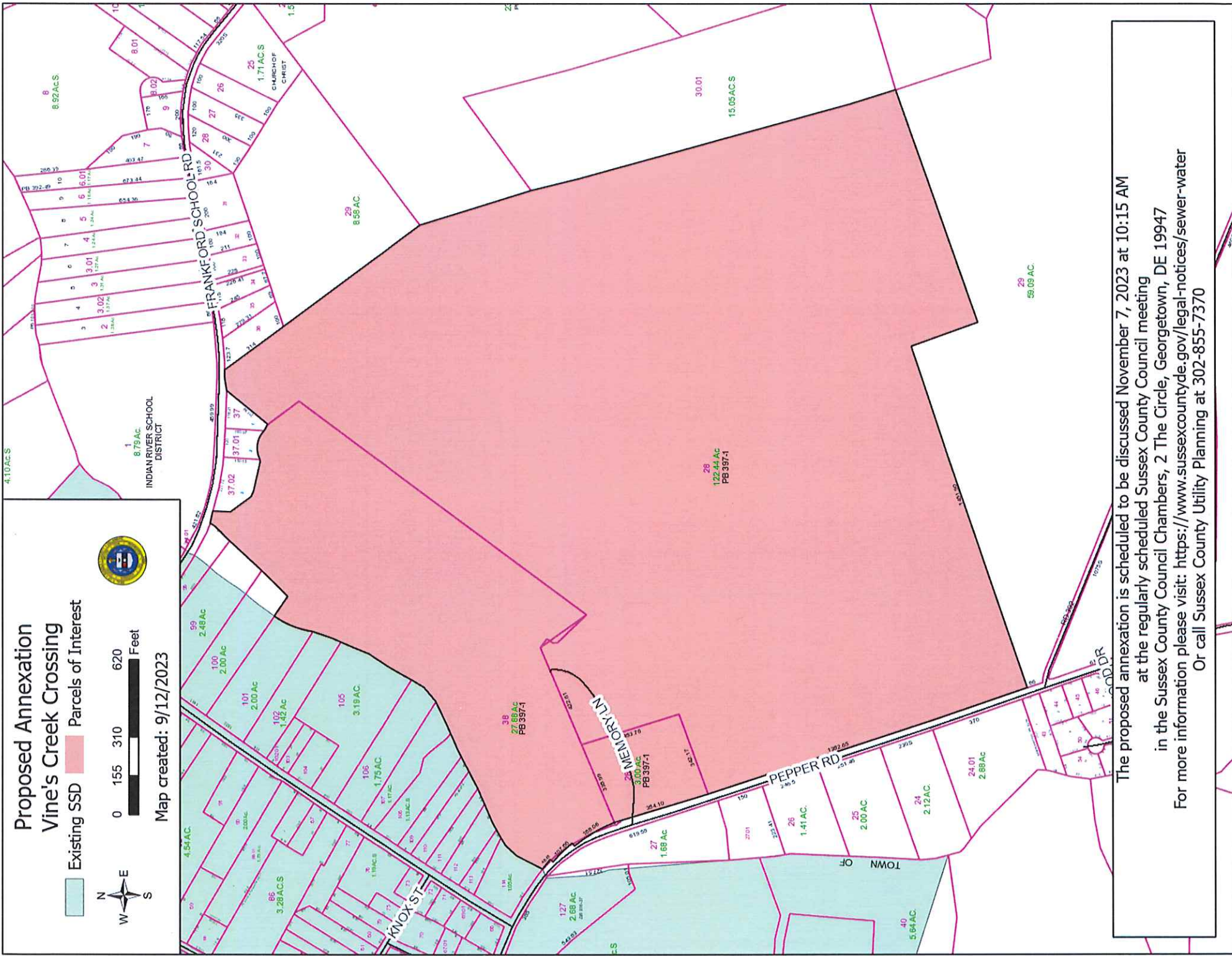
Proposed Annexation Vine's Creek Crossing

Existing SSD Parcels of Interest



0 155 310 620 Feet

Map created: 9/12/2023



The proposed annexation is scheduled to be discussed November 7, 2023 at 10:15 AM
at the regularly scheduled Sussex County Council meeting
in the Sussex County Council Chambers, 2 The Circle, Georgetown, DE 19947
For more information please visit: <https://www.sussexcountype.gov/legal-notices/sewer-water>
Or call Sussex County Utility Planning at 302-855-7370

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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

hans.medlarz@sussexcountype.gov



Sussex County

DELAWARE
sussexcountype.gov

Memorandum

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

FROM: Hans Medlarz, P.E., County Engineer
Gina A. Jennings, MPA, MBA, Finance Director

DATE: November 7, 2023

RE: *Lochwood Community Area Expansion of the Unified Sanitary Sewer District Approval of USDA/RD Supplemental Funding Offer*

On August 2, 2018, the Lochwood Property Owners Association requested a presentation from the engineering department on estimated costs for providing central County sewer service at their annual community meeting on October 27, 2018. At that meeting, the majority of the members present, requested the County distribute a polling letter to all property owners. The responses to the polling letter being favorable the Engineering Department conducted a public hearing on September 7, 2019. The results from the public hearing were presented to County Council on September 17, 2019, and Council voted to extend the Sussex County Unified Sanitary Sewer District to include the Lochwood Community.

In April of 2022 the Engineering Department finalized the Preliminary Engineering Report and the Environmental Information Documents required for submittal of the funding application to USDA – Rural Development. On May 14, 2020, these Documents were combined with the overall funding application prepared by the Finance Department and filed with USDA/Rural Development, Rural Utility Service for approximately \$8,440,000. On May 21, 2021, the County accepted the letter of conditions and on May 24, 2021, the obligating documents associated in the loan amount of \$4,723,000 and \$3,717,000 of grant funding were issued.

On June 15, 2021, Council approved the USDA Loan Resolution and introduced the associated debt ordinance authorizing the issuance of up to \$4,287,000 of general obligation bonds which was approved on July 13, 2021, after a public hearing.

The project was initially advertised in the spring of 2023, but all bids were significantly higher than the available funding. Therefore, Council rejected all bids on May 16, 2023 and authorized the rebid in two Contracts A & B.

Invitations for the Re-Bid were advertised and on July 25, 2023, Council awarded Contract A to Lindstrom Excavating, Inc. but rejected the only bid for Contract B instead authorizing the pursuit of a pre-purchase agreement for the equipment. After the \$417,000.00 purchase order for the AirVac equipment was issued on August 15, 2023, the Engineering Department requested a change order for the building and equipment installation from Lindstrom Excavating, the lowest bidder on Contract A.

On September 26, 2023, Council approved Change Order No. 1 for Lindstrom Excavating for the vacuum building which allowed the Engineering & Finance Department to submit a supplemental funding request to USDA/Rural Development for \$844,000.00.

On September 27, 2023, the County accepted the letter of conditions and on the following day USDA/RD issued the obligating documents associated in the loan amount of \$464,000 and \$380,000 of grant funding were issued.

The Finance and Engineering Departments recommend the introduction of the associated debt ordinance authorizing the issuance of up to \$464,000 of general obligation bonds of Sussex County in connection with the construction and equipping of the Lochwood Expansion of the Unified Sanitary Sewer District.

After the public hearing and adoption of a debt ordinance, Council is also required to approve the attached USDA Loan Resolution as well as the Grant Agreement.



LOAN RESOLUTION
(Public Bodies)

A RESOLUTION OF THE _____

OF THE _____
AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A
PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the _____

(Public Body)

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

_____ ; and

WHEREAS, the Association intends to obtain assistance from the United States Department of Agriculture,
(herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921
et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event
that no other acceptable purchaser for such bonds is found by the Association:**NOW THEREFORE**, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal ly permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0121. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

CERTIFICATION TO BE EXECUTED AT LOAN CLOSING

I, the undersigned, as _____ of the _____

hereby certify that the _____ of such Association is composed of _____ members, of whom , _____ constituting a quorum, were present at a meeting thereof duly called and held on the _____ day of _____ ; and that the foregoing resolution was adopted at such meeting by the vote shown above, I further certify that as of _____ , the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been rescinded or amended in any way.

Dated, this _____ day of _____

Title _____

Water and Waste System Grant Agreement

United States Department of Agriculture

Rural Utilities Service

THIS AGREEMENT dated _____, between

_____ a public corporation organized and operating under

_____ (Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (waste) system to serve the area under its jurisdiction at an estimated cost of \$ _____ and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ _____ of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ _____ has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ _____ or _____ percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed _____ percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, adopted by resolution dated _____, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the property for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment(use continuation sheets as necessary).

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland ``Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

[Revision 1, 11/20/1997]

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

[Revision 1, 11/20/1997]

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term ``facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$_____ which it will advance to Grantee to meet not to exceed _____ percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

attested and its corporate seal affixed by its duly authorized

Attest:

By _____

(Title) _____

By _____

(Title) _____

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By _____

(Title)

1 AN ORDINANCE TO AMEND ORDINANCE NO. 2787 TO AUTHORIZE THE
2 ISSUANCE OF UP TO A TOTAL OF \$5,187,000 OF GENERAL OBLIGATION BONDS
3 OF SUSSEX COUNY TO COVER THE INCREASED COSTS OF THE CONSTRUCTION
4 AND EQUIPPING OF AN EXTENSION OF SANITARY SEWER SERVICES TO
5 LOCHWOOD AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION
6 THEREWITH

7 WHEREAS, pursuant to Title 9, Delaware Code, Section 7001(a) Sussex County (the
8 “County”) has “all powers which, under the Constitution of the State, it would be competent
9 for the General Assembly to grant by specific enumeration, and which are not denied by
10 statute” (the “Home Rule Power”);

11 WHEREAS, acting pursuant to its Home Rule Power, and pursuant to Title 9,
12 Delaware Code, Chapters 65 and 67, the County has authorized the design, construction and
13 equipping of an extension of sanitary sewer services to Lochwood (the “Project”);

14 WHEREAS, pursuant to Title 9, Delaware Code, Section 6706, the County is
15 authorized to issue its bonds and to pledge its full faith and credit thereto, to finance the cost
16 of any object, program or purpose for which the County is authorized to raise, appropriate
17 or expend money under Chapter 67 of Title 9; and

18 WHEREAS, the County has previously authorized the amount of \$4,723,000 and
19 requires additional funding due to increased construction costs of the Project and desires to
20 increase the loan in the amount by \$464,000 to fund the increased construction costs of the
21 Project; and

22 WHEREAS, acting pursuant to the aforesaid authority, the County desires to
23 authorize the issuance of general obligations of the County in one or more series in the total
24 amount of \$5,187,000 to finance the costs of the Project and for the other purposes described
25 herein.

26 NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS (AT
27 LEAST FOUR FIFTHS OF THE MEMBERS OF COUNCIL CONCURRING HEREIN):

28 Section 1. Amount and Purpose of the Bonds. Acting pursuant to Title 9, Delaware
29 Code, Chapters 65 and 67, Sussex County shall issue its negotiable general obligations in the
30 maximum aggregate principal amount not to exceed \$[4,723,000]5,187,000 (the
31 [“Bonds”]) to finance or reimburse the County for a portion of the cost of the design,
32 construction and equipping of the Project.

33 The monies raised from the sale of the Bonds (including the investment earnings
34 thereon) after the payment of the costs of issuance, shall be held in one or more Project
35 accounts and shall be expended only for the purposes authorized herein or as may otherwise
36 be authorized by subsequent action by County Council. Authorized purposes include the
37 costs of planning, constructing, acquiring and equipping the Project or any portion thereof;
38 interest on the Bonds and any interim financing during the construction period and for a
39 period of up to one year following the estimated date of completion; the reasonable costs of
40 issuance of the Bonds and any interim financing; the repayment of temporary loans incurred

41 with respect to the Project; and the reimbursement of authorized costs previously expended
42 by the County from other funds.

43 **Section 2. Security for the Bonds.** The principal, interest and premium, if any, on
44 the Bonds may be paid by ad valorem taxes on all real property subject to taxation by the
45 County without limitation as to rate or amount, except as limited by Title 9, Delaware Code
46 Section 8002 (c). Pursuant to Title 9, Delaware Code, Section 6706, the full faith and credit
47 of the County is pledged to such payment. The Bonds shall contain a recital that they are
48 issued pursuant to Title 9, Delaware Code, Chapter 67, which recital shall be conclusive
49 evidence of their validity and of the regularity of their issuance. While the Bonds are backed
50 by the County[']'s full faith and credit, it is expected that the debt service will be paid from
51 revenues of the Lochwood extension.

52 **Section 3. Terms of the Bonds.** The Bonds shall be sold at such prices and upon such
53 other terms and conditions consistent with the provisions of this Ordinance and otherwise as
54 the County Administrator shall determine to be in the best interests of the County. The
55 Bonds shall bear interest at such rate or rates and shall mature in such amounts and at such
56 times, but not exceeding 40 years from the date of issue of the Bonds, and shall be subject to
57 redemption, as the County Administrator shall determine. The Bonds may be issued in one
58 or more series with differing rates or other terms.

59 **Section 4. Sale of the Bonds.** The Bonds may be issued in one or more series and shall
60 be sold in one or more public sales or private negotiated transactions upon such terms and
61 conditions as the County Administrator shall determine shall be in the best interest of the
62 County. It is anticipated that the Bonds will be sold to the United States of America, Rural
63 Utilities Service (or any successor agency).

64 **Section 5. Details of the Bonds.** The County Administrator is authorized to determine
65 the details of the Bonds including the following: the date or dates of the Bonds; provisions
66 for either serial or term bonds; sinking fund or other reserve fund requirements; due dates
67 of the interest thereon; the form of the Bonds; the denominations and designations of the
68 Bonds; registration, conversion and transfer provisions; provisions for the receipt, deposit
69 and investment of the proceeds of the Bonds; provisions for the replacement of lost, stolen,
70 mutilated or destroyed Bonds; and provisions for issuing uncertificated obligations and all
71 procedures appropriate for the establishment of a system of issuing uncertificated debt. The
72 Bonds shall be executed by the manual or facsimile signature of the County Administrator,
73 shall contain an impression of the County seal or a facsimile thereof and shall be attested by
74 the manual signature of the County Clerk. The County Administrator shall determine the
75 form of the Bonds.

76 **Section 6. Debt Limit.** It is hereby determined and certified, as of the effective date
77 hereof, that the issuance of the Bonds is within the legal debt limit of the County.

78 **Section 7. Further Action.** The President of the County Council, the County
79 Administrator, the Finance Director and the County Clerk are authorized and directed to
80 take such other action on behalf of the County, as may be necessary or desirable to effect the
81 adoption of this Ordinance and the issuance and sale of the Bonds and to provide for their

82 security and to carry out the intent of this Ordinance, including the publication of notices
83 and advertisements and the execution and delivery of customary closing certificates.

84 **Section 8. Effective Date.** This Ordinance shall become effective immediately upon
85 its passage. The County Clerk is hereby directed to publish a notice of the adoption hereof
86 in accordance with Section 7002(m)(2) of Title 9 of the Delaware Code, as amended.

87 **SYNOPSIS:**

88 **Ordinance No. 2787 authorized the issuance of up to \$4,723,000 of Sussex County General**
89 **Obligation Bonds in order to finance or reimburse the County for a portion of the costs for**
90 **the design, construction and equipping of an extension of sanitary sewer services to**
91 **Lochwood (the “Project”). The County requires additional funding due to increased**
92 **construction costs of the Project. The County seeks to amend Ordinance No. 2787 to increase**
93 **the loan amount by \$464,000 for a total of \$5,187,000 to fund the increased construction costs**
94 **of the Project.**

95 Deleted text is in brackets. Additional text is italicized.

96 **I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY**
97 **OF ORDINANCE NO. ____ ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE**
98 **_____ DAY OF OCTOBER, 2023.**

99 _____

100 **Tracy Torbert**
101 **Clerk of the Sussex County Council**

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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: November 3, 2023

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

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

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

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

[Link to the Minutes of the County Council Meeting of September 19, 2023](#)

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



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

Minutes of the August 11, 2022, Planning & Zoning Commission Meeting

C/Z 1973 Osprey Point Preserve, LLC

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

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

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

paddleboards, kayaks and canoes; that an example of a similar situation would be Americana Bayside, being another MR-RPC (Medium-Density Residential-Planned Community) which has a number of commercial uses, such as restaurants; that an example being 38 Degrees restaurant within Americana Bayside; that with the RPC Section of the Zoning Code, commercial uses of convenience and necessity are allowed at a specified ratio; that the restaurant and marina request is a light commercial use of convenience and necessity; that this convenience and necessity is not only for the residents of Osprey Point, but also the surrounding communities; that directly across from the Osprey Point Development is the Love Creek fishing access area; that in that area there is a boat ramp with parking places, allowing people to access Arnell Creek; that the proposed use would also be of convenience to the communities, subdivisions and homes along Old Landing Rd; that surrounding communities include, Old Landing Community, Rehoboth Bay Community, Saw Grass North, Saw Grass South, the Woods at Arnell Creek, Cedar Valley and many more; that Mr. Horsey met with two adjacent communities within a community outreach which was performed; the community outreach meetings occurred in April; that it was explained what the purpose was and how access would be achieved through the proposed facility located on Old Landing Rd.; that the proposed facility would not require residents of Old Landing Rd. to rely on Rt. 1 to access the water or to grab a meal; that each of the community outreach meetings there was generally 50 to 100 people in attendance; that generally at these two meetings there was support for the proposed concept; that there was a third meeting which occurred the weekend before the public hearing; that Osprey Point is currently under construction; that prior to becoming Osprey Point, the property was known as the Old Landing Golf Course; that the Old Landing Golf Course did include a restaurant; that the original Applicant for Osprey Point, was Mr. Robert Marshall, who was the current owner at the time; that Mr. Marshall's family had owned the property for over a century; that when the public hearings occurred for the original application for original approval of Osprey Point; that at the time, the property was split-zoned; that there had been a small portion zoned MR (Medium-Density Residential); that the majority of the property was zoned as AR-1 (Agricultural Residential); that the original Osprey Point application, being C/Z 1759, sought to change all of the AR-1 zoned portion of the property to MR; that in addition to the Change of Zone request, the original Osprey Point application sought the RPC (Residential Planned Community) overlay to allow for a mixture of homes, that included single-family homes and townhomes; that the original Osprey Point application was filed July 2014, which sought approval for 350 units; that these units consisted of 170 single-family homes, with 180 townhomes; that though the public hearing process, the original Osprey Point application was modified at least twice; that the result of the application for 350 units, was reduced to 217 units, with all units being single-family homes; that the application was approved under Ordinance No. 2475, as it was adopted by County Council on November 15, 2016; that at that time, there was not a commercial component sought for the initial application; that since then, every site plan and rendering since 2014 has included two piers that show 24 boat slips, with a general note stating the plan was subject to Site Plan and DNREC approval; that after receiving approval in 2016, the Applicant went through Site Plan approval process; that the Final Site Plan was approved in 2017; that on the approved Final Site Plan the two piers with 24 boat slips are shown; that the ownership of the project did change over time; that revisions were made to the Final Site Plan and a Revised Site Plan was submitted reviewed and recorded in 2020; that the piers and 24 boat slips were still included and shown on the revised plan; that the Commission reviewed the Final Amenities Plan in November 2021; that on the Amenities Plan the marina is shown on the plan; that after receiving final approval for the Amenities, the focus turned to develop a formal plan

for the marina; that when looking at the site and the history of the property, the concept of a marina and restaurant began to take shape; that the property is zoned MR; that the Future Land Use Map designates the property within the Coastal Area; that all surrounding properties are located within the Coastal Area; that there is public water and sewer available to the site; that access to the marina would be through Osprey Point Community; that instead of having two piers crossing the wetland areas, the Applicant is proposing one pier crossing the wetlands; that the one pier will create a U-shape pier which will hold the 24 boat slips; that there is a 3,259 sq. ft.; that there is a proposed pool with a bar; that there are two beaches shown on the plan; that located to the left is a community beach; that this beach would be exclusive to the residents of Osprey Point; that there would be a locked access to this beach; that on the opposite side there is a beach which will be accessed by the restaurant customers; that there is a proposal for a launch for non-motorized watercrafts; that these watercrafts would be along the line of kayaks and paddleboards; that there are 82 parking spaces proposed; that these parking spaces exceeds the parking requirements by the Zoning Code; that upon Final Site Plan review by the Commission, the Commission requires approval by various State agencies, such as Fire Marshal's Office, Sussex Conservation District and DelDOT; that the proposed Application will have additional agency requirements; that several of these agency requirements will have their own public hearings; that there will be a public hearing held by DNREC for the approval of a Minor Marina; that DNREC approval is required in relation to the easement into the area of subaqueous lands; that for a restaurant to have a liquor license, there are certain requirements which must be met before the Office of Alcoholic Beverage Control Commission (DABCC) will grant approval, which may also involve a public hearing; that if this Application is successful, it will have been well vetted by numerous agencies; that Mr. Launay and his firm at Environmental Resources, Inc. was in charge of the required permitting process involved with the proposed project; that there is a written summary submitted in the project booklet of what the permit process looks like; that the application submissions to DNREC and the U.S. Army Corp of Engineers were also included into the project booklet; that the property, as well as surrounding properties, are located within the Coastal Area based on the 2045 Future Land Use Map; that the Coastal Area is designated a Growth Area; that a common theme throughout the Comprehensive Plan is the population growth and the impact the population growth will have on Sussex County; that the population growth of Sussex County raises concerns regarding traffic; that a Service Level Evaluation Request was submitted to DelDOT; that DelDOT's response indicated that the traffic impact for the proposed project to be negligible; that another theme throughout the Comprehensive Plan is improving access to Delaware's waterways; that many people come to Sussex County because of the location to the water; that the proposed use will offer another way to access Arnell Creek; that throughout Old Landing Rd. one can see the population growth; that along Old Landing Rd. there are not a lot of places for people to access the water; that in some of the opposition, there are comparisons to Paradise Grill; that Paradise Grill is significantly larger than the proposed project in land mass and structure size; that within the proposed conditions, the first condition relates to the acreage of the project with a minor marina, pier for non-motorized watercraft vehicles and restaurant; that the second condition relates to the beach area, or sandbox area, to the left be only accessible to the residents of Osprey Point; that the next condition states proposed times of operation be Sunday through Thursday having a closing time of 10:00 pm; that on Friday and Saturday the closing time would be 11:00 pm; that Condition D states there will be no outdoor music after 9:00 pm; that Condition H states that the Applicant will supplement the natural buffer, creating a privacy fence buffer between the marina restaurant parcel and the adjacent properties, specifically being Parcel

39, Parcel 1.01 and Arnell Rd.; that there is a current buffer, consisting of existing trees; that the Applicant intends to utilize the existing buffer, while supplementing areas where there is no buffer with a privacy fence and landscaping; that the Site Plan shows a parking area in that general direction; that there are multiple conditions proposed, relating to the marina; that the proposed conditions are additional requirements to the requirements issued by DNREC; that some of the proposed conditions were constructed from direct requests from adjacent neighbors; that activities not permitted at the marina would include, repairing of boats, fueling of boats, no over-night docking other than those for seasonal slip rental and no pump-out stations located on the dock and/or pier; that the boats will only be serviced by a portable cart as needed; that the project must receive approval from DNREC and the DABCC; that currently the lots of Osprey Point are being developed; that pursuant to the Delaware Uniform Common Interest Ownership Act, a public offering statement is required when lots are marketed for sale within new construction; that within the provided offering statement, there is a direct statement which indicates the marina, restaurant and café are possibilities for the project; that the offering statement also includes a rendering of the proposed project for future residence; that there is a letter from NVR confirming their support of the Application, as well as confirming the Public Offering Statement for Osprey Point includes a statement regarding the potential development of the site; that the proposed project would be for the convenience of not only the residents of Osprey Point but also the thousands of residents along Old Landing Rd.; that the proposed project would allow residents to have a place to dine, get a drink, a location to access a kayak or paddleboard without the requirement to access Old Landing Rd. or Rt. 1 and with the proposed conditions, the project will promote the welfare, orderly growth, convenience and prosperity of the County and he requested Mr. Launay speak on behalf of his findings.

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

that there were State Map regulated wetlands that were subject to DNREC's jurisdiction; that all wetlands are under the jurisdiction of the U.S. Army Corp of Engineers; that DNREC's jurisdiction only extends only to the wetlands found on the State Wetland's Map; that the presence of these different jurisdictional wetlands played a factor of where and how they were able to do things; that when heading upstream Arnell Creek, the area of wetlands between the existing golf course and the edge of the creek increases wider, becoming a less desirable site for a marina; that the original locations were selected in the attempt to minimize the extent of State and federally regulated wetlands that the dock/pier would be required to cross to arrive to the water's edge; that once at the water's edge, they had to consider the location of navigable water; that the proposed facility will be very close to the mouth of Arnell Creek; that the water depths increase toward the east and southeast; that toward the other direction the creek becomes more shallow; that across the creek is a recreational boating area maintained by DNREC, which has its own boat launch area; that Arnell Creek is not a deep body of water; that Arnell Creek is approximately three feet at the low water level; that in regards to navigability and siting of a marina, DNREC has a policy that requires one and a half feet of water at the mean low water; that on a normal tide range, the creek has approximately a 6/10-ft. to 8/10-ft. between mean low and mean high water level; that they also considered locations where the required buffer could be located between adjacent property lines and the marina pier location, while still complying with the DNREC regulations; that the buffer is more than exceeded by where the buffers are located; that the proposed location is the existing location of the golf house and restaurant was; that the existing golf house and restaurant location is being redeveloped; that the proposed facility is going to be open to the public and the future residents of Osprey Point; that the facility is located within an open space component; that there is confusion to the two areas, located along the shore line, being referred to as beach areas; that he would encourage the Commission to consider those areas as more of a sand box area; that there is a shore line; that in some locations of the shoreline the water is very close to the edge of the shoreline; that in these areas there is little wetland vegetation between the uplands and the water; that where those locations are wider or narrower will not be impacted in any way; that originally they had proposed two separate piers; that now they have a U-shaped docking pier, with two separate docking piers being connected by a connecting pier, with only one access across the land; that this was proposed to minimize the crossing of the wetlands; that due to this the State and federally regulated wetland areas will not be impacted; that landward of the wetland boundaries there would be a retaining wall, which would not be very high in height, by raising the land in the area; that landward of that area would be a boardwalk with an access area, which is part of the recreational facility; that the landscape would tie into the landscaping located at the front of the restaurant area; that as part of the marina regulations, there are certain things which area required to be part of the marina facility; that there is a small building proposed, which is intended to be the Harbor Master's Office; that the Harbor Master will be in charge of the marina; that this would be the area for signage and emergency numbers for the marina facility; that a marina is also required to have an emergency spill kit, which will also be located in the Harbor Master building; that within the State of Delaware for all marinas, is there must be a holding tank for sewage coming off all vessels; that typically this is handled by the placement of a marina pump out port; that a tank is wheeled down to the dock; that the holding tank would be pumped; that the tank is wheeled back to land; that when the tank becomes full, the operator will contact a licensed hauler who will dispose of the waste; that this is a requirement by the law; that also included in the packet is the required Operation and Maintenance Plan; that it is a draft maintenance plan, which had been filed with DNREC; that there will be restrooms facilities within the marina,

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

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

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

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

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

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

Mr. Hopkins questioned where the location of the three-foot at low tide area was; that he questioned the depth of the water at the State’s boating launch area; that he questioned if the areas darker in shade on the rendering referenced deeper waters than other areas in the lighter shade; that the questioned how depth is calculated; that he is concerned if someone where to place a propellor into the water at three feet, will it churn the silt; that he questioned if there would be suspended mud within the three foot depth area; that he questioned where the three foot depth areas are located in relation to the proposed areas the boat slips will terminate; that he questioned if the depths would be able

accommodate a pontoon boat with people, a motor and fuel; that he questioned what the minimum depth required is for kayaking; that he questioned what the ratio for parking spaces was for commercial restaurants; that he questioned how many customers would be anticipated for the restaurant by land and by water;

Mr. Robertson stated there is a proposed condition stating there shall be no outdoor music after 9:00 pm; that the condition, regardless of what the Commission requires, will also be governed by the OABCC as it must be applied for as part of obtaining a liquor license; that he questioned if the DNREC approval is required because the marina is opened to the public versus an amenity for only the residents of the Osprey Point RPC or would DNREC's approval have been required all along and he stated if the marina was always a proposed amenity for the RPC and approved on the Final Site Plan, the project would have still been required to go through DNREC but would not have required this extra step through the Planning & Zoning Commission.

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

Mr. Launay stated that if DNREC provides authorization for the marina, they will issue a Subaqueous Land Permit; that with that granted permit there will be a Subaqueous Land Lease; that the lease will encompass the physical area of the marina; that the waters which are subject to the flow of the tide are free and navigable to anyone; that the State regulations state that someone cannot throw out an anchor, leaving their boat for an extended period of time; that a boat cannot be left, where it could become an impediment to other watercraft vehicles coming and going from the marina; that if someone were to get out of their boat, it potentially would not be a pleasant walking experience due to the hard sandy bottom of the creek; that there is a boundary of State wetlands and landward of that area there is a boundary of Federal wetlands under the jurisdiction of the U.S. Army Corp of Engineers; that he previously had testified that three feet landward of that area, the intention is to place a low profile, mild, sheet pile wall; that the wall will contain any sand or land disturbance to prevent anything from crossing over from the land into the wetlands; that he does not predict that people will be inclined to walk through a salt marsh; that the only wetland impact will be from the short portion of the pier that connects to the marina pier; that the pier will impact both State and Federal wetlands; that there is another small impact to the Federal wetlands at the location of the kayak launch; that he has a sounding survey that was performed to approximately the middle of the Arnell Creek; that he does not have a sounding survey for areas past the middle of Arnell Creek; that the depth he measured were 2.8-ft. to 2.5-ft; that in the middle of Arnell Creek the depth will become

deeper; that there is a State Boat Ramp located across from Osprey Point; that he has seen an estimated 24-ft. long boat launch from the State boat ramp during normal low tide; that there is a good component of silt, with a more sandy bottom; that depth is calculated by the distance from the bottom floor to the top of the water; that the normal tide range in the subject area is approximately 0.8-ft.; that listed on the permit drawings, there are depth reported; that the permit drawing depths are a corrected at 0.2-ft.; that mean low waters are actually 0.2-ft. lower than the depths shown on the permit drawings the Commission has; that at higher tides there will be an additional .5-ft or higher; that if someone were to drop a propellor in a particular area at low tide, which would be approximately 2.5-ft, it will be in the mud; that a Bathymetric survey is a study of the bottom, which relays the depth; that the Bathymetric survey is taken from the boundary between the physical water and the physical soil that composes the bottom; that as part of the permit drawings, there was a full size plan submitted showing the extent of the sounding survey performed, all depths and all marina piers; that the depths will vary when moving inland, where it becomes more shallow; that at the other end of the marina, that is where the most depth is located; DNREC's standard requirement is at least 1.5-ft of depth at mean low water; that they meet the minimum standard in the dock area locations; that there will not be any dredging, so they are attempting to access the best water they can; that there is a limitation on where things can be placed; that when placing a pontoon boat in the water, with people, a motor and fuel it would be close to the 1.5-ft requirement; that every boat and every motor is different; that people experienced in navigating the Inland Bays are knowledgeable on how to tilt the motors to navigate through shallow waters; that he believes a canoe or kayak should be able to navigate in shallower water, however it would depend on the size of the person; that at the area of the kayak launch, he estimated the depth to be 2.4-ft at mean low water; that he does not anticipate any issues in the launch area; that he stated the intended use for the marina would not have mattered and the marina would have required the same set of permits and approval from DNREC.

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

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

The Commission found that Mr. Robert Nadig spoke in opposition to the Application; that he is a resident of Old Landing Woods; the he was speaking on behalf of the Old Landing Woods Homeowners Association; that they are opposed to the Application; that the Application request does change the Osprey Point plan dramatically; that the proposed project will change the characteristics of the community; that it will change access points within the community; that the proposed project will have a different impact on the community than what was originally approved; that Old Landing Woods Development was the first development to be created off of the Old Landing Golf Course;

that he was present at the previous public hearings; that the original Application, there was not request for commercial use; that he considers the marina and restaurant amenity to be a developers amenity; that the proposed project will attract people off the bay, Rt. 1 and Old Landing Rd.; that the proposed use may be convenient for some, however he questioned if the proposed use is a necessity for the Osprey Point Development; that the acreage of 1.85 acres does not include the acreage of the marina; that about three acres of the 200 unit development is being commercialized; that three acres would equal 50% of the project, being more than is permitted for the proposed use; that he did not agree with the notice provided for the public hearing; that the legal advertisement mentioned a restaurant and marina, but did not mention commercial use; that they feel the Application should be rejected based on the negative impact it will have to surrounding communities; that they feel the proposed use will be taking over Arnell Creek; that the proposed use will discourage the boating that typically would be found in that area of Arnell Creek; that current boating disturb and destroy the subaqueous land; that the proposed use will exacerbate this; that boats routinely get stuck in Arnell Creek; that there is a boating safety concern with the proposed use; that the project may be smaller than Paradise Grill, but is still substantial for a 200 unit community; that the surrounding communities are quiet; that they are concerned about the bars and the nightclub; that the concept plan shows the large doors where dining can be inside or outside; that it is proposed to have no outdoor music after 9:00 pm; that they may still have music on the inside; that the plan is only a concept plan, so it could change to be anything; that surrounding residents have children who will need to go to bed; that he feels the proposed project will be taking advantage of the investments other people have made in terms of their properties; that the original restaurant of the golf course has not yet been torn down; that the current restaurant closes at dusk; that it was not intrusive to surrounding properties; that the proposed use is asking people to come to party with a marina, beach bar, tiki bar and pool bar; that the proposed use is directed for outside commercial use, not for the residents of Osprey Point; that he believes the proposed access to the restaurant to be a new access; that there were easements which were required to be obtained to create access off Old Landing Rd.; that the main concerns are the boating safety, the impacts to the wildlife and the watershed, the increase in boat traffic for the commercial purpose, that the offloading of sewage should not be part of a recreational amenity or in the location of where one would be; that there will also be a risk of gasoline and oil, which are not risks for the area currently; that the partying and the noise will substantially change the area; that he feels the calculation for commercial use is flaw in the amount the Applicant is requesting; that Osprey Point is an RPC; that Osprey Point has been compared to Americana Bayside; that Americana Bayside is 8,000 units versus Osprey Point at 200 units; that the consensus in his community were in opposition; that there was no one at the hearing in support of the Application and he does not feel approving the Application would set a very good precedent for the future.

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

The Commission found that Ms. Nancy Dellavecchio spoke in opposition to the Application; that she lives within the Old Landing Development; that she is opposed to the marina; that she moved here in 2016; that since 2016 she has seen a decrease in accessibility into the water due to the tides; that the past weekend the tides were so low she could not take her 24-ft. pontoon boat out; that she does not understand how Arnell Creek will be able to enable the number of boats the proposed project are

anticipating; that over the years, it has gotten worse; that at the mouth of Arnell Creek there is beach land; that she had witnessed many boats get stuck in that area; that this was a clear indication there is not enough water in that area; that she questioned the testimony given of the presence of three feet of water; that she fears the proposed project will terminate her access to the water and she does not feel the proposed project will improve the quality of living for residents on Marshall Rd.

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

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

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

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

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

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

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

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

thousands of homes, but that the proposed use would not cause any extra traffic; that many nearby communities and properties already have pools and amenities; that the people coming to the project will be arriving by vehicles; that she is concerned the fines will not be large enough to enforce the project to abide by the set conditions; that the water was present before any of the homes were constructed; that the water is hard to police and protect and she questioned how the proposed project would be policed.

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

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

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

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

The Commission found that Ms. Anita Broccolino spoke in opposition to the Application; that she lives in Old Landing Woods; that she agrees with everything that had already been said; that she constantly has people ask if they can access Osprey Point from Old Landing Woods, while walking her dog; that if a commercial restaurant is placed it will attract a lot of people attempting to cut through Old Landing Woods to get to the marina; that if the restaurant was for residential use, it would be

better; that she is concerned about safety; that often people get stuck in Arnell Creek and walk up knocking on residents doors, at times late at night; that there previously was a 10 to 12 year old boy, who got stuck in Arnell Creek; that emergency personnel had to rescue him; that with the presence of a bar, there will be people drunk; that the driving lanes are one way in each direction; that the congestion has been increasing in the area over the years; that there are many other developments in the area, which have been around for years, that have never needed a restaurant that would remain open until 9:00 pm to 11:00 pm; that she is concerned about the noise the project will generate; that there have been accidents and deaths along Old Landing Rd.; that she questioned if the Traffic Impact Study took into account the additional 217 homes; that she questioned if there would be 350 additional vehicles; that the commercial restaurant and marina would then add on top to that additional traffic; that she and her neighbors feel safe and they currently do not have to worry about patrons getting drunk and wandering into their yards.

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

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

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

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

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

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

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

Zoning Code. What is proposed does not fall under the type of commercial use that is permitted in an RPC.

4. At the time Osprey Point was approved by Ordinance No. 2475, the residential density of the development was substantially reduced because of opposition to the density that was originally proposed. The Ordinance states that the original density and housing types were inconsistent with the surrounding residential communities. A destination-waterfront restaurant would certainly be a more intensive use than anything else in this area of Old Landing Road. I see no compelling reason to go backward against the determination in 2016 to reduce the intensity of the RPC by permitting more intensive commercial uses within the residential development and its surrounding neighborhood now.
5. Old Landing Road is a two-lane, dead-end winding road. It is not currently suited to handle the increased traffic, pedestrians, bikers, trash trucks, and delivery vehicles that would be utilizing this destination restaurant if approved.
6. In summary, I do not see any legitimate reason to permit an intensive commercial use in the form of what would certainly be a waterfront-destination restaurant that will attract customers from far and wide beyond the confines of just Osprey Point. What has been asked for exceeds what is intended for the limited commercial uses within an RPC. For all of these reasons, it is recommended that the request to amend C/Z 1759 and Ordinance No. 2475 to allow commercial uses in the form of a restaurant and commercial marina within the RPC should be denied.
7. However, I am recommending approval of a marina of no more than 25 boat slips for the exclusive use of the residents of Osprey Point. The slips in this marina may not be bought, sold, leased, or occupied by anyone other than property owners within Osprey Point. The approval of this marina as an amenity for Osprey Point is subject to the following conditions:
 - a. This marina shall be an amenity for the property owners within Osprey Point and shall be limited to use by boats owned by property owners within Osprey Point. No slips shall be bought, sold, leased, or occupied by anyone other than owners of residential units within Osprey Point.
 - b. There shall be no more than 25 boat slips within the marina.
 - c. No boats shall be repaired or refueled at the marina.
 - d. There shall not be any pump-out location on the docks or within the marina.
 - e. DNREC approval shall be obtained for the marina use prior to Final Site Plan approval.
 - f. The existing Final Site Plan for Osprey Point shall be revised to include this marina as an amenity for the property owners within the development. The revised Final Site Plan shall include Condition A above. The Revised Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

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

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

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

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

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

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

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

PLANNING & ZONING COMMISSION

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



Sussex County

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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: August 11th, 2022

Application: C/Z 1973 Osprey Point Preserve, LLC

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

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

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

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

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

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Rehoboth Beach Fire Company

Sewer: Sussex County Sewer

Water: Tidewater Utilities, Inc.

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

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



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



Sussex County

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Memorandum

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

This memo is to provide background and analysis for the Planning Commission to consider as a part of application C/Z 1973 Osprey Point Preserve, LLC to be reviewed during the August 11, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

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

Further Site Considerations

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

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

Comprehensive Plan Analysis

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

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



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

Zoning Information

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

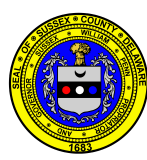
The property is zoned Medium Density Residential District – Residential Planned Community (MR-RPC).

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

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

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

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



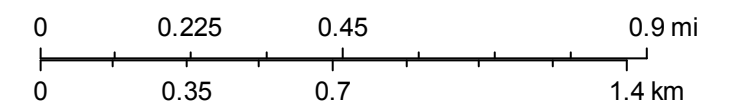
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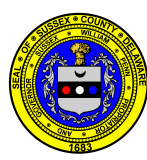


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Book	Text
Mailing Address	Text
City	Text
State	Text
Description	
Description 2	
Description 3	
Land Code	

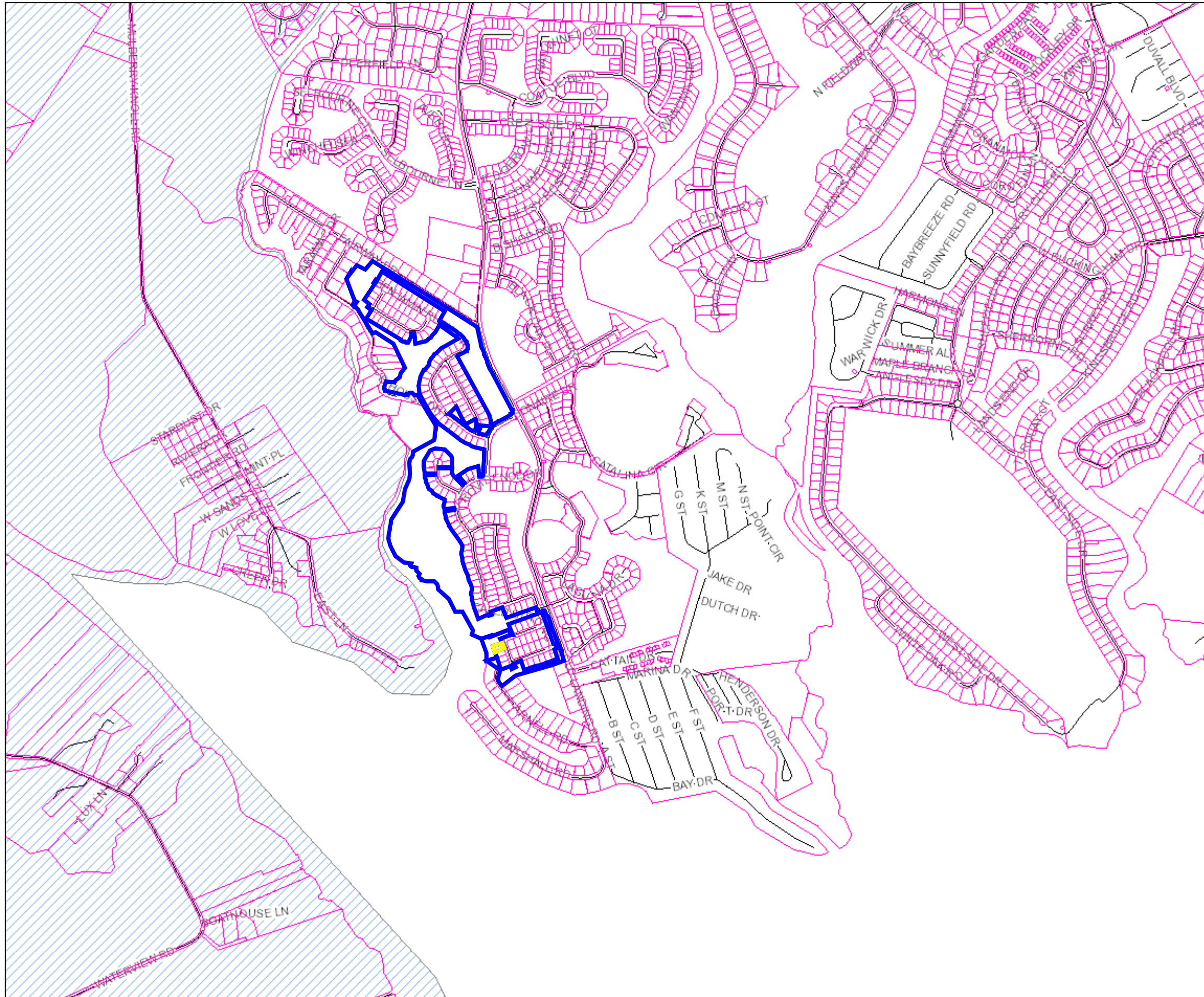
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Override 1	—	Pipe - DeIDOT
polygonLayer	—	Pipe - Tax Ditch
Override 1	—	Pipe - Private
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Tax Ditch Segments	—	Municipal Boundaries
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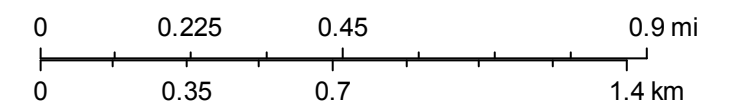
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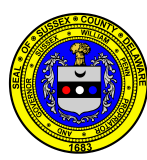


PIN:	Text
Owner Name	Text
Book	Text
Mailing Address	Text
City	Text
State	Text
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Description 2	
Description 3	
Land Code	

polygonLayer	— HOA Maintained
Override 1	— Pipe - DeIDOT
polygonLayer	— Pipe - Tax Ditch
Override 1	— Pipe - Private
⋯ Tax Parcels	— Pond Feature
— Streets	⊕ Special Access ROW
⋯ County Boundaries	⋯ Extent of Right-of-Way
Tax Ditch Segments	— Municipal Boundaries
— Tax Ditch Channel	⋯ TID
— DeIDOT Maintained	

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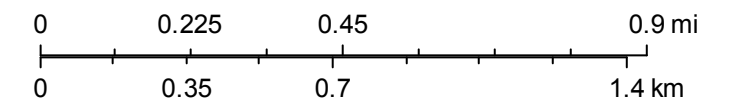
Sussex County



PIN:	Text
Owner Name	Text
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Mailing Address	Text
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Land Code	

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

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Introduced: 07/12/2022

Council District 3: Mr. Schaeffer

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

911 Address: N/A

ORDINANCE NO. ____

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

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

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1973 be _____; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

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

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

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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: November 7, 2023

RE: County Council Report for Ord. 23-05 relating to the Master Planned Zoning District

On February 7, 2023, the County Council introduced an Ordinance to amend the Code of Sussex County to delete the sections relating to the Vacation, Retirement – Residential Park District (Sections 115-140) and to replace those sections with a new Zoning District to be known as the Master Plan Zone (MPZ).

The Planning & Zoning Commission held a Public Hearing on the application on September 14, 2023. At the meeting of October 12, 2023, the Planning & Zoning Commission recommended the adoption of the Ordinance for the reasons as outlined within the motion and subject to a series of recommended revisions (copied below).

The County Council held a Public Hearing on the Ordinance at its meeting on October 17, 2023. At the conclusion of the hearing, the Council deferred action on the Ordinance, leaving the Public Record open for receipt of additional written comments until the close of business on October 31, 2023. Below is a link to the minutes of the October 17, 2023, County Council meeting.

[Link to the Minutes of the October 17, 2023 County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meeting of September 14, 2023, and October 12, 2023.

[Minutes of the September 14, 2023, Planning & Zoning Commission Meeting](#)

Ord 23-05 (Master Plan Zoning District)

**AN ORDINANCE TO DELETE CHAPTER 115, ARTICLE XVII VACATION
RETIREMENT-RESIDENTIAL PARK DISTRICT SECTIONS 115-132 THROUGH 115-**



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

140 IN ITS ENTIRETY AND TO INSERT ARTICLE XVII MASTER PLAN ZONE, SECTIONS 115-132 THROUGH 115-140 IN ITS PLACE.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Ordinance as it was introduced to County Council and the PLUS response comments dated, March 22, 2023, from the PLUS meeting held in February 2023. Mr. Whitehouse stated one comment letter which was received earlier in the day.

Mr. Vince Robertson, Assistant County Attorney, spoke on behalf of the Ordinance Application. Mr. Robertson stated the proposed Ordinance was for the benefit of everyone; that the Ordinance had been in the works for quite some time, dating back to the 2018 Comprehensive Plan; that they wanted to look at a way, for those who have larger parcels for development, to have more creativity and flexibility; that this would be provided to not only the developer, but also to the County; that this would avoid constantly having similar looking subdivisions; that they wanted to create a way to create larger mixed-use developments, that incorporate commercial uses, institutional uses, mixed-use residential and interconnectivity on a fairly large scale, with greater density than one could get currently under base zoning; that the Master Plan District would allow all of this to be packaged into one Zoning Application; that the Application would be dealt with at a high level when it would go through the public hearing process; that the Planning & Zoning Commission would handle the Site Plan Review stage on the back end, without public hearings; that the Staff Review would provide the more particular details of the plan; that they did look for a model to use, because it is fairly complex; that the City of Dover has a Master Plan Ordinance; that they took the City of Dover's Master Plan Ordinance, deconstructed it, and then reconstructed it to hopefully work for Sussex County; that the Master Plan Zoning Ordinance is not intended to replace RPCs [Residential Planned Communities], subdivisions or more typical types of commercial development; that the difference between the Master Plan and an RPC is the Master Plan is on a larger scale; that the project must consist of 200 acres or more; that the Ordinance does allow for a large density, at potentially 12 units to an acre; that the Ordinance allows for more intensive commercial or institutional uses than an RPC would; that within an RPC commercial is permitted, but the commercial uses are limited; that the Ordinance is intended to incorporate the following areas, as part of a single unified development, being Residential Areas, Neighborhood Commercial Areas, Civic Areas, and Professional, Medical and Financial Office Areas; that not all of the areas are required to be used, but some of the areas must be used; that the Ordinance is not an opportunity for to develop a giant residential subdivision at 12 units to the acre; that if the developer is going to propose residential, they need to also provide commercial, civic or professional areas as well; that the also considered is the large scale is enough to promote interconnectivity; that if a project were to be located between two State maintained roads, the idea would be that a State maintained road would be installed in the middle of the project to provide interconnectivity between the two State maintained roads, but would also be located within the development; that from the central State maintained road, private roadways would spur off from it; that these roadways would be private, but dedicated to public use; that the requirements are that the project must be a minimum of 200 acres; that 20% of the land area must be designated to a non-residential use; that the density cannot exceed 12 units an acre; that the land area shall have access to an existing or planned arterial or collector road; that the land area shall be served by existing or planned infrastructure, such as sewer and water; that the proposed MPZ must be generally consistent with the Comprehensive Plan; that they recently added the requirement that 20% of all multifamily dwellings shall be set aside for Sussex County's Rental Unit dwellings; that the Applicant will receive more design flexibility, and the County will receive more rental units under the Affordable Rental Program; that there are also open space requirements included; that the process is a four step process being, a pre-application meeting, the

public hearings before the Planning & Zoning Commission and County Council, administrative review of the plans and Site Plan review by the staff; that the pre-application meeting would be similar to the current process; that staff would sit down with the applicant, engineer and/or attorney to discuss the project and potential design changes; that this would also be the time the application would go through PLUS review; that next, the application would proceed through the public hearings before the Planning & Zoning Commission and County Council; that at this time, there will not be a detailed site plan provided; that instead a general, overall Master Plan would be submitted; that the Master Plan will define what the overall and Spatial Distribution Plan will look like; that the plans will reflect where the densities are going to be placed; that with that there will be a Master Manual submitted, which are the design guidelines that a developer is utilizing in the Master Plan; that there are 14 different elements that will need to be shown in the Master Manual; that the Master Manual will govern the project from the beginning to the end; that the project will be required to remain consistent with the Master Manual; that MPZ's would be advertised for public hearings, similar to a Change of Zone application; that the next step is the administrative review of the plans, which is performed by the Planning & Zoning Commission; that this process would be similar to how the Commission reviews site plans currently; that at this stage there would be an Implementation Plan and an Implementation Manual, which would provide much more detail in the area they are looking to get approved; that it must remain consistent with the Master Manual and design plans provided during the public hearings; that this would be vetted by staff; that if at any point there would be a material change, it would return the project to the public hearing process; that no major changes may take place without first going through a public hearing; that the design process begins more general and then becomes more specific as it goes through the process and the administrative review is where housing type, housing location, topography, streets, roads, sidewalks and landscaping would be reviewed;

Chairman Wheatley questioned if the information and requirements provided in the Master Manual and the Spatial Distribution Plan proffered by the Applicant and approved by the staff, or is the manual negotiated with staff, or is approved by the Planning & Zoning Commission.

Mr. Robertson stated that the Master Manual is a manual the developer will initially prepare, most likely in draft form; that its design is be in a narrative and graphic form; that it will be similar to a Zoning Code that governs a project; that the manual will stated what the developer plans to do, and the rules they intend to follow going forward with the project; that conversation and potential negotiation will be had at the initial level of the preapplication meeting; that the Master Manual will then be presented the Commission and County Council; that if there is anything about the plan that the Commission or County Council does not like, there will be an opportunity to change it; that MPZ's will be similar to RPC's in the fact that conditions can be placed upon it, or can be denied outright; that the Master Manual and the overall Master Plan will act like a Zoning Code for the project; that once a project is approved at the public hearing stage, the project will return for administrative plan review, where the Commission will review to ensure the plans and project implementation complies with the Zoning Code [Master Manual] that was established at the public hearing; that this process would be similar to site plan review performed currently by the Commission; that if a developer wanted to propose a shopping center, with residential and mixed commercial use, the developer would be required to apply for commercial rezoning; that public hearings would be required before Commission and County Council; that the developer would then be required to return for the RPC or subdivision request with additional public hearings; that it would also not have any interconnectivity requirement, and the proposed MPZ Ordinance addresses all of these thing globally at one time.

Chairman Wheatley stated the public has stated multiple times that they had not been provided and

overview and the proposed MPZ Ordinance would provide the Commission a tool for that purpose.

Mr. Robertson stated the Commission has seen these circumstances over time, where smaller parcels are claimed piece by piece for smaller projects, when everyone anticipates that the smaller projects are part of a larger plan; that the MPZ will provide the framework to have flexibility to provide the larger plan, to provide interconnectivity and to involve State maintained roads.

Mr. Collins questioned whether the developer will initially fund the road, that will eventually be supported by DelDOT.

Mr. Robertson stated the funding will depend on whether or not the site is located within the TID [Transportation Improvement District], which will be determined during the early stage of the pre-application meeting; that there will be coordination with DelDOT and the Applicant; that the MPZ is not requiring for all the roads within the project to be DelDOT maintained; that if DelDOT has interconnectivity scheduled in the future, through the CTP [Capital Transportation Program], there can be a nexus between the developer, the development and DelDOT to construct the interconnectivity, and there is not one definite answer, but it is a subject that would be taken into account.

Mr. Robertson stated that the final step in the process would be administrative plan review, which would be for the final, detailed, technical site plan review; that this will be performed by the staff within the County's Planning & Zoning and Engineering departments at this point, as the Commission will have already approved the general concept plan; that the process the Application will still be required to go through the PLUS process; that the project will still be required to go through all agency reviews; that project approval would be valid for five years to get underway for the time the site plans are approved; that Mr. Robertson presented to the Commission a visual example of a Spatial Distribution Plan, which is intended to reflect the density throughout the project; that this will allow the public and the County to ensure the design makes sense, using generally good planning, with lower densities located toward the outside perimeter of the project, and high, more intensive uses located on the interior of the site; that this is also an opportunity to ensure the project is located along major arterial roadways, or roadways that could handle the intended commercial uses; that this will provide the Commission a general visual of what the project will look like; that the manuals will contain more details regarding each of the areas; that currently it is tough to propose mixed use without the need to request a Conditional Use; that any material changes to the approved plan would require the project to return to the public hearing stage; that they have been discussing the MPZ with County Council for approximately two years; that they have received input and constructive comments from people who would be required to implement the MPZ; that he requested to read the provided comments, as the comments potentially may become recommendations made to County Council; that the first comment was regarding eligibility requirements, stating: *There is some confusion as to where this could go. It was referenced in the Whereas clause, but we would like to add it into the Ordinance, and that would be to add that it is clearly in the Coastal Area, the Developing Area, Town Center Area, and Commercial Area*; that this requirement would be to mirror the Whereas clause; that another comment was made regarding the Spatial Distribution Plan, stating, *we would like to clarify that in addition to higher densities, the commercial areas or intensive uses should be centrally located and/or along main roadways consisting with higher density residential uses*; that this would allow commercial uses to be placed in the middle or along roadways, such as Rt.1; that comments for the eligibility requirements stated, *consider changing the reference from "existing" or "planned" arterial or collector roads, and to use "major arterial roadways and collector streets"*; that the term originally used was not defined in the Code; that major arterial roadways and collector streets are defined within

Chapter 99; that in regard to the Development Principles and Standards, there was a suggestion made to consider *adding a new No. 11 to state that all collector roads, or the similar term, within the MPZ must be constructed to DelDOT standards and State maintained, or move and copy the requirement from elsewhere at Line 317 to Line 322, and that all other roads within the MPZ are dedicated to public use and must remain open and accessible to the public at all times*; that the intended project would be large enough, providing different types of uses to people inside and outside of the community, into the commercial, civic or professional areas; that due to this, they want to make sure that all roads are dedicated to public use; that initially, there was a requirement that stated all open space shall be located to the fronts of buildings; that after meetings and discussions with staff it was decided that open space statement should be a goal, not a requirement; that they have changed the wording from “shall” to “should”; that there initially was a service alley requirement, to allow for trash and miscellaneous items to be located in the back; that after discussions, it was found to be a good opportunity, however, would be a tough requirement to comply with given the geometry and various other factors; that in Line 304, it states that consideration should be given to allowing these areas to have frontage on existing DelDOT rights-of-way, instead of just an internal main street; that an area is located along Rt. 1, the developer should be able to provide more intensive uses along Rt. 1; that Lines 304, Line 358, and Line 392 are related to Parking Design; that there was a suggestion made that it be more flexible and be designed so that off street parking is screened from rights of ways and non-commercial uses; that the buildings and landscape areas are more visible than large off-street parking lots; that previously there was a requirement that parking lots not be visible at all or not to be located in the fronts of buildings; that again, due to geometrical and other planning reasons, it may not always be the best; that in Line 317 there is consideration being given to change “shall” to “should”, regarding the location of commercial areas and how they are oriented to main streets; that in Line 330, 364 and 398, consideration should be given to deleting the item that states services drives shall be designed and used for loading and trash collection, or change it to say whenever possible, service drives shall be designated or designed and utilized for loading and trash collection; that there was a prohibition against drive-thru uses in the neighborhood commercial area; that the prohibition originated from the desire to have the locations to be more walkable; that the goal was to have people walk around the community; that a drive-thru can be more convenient in terms of pharmacies and banks; that in Line 448, the Master Manual refers to a Master Transportation Plan, to be approved by DelDOT; that they have come to realize a Master Transportation Plan is not an item recognized by DelDOT; that they now suggest replacing it with Traffic Impact Study for the MPZ as approved by DelDOT; that Line 466 to 471 contains a requirement listed in the Master Manual that there be reference to architectural details; that after discussions they concluded that Sussex County does not dictate architectural styles; that the project would be large enough, that the project would last over a long period of time; that over that time period , architectural tastes and styles might change from the time it goes through the public hearing until the time the project is built; that in Lines 489 to 491 it provides regulation and design of lighting fixtures, street lighting and signage; that those items are not so specific that it needs to be considered at the County level; that they added confirmation that any MPZ will be subject to the Resource Buffer Requirements; that a similar project is Eden Hill, located in Dover, within their Traditional Neighborhood Design Residential District; that Eden Hill provides a large professional office building, a commercial district for medical and retail sections and residential; Eden Hill had a general overall Master Plan, which they refer to as a Pattern Book and there was a comment letter submitted by Pennoni.

Mr. Whitehouse stated the drafted Ordinance is a good summary; that throughout the whole process, they have received technical input from the State and the PLUS comments, and the State was very supportive of the objective.

Mr. Collins questioned if the Ordinance inserted any requirements to protect forested areas.

Mr. Robertson stated that within Line 235, located on Page 7, the Ordinance addresses design principles; that it states *the design for the entire zone shall follow an environmentally sustainable approach to the development to accomplish this design shall take advantage of natural drainage patterns on the site and minimize unnecessary, earth moving, erosion, tree clearance, and other disruption of the natural environment, that existing vegetation and habitat shall be preserved wherever possible, wherever extensive natural tree cover and vegetation do not exist or cannot be preserved on the site, landscaping shall be undertaken in order to enhance the appearance of the development*; that the Commission will also have the opportunity to place conditions on it and/or require changes to be made to the Site Plan; that because MPZ projects can go to 12 units to an acre, there will be some give and take; that an example of this is, if one had a subdivision and were locked into two units an acre, it becomes much more difficult, without incentives, do provide tree preservation; that if there is a wooded lot for an MPZ, the developer can work around those areas of existing woods and still achieve a fairly high density; that the MPZ fosters this capability more than any other tool the County Code currently offers; that with Residential Planned Communities (RPCs), one would be stuck with base zoning; that RPC's provide for flexibility, but if the zoning is MR (Medium Density Residential), the Applicant is still limited to four units to the acre; that the MPZ will allow for 12 units to the acre, however 12 units an acre is not expected to be proposed across a entire 200 acre parcel, and the design principles are intended to limit that ability.

The Commission found that one person wished to provide comment on the Ordinance Application.

Mr. David Hutt, Esq., with Morris James, LLP spoke generally in support of the Application, however, presented with some concerns. Mr. Hutt stated that the proposed Ordinance is similar to LPD (Land Use Planning Design), and other types of overlays; that essentially the MPZ is creating a unique zoning district for the parcel itself; that regardless if that is called a Master Manuel or a Spatial Distribution Plan, those plans become the Zoning Code for that parcel of land; that he felt with an Ordinance like this, it cannot be too specific; that the County has seen this problem with the C-4 (General Commercial) Ordinance; that he believe people believed it would be a Commercial RPC ordinance; that the Ordinance has not been proven to be successful, partly due to the requirements found in it; that the C-4 Ordinance has already been amended to change the ratio of commercial and residential; that the use of “shall” within the proposed Ordinance was discouraging to see; that he believed the individuals should be allowed a great deal of flexibility; that he is concerned about the requirement range of 20% to 50% for commercial areas, professional office, medical and finance area or civic area; that he could foresee, certain circumstances along a major arterial road, where it may be appropriate to have a greater degree of the Commercial and Civic mix versus the residential mix; that to pigeonhole the requirement to be between 20% to 50% seems like too much, making the tool unusable; that he felt the requirement of only a minimum of 25% residential or 20% of all the other items, so that it allows for a great deal of flexibility across all the various uses; that another example of this, is the proposed maximum of 10% requirement for civic areas; that he believed if one were to propose development centered around a large civic area, the County would welcome it, similar to the development of Freeman Stage; that there are very limited opportunities in the Sussex County Zoning Code for the mixture of residential and commercial uses; that C-4 Zoning is the only zoning district to permit this, unless the Applicant went through the Conditional Use process; that within Line 198, located on Page 6, within the definition of Spatial Distribution Plan, Subsection A, where it states lower density development radiating away from higher density to development radiating away from higher density to development at the interior of the MPZ; that he would suggest striking “at the

interior of the MPZ”; that it would depend on the site, whether or not that can occur; that he believe a change was made to Subsection B, however was not changed within Subsection A, making the two inconsistent; that Mr. Robertson spoke to adding a provision in the Eligibility Requirements to be located in one of the four Growth Areas he identified; that he suggested the requirement be expanded, as there are areas in Sussex County that are situated along major arterials, having water and sewer service available, which may not presently included within a required Growth Area; that he suggested and was additionally suggested by the Office of State Planning Coordination and the Pennoni letter, that the whereas clause, at the beginning, be modified in Lines 19 through 22; that the felt MPZ projects are appropriate to be located within the four Growth Areas, however, given the right area of land, with right additional circumstances, it could also be appropriate in other locations as well; that the Planning & Zoning Commission and County Council can offer protection of this, as Change of Zone applications are where they have the most discretion; that MPZ’s are zoning classification requests; that if the Commission does not like the Master Manual or the Spatial Distribution Plan, it can be recommended that County Council deny the request.

Mr. Robertson stated that he had discussions regarding the discretion the Commission and County Council will have; that what had been provided was based on staff recommendations; that Mr. Hutt’s comment was more to policy for the Commission to consider; that he tended to agree with Mr. Hutt; that MPZ projects are intended to be large in scope; that some projects may be large enough that they are self-contained, being to a scale that would create their own infrastructure, water and sewer;

Chairman Wheatley stated that on the western side of the County, there are large farms of 500 to 600 acres, where someone could potentially want to Master Plan a project; that the location might not be located within a Town Center, but could be located close enough that utilities would make sense due to the size of the project; that he could foresee instances where an MPZ could be useful in these areas and he would not want to limit the availability of it.

Mr. Butler stated that he felt more self-contained projects would be beneficial for the western side of the County; that Heritage Shores is self-contained with golf courses and its own shops, and that he believed Heritage Shores was developed on 400 acres.

Chairman Wheatley stated that water and sewer service will play a key role for the Ordinance; that I the parcel is large enough, the Applicant may need to build their own plant, where they have to augment the County’s or someone else’s plant and these are things that can be done.

Mr. Robertson stated that the State would not be in favor of this based upon their Policies & Strategies for State Spending within Level 4 areas, however, if the site is large enough, it would be able to sustain the improvements that the State would require.

Mr. Collins stated he did not believe residents would want higher density commercial to be located inside of the community, for the use of the community and the public and would be better suited for the perimeter of the property.

Mr. Hutt stated that he mostly had western Sussex County in mind with his statements, because the Coastal Area, being one of the four Growth Areas mentioned does not exist in Western Sussex County; that he also wanted to address within the Eligibility Requirements, on Page 7, Lines 221 and 22, which states at least 20% of all multifamily dwellings shall be set aside as Sussex County Rental Program (SCRIP) units, governed by Chapter 72; that he felt this concern reverts back to the ratios

and requirements; that the SCRP Ordinance has been in place for a long time; that the Ordinance does not have a track record that would indicate that it is something feasible; that he recognizes the importance of housing; that he suggested that part of the Zoning District say that there must be an affordable housing component; that there are many ways to approach the issue, without locking people into 20% of all multifamily dwellings being a part of the Sussex County Rental Program and the MPZ would be up to the Commission's discretion, as to whether or not the project had addressed affordable housing at the right level.

Mr. Collins questioned if the Ordinance could be modified to allow for some of the housing could be affordable housing to limit the use of housing for short-term rentals and he stated that generally, ownership, even for lower-income housing, tends to be better for the communities that they are in.

Mr. Hutt stated that historically, the County has not regulated short term rentals and that doing so, may be a slippery slope, as it is difficult to enforce; that with how the Ordinance is currently laid out, he felt there would be good opportunities; that there are government credit sponsored programs; that those programs may be interested in a five acre block, because they know there are certain amounts of credits and tax benefits, however, that would not help the developer meet the 20% requirement; that his last concern was in regard to drive-thru; that a parent with a sick child does not want to walk into the pharmacy, they want to take advantage of the drive-thru; that the question is, how specific does one get, before narrowing the scope down too much that it no longer is a usable tool; that he does understand the fear of not regulating the MPZ enough; that he does feel that should be a lesser fear, since the application will be for a Change of Zone, allowing the Commission the greatest amount of discretion, with the ability to place conditions; that he is in support of the Ordinance, as he feels the more available tools, the better and he hopes that the tool can be as useful as possible for all parts of Sussex County.

Mr. Robertson stated it presents an opportunity for the Commission to become engaged in the process, being proactive in a conversation of how the project will look in the end through Conditions of Approval or changes to the Spatial Distribution Plan and Master Manual. (2:45:47)

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

In relation to Ord. 23-05 regarding the Master Plan Zoning District. Motion by Mr. Collins to defer action for further consideration, leaving the record open for ten (10) business days to allow for additional written public comment regarding the Ordinance Application, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

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

The Commission discussed the Ordinance Application, which had been deferred since September 14, 2023.

Mr. Collins moved that the Commission recommend approval of the Ordinance to create a new Master Plan Zoning District (or MPZ) in Sussex County based upon the record made during the public hearing and for the following reasons:

1. There has been discussion about the need for better master planning in Sussex County for decades. The Council, the Commission, the Office of State Planning Coordination, and the public have all talked positively about creating a method for master planning in Sussex County.
2. The 2019 Sussex County Comprehensive Plan's Future Land Use Element states that "the Plan seeks to encourage the County's most concentrated forms of new development to Growth Areas, including most higher density residential development and most commercial development" and development designed in accordance with this Master Plan Community Zone can be in accordance with this encouragement.
3. The Office of State Planning Coordination reviewed and favorably commented upon the creation of an MPZ and offered several constructive comments about it.
4. Several Sussex County land use practitioners reviewed the MPZ ordinance as introduced and commented favorably upon it while also providing constructive comments about how to improve it.
5. The MPZ will be a useful tool for large-scale development in Sussex County. It will allow appropriate design flexibility while protecting the nearby residents and properties. At the same time, it establishes a new review process that is beneficial to landowners and applicants, the public, and the county.
6. The MPZ will allow the integrated and interconnected development of larger parcels of land where appropriate, instead of individual, isolated, and unrelated developments over the same land area.
7. Although the MPZ Ordinance states that it will be limited to Growth Areas, including the Coastal Area, Developing Area, Town Center Area, and Commercial Area as designated in the Comprehensive Plan and its Future Land Use Map, County Council should consider opening up the MPZ to all parts of the County. It is intended to allow larger scale, yet self-contained development including all kinds of residential uses, retail and commercial uses, and institutional uses. It is intended to allow developments that are therefore large enough to be potentially served by their own utilities, and also of a scale sufficient to be able to support off-site infrastructure improvements necessary for the MPZ. Therefore, County Council should consider opening up the MPZ to all of the County, not just the Growth Areas designated on the Future Land Use Map.
8. There was testimony suggesting that the MPZ should continue to have an affordable housing component, but it should not specifically be tied to the County's SCRP program established by Chapter 72 of the Sussex County Code. The rationale for this suggestion was that the SCRP program has only recently been substantially amended and at this point, there is only one SCRP development that has actually been built. Therefore, until the SCRP program is a proven and workable method of providing affordable housing, it should not be a requirement of the MPZ. Instead, Lines 221-222 of the Ordinance should be modified to state: *(i) There shall be a substantial affordable housing component of the MPZ that shall be described in detail in the Master Manual. The goal of this affordable housing component shall be to serve the "Intent" of the Sussex County MPHU and SCRP programs as set forth in Sections 72-2 and 72-16 of Chapter 72 of the Sussex County Code.*
9. After the Ordinance is adopted, Sussex County should continue to coordinate with DelDOT in the form of an MOU or similar understanding so that: (i) there is a one-time or master DelDOT approval versus multiple entrance approvals once the initial main internal roadway is constructed and turned over to DelDOT; and (ii) there is one-time bonding for all DelDOT roadway improvements.
10. This recommendation is subject to the following suggested revisions to the MPZ Ordinance:

- A. Council should consider amending the Ordinance as needed to permit an MPZ to be located throughout the County and not just in the Growth Areas. However, it should also be clear that if an MPZ is proposed for an area outside of a Growth Area, it can and will be served by adequate on- or off-site utilities, that are scaled to be able to accommodate and pay for any infrastructure, services or improvements required by the State and County.
- B. If the MPZ is not expanded beyond the Growth Areas, then **Line 202 (Eligibility Requirements)** should be amended to reference the Coastal Area, Developing Area, Town Center Area, and Commercial Area to mirror the Whereas Clause listing these four Areas.
- C. At **Line 192 (Spatial Distribution Plan)**: Clarify that in addition to higher densities, the commercial areas/intensive uses should be centrally located and/or along main roadways consistent with higher-density residential uses.
- D. At **Line 209-210 (Eligibility Requirements)**: the reference to “existing or planned arterial or collector road” (which are not defined in the Zoning Code) should be changed to “Major Arterial Roadways or “Collector Street” which are defined in Chapter 99.
- E. At **Line 223 (Design and Development Principles and Standards)**: add a new “Item 11” stating that all collector or primary roads (or similar term) within the MPZ must be constructed to DelDOT standards and State-maintained (or move/copy this requirement from existing language at line 317-322) and also state that all other roads within the MPZ are dedicated to public use and must remain open and accessible to the public at all times.
- F. At **Line 279-283 (Service Alleys)**: delete the reference to service alleys.
- G. At **Line 304 (Neighborhood Commercial Area), Line 352-356 (Professional Office, Medical and Financial Area), and Line 386-390 (Civic Area)**: Allow these Areas to have frontage on existing DelDOT rights of way and not just an “internal main street”.
- H. At **Line 304 (Neighborhood Commercial Area, parking design requirements); Line 358-362 (Professional Office, Medical and Financial Area parking design requirements); and Line 392-396 (Civic Area parking design requirements)**: Reword this section so that it states, “The [Neighborhood Commercial Area. Etc.] shall be designed so that off-street parking is screened from rights of ways and non-commercial uses so that buildings and landscaped areas are more visible than large off-street parking lots. This can be accomplished through landscaping, location of parking areas in relation to roads and buildings, etc.”
- I. At **Line 330 (Neighborhood Commercial Area Service Drives); Line 364 (Professional Office, Medical and Financial Area Service Drives); and Line 398 (Civic Area Service Drives)**: Revise these lines so that they state, “Whenever possible, service drives shall be designed and utilized for loading and trash collection.”
- J. At **Line 336-339 (Neighborhood Commercial Area Drive-Through Prohibition)**: Delete the drive-through prohibition.
- K. At **Line 448 (Regarding the Master Manual)**: Delete the reference to “Master Transportation Plan approved by DelDOT” (which is not an actual DelDOT document) and replace it with “Traffic Impact Study for the MPZ approved by DelDOT”.

- L. At **Line 466-471 (Master Manual, Buildings)**: Delete the reference to specific architectural details at lines 469-470 since they are likely to change throughout the multi-year build-out of an MPZ.
- M. At **Line 489-491 (Master Manual, Lighting Design)**: Delete the reference to “and design of the lighting fixtures, globes” since those will change over time.
- N. Modify Lines 221-222 of the Ordinance to state: *(i) There shall be a substantial affordable housing component of the MPZ that shall be described in detail in the Master Manual. The goal of this affordable housing component shall be to serve the “Intent” of the Sussex County MPHU and SCRP programs as set forth in Sections 72-2 and 72-16 of Chapter 72 of the Sussex County Code.*

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of Ord. 23-05 for Master Plan Zoning District for the reasons and the conditions stated in the motion. Motion carried 5-0.

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

1 **AN ORDINANCE TO DELETE CHAPTER 115, ARTICLE XVII**
2 **VACATION RETIREMENT – RESIDENTIAL PARK DISTRICT**
3 **SECTIONS 115-132 THROUGH 115-140 IN ITS ENTIRETY AND TO**
4 **INSERT ARTICLE XVII MASTER PLAN ZONE, SECTIONS 115-132**
5 **THROUGH 115-140 IN ITS PLACE.**

6 WHEREAS, Article XVII Vacation Retirement – Residential Park District is
7 a closed District and no land within Sussex County has been zoned with this
8 District classification and because it is a closed District no land can ever be zoned
9 to it in the future; and

10 WHEREAS Sussex County Council desires to replace Article XVII
11 Vacation Retirement – Residential Park District with a new Zoning District
12 identified as Article XVII Master Plan Zone; and

13 WHEREAS, the 2019 Sussex County Comprehensive Plan’s Future Land
14 Use Element states that the “Plan seeks to encourage the County’s most
15 concentrated forms of new development to Growth Areas, including most higher
16 density residential development and most commercial development” and
17 development designed in accordance with this Master Plan Community Zone can
18 be in accordance with this encouragement; and

19 WHEREAS, Master Planned development is appropriate in the Growth
20 Areas designated as the Coastal Area, Developing Area, Town Center Area, and
21 Commercial Area of the Future Land Use Map of the 2019 Comprehensive Plan
22 where adequate infrastructure is available; and

23 WHEREAS, Mixed-use residential and commercial developments can be
24 appropriate in the Coastal Area, Developing Area, Town Center Area, and
25 Commercial Area of the Future Land Use Map of the 2019 Comprehensive Plan
26 and the Master Plan Zone promotes such mixed-use development where
27 appropriate; and

28 WHEREAS, Strategy 4.4.1.5 of the Future Land Use Element of the 2019
29 Comprehensive Plan states that it is a goal of the County to “[e]ncourage master
30 planning for large-scale developments on large parcels or groups of parcels in the
31 Town Center, Coastal Area, Developing Area, and Commercial land use
32 classifications to provide flexibility in design” and this ordinance is in furtherance
33 of that Strategy; and

34 WHEREAS, this ordinance creating a Master Plan Zone within Sussex
35 County promotes the health, safety, and welfare of Sussex County.

36 NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

37 **Section 1. The Code of Sussex County, Chapter 115, is hereby amended to**
38 **delete Article XVII, Vacation Retirement – Residential District in its entirety**
39 **by deleting the language in brackets as follows:**
40

41 [§115-132 Purpose.

42 In order to encourage planned vacation, retirement and general residential park
43 developments which are compatible with the surrounding area and are
44 economically feasible and to achieve the goals of the Comprehensive Plan, the
45 Vacation-Retirement-Residential-Park District (VRP District) is hereby
46 established.

47 § 115-133 Superimposed district; effect on other provisions.

48 A. To enable the district to operate in harmony with the plan for land use and
49 population density embodied in these regulations, the VRP District is created as a
50 special district to be superimposed on other districts contained in these regulations
51 and is to be so designated by a special symbol for its boundaries on the Zoning
52 District Map.

53 B. Uses for this district shall be determined by the requirements and procedure set
54 forth in this article and shall prevail over other regulations or ordinances governing
55 the subdivision of land which may be in conflict herewith.

56 § 115-134 Minimum district area; leasing of lots.

57 A. The minimum area for a VRP District shall be 25 acres. In calculating the
58 minimum area for a district, measurement shall not include the area of any streets
59 or roads.

60 B. The lots in a VRP District shall be leased and shall not be sold as lots as long as
61 said land remains within a VRP District.

62 § 115-135 Required procedures; completion dates for stages of development.

63 A. Procedures for establishment of a VRP District and approval and amendment of
64 site plans are contained in Article XXVIII. Before any application is filed, the
65 applicant shall hold an informal conference with the Commission. The Park shall
66 follow all applicable procedures, standards and requirements of the ordinances and
67 regulations governing the subdivision of land. No building permit shall be issued

68 until a final plot of the proposed park or part thereof is approved, filed and
69 recorded.

70 B. A date or dates for the completion of certain stages of development of the park
71 may be established by the Commission, provided that such date or dates shall be
72 set after taking into consideration various factors, such as the state of the economy,
73 the going rate of interest, the market acceptance of the park, the size of the park
74 and the quantity and quality of the proposed facilities, including roads and the
75 water and sewer system.

76 § 115-136 Review standards; conditions.

77 A. The Commission shall evaluate the park by the standards of the Comprehensive
78 Plan and recognized principles of civic design, land use planning and landscape
79 architecture.

80 B. The Commission may impose conditions regarding the layout, circulation and
81 performance of the park and, where applicable, may require that appropriate deed
82 restrictions be filed and recorded, enforceable by the Commission, for a period of
83 20 years from the date of recording.

84 § 115-137 Types and sizes of dwellings.

85 A. Completely factory-built manufactured homes no less than 660 square feet and
86 no more than 1,570 square feet in size and not more than 14 feet in height,
87 hereinafter referred to as "manufactured homes," excluding porches, decks,
88 breezeways and the like, and completely factory-built modular homes no less than
89 1,000 square feet in size and no more than 18 feet in height, hereinafter referred to
90 as "modular homes," shall be permitted in the park. The word "dwellings," as used
91 in this article, as the text requires, shall refer to both types of homes.

92 B. The size and height of a manufactured home or a modular home shall be
93 determined as of the date it is originally moved into the park and shall be based on
94 the dimensions as received from the manufacturer.

95 § 115-138 Minimum lot area; irregularly shaped lots; markers.

96 A. The minimum area of all lots shall be no less than 5,500 square feet, with a
97 minimum width of 50 feet for all typical lots. Atypical or irregular-shaped lots
98 shall be of such size as shall be approved by the Planning and Zoning Commission
99 upon submission of a survey therefor.

100 B. Corners of all lots shall be visibly marked and numbered by a permanent
101 marker.

102 § 115-139 Additional requirements.

103 A. There shall be no more than one dwelling and one accessory structure on any
104 one lot.

105 B. Manufactured homes may be placed on lots immediately adjacent to other
106 manufactured homes. Modular homes may be placed on lots immediately adjacent
107 to other modular homes. A modular home may be placed on a lot immediately
108 adjacent to a manufactured home; however, a manufactured home may not be
109 placed on a lot immediately adjacent to a modular home.

110 C. No part of any dwelling or any accessory structure shall be closer than 25 feet to
111 any front boundary line. Steps with related landing, not exceeding 28 feet of lot
112 coverage, may project four feet into the required setback.

113 D. No part of any dwelling, addition or accessory structure shall be closer than two
114 feet to any side or five feet to any rear boundary line; provided, however, that no
115 part of any dwelling, addition or accessory structure shall be closer than 15 feet to
116 any other dwelling, addition or accessory structure.

117 E. Central sewer and water supply facilities and electric connections shall be
118 provided.

119 F. All streets in the park shall have a right-of-way of at least 40 feet. No less than
120 24 feet in width of the streets shall be paved with three coats of surface treatment
121 (tar and chip) and shall be properly lighted. Additional road improvements, if
122 required by the Commission, shall be provided for proper and sufficient drainage.

123 G. Access to the park shall be from a major thoroughfare and shall be at least 50
124 feet in width. The number and location of access drives shall be controlled for
125 traffic, safety and protection of surrounding properties. No lot shall be designed for
126 direct access to a street outside the boundaries of the park.

127 H. The topography of the lots shall be such as to facilitate rapid drainage, and
128 adequate drainage facilities shall be provided.

129 I. Open spaces or areas left in their natural state shall be provided within the park
130 at a ratio of 300 square feet minimum per lot.

131 J. The park shall be surrounded by a landscaped strip of open space at least 50 feet
132 in width.

133 K. Two off-street parking spaces shall be provided on each lot.

134 L. Small retail businesses intended primarily for occupants of the park shall be
135 permitted within the park area. Grocery stores, automatic laundries, beauty shops
136 and similar uses are appropriate.

137 M. The occupier of each lot in the park shall provide receptacles for trash and
138 garbage which shall be so located and kept as not to be generally visible from any
139 interior road in the park, except on days when such receptacles may be placed out
140 for purposes of collection only.

141 § 115-140 Closed district.

142 As of the date of adoption of this amendment, the VRP District shall be considered
143 a closed district and shall not be applied to any additional lands in Sussex County.
144 The district and its various provisions and regulations shall continue to exist as
145 they apply to a VRP District legally established under the procedures of this
146 chapter.]

147
148 **Section 2. The Code of Sussex County, Chapter 115, is hereby amended to**
149 **establish Article XVII, “Master Plan Zone” §§115-132 through 115-140 by**
150 **inserting the italicized language as follows:**

151
152 **§ 115-132 Purpose and Intent.**

153 *The intent of the Master Plan Zone (“MPZ”) is to create a walkable, bikeable and*
154 *pedestrian-friendly, economically viable professional, commercial and mixed-use*
155 *neighborhood that is superior in design to a standard residential subdivision,*
156 *commercial site plan, or combination of both. Its intent is also to preserve and*
157 *enhance the natural landscape and buffer the development from adverse external*
158 *influences. The provisions of this Article are intended to encourage greater*
159 *integration of land-uses and diversity of lot sizes than is permitted under other*
160 *provisions of Chapter 99 and this Chapter 115. It may provide design flexibility*
161 *that will aid in the fulfillment of Sussex County’s Comprehensive Plan. Lastly, it*
162 *will promote greater interconnectivity of roadways and coordination with DelDOT*
163 *for new state-maintained roadways within a large-scale development.*

164
165 **§ 115-133 Definitions.**

166 **General Overall Master Plan:** A document composed of a set of maps of a
167 subject property and a Master Manual that reflects a Master Plan. The
168 General Overall Master Plan is to be submitted to the Planning and Zoning
169 Commission and Sussex County Council as materials to support the rezoning
170 of a land area for development as an MPZ. The General Overall Master Plan
171 shall designate the Areas identified in Section 115-137 and shall include a
172 Spatial Distribution Plan.

173 **Implementation Manual:** A document prepared in narrative and graphic form
174 that describes all details of the development relative to the elements reflective
175 of the design principles of this Article and the specific requirements of Section
176 115-135. This should include, but is not limited to, details of the design
177 elements of the project such as architectural standards, relationships between
178 uses and different scales of buildings, parking and open spaces. It shall also
179 contain an explanation of how the Manual conforms to the approved General
180 Overall Master Plan and the Master Manual. All subsequent plan review and
181 development activities shall be governed by the Implementation Manual.

182 **Implementation Plan:** A document composed of a set of maps and an
183 Implementation Manual that describes the anticipated physical development of
184 a property. The document shall conform with the General Overall Master Plan
185 and the Master Manual and should reflect the design principles of this Article
186 and the Implementation Manual.

187 **Master Manual:** A document prepared in narrative and graphic form that
188 explains the concepts behind the implementation of the proposed Master Plan
189 Zone on the parcel or parcels and in the community. It should identify the
190 concepts and approaches to each of the elements and types of uses identified in
191 Sections 115-135 and 138.

192 **Spatial Distribution Plan:** A Plan showing how the overall density is
193 allocated throughout the MPZ. Resembling a topographic rendering (i.e., lines
194 demarcating 2 units per acre, 4 units per acre, 6 units per acre, etc.), this Plan
195 shall show the densities of individual areas within the MPZ. The intent of this
196 Plan is to visually show how the MPZ density is designed, taking into account
197 factors including, but not limited to: (a) lower density development radiating
198 away from higher density development at the interior of the MPZ; (b) the
199 location of higher densities along main roadways within the MPZ; (c) the
200 relationship with the location and type of development along the outside
201 perimeter of the MPZ; or (d) such other planning factors that may be relevant.

202 **§ 115-134 Eligibility Requirements.**

203 No land area shall be zoned MPZ unless the following conditions are met:

- 204 a) *The entire land area of the MPZ must exceed 200 acres;*
- 205 b) *The MPZ shall include at least 20% of the land area designated to*
206 *non-residential use;*
- 207 c) *The residential density of the entire MPZ shall not exceed 12 units*
208 *per acre (excluding Tidal Wetlands);*
- 209 d) *The land area shall have access to an existing or planned arterial or*
210 *collector road;*
- 211 e) *The land area shall be served by adequate existing or planned*
212 *infrastructure, including central sewer and water;*
- 213 f) *The land area may contain a single or multiple parcels. The rezoning*
214 *application for the land area shall be filed jointly by all owners of the*
215 *involved land area;*
- 216 g) *A finding by the Planning Commission and Sussex County Council*
217 *that the proposed MPZ location is generally consistent with the*
218 *Comprehensive Plan; and*
- 219 h) *The “Purposes of Regulations” set forth in Title 9, Chapter 69,*
220 *Section 6904 of the Delaware Code shall be satisfied.*
- 221 (i) *At least 20% of all multifamily dwellings shall be set aside as SCRP*
222 *units governed by Chapter 72.*

223 **§ 115-135 Design and Development Principles and Standards.**

224 *The following standards and principles of design and development shall apply to*
225 *the MPZ:*

226
227 A. *Bulk standards including setback, lot area, height, parking, signs, and*
228 *landscaping shall be governed by the approved Master Manual and shall prevail*
229 *over conflicting requirements of this Chapter and Chapter 99.*

230
231 B. *The MPZ design principles below shall be reflected in the Spatial*
232 *Distribution Plan, the Implementation Plan, the General Overall Master Plan, and*
233 *the Implementation Manual, consistent with the purpose and intent section of this*
234 *Article.*

235 1. *The design for the entire zone shall follow an environmentally*
236 *sustainable approach to development. To accomplish this, the design shall*
237 *take advantage of natural drainage patterns on site and minimize*
238 *unnecessary earthmoving, erosion, tree clearance and other disruption of*

239 *the natural environment. Existing vegetation and habitats shall be preserved*
240 *wherever possible. Where extensive natural tree cover and vegetation do not*
241 *exist or cannot be preserved on the site, landscaping shall be undertaken in*
242 *order to enhance the appearance of the development, screen streets and*
243 *parking areas, and enhance the privacy of private dwellings. Native plant*
244 *species shall be used whenever possible and practical. Natural drainage*
245 *systems shall be preserved wherever possible. Where natural drainage*
246 *systems do not exist, drainage patterns shall be developed similar to the*
247 *natural pattern to the extent practical.*

248 *2. Development shall be compatible with existing historic buildings,*
249 *landscapes and urban design within or adjacent to the zone. Any existing*
250 *cultural resources shall be analyzed for creative preservation and/or*
251 *adaptive reuse in the new development.*

252 *3. Permanent, publicly accessible Open Space outside of individual lots*
253 *comprising a minimum of ten percent (10%) of the land area shall be*
254 *provided in the MPZ. Land owned by government or non-profit entities that*
255 *is included in the approved Implementation Plan and is open to the public*
256 *may count toward this requirement. At least one-half of the minimum*
257 *required open space land must be free of wetlands or storm water*
258 *management areas containing permanently standing water in order to be*
259 *readily accessible and usable for active and passive recreation. Significant*
260 *natural features shall be incorporated into permanent public open space*
261 *whenever possible. A portion of the permanent public open space shall be*
262 *designed as a contiguous area to provide access throughout the full project*
263 *site and a portion shall be interspersed within all areas so as to provide*
264 *access from the surrounding neighborhood, active recreation space and/or a*
265 *visual amenity.*

266 *4. Open space within residential areas shall be oriented to the fronts of*
267 *the buildings. Isolated open spaces in the rear of properties are*
268 *discouraged.*

269 *5. Landscape plantings in parks, greens or significant open spaces shall*
270 *create an immediate positive visual impact on the community.*

271 *6. The MPZ shall have a pedestrian walkway and/or bicycle system*
272 *through the open spaces that connects to the street system or connects a*
273 *series of open spaces. Bicycle parking/locking facilities should be provided*
274 *in public spaces as appropriate.*

275 7. *The design of streets shall form a connected system with dimensions*
276 *and speed reasonable to serve the development and adjacent properties and*
277 *roadways, but also to create an environment that is friendly to pedestrians*
278 *and bicycle riders.*

279 8. *Service alleys shall be used throughout the development whenever*
280 *practical, particularly in areas with attached and multiple family dwellings.*
281 *Garbage storage and pick up areas shall be located along alleys where they*
282 *exist. Driveway access may be from the street or an alley, if an alley is*
283 *provided.*

284 9. *Residential neighborhoods and their individual blocks, to the extent*
285 *possible, shall contain a mixture of a variety of house and lot types and sizes*
286 *to strengthen community interactions.*

287 10. *Nonresidential uses in a primarily residential area shall be of a*
288 *character, size, scale and design to compliment a mixed sustainable*
289 *community.*

290

291 **§ 115-136 Permitted Uses.**

292 *In an MPZ, and subject to any conditions of approval imposed upon the MPZ and*
293 *General Master Plan, only those uses that are permitted in the LI-1 Limited*
294 *Industrial District, the L-2 Light Industrial District and the HI-1 Heavy Industrial*
295 *District shall be prohibited. Provided, however, that all non-residential uses shall*
296 *be of a superior design that is consistent with the Purpose and Intent of the MPZ.*
297 *The design and integration shall be reflected in the approved Implementation*
298 *Manual and the General Overall Master Plan.*

299

300 **§ 115-137 Areas Within the MPZ**

301 *In addition to the areas that are primarily residential within the MPZ, the*
302 *following areas are encouraged to facilitate mixed uses and sub-planning within*
303 *the entire MPZ project. Provided, however, that the total acreage set aside for the*
304 *following areas shall not exceed fifty percent (50%) of the entire MPZ:*

305

306 **1. Neighborhood Commercial Area.**

307 *A Neighborhood Commercial Area is optional in an MPZ, subject to the additional*
308 *requirements below. Its purpose is to provide a range of commercial/retail,*
309 *business/office and other non-residential services supportive of the residential*
310 *character of the MPZ. Residential use in the district, including that of upper*

311 *floors, is encouraged. The following design principles shall be reflected in the*
312 *Implementation Manual for the neighborhood commercial area:*

313

314 *A. Building height shall be no greater than fifty (50) feet. Buildings may be*
315 *connected but must retain fire separation. Mixed-use buildings are encouraged.*

316

317 *B. The Neighborhood Commercial Area shall be designed around and shall have*
318 *frontage on an internal main street that connects to the street and road system*
319 *outside of the MPZ. It is preferred that such “main streets” shall become State*
320 *maintained roadways. Buildings within the Area shall be organized in relation to*
321 *this internal main street to create a walkable connection among the different uses*
322 *and buildings.*

323

324 *C. Off-street parking shall be provided in a manner so that it is screened from the*
325 *right of way by buildings, landscaping or other means. Off-street parking shall be*
326 *screened from adjacent non-commercial uses and consideration should be given to*
327 *locating parking to the side or rear of the building. Off-street parking may be*
328 *shared by adjacent uses.*

329

330 *D. Service drives shall be designed and used for loading and trash collection.*

331

332 *E. Public areas for seating, gathering, and public amenities such as fountains,*
333 *amphitheaters, display areas, public art, kiosks, and recreational activity shall be*
334 *integrated into the area.*

335

336 *F. To promote walkability within the MPZ generally and the Neighborhood*
337 *Commercial Area specifically, no restaurants with drive-through service or retail*
338 *uses with drive-through service shall be permitted. Banking services with drive-*
339 *through services shall be permitted.*

340

341 *2. Professional Office, Medical and Financial Area.*

342 *A Professional Office, Medical and Financial Area is optional in the MPZ, subject*
343 *to the additional requirements below. Its purpose is to provide a range of*
344 *professional, medical, and financial office space with the opportunity to*
345 *incorporate a variety of residential uses. Residential use of part of such areas is*
346 *encouraged to make them more active and secure after the workday is over.*

347

348 A. *Building height shall be no greater than fifty (50) feet. Buildings may be*
349 *connected but must retain fire separation and have a distinct connection. Mixed-*
350 *use buildings are encouraged.*

351
352 B. *The Professional Office, Medical, and Financial Area shall be designed*
353 *around a through street or streets which connect to the street and road system*
354 *outside the area and also interconnect within the overall plan. Buildings within the*
355 *Area shall be organized in relation to this internal main street to create a*
356 *walkable connection among the different uses and buildings.*

357
358 C. *Off street parking shall be provided in a manner so that it is screened from*
359 *the right of way by buildings, landscaping or other means. Off street parking shall*
360 *be screened from adjacent noncommercial uses and consideration should be given*
361 *to locating parking to the side or rear of the building. Off street parking may be*
362 *shared among the adjacent uses.*

363
364 D. *Service drives for loading and trash collection are encouraged.*

365
366 E. *Public areas for seating, gathering, and public amenities, such as fountains,*
367 *amphitheaters, display areas, public art, kiosks, and recreational activities, shall*
368 *be integrated into the Area.*

369
370 3. *Civic Area.*
371 *A Civic Area is optional in the MPZ, subject to the additional requirements below.*
372 *Its purpose is to provide a range of civic uses including government buildings,*
373 *education buildings, libraries, meeting halls, museums, recreational facilities,*
374 *places of worship, or other similar cultural, civic or social uses with the*
375 *opportunity to incorporate a variety of residential uses. Residential use of part of*
376 *such areas is encouraged to make them more active and secure after the workday*
377 *is over.*

378
379 A. *The MPZ may have one or more Civic Areas, but the total acreage*
380 *dedicated to the areas shall not exceed ten percent (10%) of the total MPZ.*

381
382 B. *Building height shall be no greater than fifty (50) feet. Buildings may be*
383 *connected but must retain fire separation and have a distinct connection. Mixed-*
384 *use buildings are encouraged.*

385

386 C. *The Civic Area shall be designed around a through street or streets which*
387 *connect to the street system outside the area and also interconnect within the*
388 *overall plan. Buildings within the Area shall be organized in relation to this*
389 *internal main street to create a walkable connection among the different uses and*
390 *buildings.*

391
392 D. *Off street parking shall be provided in a manner so that it is screened from*
393 *the right of way by buildings, landscaping or other means. Off street parking shall*
394 *be screened from adjacent noncommercial uses and consideration should be given*
395 *to locating parking to the side or rear of the building. Off street parking may be*
396 *shared among the adjacent uses.*

397
398 E. *Service drives for loading and trash collection are encouraged.*

399
400 F. *Public areas for seating, gathering, and public amenities, such as fountains,*
401 *amphitheaters, display areas, public art, kiosks, and recreational activities, shall*
402 *be integrated into the Area.*

403
404 **§ 115-138 Master Manual.**

405 A. *The Master Manual, once approved by County Council, shall constitute an*
406 *agreement by the landowner/developer to follow the standards and guidelines*
407 *contained therein during the design, construction and maintenance of land*
408 *developed according to this Article. The Master Manual also establishes the*
409 *nature and identity of the community for potential future residents prior to its*
410 *completion. The Master Manual addresses a series of items pertaining to the*
411 *physical character of the MPZ development.*

412
413 B. *The Master Manual shall consist of a brief written and graphic description*
414 *of the landowner/developer's proposed approach to the MPZ as a whole and it*
415 *shall address the Areas and types of uses set forth in Section 115-137. The*
416 *architectural, lighting, signage and landscape examples may be vignettes of styles*
417 *with graphic and narrative descriptions for this submission. The purpose of the*
418 *Master Manual is to insure that the owner/developer gives adequate thought to the*
419 *nature of a MPZ designation and understands the impacts of such a designation*
420 *on site development; and it provides a way for the County to be involved early in*
421 *the planning process to confirm that the Purpose and Intent of this Article will be*
422 *followed.*

423

424 C. *The Master Manual shall address the items listed in Section 115-135*
425 *“Design and Development Principles and Standards” through evidence of*
426 *substantive research and physical guidelines. The extensive use of photographs,*
427 *drawings and other graphic methods is strongly encouraged. The results of this*
428 *work may be organized in a manner that best represents the*
429 *landowner/developer's intent as long as all the items are substantively addressed.*

430

431 D. *The following items are required to be included in the Master Manual:*

432

433 1. *Nearby developed precedents - a discussion and illustration of local*
434 *and regional precedents in the design of the County’s existing*
435 *neighborhoods, communities, buildings, and landscape and how they will be*
436 *reflected in the proposed development.*

437

438 2. *Existing natural features – plans showing existing natural features*
439 *including topography, soils, wetlands, drainage, vegetation and any*
440 *potential limitations on development as a result of these features.*

441

442 3. *Circulation and transportation - classification and illustration of a*
443 *system of roads, streets, alleys, parking areas and pedestrian and bicycle*
444 *routes that creates an integrated network serving the MPZ development and*
445 *links it to adjacent areas. Detailed design standards and illustrations for*
446 *each component of the system are required. A plan of the circulation*
447 *systems shall be included along with a Master Transportation Plan*
448 *approved by DelDOT.*

449

450 4. *Uses – an overall program of uses showing general use locations and*
451 *the locations of Neighborhood Commercial Areas, Professional Office,*
452 *Medical and Financial Areas and Civic Areas and the acreage or square*
453 *footage of each type of use or Area.*

454

455 5. *Building lots - a classification and illustration of the full range of*
456 *proposed lot types, sizes and setbacks, locations of potential accessory*
457 *buildings, and access by auto and foot. A plan of their location throughout*
458 *the development shall be included.*

459

460 6. *Density – the total residential density of the entire MPZ, in*
461 *accordance with the Spatial Distribution Plan.*

462

- 463 7. *Housing Types - The housing types, broken down by area within the*
464 *MPZ as appropriate.*
465
- 466 8. *Buildings - a classification of the full range of buildings, residential,*
467 *commercial, office or mixed, to be constructed including detailed guidelines*
468 *addressing their architectural character and essential required elements,*
469 *such as size, height, composition and massing, windows, doors, porches,*
470 *roof design, fenestration, and all materials. A plan of their location by use*
471 *type throughout the development shall be included.*
472
- 473 9. *Accessory structures - detailed design guidelines for accessory*
474 *structures including, but not limited to, fences, sheds, pools, garages,*
475 *gazebos shall be included and compatible with the MPZ design principles.*
476
- 477 10. *Open spaces - a classification of a system of landscaped open spaces*
478 *(in addition to private yards) with a plan of the network created by the open*
479 *spaces and pedestrian and bicycle circulation systems.*
480
- 481 11. *Landscape design - a palette of hard (paving) and plant materials*
482 *along with street furniture, major focal elements and ornamentation shall be*
483 *provided. These shall be located on a plan of the development. Details of*
484 *plant species and hard materials shall be included.*
485
- 486 12. *Stormwater management – a preliminary design of anticipated*
487 *stormwater management areas.*
488
- 489 13. *Lighting design - placement of public and private lighting throughout*
490 *the development and design of the lighting fixtures, globes, illumination*
491 *patterns and intensities.*
492
- 493 14. *Signage – a preliminary design including the typical size, type, height*
494 *and placement of all sign for public and private uses within the MPZ.*
495
- 496 15. *Coastal Area – if the MPZ is within the Coastal Area, the Master*
497 *Manual shall include the information required by Section 115-134B.(2).*
498
- 499 15. *Application and administration - a presentation of the manner in*
500 *which the Master Manual requirements and guidelines will be administered*
501 *and enforced on behalf of the developer. The roles and responsibilities of*

502 *the developer, builders and homeowners and/or homeowners' association in*
503 *overall administration of the Manual's requirements shall be addressed.*

504
505 *16. Sussex County Engineer Approval – the approval by the Sussex*
506 *County Engineer of the street, sidewalk and drainage designs to be utilized*
507 *in the MPZ.*

508

509 **§ 115-139 Procedure.**

510 *An application for rezoning of a land area to an MPZ shall be required to obtain*
511 *approvals as follows:*

512 *A. Application for an MPZ rezoning and General Overall Master Plan review.*
513 *After an application is received, but prior to any further action being taken with*
514 *regard to it, the applicant shall meet with the Director and the County Engineer*
515 *for a preliminary review of the MPZ and the General Overall Master Plan and the*
516 *Master Manual for compliance with the Design and Development Principles and*
517 *Standards of Section 115-135, the requirements of Section 115-138, the other*
518 *requirements and guidelines of this Article, and incorporating their land planning*
519 *experience and technical knowledge. This shall be a collaborative effort to refine*
520 *the application and design of the MPZ.*

521 *Thereafter, each application for a rezoning to an MPZ shall be heard by the*
522 *Planning Commission for a recommendation to the County Council, which will*
523 *make the final action on the MPZ, the General Overall Master Plan and the*
524 *Master Manual. The Commission may recommend, and County Council may*
525 *impose, conditions upon the MPZ Zoning and/or the approval of the General*
526 *Overall Master Plan and Master Manual.*

527 *The application for rezoning to a MPZ shall include, in addition to the Eligibility*
528 *Requirements of Section 115-134, the following:*

- 529 *1. A narrative on the nature of the applicant's interest in the*
530 *development;*
- 531 *2. A narrative explaining the manner in which the application conforms*
532 *to the Purpose and Intent of this Article;*
- 533 *3. The development team involved in the proposed development;*
- 534 *4. A General Overall Master Plan; and*
- 535 *5. A narrative Master Manual;*

536 *B. Application for Implementation Plan Review. After an MPZ, General Overall*
537 *Master Plan and Master Manual is approved by County Council, the Commission*
538 *shall review the MPZ Implementation Plan and Implementation Manual. The*
539 *Implementation Plan and Implementation Manual shall abide by and match the*
540 *approved General Overall Master Plan and the Master Manual incorporated*
541 *therein. The submission for the individual Areas as described in Section 115-137*
542 *may be considered separately by the Commission. The Director shall determine*
543 *whether any Implementation Plan and Implementation Manual submitted meet the*
544 *minimum requirements of this Article and Section, including but not limited to the*
545 *requirements, elements and principles of the General Overall Master Plan, the*
546 *Master Manual and the Comprehensive Plan prior to submitting the application to*
547 *the Commission for review. The Commission may approve the Implementation*
548 *Plan and the Implementation Manual once it has determined that they meet the*
549 *purpose and intent of this Article and Chapter and the approved General Overall*
550 *Master Plan.*

551 *All elements of any Implementation Plan shall include the following:*

- 552 *1. The Implementation Manual.*
- 553 *2. Detailed plans of existing natural features showing topography, soils,*
554 *drainage and vegetation.*
- 555 *3. Detailed plans of the proposed building locations, actual street, road*
556 *and transportation networks, parking areas with counts, recreation and*
557 *open space with area calculations, stormwater management and a phasing*
558 *plan.*
- 559 *4. Final program of uses including building footprints for*
560 *commercial/office uses and buildable envelope for residential portions,*
561 *building height, and total square feet by use and housing type.*
- 562 *5. The proposed development pattern, materials, dimensions and*
563 *architectural styles as shown in the Master Manual.*

564 *Once approved, the Implementation Plan shall be considered as an approved*
565 *Preliminary Site Plan in accordance with Sections 115-220 and Chapter 99, as*
566 *appropriate.*

567 *C. Action Following Implementation Plan Approval. Following*
568 *Implementation Plan approval, the Director shall perform an administrative*
569 *review of subsequent Final Site Development Plans for compliance with the*
570 *approved Implementation Plan in accordance with the following:*

571 1. *Site development plan: the approval of Final Site Development Plans*
572 *for areas or phases within the MPZ shall adhere to the Final Site Plan*
573 *process and requirements set forth in Section 115-221.*

574 2. *Implementation Plan amendments: The Director will entertain only*
575 *minor, clarifying amendments to the plans or the Master Manual in*
576 *considering a Final Site Development Plan. Minor amendments may*
577 *include, but are not limited to, the addition of a material for landscaping,*
578 *adjustments to the specific street or alley placement of less than 50 feet, or*
579 *change in location of structures in an active recreation space. Any major*
580 *amendments, as determined by the Director, will be required to be approved*
581 *by the Planning Commission. Provided, however, that amendments that are*
582 *inconsistent with the approved MPZ, General Overall Master Plan and*
583 *Master Manual shall require an amendment to both following a public*
584 *hearing before the Commission and County Council.*

585 3. *The development of the site in accordance with the Implementation*
586 *Plan and Final Site Development Plan shall be subject to all applicable*
587 *bonding requirements set forth in Chapters 99 and 115.*

588 4. *The approved Implementation Plan and Final Site Development Plan*
589 *shall be rendered null and void if substantial construction is not commenced*
590 *thereon within five years of the approval thereof.*

591
592 **§ 115-140. (Reserved).**

Green
yes 10/23

Casey Hall

From: notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE
<notifications@d3forms.com>
Sent: Monday, October 16, 2023 3:35 PM
To: Casey Hall
Subject: Sussex County DE - Council Grant Form: Form has been submitted

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Council Grant Form

Legal Name of Agency/Organization	Woodbridge Youth Football Pop Warner Little Scholars, Inc. (WOODBRIDGE)
Project Name	Nationals to Florida
Federal Tax ID	51-0348574
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	No
Organization's Mission	The mission of Woodbridge Youth Football Organization is to provide the fundamentals of football and cheer for the youth in our community. To encourage and develop our youth to strive for personal, educational, and athletic excellence and become well-disciplined student-athletes both on the field and in the community.
Address	PO Box 871
City	Bridgeville
State	DE

Zip Code	19933
Contact Person	Danniell Hicks
Contact Title	Treasurer
Contact Phone Number	14437837844
Contact Email Address	woodbridgeayf@gmail.com
Total Funding Request	2000
Has your organization received other grant funds from Sussex County Government in the last year?	Yes
If YES, how much was received in the last 12 months?	4000
Are you seeking other sources of funding other than Sussex County Council?	Yes
If YES, approximately what percentage of the project's funding does the Council grant represent?	5
Program Category (choose all that apply)	Other

Program Category Sports
Other

Primary Beneficiary Category Low to Moderate Income

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 160

Scope We serve the population of woodbridge which is underserved a low income. These kids in the 10 year old division have been awarded the honor to participate in Nationals which is in Florida. We do have another team that will more than likely be awarded this honor as well (our 11 year old team). Each teams trip will cost approximately \$35,000 for airfare, transportation and lodging along with other items such as registration fees. We have been fundraising and trying to raise money as this is a huge honor to be a part of and we are grateful for anything that we can help in order to serve the children.

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) 0.00

Description Flights/luggage

Amount 18,626.00

Description Transportation while in Florida

Amount 4,874.00

Description Food
Amount 8,750.00

Description Lodging
Amount 38,400.00

TOTAL EXPENDITURES 70,650.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -70,650.00

Name of Organization Woodbridge Youth Football

**Applicant/Authorized
Official** Danniell Hicks

Date 10/16/2023

**Affidavit
Acknowledgement** Yes

VINCENT
YES 10/25

Casey Hall

From: notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE <notifications@d3forms.com>
Sent: Friday, October 20, 2023 10:41 AM
To: Casey Hall
Subject: Sussex County DE - Council Grant Form: Form has been submitted

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Council Grant Form

Legal Name of Agency/Organization Kim and Evans Family Foundation, Inc. ✓

Project Name Evening of Celebration and Dance- Remembering the Past, Embracing the Future

Federal Tax ID 82-3857830

Non-Profit Yes

Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.) No

Organization's Mission Our mission is to better the lives of disadvantaged people and animals in Sussex County and beyond.

Address 123 Village Drive

City SEAFORD

State DE

Zip Code 19973

Contact Person Joseph H Kim
Contact Title President
Contact Phone Number 4436147454
Contact Email Address kimandevansff@gmail.com

Total Funding Request 1500

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

If YES, how much was received in the last 12 months? 500

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

If YES, approximately what percentage of the project's funding does the Council grant represent? 2.5

Program Category (choose all that apply) Health and Human Services

Primary Beneficiary Category Low to Moderate Income

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

250

Scope

Dear Friend,

I would like to extend my warmest greetings to you on behalf of my charitable foundation, the Kim & Evans Family Foundation. It is with great pleasure that I invite you to join us for An Evening of Celebration and Dance – remembering the past, embracing the future. This elegant affair presented by the Kim & Evans Family Foundation will be held at Heritage Shores in Bridgeville, Delaware on Saturday, January 27, 2024, from 6 to 10 pm.

The purpose of this event is to pay tribute to the extraordinary physicians from our community who have passed away in recent years, while also raising funds to support charitable programs that enhance the health and well-being of our community. We will be honoring the memories of Dr. Harry C. Anthony, Jr., Dr. Eduardo L. Jiloca, Dr. Donald T. Laurion, Dr. Khalid Manzoor, Dr. Joseph P. Olekszyk, Dr. Martin Cosgrove, and Dr. Judith B. Tobin.

The proceeds from this event will go toward several local projects such as the Harry C. Anthony Jr., MD Scholarship Fund and the TidalHealth Mobile Mammogram Drive. The charitable programs directly impact our community in Western Sussex County, improving the quality of care and providing vital resources to those in need.

Tickets for this occasion are priced at \$150 per person and include admission, dinner, assorted beverages including beer and wine, a silent auction, and an evening filled with dance and celebration. Sponsorships are also available!

Attire is formal and don't forget your dancing shoes!

Please consider joining us for this remarkable evening to celebrate the lives and legacies of our dear colleagues and friends who had made a profound impact on their community.

kimandevansff.ticketleap.com/celebrationanddance2024/

Thank you for your remarkable generosity and unwavering support!

Joe

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

5,000.00

Description

Event costs rental/food/beverages

Amount

30,000.00

Description

Hope to raise

Amount

20,000.00

TOTAL EXPENDITURES

50,000.00

TOTAL DEFICIT FOR PROJECT OR ORGANIZATION

-45,000.00

Name of Organization

Kim and Evans Family Foundation

Applicant/Authorized Official

Joseph H. Kim, DO

Date

10/20/2023

Affidavit
Acknowledgement

Yes

VINCENT
YES 10/25

Casey Hall

From: notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE
<notifications@d3forms.com>
Sent: Tuesday, October 24, 2023 11:00 AM
To: Casey Hall
Subject: Sussex County DE - Council Grant Form: Form has been submitted

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Council Grant Form

Legal Name of Agency/Organization	City of Seaford ✓
Project Name	Annual Christmas Parade
Federal Tax ID	51-6000241 ✓
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	No
Organization's Mission	DSA is an association of businesses located in downtown Seaford to advocate on behalf of those businesses and to sponsor events to bring people to our downtown.
Address	P.O. Box 12
City	Seaford
State	DE
Zip Code	19973

Contact Person	Alice Adkins
Contact Title	VP, DSA
Contact Phone Number	443-786-3968
Contact Email Address	amessick1239@gmail.com
Total Funding Request	2000.00
Has your organization received other grant funds from Sussex County Government in the last year?	No
If YES, how much was received in the last 12 months?	N/A
Are you seeking other sources of funding other than Sussex County Council?	Yes
If YES, approximately what percentage of the project's funding does the Council grant represent?	25
Program Category (choose all that apply)	Other
Program Category Other	General citizenry/youth, low income

Primary Beneficiary Category Youth

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 2000

Scope The Downtown Seaford Association (DSA) sponsors this annual Christmas parade to both bring people into our downtown and for the entertainment of our citizens. We routinely have over 100 parade entries, including marching bands, car clubs, fire units, local businesses, and floats. When we get the right weather, it is very well attended.

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) 2,000.00

Description Reimbursement of expenses to marching bands

Amount 1,550.00

Description Event insurance

Amount 343.00

Description Porta Johns

Amount 1,260.00

Description Candy for handout by elves

Amount 300.00

Description Trophies

Amount 700.00

Description Advertising

Amount 125.00

TOTAL EXPENDITURES 4,278.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -2,278.00

Name of Organization City of Seaford

**Applicant/Authorized
Official** Erica Colegrove

Date 10/24/2023

**Affidavit
Acknowledgement** Yes

To Be Introduced: 11/7/23

Council District 5: Mr. Rieley
Tax I.D. No.: 133-7.00-8.00 (p/o)
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A POLICE STATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 44 ACRES, MORE OR LESS

WHEREAS, on the 27th day of June 2023, a Conditional Use application, denominated Conditional Use No. 2477 was filed on behalf of the State of Delaware; 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. 2477 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, Subsections 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2477 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on the east side of Patriots Way (S.C.R. 318), approximately 0.3 mile north of Avenue of Honor (S.C.R. 86), and being more particularly described in the attached legal description prepared by Delaware Department of Transportation, said parcel containing 44 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: 11/7/23

Council District 5: Mr. Rieley
Tax I.D. No.: 234-29.00-263.06
911 Address: 30839 Mount Joy Road, Millsboro

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN ON-PREMISES ELECTRONIC MESSAGE CENTER SIGN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 10.94 ACRES, MORE OR LESS

WHEREAS, on the 1st day of November 2023, a conditional use application, denominated Conditional Use No. 2491 was filed on behalf of St. Michael the Archangel Church; 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. 2491 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. 2491 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on the north side of Mount Joy Road (S.C.R. 297) and the west side of John J. Williams Highway (Rt. 24) at the intersection of Mount Joy Road (S.C.R. 297) and John J. Williams Highway (Rt. 24) and being more particularly described in the attached deed prepared by Fuqua & Graves Attorneys, said parcel containing 10.94 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: 11/7/23

Council District 4: Mr. Hudson

Tax I.D. Nos.: 134-18.00-45.00, 51.00 and P/O 53.00, 54.00 & 54.01

911 Address: 34665, 34723 & 34771 Daisey Road, Frankford

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 73.95 ACRES, MORE OR LESS

WHEREAS, on the 16th day of September 2022, a zoning application, denominated Change of Zone No. 1991 was filed on behalf of Beazer Homes, 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 Change of Zone No. 1991 be _____; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcels of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on north side of Daisey Road (S.C.R. 370), approximately 0.6 mile west of Bayard Road (S.C.R. 384) and being more particularly described in the attached legal description prepared by Solutions IPFM, said parcels containing 73.95 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.