

COUNTY COUNCIL

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



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

A G E N D A

AUGUST 9, 2022

10:00 A.M. (DelDOT Ribbon Cutting)*

Call to Order

Approval of Agenda

Approval of Minutes – July 26, 2022

Reading of Correspondence

Public Comments

Councilman Mark Schaeffer

1. Discussion related to the Georgetown Historical Society Councilmanic Grant

Todd Lawson, County Administrator

1. Administrator's Report

10:15 a.m. Public Hearings

1. The Lands of Hete4, LLC Expansion of the Sussex County Unified Sanitary Sewer District (West Rehoboth Area)
2. Mayapple Farm Expansion of the Sussex County Unified Sanitary Sewer District (Bay View Estates Area)



Hans Medlarz, County Engineer

1. **Discussion and Possible Introduction of a Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$1,900,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE CONSTRUCTION AND EQUIPPING OF AN EXTENSION OF SANITARY SEWER SERVICES TO HERRING CREEK AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”**
2. **Mulberry Knoll Force Main and Pump Station, Project S20-14**
 - A. **Balancing Change Order and Substantial Completion**
3. **Agreement for Wastewater Services – Lewes Board of Public Works**
 - A. **Amendment No. 3**

Old Business

1. **“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE EXPANSION OF CU 1741 (ORDINANCE 2021) FOR THE EXPANSION OF A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 62.204 ACRES, MORE OR LESS”**
2. **“AN ORDINANCE TO AMEND CHAPTER 52, § 52-1 OF THE CODE OF SUSSEX COUNTY TO ADOPT THE BUILDING CONSTRUCTION STANDARDS IN THE INTERNATIONAL BUILDING CODE 2021 EDITION AND THE INTERNATIONAL RESIDENTIAL CODE 2021 EDITION”**
3. **“AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 72, ARTICLE II, SECTIONS 72-16 THROUGH 72-28 AND CHAPTER 115, ARTICLE IV, V, VI, VII AND VIII SECTIONS 115-20, 115-25, 115-29, 115-34, 115-37, 115-42, 115-45, 115-50, 115-53 AND 115-58 REGARDING AFFORDABLY PRICED RENTAL UNITS AND THE SUSSEX COUNTY RENTAL UNIT (SCRP) PROGRAM”**

Grant Requests

1. **Milton Community Foundation, Inc. for a plastic water bottle refill unit**
2. **CHEER, Inc. for their 12th Annual Car, Truck & Bike Show**
3. **Bridgeville Apple Scrapple, Inc. for their 30th Annual Apple Scrapple Festival**
4. **Cornerstone Community Center for their Holiday Extravaganza**
5. **Operation Seas The Day for operating expenses**

Introduction of Proposed Zoning Ordinances

Council Members' Comments

Executive Session – Land Acquisition and Pending/Potential Litigation pursuant to 29 Del.C.§10004(b)

Possible action on Executive Session items

1:30 p.m. Public Hearing

Change of Zone No. 1961 filed on behalf of Country Lawn Care & Maintenance, LLC

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 7.75 ACRES, MORE OR LESS” (property lying on the north side of Lewes-Georgetown Highway [Route 9], approximately 0.89 mile east of Steiner Road) (911 Address: 24347 Lewes-Georgetown Highway [Route 9]) (Tax Parcel: p/o 135-11.00-32.00)

Adjourn

***The start of the County Council meeting will be delayed so that Members may attend a DelDOT Ribbon Cutting in Georgetown.**

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on August 2, 2022 at 4:15 p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

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

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

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

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

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

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

#

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JULY 26, 2022

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, July 26, 2022, at 10:00 a.m., in Council Chambers, with the following present:

Michael H. Vincent	President
Douglas B. Hudson	Vice President
Cynthia C. Green	Councilwoman
John L. Rieley	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 335 22
Approve
Agenda**

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

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of the July 12, 2022 meeting were approved by consensus.

**Corres-
pondence**

Mr. Moore read correspondence received from Rehoboth Summer Children's Theatre and Children's Beach House in appreciation of grants received.

**Public
Comment**

There were no public comments.

**General
Assembly
Legislative
Wrap Up**

Mr. Lawson provided a summary of the recent legislative session of the 151st General Assembly. Mr. Lawson reviewed legislation allowing the expanded use of Realty Transfer Tax (RTT) (HB 426); legislation requiring public comment at all public meetings (HB 293) and the County's agreement with the State to fund additional Delaware State Troopers in Sussex County (HB 250).

**Adminis-
trator's
Report**

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

1. Project Receiving Substantial Completion

**Adminis-
trator's
Report
(continued)**

Per the attached Engineering Department Fact Sheet, Parkside – Phase 2 received Substantial Completion effective June 23rd.

2. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for June 2022 is attached listing the number of violent crimes and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 191 troopers assigned to Sussex County for the month of June.

3. Council Meeting Schedule

A reminder that Council will not meet on Tuesday, August 2nd. The next regularly scheduled Council meeting will be held on Tuesday, August 9th at 10:00 a.m.

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

**EMS Public
Safety
Building/CO
No. 15**

Hans Medlarz, County Engineer presented change order no. 15 for the EMS public safety building for Council's consideration. Mr. Medlarz explained that RFI-60 exposed an issue related to the door jams of the overhead door in the logistics warehouse and a field change for the gutter support in the mechanical well of the sloped roof system were items included in the change order request.

**M 336 22
Approve
EMS Public
Safety
Building/CO
No. 15**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved based upon the recommendation of the Sussex County Engineering Department, that change order No. 15 for contract C19-04, Sussex County Public Safety Building be approved, for an increase of \$11,357.87.

Motion Adopted: 5 Yeas

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

**Bulk
Delivery of
Magnesium
Hydroxide/
Project
M21-12**

Hans Medlarz, County Engineer presented a contract escalation for bulk delivery of magnesium hydroxide for Council's consideration. Prior to the one-year extension period, the contractor notified the department they could not hold the price and requested an increase of \$0.36 per gallon due to the current economic conditions. Mr. Medlarz further explained that with this increase, the price is still lower than the second bid received.

**M 337 22
Approval of
Contract
Escalation**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved based upon the recommendation of the Sussex County Engineering Department, that the base bid for Sussex County Project M20-21, “Bulk Delivery of Magnesium Hydroxide”, be increased by \$0.36 per gallon for a one-year FY23 contract extension.

Motion Adopted: 4 Yeas, 1 Nay

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

**Landfills
Site
Maintenance/CO
No. 1**

Hans Medlarz, County Engineer presented change order no. 1 – FY23 for the landfills site maintenance for Council’s consideration. Mr. Medlarz explained to ensure a clear path to the different areas, a mowing quote was requested from the current vendor.

**M 338 22
Approval of
CO No.
1/Landfills
Site
Maintenance**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved based upon the recommendation of the Sussex County Engineering Department that change order no. 1 – FY23 for contract #17-13, Sussex County Landfills Site Maintenance, be approved, increasing the contract amount by \$1,500 for a new total of \$20,901.20.

Motion Adopted: 5 Yeas

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

**Public
Hearing/
Proposed
Building
Code
Ordinance**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 52, § 52-1 OF THE CODE OF SUSSEX COUNTY TO ADOPT THE BUILDING CONSTRUCTION STANDARDS IN THE INTERNATIONAL BUILDING CODE 2021 EDITION AND THE INTERNATIONAL RESIDENTIAL CODE 2021 EDITION”.

Mr. Moore explained that a public hearing was previously held on this matter and on May 17, 2022, at that time the Ordinance was passed. Subsequent to that, it was noticed that an effective date was not filled in. Mr. Moore further explained that under State law, if there is no date, it takes effective immediately. It was the intent that the effective date be January 1, 2023, as opposed to currently.

Andy Wright, Chief of Building Code reminded Council that on May 17,

**Public Hearing/
Proposed Building Code Ordinance (continued)**

2022, an Ordinance was proposed to adopt the 2021 International Building and International Residential Code. Mr. Wright explained the reasons of requesting the January 1, 2023, effective date. It will allow the commercial designers enough time to follow forward with the current code edition and start any new projects after that date to the 2021 code. In addition, it will allow the fast-track residential master plans that are on file time to revamp and update their plans. Lastly, it will allow the yearly applications to start with 2023 so any staff member will know that an application starting with 2023 will have the new code in place.

Public comments were heard.

Mr. Jordan Warfel of Dream Designs, LLC discussed the new proposed stair code that he believes will have a negative effect on the entry level affordable models and homeowners that desire to finish off space above their garage or houses to get more finished space. He further explained that when fitting these stairs into tight places, a foot or two could make a difference if the stair could fit or not.

The Public Hearing and public record were closed.

**M 339 22
Defer Action/
Proposed Building Code Ordinance**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 52, § 52-1 OF THE CODE OF SUSSEX COUNTY TO ADOPT THE BUILDING CONSTRUCTION STANDARDS IN THE INTERNATIONAL BUILDING CODE 2021 EDITION AND THE INTERNATIONAL RESIDENTIAL CODE 2021 EDITION”.

Motion Adopted: 5 Yeas

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

**Public Hearing/
New Road Estates Improvements Assessment Roll**

A Public Hearing was held on Proposed New Road Estates Improvements Assessment Roll.

Hans Medlarz, County Engineer explained that the project consists of nine residential parcels along New Lane, a private street and cul-de-sac owned and maintained by the community Homeowners Association.

There were no public comments.

The Public Hearing and public record were closed.

M 340 22
Adopt
Resolution
No. R 008 22

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Resolution No. R 008 22 entitled “A RESOLUTION ADOPTING THE UNIFORM ASSESSMENT ROLL FOR THE PURPOSE OF BILLING FINAL COSTS OF THE NEW ROAD ESTATES PAVEMENT IMPROVEMENTS CHAPTER 96 SUSSEX COMMUNITY IMPROVEMENT PROJECT T21-08.

Motion Adopted: 5 Yeas

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

Old
Business/
CZ1967

Under Old Business, Jamie Whitehouse, Planning and Zoning Director presented Change of Zone No. 1967 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” filed on behalf of Henlopen Properties, LLC.

The initial public hearing was held before the County Council on April 26, 2022. At that time, a motion was made to defer action on the application for a period of two weeks to May 6th for the Lewes Board of Public Works and any other member of the public to submit their reports on the well head protection issue. At the meeting of May 24, 2022, Council closed the Public Record and deferred action on the application for further consideration. At the meeting of June 28, 2022, Council discussed the application and deferred action for further consideration.

M 341 22
Adopt
Ordinance
No. 2874/
CZ1967

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2874 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” for the reasons given by Planning and Zoning numbered 1-7 as follows:

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

**M 341 22
Adopt
Ordinance
No. 2874/
CZ1967
(continued)**

2. Both central water and central sewer will be available to this site.
3. This site is the location of the Gills Neck Road and Kings Highway lighted intersection. DelDOT is also planning to improve the Kings Highway Corridor in the near future. Given its location adjacent to these roadways and this intersection, MR zoning is appropriate for this property.
4. The property is in the immediate vicinity of other properties that are commercially zoned or are being used for business, commercial and institutional uses. The site is also across from the Cape Henlopen High School campus. There is also extensive MR-zoned property to the east of this site. This rezoning is consistent with other zoning and land uses in the area.
5. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
6. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. MR Zoning is appropriate in this Area according to the Plan.
7. For all of these reasons, MR zoning is appropriate for this site.

Motion Adopted: 5 Yeas

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

**Old
Business/
CZ1968**

Under Old Business, Jamie Whitehouse, Planning and Zoning Director presented Change of Zone No. 1968 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS” filed on behalf of Henlopen Properties, LLC.

This was last considered at Council during the June 28, 2022 meeting, at which time, action was deferred for further consideration.

**M 342 22
Adopt
Ordinance
No. 2875/
CZ1968**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2875 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS” for the reasons

**M 342 22
Adopt
Ordinance
No. 2875/
CZ1968
(continued)**

given by Planning and Zoning numbered 1-7 as follows:

- 1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.**
- 2. The Applicant’s property is generally located at the intersection of Gills Neck Road and Kings Highway on the outskirts of the City of Lewes. It is next to an existing medical office building, across from Cape Henlopen High School and there are other businesses, commercial and institutional zonings, and uses in the immediate area. This is an appropriate location for C-2 zoning.**
- 3. C-2 Zoning at this location near the intersection of Gills Neck Road and Kings Highway will benefit nearby residents of Sussex County by providing a convenient location for retail uses or consumer services.**
- 4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.**
- 5. The site is in the “Coastal Area” according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.**
- 6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.**
- 7. Any future use of the property will be subject to Site Plan review by 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**

**Old
Business/
CU2334**

Under Old Business, Jamie Whitehouse, Planning and Zoning Director presented Conditional Use No. 2334 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (267 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” filed on behalf of Henlopen Properties, LLC.

This was last considered at Council during the June 28, 2022 meeting, at which time, action was deferred for further consideration. During the public hearing held on April 26, 2022 held before Council, there was a request from the applicant to consider a potential amendment to Condition K.

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to change

**M 343 22
Amend
Condition
K/ CU2334
M 343 22
Amend
Condition
K/ CU2334**

Condition K to read: Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday and on Saturdays between October 1st and April 30th. No Saturday hours are permitted from May 1st through September 30th. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.

Motion Adopted: 5 Yeas

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

The gavel was given to Mr. Hudson.

Mr. Vincent stated that based upon the record at both the Planning and Zoning Commission and the County Council hearing, as well as the recommendations of the Sussex County Engineer, he would like to make the following motions for consideration.

**M 344 22
Remove
Condition
P/CU2334**

A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to strike Condition P of the April 14th Planning & Zoning Commission’s Conditions of Approval in its entirety.

Motion Adopted: 5 Yeas

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

**M 345 22
Amend
Conditions/
CU2334**

A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to add a condition of approval as follows: The applicant is to provide independent specialized inspection services during construction of the infiltration facility and to either prefund or bond the 10-year operation & maintenance expense for the infiltration facility, as mutually determined by the Sussex Conservation District and the Sussex County Engineering Department.

Motion Adopted: 5 Yeas

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

**M 346 22
Amend
Conditions/
CU2334**

A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to add a condition of approval as follows: The applicant is to provide an ephemeral wetland forebay sized to treat the separated rooftop runoff in the stormwater management design.

Motion Adopted: 5 Yeas

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

**M 347 22
Amend
Conditions/
CU2334**

A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to add a condition of approval as follows: The applicant is to install two 4-inch monitoring wells downstream of the infiltration facility prior to any land disturbing activity and have each well analyzed annually for the following classes of substances regulated under the National Primary Drinking Water Regulations for a period of five-years or final County Engineering Department acceptance whatever, date comes later:

- A. Inorganic chemicals (§ 141.11)**
- B. Organic chemicals (§ 141.12)**
- C. Volatile organic contaminants (§ 141.61)**

Motion Adopted: 5 Yeas

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

**M 348 22
Amend
Conditions/
CU2334**

A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to add a condition of approval as follows: The applicant is to either grant perpetual access rights for the Lewes Board of Public Works or prefund a contract with a certified laboratory to annually analyze groundwater quality for the following classes of substances regulated under the National Primary Drinking Water Regulations for an additional ten-years after final County Engineering Department acceptance:

- A. Inorganic chemicals (§ 141.11)**
- B. Organic chemicals (§ 141.12)**
- C. Volatile organic contaminants (§ 141.61)**

Motion Adopted: 5 Yeas

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

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

**M 349 22
Amend
Conditions/
CU2334**

A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to add a condition of approval as follows: The applicant is to incorporate a first flush sand filtration component in the stormwater conveyance design for the imperious areas commercially utilized by vehicular traffic under a Sussex County Engineering Department permit.

Motion Adopted: 5 Yeas

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

The gavel was given back to Mr. Vincent.

**M 350 22
Adopt
Ordinance
No. 2876/
CU2334**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2876 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (267 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” for the reasons given by Planning and Zoning numbered 1-12 with conditions 13 A-R as amended by this Council by the deletion of 1 condition and the addition of 5 new conditions as follows:

- 1. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available. This conditional use application for multi-family units is in compliance with the purposes of the MR Zone.**
- 2. Both central water and central sewer will be available to this site.**
- 3. This site is the location of the Gills Neck Road and Kings Highway lighted intersection. DelDOT is also planning to improve the Kings Highway Corridor in the near future. Multi-family development is appropriate for this property adjacent to these roadways and this intersection.**
- 4. The property is in the immediate vicinity of other properties with a variety of business, commercial and institutional uses. The site is across from the Cape Henlopen High School campus. It is adjacent to the City of Lewes with nearby Mixed Residential,**

**M 350 22
Adopt
Ordinance
No. 2876/
CU2334
(continued)**

General Commercial, and Community Facilities zoning districts within the city. Nearby residential uses include Dutchman’s Harvest within the City of Lewes with 17.7 units per acre; Jefferson Apartments within the City of Lewes with 9.8 units per acre; the Moorings at Lewes in Sussex County with 6.4 units per acre; and Henlopen Gardens in the City of Lewes with 5.5 units per acre. This conditional use at approximately 6 units per acre is consistent with other zoning and multi-family developments in the area.

- 5. There are no wetlands located on the property.**
- 6. A small portion of the property is located within a Wellhead Protection Area. It will comply with the requirements of Chapter 89 of the Sussex County Code.**
- 7. The Applicant commissioned an Environmental Assessment Report prepared by Verdantas that analyzed the geography and groundwater characteristics of the site. That study concluded that the proposed use, as designed and in compliance with Chapter 89 of the Sussex County Code and with the suggested conditions will not have an adverse impact upon the City of Lewes Wellheads that are off-site and across Kings Highway.**
- 8. DelDOT has reviewed the proposed project and has determined under its vehicle trip standards that the development’s traffic impact will be minor. When DelDOT determines that traffic impact will be minor, a project is eligible to pay an Area Wide Study Fee instead of obtaining a Traffic Impact Study. Paying this fee does not eliminate the developer’s obligation to construct or pay for offsite road improvements that are required by DelDOT.**
- 9. DelDOT has issued and updated its Traffic Impact Study review letter for the project. That letter requires several offsite roadway improvements including, but not limited to, the construction of interim improvements to Kings Highway, the dedication of a substantial amount of additional right-of-way to DelDOT; equitable contributions to the US9, Kings Highway, Dartmouth Drive to Freeman Highway Project; and equitable contributions to the realignment of Old Orchard Road/Savannah Road/Westcoats Road Project.**
- 10. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.**
- 11. The proposed use is consistent with the County’s Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan,**

**M 350 22
Adopt
Ordinance
No. 2876/
CU2334
(continued)**

which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.

12. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.

13. This recommendation is subject to the following conditions:

A. There shall be no more than 267 units within the development.
B. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination. The developer shall also coordinate with the Lewes ByWays Committee on the design and landscaping within the ByWay corridor.

C. As proffered by the Applicant, the existing Mitchell family buildings shall be documented by an archeological study prior to their removal from the property.

D. All recreational amenities shall be completed within the development as follows:

i. The Community Center/Clubhouse, pool, and sports courts shall be completed on or before the 125th Building Permit;

ii. The dog park shall be completed on or before the 150th Building Permit.

E. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.

F. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.

G. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.

H. Interior street design shall comply with or exceed Sussex County standards.

I. Road naming and addressing shall be subject to the review

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and approval of the Sussex County Mapping and Addressing Department.

- J. The Applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.**
- K. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday and on Saturdays between October 1st and April 30th. No Saturday hours are permitted from May 1st through September 30th. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.**
- L. A 20-foot-wide forested buffer shall be installed along the perimeter of the development adjacent to Jefferson Apartments, Bay Breeze Estates, and The Moorings. This buffer area shall comply with the planning requirements for such a buffer as contained in Section 99-5 of the Sussex County Code.**
- M. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas.**
- N. The Applicant shall form a Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.**
- O. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.**
- P. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- Q. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.**
- R. The applicant is to provide independent specialized inspection services during construction of the infiltration facility and to either prefund or bond the 10-year operation & maintenance expense for the infiltration facility, as mutually determined by the Sussex Conservation District and the Sussex County**

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Engineering Department.

- S. The applicant is to provide an ephemeral wetland forebay sized to treat the separated rooftop runoff in the stormwater management design.**
- T. The applicant is to install two (2) 4-inch monitoring wells downstream of the infiltration facility prior to any land disturbing activity and have each well analyzed annually for the following classes of substances regulated under the National Primary Drinking Water Regulations for a period of five-years or final County Engineering Department acceptance whatever, date comes later:

 - A. Inorganic chemicals (§ 141.11)**
 - B. Organic chemicals (§ 141.12)**
 - C. Volatile organic contaminants (§ 141.61)****
- U. The applicant is to either grant perpetual access rights for the Lewes Board of Public Works or prefund a contract with a certified laboratory to annually analyze groundwater qualify for the following classes of substances regulated under the National Primary Drinking Water Regulations for an additional ten-years after final County Engineering Department acceptance:

 - A. Inorganic chemicals (§ 141.11)**
 - B. Organic chemicals (§ 141.12)**
 - C. Volatile organic contaminants (§ 141.61)****
- V. The applicant is to incorporate a first flush sand filtration component in the stormwater conveyance design for the imperious areas commercially utilized by vehicular traffic under a Sussex County Engineering Department permit.**

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 351 22
Kody’s Kids**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$1,000 (\$1,000 from Mr. Hudson’s Councilmanic Grant Account) to Kody’s Kids, Inc. for activity supplies.

Motion Adopted: 5 Yeas

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

Mr. Vincent, Yea

M 352 22
The
Nemours
Foundation

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 The Nemours Foundation for Vaccine and Medication Barcoding.

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

Mrs. Green 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 GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 0.296 ACRES, MORE OR LESS”

Mr. Schaeffer 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 LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.83 ACRES, MORE OR LESS”

Mr. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A 14.64 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 28.09 ACRES, MORE OR LESS”

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 BUSINESS PARK TO INCLUDE WAREHOUSES AND OFFICE BUILDINGS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 22.29 ACRES, MORE OR LESS”

The Proposed Ordinances will be advertised for Public Hearings.

Council Member Comments

Mr. Schaeffer commented that recently, the Georgetown Historical Society requested a Councilmanic Grant. Mr. Rieley granted \$2,000 from his account and the Council did vote unanimously for that grant. He commented that he recently learned that there is a Confederate flag displayed on the property which he believes is unacceptable, inappropriate and an expression of racism. Mr. Schaeffer stated that if the Historical

Council Member Comments (continue) Society is displaying that flag, he would like to ask for the donation back.
Mr. Moore explained that the item would need to be placed on an agenda for a future meeting if desired. In addition, a motion would need to be made to ask for the request as stated. Mr. Schaeffer commented that he would like to add it to a future agenda for discussion.

M 353 22 Go Into Executive Session At 11:04 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to recess the Regular Session, and go into Executive Session for the purpose of discussing matters relating to land acquisition, pending/potential litigation, and personnel.
Motion Adopted: 5 Yeas
Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

Executive Session At 11:09 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to land acquisition, pending/potential litigation, and personnel. The Executive Session concluded at 12:05 p.m.

M 354 22 Reconvene At 12:10 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to come out of Executive Session and back into Regular Session.
Motion Adopted: 5 Yeas
Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

E/S Action Mr. Moore shared that there was one item that he had a conflict on, so he was out of the room during that time. Therefore, Mr. Lawson will provide some proposed motions.

M 355 22 Parcel 2022-L A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to authorize the County Administrator to go into negotiations and purchase the property identified as 2022-L.
Motion Adopted: 5 Yeas
Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea

M 356 22 Parcels 2022-M & A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that the County Council agree to participate in round 26 of the Delaware Ag Land Preservation Program and authorize the County Administrator to allocate

2022-N funding to the State for two properties identified as 2022-M & 2022-N.

Motion Adopted: 4 Yeas, 1 Nay

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

**M 357 22 A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to recess
Recess until 1:30 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 358 22 At 1:32 p.m., a Motion was made by Mr. Hudson, seconded by Mr.
Reconvene Schaeffer to reconvene.**

Motion Adopted: 4 Yeas, 1 Absent

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

Mr. Moore read the procedure for public hearings on zoning matters.

**Public Hearing/
Ordinance 22-05,
CZ1949 &
CU2304** A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP ELEMENT OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 334-12.00-16.04” (property lying on the west side of John J. Williams Highway [Route 24], approximately 0.25 mile southwest of Mulberry Knoll Road [S.C.R. 284]) (911 Address: N/A) (Tax Parcel: 334-12.00-16.04)

The Planning and Zoning Commission held a Public Hearing on the application on June 23, 2022, and on July 14, 2022, the Commission recommended approval of the Ordinance for the four reasons stated.

Jamie Whitehouse, Planning and Zoning Director presented the application.

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62

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ACRES, MORE OR LESS” (property lying on the west side of John J. Williams Highway [Route 24], approximately 0.25 mile southwest of Mulberry Knoll Road [S.C.R. 284]) (911 Address: N/A) (Tax Parcel: 334-12.00-16.04)

The Planning and Zoning Commission held a Public Hearing on the application on June 23, 2022, and on July 14, 2022, the Commission recommended approval of the application for the seven reasons stated.

Jamie Whitehouse, Planning and Zoning Director presented the application.

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (84 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS” (property lying on the west side of John J. Williams Highway [Route 24], approximately 0.25 mile southwest of Mulberry Knoll Road [S.C.R. 284]) (911 Address: N/A) (Tax Parcel: 334-12.00-16.04)

The Planning and Zoning Commission held a Public Hearing on the application on June 23, 2022, and on July 14, 2022, the Commission recommended approval of the application for the ten reasons stated and subject to the sixteen recommendation conditions.

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Council found that Mr. David Hutt, Esq. spoke on behalf of the Application; that he is an attorney with Morris James; that he is representing the owner of the property and Applicant, J.G. Townsend Jr. & Co.; that also present were Mr. Paul Townsend, a shareholder in J.G. Townsend Jr. & Co., Mr. Doug Motley, a representative of the development group, Mr. Ring Lardner, Engineer with Davis, Bowen and Friedel, Mr. Edward Launay, Wetland Scientist with Environmental Resources, Inc. and Mr. Cliff Mumford, professional engineer with Davis, Bowen and Friedel; that the site is known as the “Howeth Property”; that this name was provided after J.G. Townsend Jr. & Co. purchased the land from the Howeth Family; that historically the Howeth Farm was much larger than it currently is; that not too long ago, it was more than 70 acres; that approximately a decade ago, J.G. Townsend Jr. & Co. were approached by various institutions and bodies which included the Cape Henlopen School District, the State of Delaware, and Sussex County; that these agencies were looking for a location along that particular section of Rt. 24 to place various facilities; that the result of those discussions was a minor subdivision plan; that Parcel A1 of the minor subdivision was conveyed to the Cape Henlopen School District in 2015; that it has now become the home of the Love Creek

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Elementary School; that Parcel B was purchased by the State of Delaware; that it is now the home of Troop 7 for the Delaware State Police; that the history is important as it answers many questions regarding the property; that located to the north is the Love Creek Elementary School; that located to the west is the Saddle Ridge Community; that Rt. 24 runs along the frontage of the property; that the Beacon Middle School is located across from Love Creek Elementary; that the property is located in close proximity to the Beebe Medical Campus, Seaglass Apartments, The Residence Inn Hotel, Hearts Landing Community, Love Creek Manufactured Home Community, The Residences at Rehoboth Bay Condominium and Marina, as well as the various commercial businesses located along Rt. 1; that on the 2020 Delaware State Strategies Map it shows almost the entire area as being within Investment Level 2; that there is a small area located on the property which is located within Investment Level 3; that the area located within Investment Level 3 is an isolated area of non-tidal wetlands; that within the 2045 Future Land Use Map within Sussex County's Comprehensive Plan shows many parcels within the Commercial Area along Rt. 24; that one of the requests is to change the Future Land Use Map designation for a portion of the property; that the Applicant's intention is to have the entire property located within the Coastal Area; that the Coastal Area is a designation which would allow uses other than only commercial uses; that Saddle Ridge, Love Creek Elementary School, Beacon Middle School and the site across from Beacon Middle School is shown as being in the Commercial Area on the Future Land Use Map; that there is a mixture of zoning classifications along that corridor of Rt. 24; that there is a mixture of C-1 (General Commercial), CR-1 (Commercial Residential), I-1 (Institutional), B-1 (Neighborhood Business) and MR (Medium-Density Residential); that the Change of Zone Application is seeking to change the zoning from AR-1 (Agricultural Residential) to MR (Medium-Density Residential) along this area; that there are three Applications being presented in relation to the same property; that the first request is to amend the Future Land Use Map creating one designation for the property; that the second request is for a Change of Zone from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that the third Application is a Conditional Use request to allow 84 townhomes; that correspondence was filed with the Planning and Zoning Department relating to an easement on the property; that a parcel owned by Mr. and Mrs. Lang has an easement; that the easement is 12 ½ foot wide easement that starts at Rt. 24 and runs in a straight line back to their property; that after being contacted by the Planning and Zoning Department and reading the correspondence, the applicant has reached out to the Lang's and looks forward to working that out with them.

The Council found that Mr. Ring Lardner spoke on behalf of the Application; that he is an engineer for Davis, Bowen and Friedel; that the site is located along John J. Williams Hwy., which is classified as a major collector road per the DelDOT Functional Classification Map; that the project is located within the Henlopen Transportation Improvement District (Henlopen TID); that the TID was a group effort between DelDOT

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and Sussex County; that the agreement was approved on October 30, 2020; that DelDOT noted the traffic for the proposed project was consistent with the TID; that the project was eligible to pay the TID fee, rather than performing a Traffic Impact Study (TIS); that a TID fee based on a per lot basis on January 31, 2021 was \$341,796.00; that the fee does increase annually on January 31st; that the fee is due at the time of building permit issuance; that the fee will continue to increase until the building permits are released; that the TID fees help fund the various project within the Transportation Improvement District to help improve the TID area; that the project is not located within the Well Head Protection Area or Excellent Recharge Area; that the project is located outside of the 100 Year Flood Plain; that there is a small pocket of wetlands located on the site; that the wetlands were delineated by Environmental Resources Inc.; that a wildlife habitat report was completed by Environmental Resources Inc.

The Council found that Mr. Edward Launay, with Environmental Resources Inc. did prepare a wetland delineation of the property; that there was an area of isolated non-tidal wetlands found on the property; that there are no state regulated wetlands in the vicinity of this project; that because the wetlands are isolated and in depression, they are not regulated by the Corp of Engineers; that there is no required buffer from those wetlands; that under the newly passed Buffer Ordinance, there will be a 30 foot buffer from wetlands that are regulated by the Corp. of Engineers and it not subject to a buffer from Sussex County and not subject to any regulations from the State of Delaware; that the applicant chose to buffer that wooded wetland with a minimum 50-ft buffer; that Mr. Launay's review does contain a consultation with the U.S. Fish and Wildlife Service; that there are no records of federally listed threatened or endangered species being located on site; that within DNREC's Fish and Wildlife comments from the PLUS review, it mentions three State rare species; that all three species are located within the Hetty Fisher Pond, which is located over 740-ft. from the site.

The Council found that Mr. Ring Lardner spoke on behalf of the Application; that the layout of the site first began at the intersection of John J. Williams Hwy. as it is the combined entrance for the Love Creek Elementary School, Troop 7 and the proposed project; that when the Love Creek Elementary School was approved, traffic for the proposed project was already preassigned for the intersection; that the intersection was designed for the proposed project traffic; that as part of the improvement and approval of Love Creek Elementary School the stub was connected to the parcel; that they did design a 20-ft. landscape buffer along the property border of Love Creek Elementary School, Belle Terre and Saddle Ridge Communities; that the communities for Belle Terre and Saddle Ridge also have buffers on their property; that this has created two sets of buffers adjacent to each other; that they established a 50-ft wetland buffer to the isolated wetlands on site; that no lots will be located back to back; that the stormwater pond is proposed to be centrally located on the site; that the proposed stormwater pond location will minimize grading changes to the

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site; that active amenities are proposed along the other side of Road A, to ensure amenities would not be located in the rear yard of the lots; that they attempted to minimize dead-end streets; that they did provide overflow parking areas throughout the site for guests; that the internal roads will meet and/or exceed the requirements of Sussex County Road Standards; that the roads will be privately maintained; that Sussex County Geographic Information Office (GIO) (F.K.A. Mapping and Addressing Department) has approved the subdivision name of “School Lane” as well as the road names; that proposed amenities include a pool house, pool, centralized mailbox and a sports field area; that there is an ability to provide the 12 ½ foot easement from the T turn around at the end of the property to still provide access to the site; that the project will be served by Tidewater Utilities, Inc. for water services; that Sussex County will provide sanitary sewer services; that they have received willing and able to Serve letters from Tidewater Utilities, Inc., Chesapeake Utilities, Delaware Electric Coop, and a Sewer Service Concept Evaluation from Sussex County Engineering; that the project was reviewed by PLUS on December 16, 2020; that the PLUS comments and the Applicant’s written response can be found in the submitted Exhibit Booklet; that the comments provided were general in nature; that the Applicant will comply with all regulatory requirements; that his office prepared an Environmental Assessment and Public Facilities Evaluation Report and the project complies with the Comprehensive Plan.

The Council found that Mr. David Hutt, Esq. spoke on behalf of the Application; that Investment Level 2 areas are described as an area where the State anticipates growth for an area in the near future; that the Office of State Planning Coordination stated in the their comments “in Investment Level 2 areas, like Investment Level 1 areas, State investments and polices should support and encourage a wide range of uses and densities” and “Investments should encourage departure from the typical single-family dwelling development and promote a broader mix of housing types and commercial sites encouraging compact mixed-use development where applicable”, which ensures that the State encourages a departure from typical single-family homes, offering a broader mix of housing options; that Section 8.2 of the Comprehensive Plan states “while the County allows for multi-family (duplexes, townhouses and apartments etc.) the primary housing type is detached single-family (stick-built, modular and manufactured homes)”; that in 2016, Sussex County issued 1,778 building permits; that of those building permits, 1,615 building permits were for single-family homes, equaling to 90.8%; that in 2017, 2,068 building permits issued; that 1,961 building permits, or 94.8%, were for single-family homes; that in 2018, 1,057 building permits were issued before the cut off for the Comprehensive Plan; that of those building permits, 992 building permits, or 93.8%, were issued for single-family homes; that within Chapter 8 of the Comprehensive Plan, it stated the County should consider the ability to establish other housing types or reduce the need for a Conditional Use for multi-family development; that the proposed Application does help address the mentioned needs; that within Chapter 4 of the Comprehensive Plan, the Coastal Area is described as one of the fastest growing areas within Sussex

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County; that the Comprehensive Plan does recognize the environmental concerns which may arise in the Coastal Area; that there is a buffer provided to the isolated wetlands, which proposed some environmental concerns; that the proposed buffer to the wetlands exceeds Sussex County's recently adopted Buffer Ordinance requirements; that within the County Code, it states permitted uses and densities within each of the Growth Areas; that within the permitted use section for the Coastal Area, the Comprehensive Plan states that a range of housing types should be permitted, including single-family homes, townhouses and multi-family units; that the next Section it states that medium and higher densities (4 to 12 units per acre) can be appropriate in certain locations and medium and higher densities could be supported in areas where there is central water and sewer, near sufficient commercial uses and employment centers, where it is in keeping with the character for the area, where it is along a main road, being located at or near a major intersection, where there is adequate level of service, or where other considerations exist that are relevant to the requested project and density; that the density for the proposed project is 3.9 units to the acre; that the medium and higher density requirements are all met by the proposed project; that Tidewater Utilities will provide water services; that central sewer is available through Sussex County; that the property is located in an area where there are commercial uses and employment centers; that the project is located along Rt. 24, which is a major collector road; that the project is located at a signalized intersection on Rt. 24; that although some adjacent properties are listed as AR-1 (Agriculture Residential), the Love Creek Elementary School is not an agricultural use; that the Love Creek Elementary School is over 89,000 sq. ft., which was granted by a Conditional Use approval; that located across the street is Beacon Middle School, being over 77,000 sq. ft.; that the County recently considered an application for the V&M site, which received approval for a 5,000 sq. ft. convenience store and fueling stations; that a 12,000 sq. ft. office building will also be located on the V&M property; that there were multiple other Conditional Use approvals mentioned within the submitted material; that the requested zoning classification for the property is MR (Medium-Density Residential), as it is an appropriate zoning district for the proposed use; that townhomes is a Conditional Use within the MR (Medium-Density Residential) Zoning District; that Conditional Uses are generally of a public or semi-public character and our essential for the general convenience and welfare of the County; that Conditional Uses to require some Planning judgement; that the purpose of the MR Zoning District is to provide for medium density residential development in areas; that the Future Land Use Map for the property shows the commercial designation; that by allowing the area to be rezoned the area would avoid concentrations of retail and service uses, as well as hotels, motels, carwashes, auto dealerships, as well as other medium and large scale uses not primarily targeted to immediately adjacent residents and areas; that a reference was made that it would devalue the future residential uses being so close to a school; that a letter was provided from Harold Carmine, a certified appraiser; that Mr. Carmine's letter stated that it has been his experience that proximity to a school does not negatively impact property

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values, in fact, proximity to schools with a good educational reputation such as the Cape Henlopen School District is a positive factor for purchasing a home; that a copy of the letter was provided to Mr. Moore; that traffic was a main theme within the comments made in opposition; that the use of the entryway was always anticipated; that there was a Service Level Evaluation Request sent to DelDOT as part of the Application; that within DelDOT's response indicated that the traffic impact for the project would be minor; that in having a minor impact the project became eligible to participate in the Area Wide Study Fee Program; that however, the property is located within the Henlopen Transportation Improvement District (TID); that due to this the Area Wide Study Fee does not apply; that the fee per unit does apply; that another concern mentioned in opposition was the appropriateness of multi-family units being located adjacent to a school; that the concern is in contrary to many schools which currently exist in Sussex County; that Cape Henlopen High School, HOB Brittingham Elementary School, Mariner Middle School, East Millsboro Elementary School, Rehoboth Elementary School are all located immediately adjacent to or nearby multi-family residential communities; that the project as proposed is consistent with Chapters 4 & 8 of the County's Comprehensive Plan which indicates the proposed area is appropriate for the proposed zoning and for the proposed Conditional Use for townhomes; that the Applicant requests approval to amend the Future Land Use Map, allowing the property to be located completely within the Coastal Area, changing the County's Zoning Map from AR-1 to MR Zoning and an approval for the Conditional Use permitted 84 townhomes.

Public comments were heard.

Ms. Judy Rose Siebert came to speak in opposition of the applications. Ms. Siebert distributed a petition consisting of 119 signatures. She expressed her concerns about the trees and forest in the area. She also discussed the monarch butterfly habitat that is located in the area. She asked the Council to create a win-win solution that will allow the development of the crop land portion of the parcel, while following Chapter 4 guidelines of the Comprehensive Plan for conservation and the DNREC guidelines given in the PLUS review to preserve the forest. She added that this is the request of the 119 people that signed the petition distributed. Ms. Siebert has also discussed the easement located on the property with Mr. and Mrs. Lang. Ms. Sibert stated that she believes that the project is not in compliance with Chapter 5 of the Comprehensive Plan. Ms. Siebert shared pictures of mature trees located in the area.

Ms. Siebert shared that a master Arborist, Jeremy Hager, provided some guidelines relating to tree roots. Ms. Siebert shared a copy of his guidelines and recommendations.

Ms. Siebert asked for minimization of impact on natural resources as set forth in the Comprehensive Plan Chapter 5.

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Ms. Siebert reviewed the submitted petition and the requests of those that signed the petition. In addition, she requested that stormwater management pond edges be planted with native species to include milkweed species to provide habitat for federally endangered monarch butterflies.

Mrs. Nancy Lang, owner of the 6.7-acre property adjoining the northwest side of the proposed School Lane development, spoke about the applications. Her property includes a twelve-and-a-half-foot right-of-way easement. The easement runs across the middle of the School Lane development, from Route 24 to her property. Her easement would be breached by this development.

Mrs. Lang stated that the Cape Gazette published a picture of the proposed School Lane development on its front page on July 5th. That article altered her and her husband that a developer was intending to build townhomes over their entire right-of-way easement. At that time, the developer had not initiated contact about their easement, or proposed mitigation for a breach of their easement.

In response to the Cape Gazette article, her and her husband gathered and copied relevant documents, and wrote a letter with their concerns to the Sussex County Planning and Zoning commission. Her and her husband even visited the Sussex County Administration Building on July 11th, to ensure that the Planning and Zoning office was aware of the situation. The current plans for the School Lane development would violate her right-of-way easement.

As a result, and to avoid a breach of her easement, her and her husband request a hold on the School Lane development until plans can be made to address and resolve any breach of their easement.

Mr. Thomas Negrán expressed concerns about the traffic at the entrance with the additional load of the proposed townhomes. He requested that the County consider all of the impacts included in this proposal.

Ms. Pat Hutchinson stated that she agrees with maintain the forestry as much as possible. She expressed concerns about transportation issues for the nearby school. She encouraged more information to be done about the impact that will occur on the school. She expressed concerns if the design will be completed as it has been discussed and if the units will be owner occupied.

Ms. Melanie Bernstein spoke about the animals in the area that will lose their habitat. She also discussed the preserving the existing forest.

The Public Hearing was closed.

Mr. Schaeffer stated that he questioned the engineer if there was an opportunity to utilize a different zoning designation to redesign the

subdivision and give the applicant the same business opportunity but preserve the forest land. Mr. Moore recommended to defer action; there is an application that the applicant has submitted for action that needs to be honored. If the applicant decides while action is deferred that they have a different design that they can come forward with, at that point, they can file with Planning and Zoning for a different zoning application. At that point, the application presented today would be withdrawn. If a new zoning designation is not needed, some of the conditions could be changed considering buffering.

**M 359 22
Defer
Action/
Ordinance
22-05,
CZ1949 &
CU2304**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP ELEMENT OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 334-12.00-16.04" for the reasons given by Planning and Zoning numbered 1-4, Change of Zone No. 1949 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS" for the reasons given by Planning and Zoning numbered 1-7 and Conditional Use No. 2304 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (84 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS" for the reasons given by Planning and Zoning numbered 1-10 with conditions numbered 11 A-P and the record to remain open just to give the applicant the opportunity to discuss with the engineer whether or not they would like a new proposal for the design that will preserve the forested area and then the record would be closed after that.

Motion Adopted: 5 Yeas

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

**M 360 22
Adjourn**

A Motion was made by Mr. Schaffer, seconded by Mr. Hudson to adjourn at 3:34 p.m.

Motion Adopted: 5 Yeas

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

Respectfully submitted,

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

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

ENGINEERING DEPARTMENT

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

Proposed Hete (Postal Lane) Expansion of the Sussex County Unified Sanitary Sewer District

PUBLIC HEARING FACT SHEET

- County Council approved permission to prepare and post notices for the public hearing on June 21st, 2022, for an expansion of the Sussex County Unified Sanitary Sewer District (West Rehoboth Area)
- The Engineering Department had received a request from Mathew Hete/ Lands of Hete4, LLC the owner/developer of the property.
- The request is for parcel 334-6.00-686.00 on Postal Lane.
- The project consists of (4) Single Family homes on a single parcel. As they are single family homes, they will require an 8" sewer connection in Postal Lane.
- The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates.
- The area was posted on July 12th, advertised on the county webpage and advertised the weeks of July 20 & July 27.
- We have received no contact in support or opposition to this project at this time.



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

SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT
LANDS OF HETE 4, LLC
AFFIDAVIT FOR PUBLIC HEARING

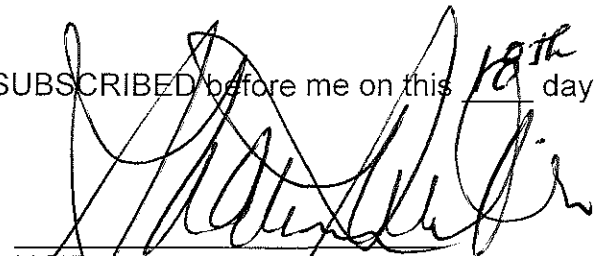
STATE OF DELAWARE)
 :
COUNTY OF SUSSEX)

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 July 12, 2022 he was a Utility Planning Technician for the Sussex County Engineering Department, Sussex County, State of Delaware; and
- B. On July 12, 2022 he did post the attached "Public Notice," prepared by the Sussex County Engineering Department, at the following locations:
 - 1. On a post in the southerly Right-of-Way (ROW) of Postal Lane, 95'± northeast of Maple Dr.,
 - 2. On a post in the southerly ROW of Postal Lane, 178'± northeast of Maple Drive,
 - 3. On a post in the southerly ROW of Postal Lane, 261'± northeast of Maple Drive,
 - 4. On a post in the southerly ROW of Postal Lane, 344'± northeast of Maple Drive,
 - 5. On a post in front of a stop sign at the intersection of Maple Drive and Postal Lane,
 - 6. On a post in front of a stop sign at the intersection of Linden Lane and Postal Lane,
 - 7. On a post in front of a stop sign at the intersection of Craig Blvd. and Plantation Road,
 - 8. On a post in front of a stop sign at the intersection of Cedar Drive and Plantation Road.


PHILLIP C. CALIO

SWORN TO AND SUBSCRIBED before me on this 12th day of July A.D., 2022


NOTARY PUBLIC

My Commission Expires 6/14/2024



PUBLIC NOTICE

EXPANSION OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT
LANDS OF HETE4, LLC EXPANSION – WEST REHOBOTH AREA
FILE NUMBER: OM 9.13-BD

NOTICE IS HEREBY GIVEN that the Sussex County Council voted on **June 21, 2022**, to consider expanding the boundary of the West Rehoboth Area of the Sussex County Unified Sanitary Sewer District (SCUSSD) to include a property situated on the southeast side of Postal Lane (SCR 283), parcel 334-6.00-686.00. The parcel is located in the Lewes and Rehoboth Hundred, Sussex County, Delaware and recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware.

BEGINNING at a point, said point being on the Sussex County Unified Sanitary Sewer District (SCUSSD) boundary, said point also being on the southwesterly Right-of-Way (ROW) of Postal Lane (SCR 283); said point further being the northwesternmost property corner of lands Now-or-Formerly (N/F) of Matthew C. Hete and Mindy H. Hete; thence proceeding with the following six (6) bearings and distances (1) N59°58'19"E 100.19', (2) N59°54'25"E 150.00', (3) S30°02'26"E 217.80', (4) S59°57'34"W 150.00', (5) S59°58'05"W 99.76', (6) N30°09'22"W 217.67' to a point, said point being that of the **BEGINNING**.

The proposed expansion of the SCUSSD is within these boundaries and said to contain 1.249 acres more or less. The boundary description has been prepared using Sussex County tax map numbers 334-6.00.

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

The public hearing will be held on this issue at **10:15 am on August 9, 2022**, in the Sussex County Council Chambers. 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

RESOLUTION

A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) WEST REHOBOTH AREA, TO INCLUDE LANDS OF HETE 4, LLC ALONG THE SOUTH SIDE OF POSTAL LANE LOCATED IN THE LEWES AND REHOBOTH 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 Rehoboth Beach, 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 in the Rehoboth Beach area and further 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 southwesterly Right-of-Way (ROW) of Postal Lane (SCR 283); said point further being the northwesternmost property corner of lands Now-or-Formerly (N/F) of Matthew C. Hete and Mindy H. Hete; thence proceeding with the following six (6) bearings and distances (1) N59°58'19"E 100.19', (2) N59°54'25"E 150.00', (3) S30°02'26"E 217.80', (4) S59°57'34"W 150.00', (5) S59°58'05"W 99.76', (6) N30°09'22"W 217.67' to a point, said point being that of the **BEGINNING**.

NOTE: The above description has been prepared using Sussex County Tax Map 334-6.00 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.

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
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Sussex County

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HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Mayapple Farm Expansion of the Sussex County Unified Sanitary Sewer District

PERMISSION TO POST FACT SHEET

- County Council approved permission to prepare and post notices for the public hearing on June 28th, 2022, for an expansion of the Sussex County Unified Sanitary Sewer District (Bay View Estates Area)
- The Engineering Department had received a request from GMB, LLC on behalf of their client Mayapple Farm, LLC the owners/developers of a project to be known as Mayapple Farm.
- The request includes parcel 533-19.00-289.05.
- The project is proposed at 41 single family homes under a condo regime on 20.91 acres.
- The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates.
- The area was posted on July 12th and advertised on the county webpage.
- We have received a request from an adjacent property owner to include (2) of their parcels into the sewer district as well. This would add parcels 289.02 & 289.03 The engineering department would support their request.



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

PROPOSED MAYAPPLE FARM EXPANSION
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 July 12, 2022 he was a Utility Planning Technician for the Sussex County Engineering Department, Sussex County, State of Delaware; and
- B. On July 12, 2022 he did post the attached "Public Notice," prepared by the Sussex County Engineering Department, at the following locations:
 - 1. On a post in front of DEC Pole 27324 in the westerly ROW of Williamsville Road (CR 395),
 - 2. On a post in front of Dec Pole 27322 in the westerly ROW of Williamsville Road (CR 395),
 - 3. On a post in front of DEC Pole 27182 in the westerly ROW of Williamsville Road (CR 395),
 - 4. On a post in front of DEC Pole 27184 in the westerly ROW of Williamsville Road (CR 395),
 - 5. On a post in the easterly ROW of Williamsville Road (CR 395), across from the entrance to Bay View Estates,
 - 6. On a post in front of a stop sign at the intersection of Bay View Blvd. and Williamsville Road,
 - 7. On a post in front of a stop sign at the intersection of Candleberry Dr. and Williamsville Road,
 - 8. On a post in front of a stop sign in the easterly ROW of Williamsville Road (CR 395) at the intersection with Lighthouse Road (SR 54).


PHILLIP C. CALIO

SWORN TO AND SUBSCRIBED before me on this 18th day of July
A.D., 2022


NOTARY PUBLIC

My Commission Expires 6/14/2024



PUBLIC NOTICE

EXPANSION OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT
MAYAPPLE FARM EXPANSION – BAY VIEW ESTATES AREA
FILE NUMBER: BVSCE-9.08

NOTICE IS HEREBY GIVEN that the Sussex County Council voted on **June 28, 2022**, to consider expanding the boundary of the Bay View Estates Area of the Sussex County Unified Sanitary Sewer District (SCUSSD) to include a the proposed Mayapple Farm subdivision and 4 additional properties located on the westerly side of Williamsville Road (SCR 395). The parcels are located in the Baltimore Hundred, Sussex County, Delaware and recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware.

BEGINNING at a point, said point being the southeasternmost property corner of lands Now-or-Formerly of David R. Kohout, said point also being on the SCUSSD boundary, said point further being on the westerly Right-of-Way (ROW) of Williamsville Road; thence proceeding by and with said ROW in a southeasterly direction a total distance of 1,158'± to a point, said point being the northeasterly property corner of lands N/F of Christopher G. Megee and Wendy R. Megee, said point also being the southeasternmost property corner of lands N/F of Mayapple Farm LLC; thence leaving said ROW and proceeding by and with said Mayapple lands in a southeasterly direction a distance of 343'± to a point, said point being on the Delaware-Maryland boundary line; thence continuing with said Mayapple lands in a westerly direction a distance of 853'± to a point, said point being the southeasternmost property corner of Bay View Estates (DE), said point also being on the SCUSSD boundary; thence continuing with said Mayapple lands and SCUSSD boundary in a northwesterly, northerly, northeasterly and southeasterly direction a total distance of 1,669'± to a point, said point being the southwesternmost property corner of lands N/F of David R. Kohout; thence leaving said Mayapple lands and continuing with said SCUSSD boundary in an easterly direction a distance of 177'± to a point, said point being that of the **BEGINNING**.

The proposed expansion of the SCUSSD is within these boundaries and said to contain 25.0 acres more or less. The boundary description has been prepared using Sussex County tax map numbers 533-19.00.

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

The public hearing will be held on this issue at **10:15 am on August 9, 2022** in the Sussex County Council Chambers. 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.

Hans M. Medlarz, P.E.
County Engineer

Proposed Annexation Mayapple Farm

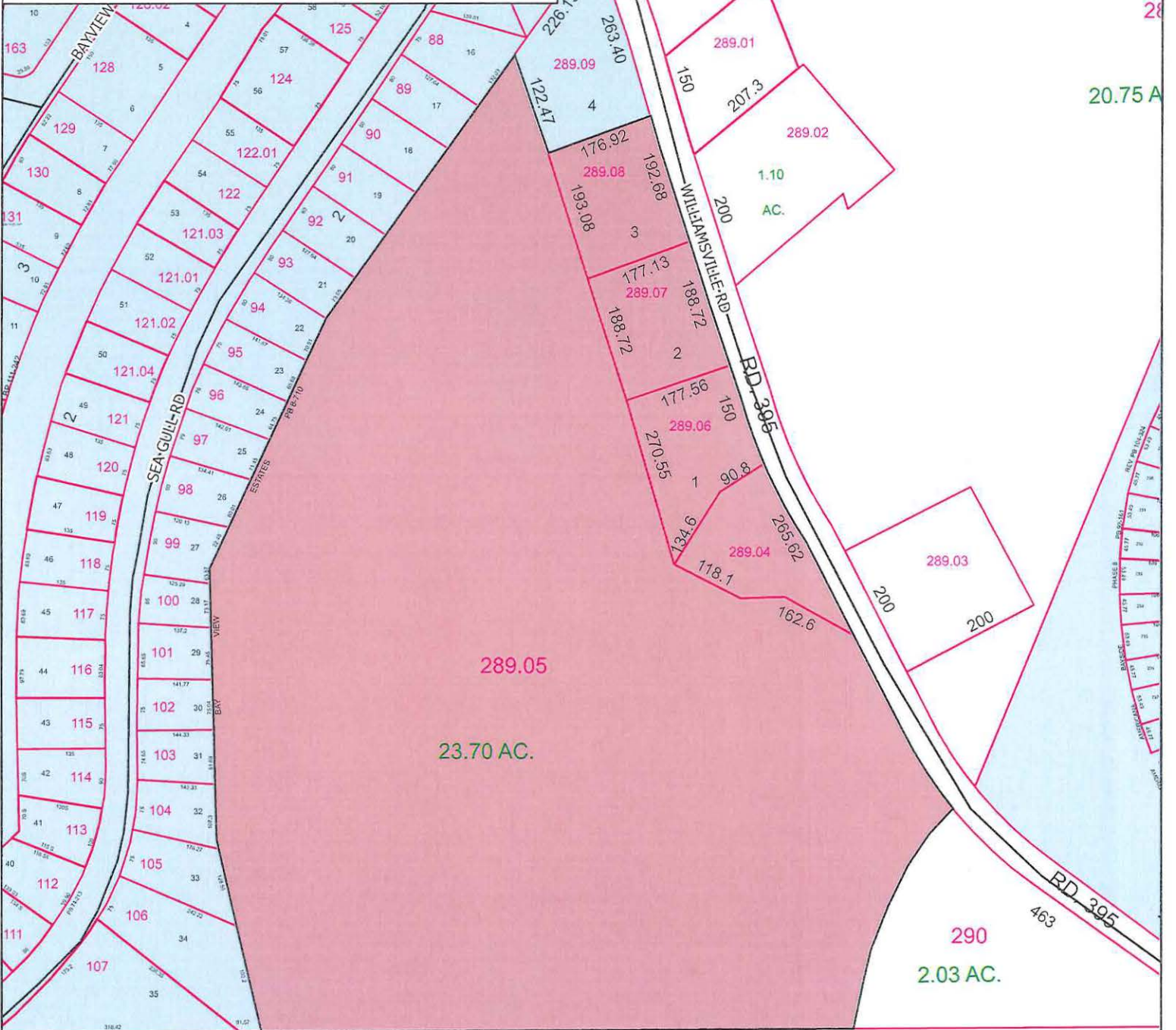
Existing SSD Parcels of Interest



0 70 140 280
Feet



7/7/2022



The proposed annexation is scheduled to be discussed August 9, 2022 at 10:15 AM
at the regularly scheduled Sussex County Council meeting.
For more information please visit: <https://www.sussexcountyde.gov/legal-notice/notice-sewer-water>
Or call Sussex County Utility Planning at 302-855-7370

RESOLUTION

A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) BAY VIEW ESTATES AREA, TO INCLUDE THE MAYAPPLE SUBDIVISION AND 4 PARCELS LOCATED IN THE 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 Mayapple subdivision, 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 in the Mayapple Farm property and 4 properties and further described as follows:

BEGINNING at a point, said point being the southeasternmost property corner of lands Now-or-Formerly of David R. Kohout, said point also being on the SCUSSD boundary, said point further being on the westerly Right-of-Way (ROW) of Williamsville Road; thence proceeding by and with said ROW in a southeasterly direction a total distance of 1,158'± to a point, said point being the northeasterly property corner of lands N/F of Christopher G. Megee and Wendy R. Megee, said point also being the southeasternmost property corner of lands N/F of Mayapple Farm LLC; thence leaving said ROW and proceeding by and with said Mayapple lands in a southeasterly direction a distance of 343'± to a point, said point being on the Delaware-Maryland boundary line; thence continuing with said Mayapple lands in a westerly direction a distance of 853'± to a point, said point being the southeasternmost property corner of Bay View Estates (DE), said point also being on the SCUSSD boundary; thence continuing with said Mayapple lands and SCUSSD boundary in a northwesterly, northerly, northeasterly and southeasterly direction a total distance of 1,669'± to a point, said point being the southwesternmost property corner of lands N/F of David R. Kohout; thence leaving said Mayapple lands and continuing with said SCUSSD boundary in an easterly direction a distance of 177'± to a point, said point being that of the **BEGINNING**.

NOTE: The above description has been prepared using Sussex County Tax Map 533-19.00 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.

RESOLUTION

A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) BAY VIEW ESTATES AREA, TO INCLUDE THE MAYAPPLE SUBDIVISION AND 6 PARCELS LOCATED IN THE 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 Mayapple subdivision, 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 in the Mayapple Farm property 6 additional properties and further described as follows:

BEGINNING at a point, said point being the southeasternmost property corner of lands Now-or-Formerly (N/F) of David R. Kohout, said point also being on the SCUSSD boundary, said point further being on the westerly Right-of-Way (ROW) of Williamsville Road; thence proceeding by and with said ROW in a southeasterly direction a total distance 75'± to a point, said point being on the easterly property line of lands N/F of Margaret B. Swanson TTEE REV TR & Sanden E. Swanson TTEE REV TR; thence leaving said Swanson lands and said ROW and proceeding in an easterly direction a distance of 50'± to a point, said point being on the easterly ROW of Williamsville Road, said point also being the northwesterly property corner of lands N/F Robert E. Dickerson TTEE & Jacqueline R. Dickerson TTEE of RED and JRD REV TR; thence proceeding by and with said Dickerson lands in a northeasterly, southeasterly, southwesterly, northwesterly and southwesterly direction respectively a total distance of 748'± to a point, said point being on the easterly ROW of Williamsville Road; thence leaving said ROW and crossing said Williamsville Road in a westerly direction a distance of 50'± to a point, said point being on the westerly ROW of Williamsville Road; thence proceeding by and with said ROW in a southeasterly direction a distance of 434'± to a point, said point being on the easterly property line of lands N/F of Carol A. Camelio; thence leaving said ROW on crossing Williamsville Road in an easterly direction a distance of 50'± to a point, said point being on the easterly ROW of Williamsville Road, said point also being the northwestern most property corner of lands N/F of Robert E. Dickerson, Trustee; thence leaving said ROW and proceeding by and with said other lands of Dickerson northeasterly, southeasterly and southwesterly direction respectively a total distance of 626'± to a point, said point being on the easterly ROW of Williamsville Road; thence crossing Williamsville Road in a westerly direction a distance of 50'± to a point, said point being on the westerly ROW of Williamsville Road, said point also being on the easterly property line of lands N/F of Mayapple Farm LLC; thence proceeding by and with said ROW in a southeasterly direction a distance of 225'± to a point, said point being the northeasterly property corner of lands N/F of Christopher G. Megee and Wendy R. Megee, said point also being the southeasternmost property corner of lands

N/F of Mayapple Farm LLC; thence leaving said ROW and proceeding by and with said Mayapple lands in a southeasterly direction a distance of 343'± to a point, said point being on the Delaware-Maryland boundary line; thence continuing with said Mayapple lands in a westerly direction a distance of 853'± to a point, said point being the southeasternmost property corner of Bay View Estates (DE), said point also being on the SCUSSD boundary; thence continuing with said Mayapple lands and SCUSSD boundary in a northwesterly, northerly, northeasterly and southeasterly direction a total distance of 1,669'± to a point, said point being the southwesternmost property corner of lands N/F of David R. Kohout; thence leaving said Mayapple lands and continuing with said SCUSSD boundary in an easterly direction a distance of 177'± to a point, said point being that of the **BEGINNING**.

NOTE: The above description has been prepared using Sussex County Tax Map 533-19.00 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.

Proposed Annexation
Mayapple Farm Alternate Map

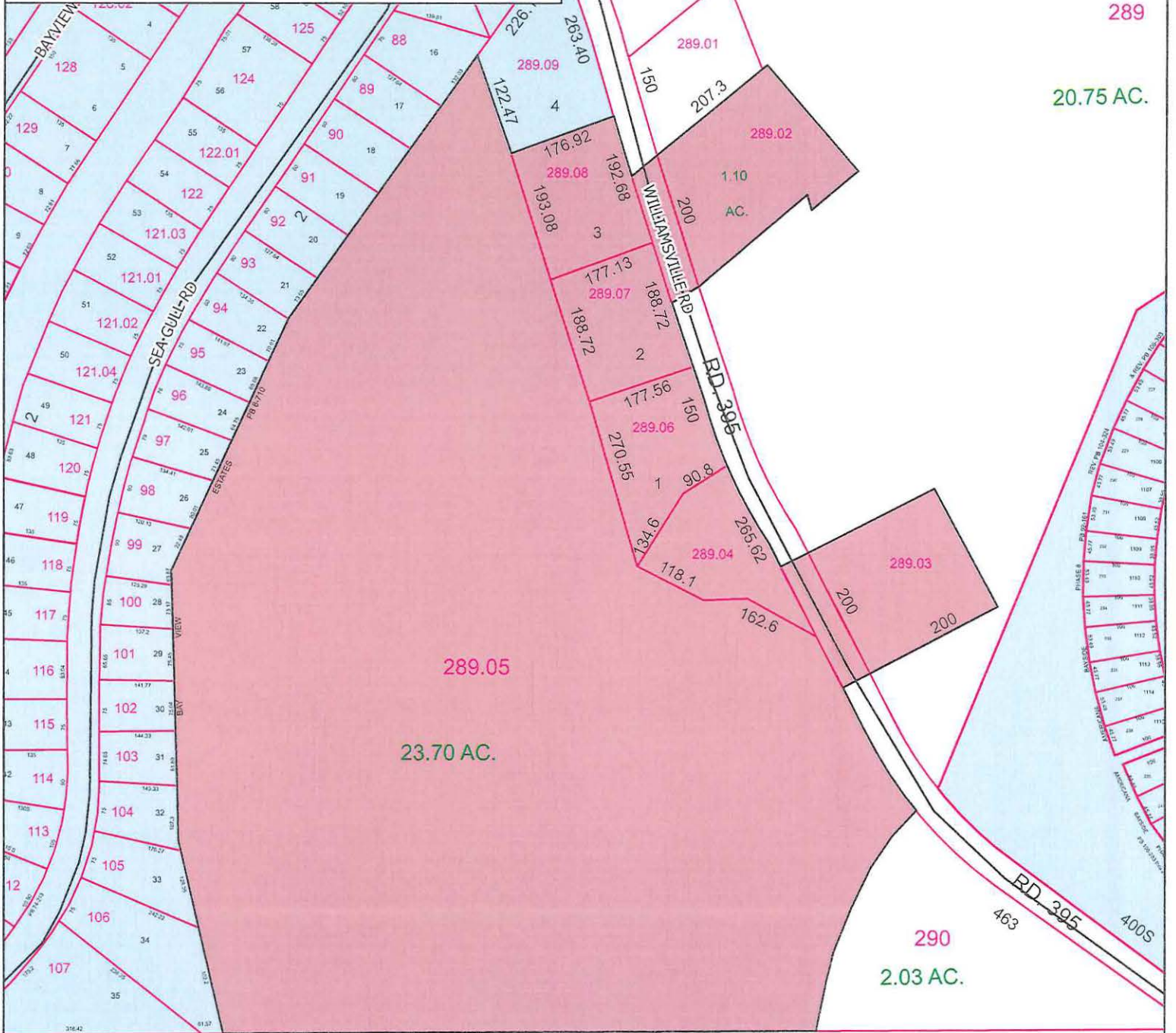
Existing SSD Parcels of Interest



0 70 140 280
Feet



7/14/2022



The proposed annexation is scheduled to be discussed August 9, 2022 at 10:15 AM
at the regularly scheduled Sussex County Council meeting.
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@sussexcountycle.gov



Sussex County
DELAWARE
sussexcountycle.gov

Memorandum

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

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

DATE: August 9, 2022

RE: *Herring Creek Area of the Unified Sanitary Sewer District,
Approval of Supplemental USDA Loan Resolution &
Introduction of an Associated Debt Ordinance*

On July 9, 2016, eligible voters within the proposed Herring Creek Sewer Area approved the sewer district expansion and on August 2, 2016, County Council officially created said expansion. On November 1, 2016, County Council approved WRA Associates, Inc.'s professional services Amendment No. 8 for Aerial Mapping & Environmental Assessment. That day County Council further directed the County Engineer to procure rights-of-way and prepare plans and specifications. Since then, the Engineering Department identified easement acquisitions, approached owners, ordered appraisals and secured many key easements, but not all.

On March 20, 2017, the Finance Department filed an overall funding application for approximately \$20,500,000 with USDA/Rural Development, Rural Utility Service. Due to the size of the project USDA approached the County with a phasing plan. Phase 1 encompasses the pump stations and pressure mains in conjunction with the necessary the right-of-way acquisitions. Phase 2 provides the sewer collection system for all subdivisions off Sloan Road while Phase 3 provides the collection system for all minor and major subdivisions off Banks Road.

On June 21, 2017, the County accepted the letter of conditions and the obligating document associated with the Phase 1 in the amount of \$4,287,000 of loan and \$990,000 of grant funding. On January 30, 2018, Council approved the USDA Loan Resolution for Phase 1 and introduced the associated ordinance which was heard and approved by Council on March 13, 2018.



On June 8, 2018, the County accepted the letter of conditions and the obligating document associated with the Phase 2 in the amount of \$5,600,000 of loan and \$1,899,000 of grant funding. On June 19, 2018, Council approved the USDA Loan Resolution for Phase 2 and introduced the associated ordinance which was heard and approved by Council on July 17, 2018.

On August 2, 2018, the County accepted the letter of conditions and the obligating document associated with the Phase 3 in the amount of \$5,601,000 of loan and \$1,900,000 of grant funding.

On September 18, 2018, Council approved the USDA Loan Resolution for Phase 3 and introduction of the associated ordinance authorizing the issuance of up to \$5,601,000 of general obligation bonds of Sussex County in connection with the construction and equipping of Phase 3 of the Herring Creek Area Expansion of the Unified Sanitary Sewer District. The associated ordinance was heard and approved by Council on October 9, 2018.

After the bid and award of the last construction contract, the Finance and Engineering updated all costs and subsequently requested \$1,900,000 or 9.27% in supplemental funding. USDA issued and the County concurred to the Letter of Conditions and on June 30, 2022. The Finance and Engineering Departments now recommend Council's approval of the supplemental USDA Loan Resolution and introduction of the associated ordinance authorizing the issuance of up to \$1,900,000 of general obligation bonds of Sussex County at a rate of 1.5% in connection with the construction and equipping of the Herring Creek Area Expansion of the Unified Sanitary Sewer District.

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.

- 11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
- 12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
- 13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
- 14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities and replacement of short lived assets.
- 15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
- 16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
- 17. To accept a grant in an amount not to exceed \$ _____

under the terms offered by the Government; that the _____

and _____ of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

The vote was: Yeas _____ Nays _____ Absent _____

IN WITNESS WHEREOF, the _____ of the

_____ has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this _____, _____ day of _____

(SEAL) By _____

Attest: Title _____

Title _____

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 _____

ORDINANCE NO. ____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$1,900,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE CONSTRUCTION AND EQUIPPING OF AN EXTENSION OF SANITARY SEWER SERVICES TO HERRING CREEK AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH

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

WHEREAS, acting pursuant to its Home Rule Power, and pursuant to Title 9, Delaware Code, Chapters 65 and 67, the County has authorized the design, construction and equipping of an extension of sanitary sewer services to Herring Creek (the "Project");

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

WHEREAS, acting pursuant to the aforesaid authority, the County desires to authorize the issuance of general obligations of the County to finance the costs of the Project and for the other purposes described herein.

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

Section 1. Amount and Purpose of the Bonds. Acting pursuant to Title 9, Delaware Code, Chapters 65 and 67, Sussex County shall issue its negotiable general obligations in the maximum aggregate principal amount not to exceed \$1,900,000 (the "Bonds") to finance or reimburse the County for a portion of the cost of the design, construction and equipping of the Project.

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

Section 2. Security for the Bonds. The principal, interest and premium, if any, on the Bonds may be paid by ad valorem taxes on all real property subject to taxation by the

County without limitation as to rate or amount, except as limited by Title 9, Delaware Code Section 8002 (c). Pursuant to Title 9, Delaware Code, Section 6706, the full faith and credit of the County is pledged to such payment. The Bonds shall contain a recital that they are issued pursuant to Title 9, Delaware Code, Chapter 67, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. While the Bonds are backed by the County's full faith and credit, it is expected that the debt service will be paid from revenues of the Herring Creek extension.

Section 3. Terms of the Bonds. The Bonds shall be sold at such prices and upon such other terms and conditions consistent with the provisions of this Ordinance and otherwise as the County Administrator shall determine to be in the best interests of the County. The Bonds shall bear interest at such rate or rates and shall mature in such amounts and at such times, but not exceeding 40 years from the date of issue of the Bonds, and shall be subject to redemption, as the County Administrator shall determine.

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

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

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

Section 7. Further Action. The President of the County Council, the County Administrator, the Finance Director and the County Clerk are authorized and directed to take such other action on behalf of the County, as may be necessary or desirable to effect the adoption of this Ordinance and the issuance and sale of the Bonds and to provide for their security and to carry out the intent of this Ordinance, including the publication of notices and advertisements and the execution and delivery of customary closing certificates.

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

SYNOPSIS: This Ordinance provides for the issuance of up to \$1,900,000 of Sussex County General Obligation Bonds in order to finance or reimburse the County for a portion of the costs for the design, construction and equipping of an extension of sanitary sewer services to Herring Creek (the "Project").

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. ____ ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE _____ DAY OF _____, 2022.

Tracy Torbert
Clerk of the Sussex County Council

(Herring Creek Ordinance)

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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

hans.medlarz@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

RE: ***Mulberry Knoll Pump Station & Force Main, Project S20-14
Change Order No. 2 - Substantial Completion & Final Balancing***

DATE: August 9, 2022

Council adopted Resolution R 011 17 on June 6, 2017, expanding the Unified Sanitary Sewer District to include the Mulberry Knoll Area. On August 13, 2019, Council conducted a public hearing for an offer of Project funding through the Clean Water State Revolving Fund. Ordinance No. 2672 was adopted, providing issuance of a General Obligation Bond up to \$3,135,379 to finance design, construction and equipping of the Project, with an expectation of principal forgiveness up to \$1,941,000 to reduce the principal amount to \$1,194,379 upon Project completion.

On October 22, 2019, Council authorized Amendment No. 2 of the KCI Technologies Base Agreement for design and bidding phase services associated with the Mulberry Knoll Sewer Expansion Project. Design efforts progressed and based on Department direction, KCI separated the Project into two (2) distinct contracts to focus construction disciplines and improve Project timing and bidding: Project S20-14 would construct a pump station and force main for sewer conveyance, and Project S20-22 the gravity and low-pressure systems for sewer collection.

Contract Documents for Project S20-14, Mulberry Knoll Pump Station & Force Main were assembled and advertised on September 25, 2020. Seven (7) bids were received on October 28, 2020. The Department reviewed the bids received along with KCI's evaluation of the apparent lowest three bids. Project financing was evaluated against the pump station bids in combination with estimates for the sewer collection contract. The Department believed bid results indicated strong competition for the S20-14 contract, however the construction market and pricing reflected a need for additional funds to maintain overall project financing.

On November 17, 2020, Council award Project S20-14 to the lowest responsible bidder, Teal Construction Inc, of Dover, DE, in the amount of \$1,368,000.00, and contingent upon concurrence of DNREC to ensure the State's commitment to supplemental funding and overall



project financing. On March 26, 2021, DNREC notified the Department there was no objection to proceeding with the construction of the Mulberry Knoll Pump Station and Force Main Project.

Teal Construction was given Notice to Proceed effective June 1, 2021 and work at the pump station site started promptly. On July 13, 2021, Council authorized Change Order No. 1 to increase the quantity of gravity sewer pipe and manholes associated with the work for improved coordination with the sewer collection design via Project S20-22. The approval of Change Order No. 1 at \$89,840.00 increased the Contract Price to a new total value of \$1,457,840.00.

On November 30, 2021 Council awarded Project S20-22 to the lowest responsible bidder, Carrow Construction in the Base Bid plus Add Alternate Item, for a total of \$1,861,538.00, contingent upon DNREC concurrence and approval of project financing.

Total project financing was evaluated using the bids received for S20-22 in combination with the ongoing S20-14 construction contract and related costs and Council authorized development of a supplemental funding request and submission to DNREC for approval.

On March 25, 2022 DNREC issued a Supplemental Loan in the amount of \$1,329,000 all in the form of loan forgiveness for the construction budget shortfall, additional engineering services associated with the extended construction period, and a 15% contingency on the collection system contract.

Teal Construction completed all contract work and a manufacturer start-up and certification of the pump station equipment occurred in early April of 2022. Change Order 2 serves as Final Balancing of the S20-14 contract.

The Department recommends Council approve proposed Change Order 2, decreasing the total contract value by \$16,975.00 for a final value of \$1,440,865.00. The Department further recommends Substantial Completion be granted effective May 1, 2022, with release of retainage authorized.

Date of Issuance: August 1, 2022	Effective Date:
Owner: Sussex County	Owner's Contract No.: S20-14
Contractor: Teal Construction	Contractor's Project No.:
Engineer: KCI Technologies	Engineer's Project No.: 13157731.S20-14
Project: Mulberry Knoll Pump Station & Force Main	Contract Name:

The Contract is modified as follows upon execution of this Change Order:

CO2 serves as Final Balancing of contract items, values and time with Substantial Completion Effective May 1, 2022. Time extension is no-cost.

Attachments: *[List documents supporting change]*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ <u>1,368,000.00</u>	Original Contract Times: Substantial Completion: <u>210</u> Ready for Final Payment: <u>300</u> days or dates
Increase from previously approved Change Orders No. <u>1</u> to No. <u>1</u> : \$ <u>89,840.00</u>	[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>1</u> : Substantial Completion: <u>0</u> Ready for Final Payment: <u>0</u> days
Contract Price prior to this Change Order: \$ <u>1,457,840.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>210</u> Ready for Final Payment: <u>300</u> days or dates
Decrease of this Change Order: \$ <u>16,975.00</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: <u>May 1, 2022</u> Ready for Final Payment: <u>May 3, 2022</u> days or dates
Contract Price incorporating this Change Order: \$ <u>1,440,865.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>May 1, 2022</u> Ready for Final Payment: <u>May 3, 2022</u> days or dates

RECOMMENDED:		ACCEPTED:		ACCEPTED:	
By: _____	By: _____	By: _____	By: _____	By: _____	By: _____
Owner (if required)	Owner (Authorized Signature)	Owner (Authorized Signature)	Contractor (Authorized Signature)	Contractor (Authorized Signature)	Contractor (Authorized Signature)
Title: _____	Title _____	Title _____	Title <u>CHARLES W. REED III</u>	Title _____	Title _____
Date: _____	Date _____	Date _____	Date <u>8/2/2022</u>	Date _____	Date _____

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____

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

Memorandum

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

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

RE: *Agreement for Wastewater Services– Lewes Board of Public Works (BPW) Amendment No. 3*

DATE: August 9, 2022

In July of 2016, the Council authorized agreement negotiations with other wastewater service providers for the utilization of existing wastewater treatment capacity. On September 20, 2016, Council approved the initial agreement with the Lewes Board of Public Works for wastewater treatment and disposal. It allowed for the transmission of a year-round base flow rate of up to 75,000 gallons per day into the BPW's system with a seasonal ramp up of up to 300,000 gallons per day seasonally at a competitive rate of \$2.40/1,000 gals.

As per the BPW's request the County utilized George, Miles & Buhr, Inc., PBW's Engineer of Record for the design of the County owned improvements. Following the design completion and permitting the Council approved on August 29, 2017, the Lewes BPW's assistance request under the FY18 General Labor & Equipment Contract for a joint project portion on Gills Neck Road. Both projects were completed, and flow was diverted that year.

In March of 2018 BPW's General Manager requested an amendment to the Agreement allowing BPW's service area tie-in(s) to the County's system and on March 20, 2018, Council approved the amendment allowing wastewater to be transmitted and treated in the most cost-effective manner with the billing to be accomplished on a net zero metering basis.

The Engineering Department approached the BPW's General Manager with a request to increase the flow contributions, which the County Engineer presented to the Board on September 26, 2018. At that meeting, the Board instructed their Counsel to draw up the 2nd amendment which was reviewed by the Assistant County Attorney and approved by the Board. County Council accepted Amendment No. 2 on January 8, 2019.



In the spring of 2022 BPW's General Manager requested a 3rd amendment to the Agreement allowing another of BPW's service area tie-in(s) to the County's system on Gills Neck Road. It was approved on July 27, 2022, by the Board. Now the Engineering Department is requesting Council's approval of Amendment No. 3 to the Agreement for Wastewater Services.

AGREEMENT FOR WASTEWATER SERVICES

Between

LEWES BOARD OF PUBLIC WORKS

and

SUSSEX COUNTY

for and on behalf of

SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT

In Connection with

the Transmission and Treatment of Sewage Discharge to/from

the West Rehoboth Sanitary Sewer District Area

This Agreement for Services is made and entered into this 4th day of August, 2022 (the "Effective Date"), by and between Lewes Board of Public Works, a chartered utilities board for the Lewes area (hereinafter referred to as the "BPW"), and Sussex County, a political subdivision of the State of Delaware (hereinafter referred to as the "County"), in connection with the West Rehoboth Sanitary Sewer District Area.

WITNESSETH:

WHEREAS, the BPW and the County entered into an agreement dated September 28, 2016 allowing the County to transmit sanitary sewage from the West Rehoboth Sanitary Sewer District Area to the BPW Wastewater Treatment Facility, as defined in Article II below, for treatment and disposal, which was replaced in its entirety by the first revision dated March 28, 2018; and the second revision dated January 28, 2019.

WHEREAS, the agreement between the parties dated March 28, 2018 allowed the County to transmit sanitary sewage from the West Rehoboth Sanitary Sewer District Area to the BPW Wastewater Treatment Facility, and the BPW to transmit sanitary sewage from the phases of the Showfield Subdivision to the County's Wastewater Treatment Facility for treatment and disposal; and

WHEREAS, the parties are interested in expanding their mutual cooperation and support, such that the County proposes to transmit sanitary sewage from the West Rehoboth Sanitary Sewer District Area to the BPW Wastewater Treatment Facility for treatment and disposal, and the BPW proposes to transmit sanitary sewage from the areas set forth in Article IV herein to the County's Wastewater Treatment Facility for treatment and disposal; and WHEREAS, the BPW wishes to provide such wastewater services to the County, and the County wishes to provide such wastewater services to the BPW consistent with the terms herein.

NOW THEREFORE, for and in consideration of the mutual covenants, promises, agreements, and stipulations contained herein, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I - TERM OF AGREEMENT

Upon the Effective Date of this Agreement, the January 28, 2019 Agreement is hereby terminated and replaced in its entirety by this Agreement. The term of this Agreement shall be ten (10) years, commencing upon the Effective Date of this Agreement and terminating ten (10) years thereafter. The County and BPW shall each have an option to renew this Agreement for an additional term of ten (10) years if, at the expiration of the term of this Agreement, the renewing party is not in default of any of the terms or conditions of this Agreement.

The renewing party must notify the other party in writing via first class U.S. mail of its intent to renew or terminate this Agreement no later than ninety (90) days prior to this Agreement's expiration. If neither party indicates its intention to renew or terminate the Agreement, then this Agreement will be automatically renewed on a year-to-year basis.

ARTICLE II - DEFINITION OF TERMS

The following terms, as used herein, shall have the following meanings:

A. "Add Alternate" shall mean an additional item of work that is priced separately in bid documents for a construction project and that may be awarded as a part of the construction contract for the relevant project.

B. "Base Flow Volume" shall mean a permitted discharge throughout the calendar year, pro-rated as applicable.

C. "Biological Treatment" shall mean the handling of either party's sewage by means of biological processes performed within the applicable Wastewater Treatment Facility.

D. "Collection System" shall mean local gravity pipelines and pump station(s) with pressurized pipelines used to convey each party's respective sewage to the designated Connection Point.

E. "Connection Point" shall mean the mutually agreed upon point of transfer shifting conveyance responsibilities from the County to the BPW or the BPW to the County as appropriate.

F. "Equivalent Dwelling Unit or EDU" shall mean one average sized residential dwelling unit.

G. "Sewage" shall mean water-carried waste from residences, businesses and institutions.

H. "Transmission System" shall mean collector gravity pipelines and pump station(s) with pressurized pipelines used to convey both BPW and County sewage from the applicable Connection Point to the applicable Wastewater Treatment Facility.

I. "Wastewater Treatment Facility" shall mean the applicable treatment plant and any disposal facilities used to treat Sewage, including any future additions, modifications, or improvements thereto.

ARTICLE III - SERVICES TO BE RENDERED

A. Transmission of Sewage

The BPW and the County each agree to transmit the other party's Sewage through their applicable Transmission Systems to their applicable Wastewater Treatment Facility downstream of the designated Connection Point. This obligation extends only to construction and operation of the applicable Transmission System and does not include their respective Collection Systems upstream of the Connection Point.

B. Treatment of Sewage

The BPW and the County agree to treat their respective sewage to a degree sufficient to enable the final effluent to comply with their respective Wastewater Treatment Facility National Pollutant Discharge Elimination System ("NPDES") Permit.

ARTICLE IV - CHARACTERISTICS AND QUANTITY OF SEWAGE

The BPW's and the County's obligations herein to transmit and treat the respective Sewage is and shall be subject to the following conditions:

A. Quality of Sewage

Sewage will not be acceptable if: (1) upon the addition of said Sewage to the sewage flow entering the applicable Wastewater Treatment Facility, the resulting combined sewage flow is not amenable to Biological Treatment; or (2) the contribution directly and solely results in a violation of standards set in the respective Wastewater Treatment Facility's NPDES Permit.

B. The County's Quantity of Flow

The County's Sewage contributions (with net adjustments as defined in Article V, Section C.) shall be limited to a Base Flow Volume of 100,000 gallons per day and a seasonal (December 1st through March 31st) volume of 400,000 gallons per day (the "Seasonal Flow Volume") for the initial two (2) year period of the Agreement. The County may request a twenty-five percent (25%) volume increase of both the Base Flow Volume and Seasonal Flow Volume after the initial (2) year period and the BPW may grant such request so long as the BPW's Transmission System and Wastewater Treatment Facility operates at less than seventy-five percent (75%) capacity, respectively, at the time of request. Notwithstanding anything herein to the contrary, at any time,

the County may request to exceed the Seasonal Flow Volume, and the BPW, in its sole and absolute discretion, may grant such request so long as the County is solely responsible for the costs of any improvements to the BPW's Transmission Systems and Wastewater Treatment Facilities necessary, in the BPW's sole and absolute discretion, to accommodate the additional flow volume.

C. The BPW's Quantity of Flow

The BPW's flow contribution shall be limited to the phases of the Showfield Subdivision and Henlopen Bluff, situated within the corporate limits of the City of Lewes and any tax parcels located off Old Orchard Road and New Road as may be agreed upon between the General Manager of the BPW and the County Engineer and approved by the BPW.

ARTICLE V - PAYMENT FOR SERVICES

A. Manner of Payment

The County shall pay monthly for any and all transmission and/or treatment services rendered by the BPW in the previous month hereunder within thirty (30) days after County's receipt of an invoice from the BPW. Upon the County's failure to pay any invoice so generated, the outstanding balance due upon such invoice shall accrue a financing charge in the amount of one percent (1.0%) per month.

B. Rate

The County agrees to pay the BPW for all of the County's Sewage transmitted and treated by the BPW at the rate of \$2.65 per 1,000 gallons of Sewage flow, as calculated pursuant to Article VI. The rate shall be adjusted annually on January 1st based on the Philadelphia Region Consumer Price Index as published by the US Census Bureau.

C. Adjustments

The BPW agrees to adjust the monthly invoice by deducting the flow volume for any and all transmission and/or treatment services rendered by the County under this Agreement in the previous month. Unless metered data of actual sewage flow volume is available, in which case the actual sewage flow volume data shall be used to calculate deductions under this Section,

deductions shall be calculated by multiplying the number of EDUs connected to the County's sewer system by 250 gallons per day. An EDU is considered connected after receiving a Certificate of Occupancy from the appropriate government entity having jurisdiction over land use.

ARTICLE VI - MEASUREMENT OF SEWAGE FLOW

The County's Sewage flow shall be identified per a monitoring program agreed upon by the General Manager and County Engineer that is conducted and paid for by the County and supervised by the BPW. The results of all flow measurements shall be evaluated monthly and shall serve as the basis for the BPW's charges to the County.

The metering device utilized to measure the County's Sewage flow shall be calibrated annually by an independent testing agency. The results of calibrations shall be made available to the BPW. If the calibration reveals a discrepancy greater than 10-percent (10%), then the monthly sewer billing to the County shall be adjusted (up or down) for a three (3) month period immediately preceding the calibration. No action shall be taken for metering devices within 10% accuracy.

Billing or credit adjustments shall be made on the next billing period immediately following the discovery of the metering discrepancy.

ARTICLE VII – CAPITAL IMPROVEMENTS

A. Each party shall be responsible for all capital expenses associated with the construction of their respective Collection Systems, including all costs incurred in connecting to the other party's Transmission Systems and for all costs of operation and maintenance associated with said improvements. No sewer infrastructure of any type shall be connected to a Connection Point unless the BPW and the County each review and approve the design and inspect and approve the construction of any such proposed connection.

B. Except as provided in Article IV. B. herein, the BPW and the County shall be jointly responsible for all future capital expenses associated with the Transmission Systems and Wastewater Treatment Facilities downstream of the system Connection Points if said

improvements are directly attributable to the addition of the County's flow volume to the BPW's Transmission System, or the BPW's flow volume to the County's Transmission System, or both the County's flow volume and the BPW's flow volume to the other party's Transmission System. Responsibility shall be allocated proportionally based on the amount of each party's sewage flow volume.

ARTICLE VIII – WASTEWATER IMPACT FEES

The County fully paid the "Treatment and Transmission" portion of the BPW's impact fees for the Base Flow Volume valued at **\$1,500.00** per EDU equaling 300 gallons per day, in the total amount of \$500,000.00. Subsequent impact fee payments shall be made in full within thirty (30) days of the BPW's approval of increases in Base Flow Volume requested by the County, as provided in Article IV, Section B. In addition, calculations of future impact fees shall be made at the "Treatment and Transmission" portion of the BPW's impact fee rate in effect at the time.

ARTICLE IX – PROJECT COOPERATION

Prior to finalizing any construction bid documents for any future capital projects increasing treatment capacity, the BPW and the County shall jointly develop Add Alternates, if needed, and either party may require an Add Alternate that will be solely funded by the requesting party. Any Add Alternates benefitting both parties shall be awarded by mutual written consent, and the improvements made through Add Alternate(s) shall be paid proportionally by each party. Any Add Alternate benefitting only one party to this Agreement shall be awarded if requested by the benefitting party in writing, and such Add Alternate shall be solely funded by the benefitting party.

ARTICLE X – MAINTENANCE RESPONSIBILITIES

Each party shall properly operate and maintain its respective Collection Systems, Wastewater Treatment Facilities, and Transmission Systems in good and efficient operating

condition and in compliance with all permits and applicable laws, regulations, orders, standards, and policies.

ARTICLE XI – TERMINATION OF SERVICES

Except as otherwise provided herein, either party may terminate this Agreement upon twenty-four (24) months' written notice to the other party; provided that, notwithstanding any such notice of termination, the County agrees to pay the BPW for any services rendered by the BPW hereunder; and further provided that, notwithstanding any such notice of termination, the County shall reimburse the BPW for the County's pro rata share of any costs incurred by the BPW (less depreciation) for any capital project which, during the term of this Agreement, was undertaken by the BPW for the specific benefit of the County. Notwithstanding the notification period, should the BPW's or the County's facilities experience operating limitations that are likely to result in violations of applicable permits, the acceptance, treatment and disposal of wastewater by the respective parties may be temporarily limited or discontinued.

ARTICLE XII – LAW GOVERNING

This Agreement shall be governed, construed and interpreted by the Laws of the State of Delaware, and any action brought to enforce any right or obligation under this Agreement may only be brought in the courts of the State of Delaware. The parties to this Agreement further agree to waive their rights to demand a jury trial in any action that may be brought to enforce any portion of this Agreement. In any such controversy or claim, each party shall bear its own costs and neither party shall be responsible for payment of the other's legal, technical, or other costs of arbitration or litigation.

ARTICLE XIII – GOVERNMENTAL AUTHORITY

This Agreement shall be contingent upon, and subject to, all governmental and regulatory approvals required to enable either party to enter into and perform pursuant to this Agreement including but not limited to any approvals required from the Delaware Department of Natural

Resources and Environmental Control. In addition, the parties agree to comply with all applicable laws, regulations, permits and policies of the federal, state, county and local authorities in the performance of this Agreement.

ARTICLE XIV – RECORDS AND TESTING

The parties shall maintain all financial and operational books, records, and supporting documentation related to their functions and services provided under this Agreement. Each party shall make such records available to the other party, upon ten (10) days' written request. In addition, upon written request, each party shall provide all metering or qualitative data collected in relation to the operations of their respective Wastewater Treatment Facilities. Without limitation of the foregoing, upon a party's written request, the other party shall produce any documents necessary to support the methodology, amounts, and other associated issues in connection with the other party's calculation of the fees charged or deducted under this Agreement. Either party may request to conduct, at its own expense, additional sampling, metering, or other tests of the wastewater at the other party's Wastewater Treatment Facility, and the other party's approval of such request shall not be unreasonably withheld.

ARTICLE XV – SEVERABILITY

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

ARTICLE XVI – MISCELLANEOUS

A. This Agreement supersedes any and all previous agreements and understandings, written or oral, between the parties hereto concerning the subject matter hereof.

B. This Agreement constitutes the entire understanding of the parties with regard to the subject matter hereof, and the parties acknowledge and agree that there is no other agreement or understanding, written or oral, between the parties hereto concerning the subject matter hereof.

C. No change, modification, revision, or amendment to this Agreement shall be made or enforceable unless such change, modification, revision, or amendment is reduced to a writing duly executed by both parties hereto.

D. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, and assigns. No third-party beneficiaries to this Agreement are intended.

E. Any notice required to be delivered to or by either party under this Agreement shall be sent via first class US mail. For purposes of this provision, the BPW's address shall be:

Attn.: General Manager, 107 Franklin Street, Lewes BPW Administration Building,
Lewes, DE 19958,

and the County's address shall be:

Attn: Sussex County Engineer, 2 The Circle, P.O. Box 589, Georgetown, DE 19947.


F. Assignment, subcontracting, or transfers of this Agreement or any part hereof, shall be prohibited, unless both parties sign a written consent.

[signature page follows]

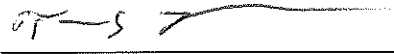
IN WITNESS WHEREOF, intending to be legally bound hereby, the parties to this Agreement have hereunto set their respective hands and seals the day and year first above written.

LEWES BOARD OF PUBLIC WORKS

ATTEST:


_____(SEAL)

Name: *Austin Calaman*
Title: *General Manager*

BY: 
_____(Seal)

Thomas S. Panetta
President, Lewes BPW

Date: *4 Aug 2021* ^{*of*} *2022*

SUSSEX COUNTY, DELAWARE

ATTEST:

_____(SEAL)
Tracy Torbert, Clerk of Council

BY: _____
Michael H. Vincent
President, Sussex County Council

Date: _____

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
(302) 855-7878 T
(302) 854-5079 F
jamie.whitehouse@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: August 5, 2022

RE: County Council Old Business Report for C/U 2294 filed on behalf of Horsey Family, LLC

The Planning and Zoning Department received an application (C/U 2294 filed on behalf of Horsey Family, LLC) for a Conditional Use for parcel 231-21.00-21.00 for the expansion of C/U 1741 (Ordinance No. 2021) for the expansion of a borrow pit. The property is located on the east side of Asbury Road [S.C.R. 446] approximately 0.35 mile south of County Seat Highway [Rt. 9]. The parcel size is 62.204 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on May 26, 2022. At the meeting of June 9, 2022, the Planning & Zoning Commission recommended approval of the application subject to 8 reasons stated and subject to 17 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on June 14, 2022. At the conclusion of the Public Hearing action on the application was deferred for further consideration. Below is a link to the County Council meeting minutes of the June 14, 2022 meeting:

[Link to County Council Minutes of June 14, 2022](#)

Below are the minutes from the Planning & Zoning Commission meetings of May 26, 2022 and June 9, 2022.

Minutes of the May 26, 2022 Planning & Zoning Commission Meeting

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE EXPANSION OF C/U 1741 (ORDINANCE 2021) FOR THE EXPANSION OF A BORROW PIT TO BE LOCATED



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

ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 62.204 ACRES, MORE OR LESS. The property is lying on the east side of Asbury Road (S.C.R. 446), approximately 0.35 mile south of County Seat Highway (Rt. 9). 911 Address: N/A. Tax Parcel: 231-21.00-21.00.

Mr. Whitehouse stated that submitted into the record were the Conceptual Site Plan, the Applicant's exhibit booklet, the DelDOT Service Level Evaluation Response, a copy of Ordinance 2021 dated December 16, 2008, a staff analysis, and zero comments.

The Commission found that David Hutt, Esq. was present on behalf of the of the Application, that also present are Bobby Horsey representing the Horsey Family, LLC, and Clifford Mumford, Professional Engineer with Davis, Bowen and Friedel; that this Application deals with a 62 acre tract of land off of Route 9 on Asbury Road; that this is located in an Agricultural and Woodland area of Sussex County with single-family homes dispersed throughout; that the property is zoned AR-1; that the 2020 State Strategies Map designate this as a Level IV area; that the Ordinance referenced by Mr. Whitehouse was the Approval in 2008 of CU 1741 for a 199.5 acre borrow pit that is currently under operation; that the entrance is located on Hardscrabble Road; that Vulcan is mining at this site and have asked the owner to extend to the north; that DelDOT responded that the traffic impact is diminutive; that no new entrance is being proposed and the expansion area would use the existing entrance; that a Borrow Pit has special requirements per Sussex County Code; the first being that no materials are brought to the site for processing or mixing; the second is that excavation be controlled to offer reasonable protection to surrounding properties with respect to odor and dust; that the Applicant will be submitting a proposed set of Findings of Fact which address those requirements; that the proposed hours of operation are Monday through Friday from 6:00 am – 6:00 pm and Saturday from 6:00 am – 2:00 pm with no Sunday hours; that the third special requirement is that the location of the excavation is done in a way that is in respect to the water table with appropriate slopes; the dredge is set at 97 ft. and side slopes of 4:1 which will be shown on the site plan; that there are wetlands on the property will be formally delineated on the final site plan and shall have a 100 ft. buffer; that the fourth special requirement is that the borrow pit be surrounded by a landscaped unexcavated buffer strip of open space a minimum of 100 ft from any street lines and a minimum of 50 ft from all property lines; that the Applicant proposes to double those requirements; that the fifth special requirement is that the borrow pit be at least 200 ft from any dwelling on property of other ownership; that this application exceeds those requirement; that the sixth requirement is that the site plan be submitted with various requirements for existing conditions, excavation area; reclamation area; approvals from other agencies and typical site plan considerations which is essentially the Planning and Zoning Commission's typical site plan process; the ultimate reclamation plan is for it to be a wildlife pond for fish and pond when it is no longer being used as a borrow pit; that the general Conditional Use requirements are that the use would promote the general convenience, orderly growth and prosperity of the County; that the aggregates removed from the borrow pit will be used by the residents of Sussex County as records show that most aggregates are used within a 30 – 50 mile radius from where they were extracted from the earth; and that the current slide on the screen shows the number of minerals, metals and fuels consumed by American's in their lifetime.

Chairman Wheatley asked if there will be any increase in traffic based on the expansion.

Mr. Horsey stated there won't be more trucks on the road; that this expansion will extend the longevity of the borrow pit; and that the hours of operation stated by Mr. Hutt only refer to trucking hours as the dredging hours continue until midnight.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to the Application.

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

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

In relation to the Application C/U 2294 Horsey Family, LLC. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

Minutes of the June 9, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since May 26, 2022.

Mr. Hopkins moved that the Commission recommend approval of C/U 2294 Horsey Family, LLC for an expansion of an existing borrow pit based upon the record made during the public hearing and for the following reasons:

1. The subject property is adjacent to an existing, operational borrow pit that was approved by Sussex County Council as Conditional Use #1741 by Ordinance # 2021. This application is for a reasonable expansion of that existing borrow pit operation.
2. The subject property is zoned AR-1, and the surrounding properties are primarily used for agricultural purposes. This expansion of the existing borrow pit will not adversely affect the surrounding properties and the uses that occur on them.
3. The Sussex County Comprehensive Plan identifies this property as being in the "Rural Area". Borrow pit operations are appropriate within this designated Area according to the Plan.
4. The proposed expansion of the existing borrow pit will not increase the congestion on nearby roadways. This is confirmed by DelDOT, which has stated that the proposed Conditional Use will have a "diminutive" impact upon area roadways. In fact, there should be no significant increase in traffic beyond what is currently generated by the existing borrow pit operations.
5. This expansion of the existing borrow pit is generally of a public or semi-public character and is essential and desirable for the general convenience and welfare of Sussex County residents, visitors, public works projects, and businesses. This application will provide additional borrow pit materials that will be used in the construction of public and private projects throughout Sussex County.
6. The Applicant will be required to comply with the requirements of Section 115-172B of the Sussex County Zoning Code, which are specific to borrow pit operations.
7. The Applicant has stated that upon completion of the borrow pit operations, the reclamation plan will enable the site to become a wildlife pond for fish and fowl.
8. No parties appeared in opposition to this Application.
9. This recommendation is subject to the following conditions:

- A. No materials shall be brought from off the site for processing, mixing, or similar purposes.
- B. Water or a water truck shall be available to control dust from road traffic when conditions require.
- C. The entrance to the expansion of the existing pit shall utilize the existing entrance on Hardscrabble Road. There shall be no entrance on S.C.R. 446 (Asbury Road). The entrance on Hardscrabble Road shall be fenced or gated to prevent access. All entrances shall be secured when the borrow pit is not in operation.
- D. Any additional roadway and entrance improvements required by DelDOT shall be completed by the Applicant as required and in accordance with all DelDOT requirements.
- E. The Applicant shall comply with all State and County erosion and sediment control regulations. The project will meet or exceed stormwater management system regulations set forth by the Sussex Conservation District and DNREC through a combination of Best Management Practices (BMP) and Best Available Technologies (BAT). The final site plan shall contain the approval of Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- F. The hours of trucking operations shall be between 6:00 a.m. and 6:00 p.m. Monday thru Friday and between 6:00 a.m. and 2:00 p.m. on Saturdays. Dredging operations may operate 24 hours per day, 6 days per week as permitted under Ordinances #2021. No Sunday hours shall be permitted.
- G. No materials shall be stored on any access roads or within any buffers.
- H. Any fuel stored on the site shall be subject to the jurisdiction of DNREC and the Sussex Soil Conservation District.
- I. No stumps, branches, debris, or similar items shall be buried or placed in the borrow pit site.
- J. The proposed pit will have a 4:1 side slope down to a 10-foot level bench that will be approximately near or 1 foot below the static water surface. Below the water level, the borrow pit shall have 3:1 slopes. The depth of the water in the proposed borrow pit will not exceed 100 feet.
- K. A final site plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding, and planting schedules designed to create a pleasing appearance and protect existing and future developments.
- L. Permanent concrete markers and signs shall be placed at appropriate locations to designate the boundaries of the subject property and pit areas. The boundary markers shall be raised and marked so that they are clearly visible to anyone nearing the site.
- M. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling of other ownership, and 50 feet from all other property lines of other ownership. The buffer area shall be a vegetated buffer of existing vegetation or native species vegetation.
- N. No wetlands on the site shall be disturbed and the pit shall be located at least 100 feet from all delineated wetlands.
- O. This approval shall terminate upon the expiration of fifty (50) years from the date of enactment.

- P. Any safety lights shall be screened downward, so they do not shine on neighboring properties or roadways.
- Q. The final site plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2294 Horsey Family, LLC for the reasons and conditions stated in the motion. Motion carried 5-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Mr. Mears - yea, Chairman Wheatley - yea

PLANNING & ZONING COMMISSION

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



Sussex County

DELAWARE
sussexcountyde.gov
302-855-7878 T
JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: May 12th, 2022

Application: CU 2294 Horsey Farm, LLC

Applicant: Horsey Farm, LLC
28107 Beaver Dam Branch Rd
Laurel, DE 19956

Owner: Horsey Farm, LLC
28107 Beaver Dam Branch Rd
Laurel, DE 19956

Site Location: The site is on the east side of Asbury Road (S.C.R. 446), south of County Seat Highway (Rt. 9).

Current Zoning: Agricultural Residential (AR-1)

Proposed Zoning: Agricultural Residential (AR-1)

Comprehensive Land Use Plan Reference: Low Density

Councilmanic District: District 1 - Vincent

School District: Seaford School District

Fire District: Georgetown Fire Company

Sewer: On-site septic systems

Water: On-site well

TID: Not Applicable

Site Area: 62.204 acres +/-

Tax Map ID: 231-21.00-21.00



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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Mx. Jesse Lindenberg, Planner I
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: April 26, 2022
RE: Staff Analysis for CU 2294 Horsey Family, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2294 Horsey Family, LLC to be reviewed during the May 26th, 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 Conditional Use for Tax Parcel: 231-21.00-21.00 to amend Conditional Use No. 1741 (Ordinance No. 2021) to allow for the expansion of an existing borrow pit through the addition of 62.204+/- acres of land. The property is lying on east side of Asbury Road (S.C.R. 446), approximately 0.35 mile south of County Seat Highway (Rt. 9). The parcel consists of 62.204 acres +/-.

It should be noted that the previous Conditional Use (Conditional Use No. 1741) was filed on behalf of David G. Horsey & Sons, Inc. for a borrow pit excavation to be located on a 199.50 acre +/- parcel of land. The Conditional Use was approved by the Sussex County Council on Tuesday, December 16th, 2008, and the change was adopted through Ordinance No. 2021.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of "Low Density." The parcels to the north, south, east, and west also have a Future Land Use Map designation of "Low Density."

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

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

Since 2011, there has been one (1) Conditional Use application within a 1-mile radius of the application site. This application was Conditional Use No. 1952 Clinton & McCutchen to allow for

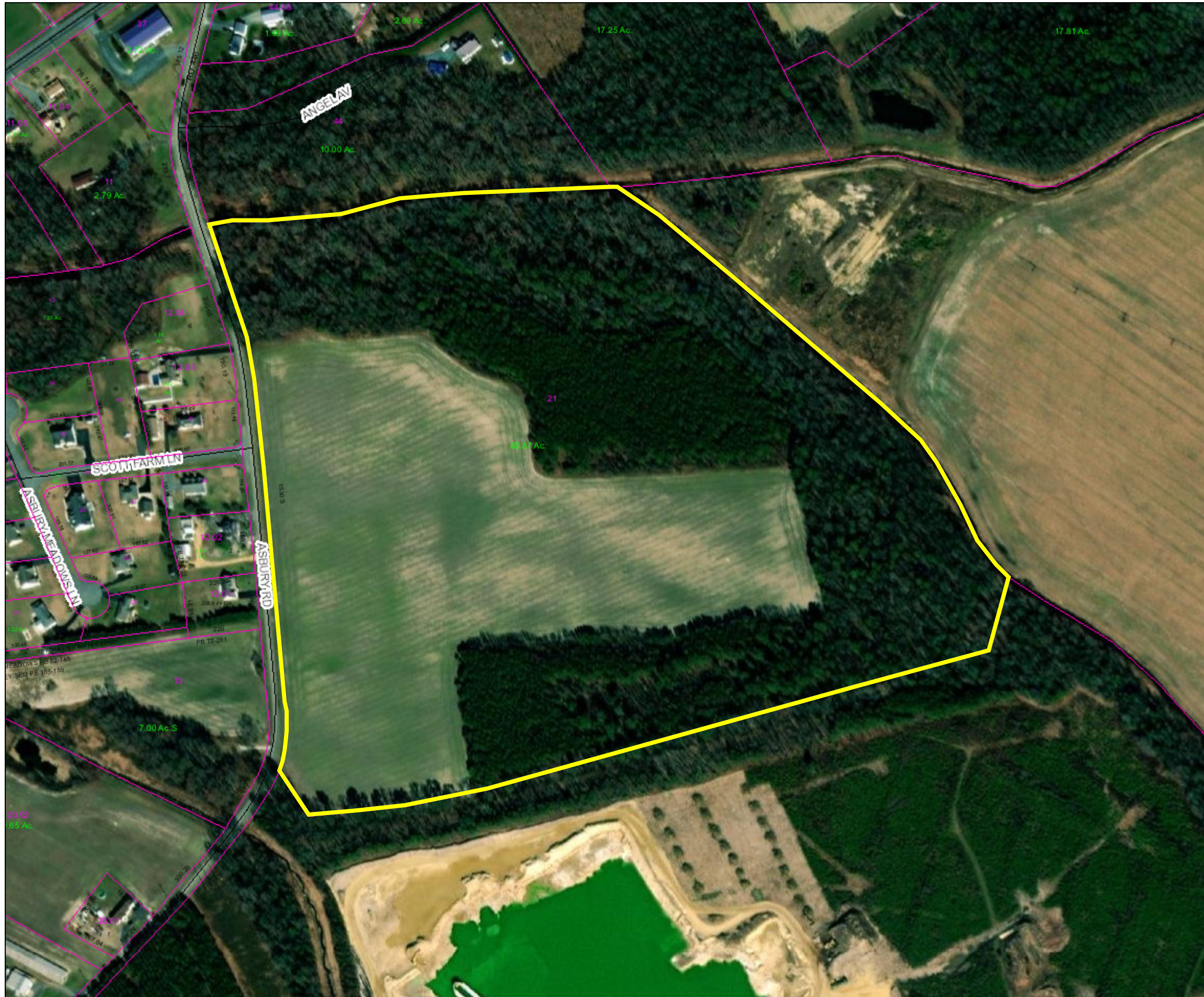


boat repair, storage, and sales to be permitted within an Agricultural Residential (AR-1) Zoning District. This application was approved by the Sussex County Council on Tuesday, March 19, 2013, and this change was adopted through Ordinance No. 2296. Please see the attached excel spreadsheet for information regarding previous Conditional Use Applications prior to 2011.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional use to allow for the amendment of Conditional Use No. 1741 (Ordinance No. 2021) for the expansion of an existing borrow pit through the addition of 62.204 +/- acres of land, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.



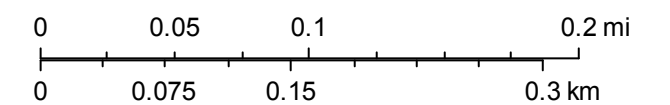
Sussex County



PIN:	231-21.00-21.00
Owner Name	HORSEY FAMILY LLC
Book	5422
Mailing Address	28107 BEAVER DAM BRAN
City	LAUREL
State	DE
Description	GEORGETOWNLAUREL
Description 2	E/RT 446 900'
Description 3	S/RT 9
Land Code	

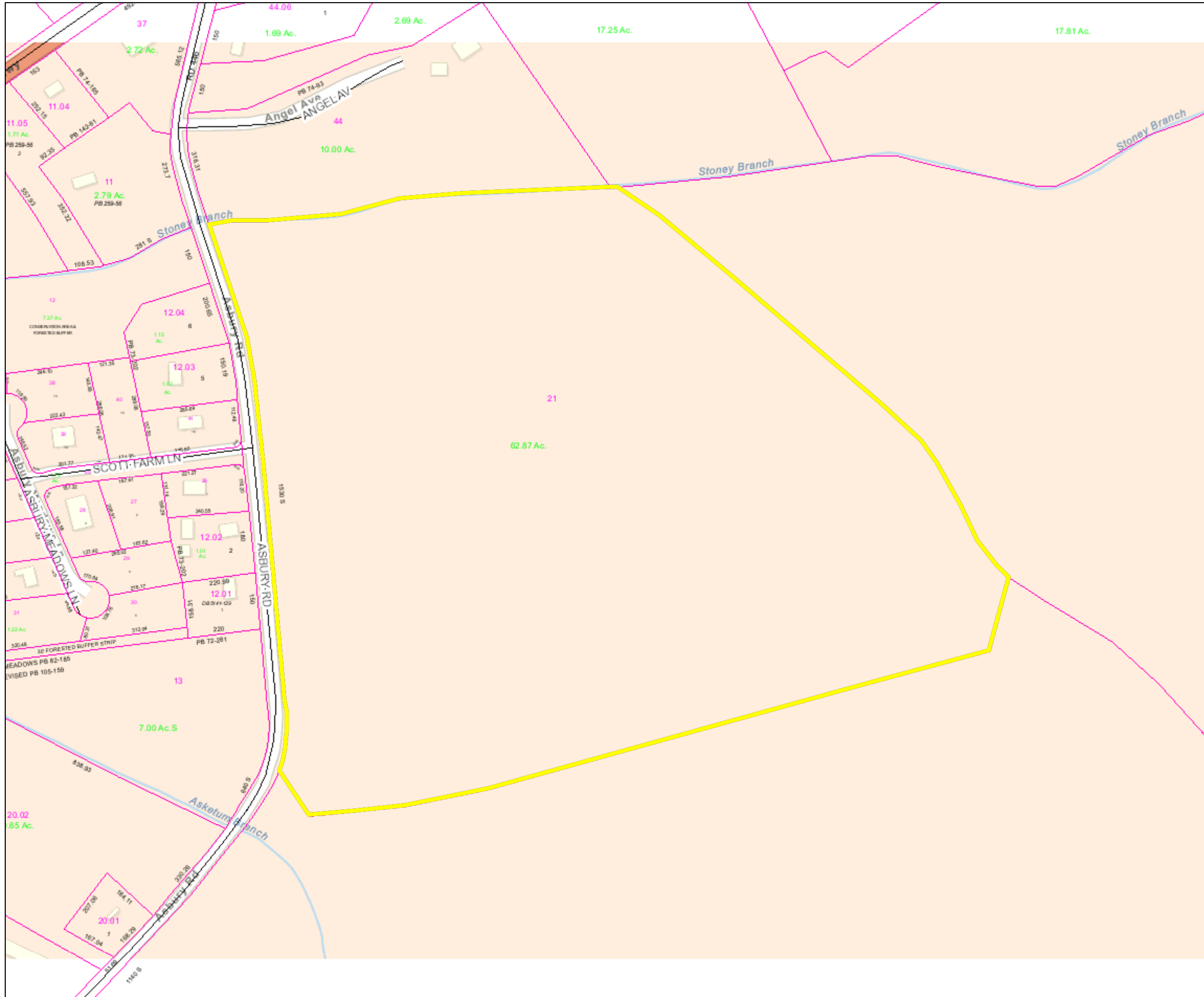
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- Override 1
- Tax Parcels
- Streets
- County Boundaries

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Sussex County



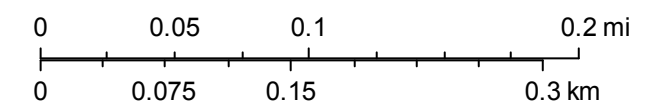
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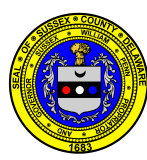
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Override 1
- polygonLayer**

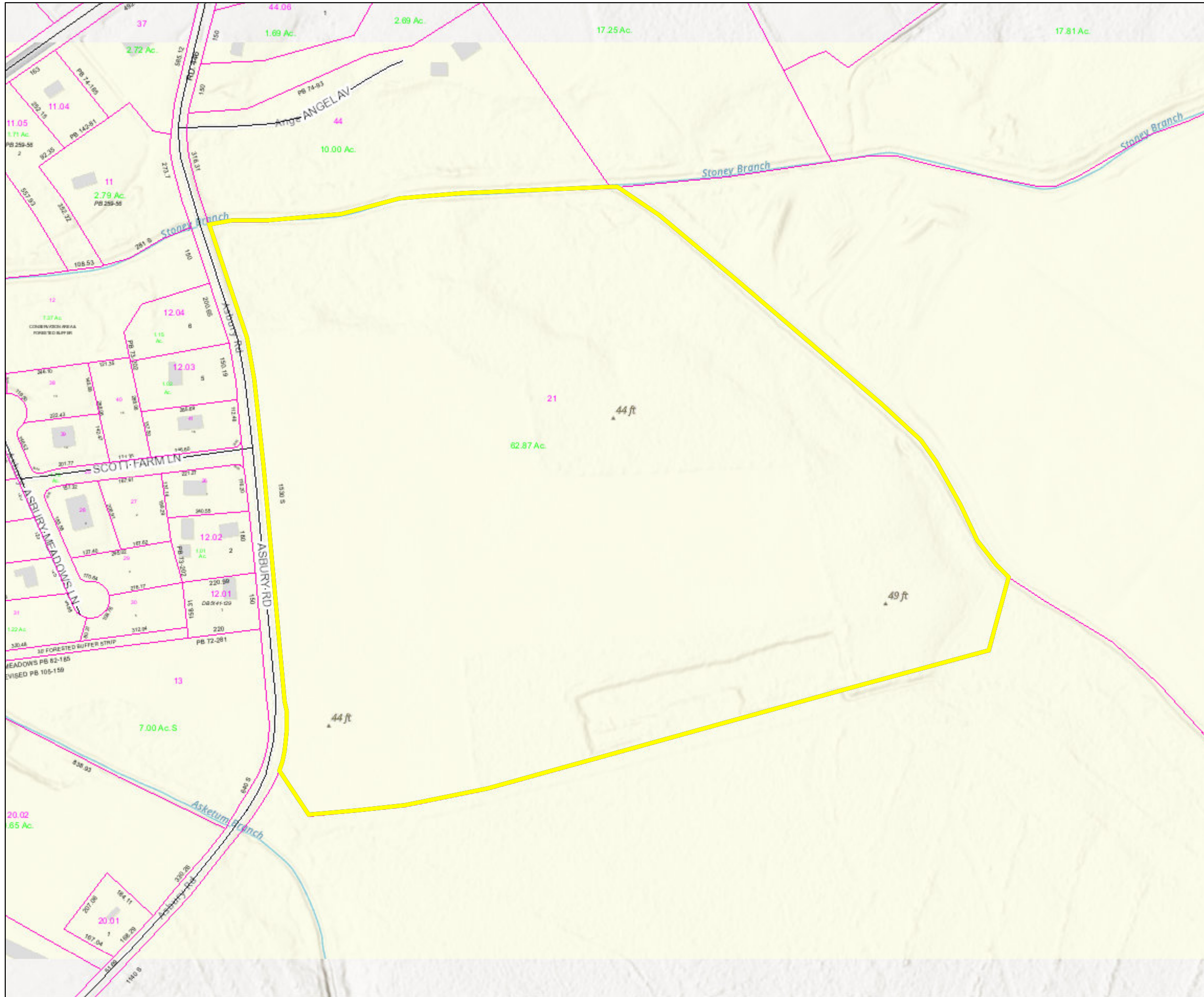
Override 1
- Tax Parcels
- Streets
- County Boundaries

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Sussex County



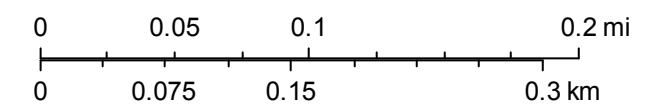
PIN:	231-21.00-21.00
Owner Name	HORSEY FAMILY LLC
Book	5422
Mailing Address	28107 BEAVER DAM BRAN
City	LAUREL
State	DE
Description	GEORGETOWNLAUREL
Description 2	E/RT 446 900'
Description 3	S/RT 9
Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- Tax Parcels
- Streets

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To Be Introduced: 03/22/22

Council District 1: Mr. Vincent
Tax I.D. No.: 231-21.00-21.00
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE EXPANSION OF CU 1741 (ORDINANCE 2021) FOR THE EXPANSION OF A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 62.204 ACRES, MORE OR LESS

WHEREAS, on the 24th day of June 2021, a conditional use application, denominated Conditional Use No. 2294 was filed on behalf of Horsey Family, LLC; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2294 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2294 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 Nanticoke Hundred, Sussex County, Delaware, and lying on east side of Asbury Road (S.C.R. 446) approximately 0.35 mile south of County Seat Highway (Rt. 9), and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 62.204 acres, more or less.

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

JAMIE WHITEHOUSE, AICP
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Sussex County

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Memorandum

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

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

CC: Everett Moore, County Attorney

Date: August 5, 2022

RE: County Council Old Business Report for an Ordinance relating to Affordably Priced Rental Units and the Sussex County Rental Unit (SCRP) Program.

On March 29, 2022 the County Council introduced an Ordinance to amend the Code of Sussex County in relation to Affordably Priced Rental Units and the Sussex County Rental Unit (SCRP) Program.

The Planning and Zoning Commission held a public hearing on the Ordinance on April 28, 2022. At the meeting of April 28, 2022, the Commission left the Public Record open until the next regular meeting for the receipt of additional comments. At the meeting of May 12, 2022 the Commission was provided with an update of the additional comments received. At the conclusion of the meeting, the Commission left the record open until the next regular meeting.

At the Planning & Zoning Commission meeting of May 26, 2022, the Commission discussed the Ordinance and closed the Public Record. The Commission then deferred action on the Ordinance for further consideration. At the Planning & Zoning Commission meeting of June 9, 2022, the Commission recommended that Council Council adopt the Ordinance for the 8 reasons stated in the motion and subject to the 4 recommended revisions outlined in the motion.

A Public Hearing was held before the County Council at its meeting of June 28, 2022. At the conclusion of the Public Hearing, the record was left open for a period of two weeks for the receipt of additional written comments only. The minutes of the County Council meeting of June 28, 2022 can be found at the link below:

[Link to Minutes for County Council meeting of June 28, 2022](#)

A copy of the minutes of the meetings of April 28, May 12, May 26 and June 9, 2022 is included below:



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

Minutes of the April 28, 2022 Planning & Zoning Commission Meeting

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 72, ARTICLE II, SECTIONS 72-16 THROUGH 72-28 AND CHAPTER 115, ARTICLE IV, V, VI, VII AND VIII SECTIONS 115-20, 115-25, 115-29, 115-34, 115-37, 115-42, 115-45, 115-50, 115-53 AND 115-58 REGARDING AFFORDABLY PRICED RENTAL UNITS AND THE SUSSEX COUNTY RENTAL UNIT (SCRIP) PROGRAM

Mr. Whitehouse advised the Commission the Ordinance was noticed and posted on the Sussex County website; that one letter raising comment was submitted and has been circulated to the Commission.

The Commission found that Mr. Vincent Robertson spoke on behalf of the Ordinance; that also present was Ms. Brandy Nauman, who runs the Community Development and Housing Office for Sussex County; that the Ordinance originated back in 2018 with the 2018 Comprehensive Land Use Plan; that there was a lot of input offered related to the lack of affordable workforce housing in Sussex County; the basis for the initiative is cited in the Where As clauses of the Ordinance; that there is a housing vision which supports the initiative; that in 2018 the Comprehensive Plan recognized an influx of new residents in Sussex County, which fueled prosperity within the County's real estate market, hospitality industry and related economic sectors; that most housing, particularly on the eastern side of the County is new and often unaffordable to low-income families, seasonal employees, entry-level workers, and recent college graduates; that the Comprehensive Plan also recognized the shortage of affordable housing remains a very real problem for low to moderate household within Sussex County; that there were a few objectives discussed within the housing element where the need to improve the Sussex County Rental (SCRIP) Program, by providing incentives to properly reflect the housing market, while incentivizing developers to participate in the provision for affordable housing; that one of the strategies mentioned explore ways for private developers to provide multi-family affordable housing opportunities in Sussex County; that there were several objectives and strategies which mentioned facilitating and promoting land use policies that enable and increase in the supply of affordable housing in areas with adequate infrastructure, increase affordable housing options, which include supplying rental units near employment opportunities, review of County Code to determine if there are regulatory barriers to development of affordable housing, to revisit the Zoning Code to determine in districts where multifamily housing is currently considered a Conditional Use versus being considered a permitted use, where water and sewer area already present to the site; that there are other objectives mentioned in the housing element as well; that Ms. Brandy Nauman's office, in following the directives of the Comprehensive Plan developed and RFP for a housing consultant to provide recommendation for Sussex County, which was done in April 2021; that the County contracted with LSA to perform a Housing Needs, Market Analysis, Economic Feasibility Analysis, Housing Opportunity and Market Evaluations; that these were broad topics within the Comprehensive Plan; that he believes people do understand the need to address and increase the affordable and workforce housing opportunities in Sussex County; that it is one thing to discuss the need, but it is another issue to figure out way which works for Sussex County, the future residence and the developers who will build the units; that there is a current Rental Unit Program for Sussex County; that this program is known as the SCRIP Program; that when the SCRIP Program was originally initiated around 2008 or 2009, there was no study performed; that there were incentives offered in the initial program; that some of these incentives were expediting the Application, bonus density and other incentives; that within the last 14 years, there has only been one developer to utilize the SCRIP

Program; that the feedback from the SCRCP Program was the program was economically infeasible and the process was not smooth to go through, which resulted in no one utilizing the program; that the first issue was to identify why that was and try not to make the same mistake twice when developing a new program; that they attempted to develop a new program based on expert opinions and facts which confirms affordable and workforce housing could be supplied and Sussex County would be able to partner with the development community in a way which would be economically viable for developers; that there are elements to those areas within the LSA report; that LSA did have discussions with people who are involved and engaged in the process; that LSA had discussion with people from the public sector, private sector, housing sector and Sussex County staff; that there are a lot of different variables which went into this, such as the land use costs; that land use costs are higher on the coastal side of the County than on the western side of the County; that on the flip side of the situation, the market rate rent is higher on the coastal side of the County than on the western side of the County; that meanwhile the fixed costs and construction costs essentially remain the same on both sides of the County; that this example is an oversimplification; that the math of the situation is, there must be enough density, referenced by LSA as “Cross Subsidizing”, where there must be enough of the market rate units to make the affordable and workforce housing units viable; that when there are lower property values on the western side of the County for market rate units; that it is tough to offer the units on the western side; that it is also difficult to offer on the eastern side, as there is higher rent, but also having higher land use; that the LSA report can be found on the Sussex County website; the LSA report determined 12 units per acre is required to make the program work; that within the LSA report it was stated the Zoning Code should be modified to promote housing and affordability within the growth areas identified within the Comprehensive Plan, which should include the by right allowance of a maximum density of 12 units per acre, where affordable units are provided; that they learned from the experience of developing the only SCRCP project, known as Coastal Tide, located behind Home Depot in Lewes; that Coastal Tide was a good test case; that the existing SCRCP Code provisions are located in Chapter 72; that the way the SCRCP provisions are drafted, it places Sussex County in partnership with the property management, by evaluating tenants; that it creates Sussex County to become a duplicate property management agency, despite there already being a property management agency present, who works for the developer; that they chose to change this issue by allowing all of the requirements to remain in place, but require the property manager or the developer to certify that they are complying with the requirements and supply the information and certification to Sussex County on an annual basis; that this allows for checks and balances within the processes, without duplicating work which is already being performed; that this is one of the big changes made to Chapter 72 of the County Code; that it removes the bonus and expedited densities; that the proposed Ordinance states if housing is provided to the qualified individuals, the developer would be permitted to do 12 units to the acre in all the residential zoning districts; that 12 units to the acres is already permitted within the HR Zoning Districts; that this would be allowed within AR-1 and AR-2 (Agricultural Residential) Zoning Districts as well; that there are conditions and requirements placed; that there were three main strategies mentioned within the final recommendations from the LSA report; that the strategy currently being focused on is for the modification to the County Zoning Code to help promote affordability in growth areas identified in the Comprehensive Plan; that the Local Housing Trust Fund is a separate initiative, which is currently underway; that the third strategy to preserve the existing supply of affordable housing is an ongoing initiative; that they have added the annual audit requirements; that the audit must be prepared by a Certified Public Accountant (CPA), who is not otherwise affiliated with the developer; that the County requires a third-party, independent

auditor; that the auditor must certify that all Chapter 72 requirements and all the terms of the SCRP agreement are being adhered to; that the auditor must confirm the status of each leased or vacant SCRP unit; that the auditor must certify that each of eligible tenants renting an SCRP unit within the project are eligible as of the date of the report; that the auditor must certify and provide the status and duration of any SCRP unit vacancies; that the auditor must certify any marketing efforts to re-rent any vacant SCRP units; that the auditor must provide a status list of any eligible SCRP tenants waiting for an available SCRP unit; that the auditor must provide any other information requested by the Certified Public Accountant's (CPA) office or by the Sussex County Community Development Department; that by setting these requirements, it will allow the developer to run the project, providing housing to tenants; that it also allows Ms. Brandy Nauman and the Sussex County Community Development Department to perform their jobs more efficiently; that they did place a penalty provision in the Ordinance, in the attempt to avoid a developer sitting on a SCRP unit or not making a concerted effort to rent a SCRP unit; that there is a provision in place which states if a SCRP unit is rented at market rate, the developer will be required to pay the rent occurred to Sussex County, where it is placed back into the Housing fund for the County; that this penalty does provide an incentive to rent the units; that within the proposed Ordinance, affordable housing would be permitted by right in the Coastal Area, Developing Area and the Town Center Area; that these areas are all considered growth areas within Sussex County; that they placed standards within the Ordinance as to where the affordable housing could be located within the growth areas; that without the placement of the standards, it would almost eliminate the purpose of zoning; that they attempted to make sure the projects would be placed in appropriate locations, with appropriate perimeters; that the Planning & Zoning Office hired AECOM to take the proposed perimeters, attempting to confirm if development would be feasible with the proposed perimeters; that the LSA report confirmed the economic elements would work at 12 units to the acre; that AECOM was hired to ensure that the 12 units to the acre could be constructed, while meeting the separation, parking and stormwater management requirements; that stated in the proposed Design Criteria, at least 30% of the project units must be SCRP units; that there must be a perimeter buffer of 100-ft.; that the permitted building height increased to 52-ft. and four stories; that due to the height limits, many of the multi-family and apartment complexes within Sussex County have flat roofs; that they hoped of offer more flexibility for design ingenuity, where a pitched roof may be possible; that the open space is required to be at least 50%; that central water and sewer are required; that the LSA report did mention the necessity for central utilities; that he feels the project could move forward without central water, but he feels central sewer would be essential; that without central sewer, the project would require a lot more land to accommodate the required drain field for a project without central sewer; that he does understand this requirement will limit geographically where projects can be constructed; that if a commercial zoned property is located adjacent, there must be interconnectivity provided; that all sidewalks and streets will be interconnected with surrounding sidewalk systems; that walking and biking trails are required to be interconnected; that the trails would be permitted within the 100-ft buffer perimeter; that primary views for all units will be directed to open spaces and amenities; that this is a design requirement to avoid all of the units being crammed onto a parcel; that this is similar to the superiority design perimeters for cluster subdivisions; that projects should be located near and existing and/or planned DART route; that the idea is for the projects to be located near employment centers or allowing access to employment centers; that within the current Ordinance, it requires projects to be located within a half mile of an existing or proposed DART route; that DART had mentioned excitement in the Ordinance requirement, as it would promote DART ridership; that the housing requirements state only multi-family and rental units would

be permitted; that the current Ordinance does not include home ownership; that home ownership is part of a separate plan for Sussex County; that home ownership would not require a property manager or developer running a project with market rate and SCRP units; that at least 30% of restricted units that average 80% of AMI or less; that compliance reporting is required, based on submitted audits and certifications; that there is financial penalties if the requirements are violated; that AECOM did produce two site plan analysis on a 10 acre parcel and a 30 acre parcel using the proposed perimeter requirements;

Chairman Wheatley suggested an exception be made for small projects, such as projects under 20 or 40 units; that he does not know if it would be feasible but wanted to offer the suggestion.

Mr. Robertson stated should exceptions for small projects be considered, he would suggest they reach out to the experts and Mr. Hans Medlarz with Sussex County Engineering, to obtain his opinion.

Ms. Stevenson stated she did attend a Low-Income Housing symposium; that there was a non-profit organization out of Salisbury present, that would be interested in projects of the proposed use and maybe companies like them would be interested in smaller-scale projects.

Mr. Whitehouse stated there is guidance from the Federal Highway Administration as to distances that are deemed walkable; that with a bicycle considered, the distances become greater and the location distance, relative to DART routes was based on the distances deemed “physically walkable”.

Ms. Wingate stated if central sewer and water are required, it would more likely be in an area of a DART route as well.

Mr. Hopkins questioned the 30% requirement of restricted units in relation to the 12.5% requirement; that he questioned if the 30% of units that average 80% of AMI or less; that AMI stands for Average Median Income; that he questioned if the definition of “moderate to low income” within the Ordinance is 30% to 80% and he questioned if a tenant must be 30% of 80%, how does the requirement play into the big picture of almost half of the workforce, as stated by the LSA report, being considerably under 80%.

Mr. Robertson stated the 12.5% was the requirement within the current SCRP program which they propose to remove and replace with the 30% requirement, which is the newly proposed requirement; that the State statute requires any deletions from an Ordinance, must be placed within brackets; that anything added to the Ordinance must be underlined and placed in italics; that this makes reading a document very hard to follow when in black and white print; that it is particularly difficult to locate where the brackets begin and end; that on the first part of Chapter 72, they attempted to highlight in red any place there was a change; that everything proposed to be removed is located within brackets and everything proposed to be added is referenced with underlining and italics.

Ms. Brandy Nauman stated the percentages can get confusing; that under requirement No. 2, to be eligible to receive permitted use, 30% of the project must be offered as affordable SCRP units; that for example 30 units out of 100 units must be offered as affordable SCRP units; that the 30% of SCRP units must serve a population that is 80% of the AMI or less and this is a standard that is considered moderate to low income.

Chairman Wheatley stated that 80% or less of AMI does contain a large portion of the workforce.

Ms. Stevenson questioned what 80% or less of AMI would look like in real income number statistics.

Ms. Nauman stated AMI stands for Area Median Income; that AMI does not differentiate between the east and the west side; that the AMI is County specific; that for a household of two people, the range would be \$18,030 to \$48,100 earned annually; that a one-bedroom rental unit is \$590, \$705 for a two-bedroom rental unit and \$815 for a three-bedroom rental unit; that those are the current rental prices being used within Coastal Tide; that the 2022 Income Limits were just released that week; that they will be updating the prices based off of the reported income limits, which did go up and that a family of four can earn up to \$60,100.

Mr. Whitehouse stated that they had to make certain assumptions; that they had AECOM provide site plan analysis to show projects could be constructed on a 10-acre parcel as well as a larger parcel; that for the 10-acre parcel, they assumed 1,000 sq. ft. per unit, with four floors and four units per floor; that this was able to be constructed in compliance to the 100-ft. setback requirement; that they were able to construct the project at 12 dwelling units to the acre while meeting the numerical requirements, parking requirements, setback requirements and include assumptions for stormwater management, as well as a community-building; that the model shows the flexibility and possibility to achieve development on a 10-acre parcel; that comments they received included flexibility of parking being important in allowing the arrangement of the buildings to work; that shown on the 30-acre model they used the same principle and same design assumptions, they were able to assume eight units per floor at 1,000 sq. ft. per unit with four floors; that this would allow for 30 units per building; that when again assuming 12 dwelling units to the acre, they were able to provide 360 dwelling units; that 30% of the 360 dwelling units would produce 72 Workforce Housing units; that they did show the 30 acre parcel as a slightly irregular parcel, not being a perfect rectangle; that even on the irregular parcel, they were able to consider stormwater management and the potential for the presence of wetlands; that they were able to establish that the project would be viable physically, in terms of the design and layout; that interconnectivity was able to be achieved; that they were able to place a community building at the front; that all the design criteria, unit number were met and all complied with required setbacks and this was all achieved without significant compromise and with room left over.

Ms. Stevenson questioned if there is a minimum lot requirement, or if anyone could build if they meet the requirements of the Ordinance.

Mr. Whitehouse stated there is nothing within the Ordinance that states a parcel must be a minimum of 10 acres or 30 acres and they chose those numbers for modeling purposes only.

Mr. Robertson mentioned the site plan analysis were all done to scale.

Ms. Wingate questioned if storage buildings are normally included with affordable housing.

Mr. Robertson stated they looked at several other projects; that they did not consider storage units and most affordable housing units do not offer separate storage units, as storage is typically built into the units themselves.

Mr. Hopkins questioned if the current Ordinance proposes 12 units to the acre, what would encourage developers to develop at 12 units to the acre if they are required to sacrifice 30% of their units, as they are currently only required to sacrifice 12% of the units and questioned if developers would be permitted to develop anywhere in Sussex County.

Mr. Robertson stated the proposed Ordinance permits 12 units to the acre as a permitted use; that in being a permitted use, there is no requirement for a public hearing before the Planning & Zoning Commission or County; that a developer would be permitted to go straight to Site Plan Review and a developer would be permitted to develop 12 units to the acre if they meet all the proposed Ordinance criteria.

Mr. Hopkins questioned if Robinsonville Rd would be an ideal location.

Mr. Robertson stated he could not speak to any specific locations, but one of the criteria is near an existing or proposed DART route; that he does not believe the location of Robinsonville Rd. would meet the DART route criteria; that he stated the State controls DART routes, and the presence of DART routes will be a limiting factor for projects.

Mr. Hopkins questioned if a developer could obtain a DART route from the State, they could potentially be able to develop a project.

Ms. Wingate stated DART may expand its proposed routes if they were guaranteed opportunities for ridership.

Mr. Robertson currently stated the existing DART route consists of Rt. 9, Rt. 24, Rt. 54, Rt. 26, Rt. 1, and Rt. 113

Chairman Wheatley questioned if a developer could secure a commitment for DART to extend a route within a half-mile of a proposed site would the parcel, then qualify.

Mr. Robertson stated Final Site Plan approval shall not be granted until a route is in existence and operated by DART.

Mr. Robertson stated there is a well-established acknowledgment that Sussex County does not have enough affordable or workforce housing; that they have looked at ways to achieve more workforce housing; that Sussex County itself, does not own housing developments; that Sussex County does not build them, does not own them, does not develop them; that the LSA report did mention what can be done to create affordable housing that is not currently being built in Sussex County; that the only way for affordable housing to be achieved is through the proposed density and by allowing the density to be a permitted use; that a lot of people will want affordable housing, but if a public hearing is required, there will always be arguments regarding density; that this creates everyone being put on the spot, creating unpredictability and uncertainty and the public hearing process takes time to get through for approvals.

Ms. Stevenson stated everyone who currently does not live in Sussex County wants to see affordable workforce housing, everyone within the Government wants affordable workforce housing but the current residents of Sussex County do not necessarily want affordable workforce housing.

Mr. Robertson stated with the data he has received and the comments he has heard, he believes many people are in support of affordable workforce housing; that he stated Ms. Brandy Nauman's office has had discussions with Cape Henlopen School District regarding the issue of being unable to get teachers for the district because the teachers cannot afford to live in Sussex County.

Mr. Hopkins stated he agrees there is a current problem; that he believes the LSA report was well written; that he strongly encourages everyone to read the whole report; that the report clearly shows that half of Sussex County's workforce cannot afford a \$250,000 house; that the LSA evaluation mentions both ownership as well as rentals and he questioned if the Ordinance was referencing rental units only.

Mr. Robertson stated the Ordinance currently focuses on rental units only; that this is due to Sussex County having a completely separate section of the County Code regarding homeownership; that when dealing with homeownership, one has to be very careful to ensure investors do not purchase the properties and flip them; that this requires Sussex County to be the regulator, ensuring the homeowner occupied properties remain that way in perpetuity; that he acknowledges the fact the homeownership issue needs to be tackled as well but right not the Ordinance is tackling rental units.

Mr. Hopkins questioned how many units are needed and how long; that if the Ordinance is peeling off tenants who just fall under the 80% criteria, he questions what happens to everyone else; that he stated the only issue he had with the LSA evaluation is the fact they had to work off the consortium numbers; on page two and page 13 it shows the projection between 2020 and 2030 which states over those 10 years, new permits are projected to be 10,290 and between 2030 and 2040 another 5,000 permits are projected; that within the last three years, Sussex County has nearly hit the 15,000 range and he believed building permits last year to have 5,200 +/-.

Mr. Whitehouse stated the permit total would include all permits located for in-town and permits within Sussex County and if one were to total all permits pulled in town and unincorporated areas, the average is approximately 5,000 permits per year.

Mr. Robertson questioned if the 5,000 permits per year include deck and accessory structures, or dwelling units.

Mr. Whitehouse stated the permits would include single-family homes, manufactured homes, and multi-family homes.

Mr. Hopkins stated the current subject is a sore subject for the Commission members who participated in the many meetings in 2017 and 2018; that currently, only three years later, Sussex County has burnt through, what the consortium stated would take 20 years to do and he requested Ms. Stevenson read a paragraph from page two of the LSA report.

Ms. Stevenson read from page two of the LSA report that:

“However, Sussex County has not seen the construction of new homes at rents and prices that are affordable to lower-income households, including individuals in key sectors of the local economy and individuals living on fixed incomes. Currently, there are nearly 10,700 households in Sussex County that are severely cost-burdened, spending more than half of their income on housing each month. To help mitigate current and future housing challenges, support economic growth, and promote a high quality of life for County residents. Sussex County should encourage the reduction of rental and for-sale homes affordable to households in different income ranges as follows.”

Mr. Hopkins stated that the LSA report goes on to list information in the table, which was based on the information provided by the consortium; that it is stated the 80% to 100% and lower; that one would take the less than 30% of AMI, the 30% to 50% of AMI, the 50% to 80% of AMI; that these are the numbers which are reference in the proposed Ordinance as medium and low categories; that

it states Sussex County should be building the 99, the 131 and the 171 to keep up with the demand; that it was stated we should not touch the 10,700 households mention in the paragraph Ms. Stevenson previously read; that Sussex County should be generating 401 based on the total number of units of 1,549; that last year the total number of units was not 1,549; that it was 5,200 units, being the same the year before and the year before that; that based off of previous years, one could think the provided numbers are going to increase as well; that he suggested they use the provided numbers, which state Sussex County should be providing 401 units annually and he states Sussex County first need address how large the problem is, then how does the County achieve what is needed.

Ms. Wingate stated she feels the proposed Ordinance is a great first step in the right direction; that it used to be 70% and is proposed to increase to 80% to attempt to help those who were previously being missed; that she appreciates the work that has been placed into the Ordinance; that the models prepared by AECOM clearly shows the projects can be done and the other great part being the Ordinance does not require a public hearing.

Mr. Robertson stated with the current SCRIP Program has only provided 30 units, within Coastal Tide, in the last 14 years.

Mr. Hopkins mentioned on page 20 of the LSA report it is stated the best-case rental scenario, the model becomes viable at 10 units per acre at 12 units per acre, the project could support a 25% units set aside affordable to households earning 80% or below; that he feels the LSA analysis has already proven the Ordinance wrong; that the Ordinance proposes 12 units to the acre while setting aside 35%, which seems to be in opposition to the LSA report.

Mr. Robertson stated on page 20 of the LSA report it states that in a best-case rental scenario, the coastal model at 12 units to the acre, the project could support a 25% set aside of units affordable to households earning 80%; that they took it a step further, in the attempt to shoot a little higher, requesting 30%; that this was in the attempt to obtain more affordable units out of the 12 units to the acre; that the Ordinance is going to allow, by right, a permitted 12 units to the acre, Sussex County should get something back in return; that it would be a lot easier to begin at 30% and back the percentage down to 25% than to begin at 25% and attempt to increase to 30%.

Mr. Hopkins stated within the next sentence on page 20 of the LSA report it stated to achieve the level of housing affordable to 50% or less of AMI, the project would need at least 16 units per acre.

Mr. Robertson stated the statement Mr. Hopkins referenced within the LSA report is correct, however, they attempted to reach a greater range of people by looking at 80% or less of AMI.

Mr. Hopkins stated that 80% is higher and is considered a higher income.

Mr. Robertson stated that 80% is a higher income; that the LSA report referenced that many residents within Sussex County are at the 80% and lower who currently cannot afford rental and homeownership in Sussex County, and they are attempting to capture 80% and down, even below 50% of AMI.

Mr. Hopkins stated that to capture 80% and lower one must look at the lowest number; that provisions must be made for the 30% tenant; that a 30% tenant will not fit within an 80% category, and he feels the Ordinance has it backward.

Ms. Nauman stated this is one of the reasons they hired someone to perform all the math; that it was her understanding that all the mentioned scenarios were played out as part of the provided modeling; that the level of incomes that would be able to be viable at the proposed model location.

Mr. Hopkins questioned an explanation of the sentence within the LSA report, which stated, *“to achieve about this level of housing affordable to 50% AMI and below the project would need at least 16 units per acre.”*

Mr. Hopkins stated the statement is correct; that if one were to only look at 50% and below, a lower rental rate would be charged, which would require more units to be offered at market rate to offset the 50%.

Mr. Hopkins questioned if Sussex County is attempting to help the 50% or below AMI tenants, or only those tenants who are at 80% of AMI.

Mr. Robertson stated tenants are eligible at 80% or less of AMI, it allows for tenants at 80%, 70%, 60%, 50%, 40%, 30%, and below to be eligible.

Mr. Hopkins stated as Sussex County makes provisions for the people who make less money, there is a need for more units to be offered.

Mr. Robertson stated the proposed Ordinance states, based on the LSA report if a person were to bring in tenants of 80% of AMI and less, going all the way down, allowing for 80%, 50%, and 30%, 12 units to an acre is required at 25% of the units.

Mr. Hopkins disagreed with Mr. Robertson stating he does not believe him to be correct and he feels the math is not correct.

Mr. Robertson stated the presented Ordinance is based on the information provided to them by the hired experts; that the statement Mr. Hopkins referenced is regarding the attempt to look at only tenants at 50% and below of AMI; that in that circumstance, one would not capture the 80% to 50% of AMI range of people; that if the goal was to only look at 50% and below of AMI, the stated 16 units per acre would be required, which would be four additional units per acre to offset that 50%; that if one looks at 80% and below of AMI, it can be achieved at 12 units per acre and 30% of proposed units and they do not want to exclude the people located within the 50% to 80% of AMI range; that the people in this range make up the majority of the workforce for Sussex County.

Mr. Hopkins stated by only building 12 units to the acre, Sussex County will only accommodate people located within the 80% range, not people located within the 50% and below range.

Mr. Robertson stated Mr. Hopkins's view was not correct; that he was not certain how else to explain the Ordinance and if Sussex County looks at people at 80% and below of AMI it would include 78%, 77%, 76%, and below.

Mr. Hopkins stated he did not see Mr. Robertson's information to be true; that he stated that 80% of \$100 is \$80; that he understood the Ordinance to state he would be eligible at \$80 when everyone else is paying \$100; that he would be sliding in just under the threshold at 80%; that he questioned what happens if he only makes \$50 and he would not be eligible to rent.

Ms. Wingate stated the Ordinance proposes 80% and down.

Mr. Robertson stated they are not proposing to take just anyone at 80%; that if an eligible tenant came forward at 50%, they would be accepted; that if an eligible tenant came in at 60% or 70%, they would be accepted, and the Ordinance provides a wider range.

Ms. Stevenson questioned how it is determined that the rentals are a good mixture of all percentages, making sure rentals are not only going to tenants at 80% and no tenants at 30%.

Ms. Nauman stated the slide stated the request for an average of mixed incomes; that it is very difficult to get someone at precisely at 80% of AMI; that someone may come in at 60% of AMI and another person come in at 100% of AMI; that if the average of the units is 80% of AMI annually, that is what they are hoping to achieve.

Mr. Hopkins questioned if the people who provided the LSA report, or any of the other mentioned providers and stakeholders, were in any way involved in writing the proposed Ordinance.

Ms. Nauman stated the mentioned providers were a part of many focus groups and stakeholders to develop the provided report and the provided report was used to construct the proposed Ordinance.

Mr. Hopkins stated his intention is not to give everyone a hard time; that he wants the Ordinance to work; that the Ordinance is a big deal; that the affordable workforce housing issue is one of the biggest issues Sussex County is currently dealing with; that he feels the issue should be handled with all hands on deck; that he appreciates the models provided by AECOM and he would like to hear and receive opinions from developers as well.

Mr. Robertson stated the report reflects the information provided by housing developers and others.

Mr. Hopkins questioned if those developers were part of the writing of the Ordinance.

Mr. Robertson stated the developers were not part of the writing of the Ordinance itself, but the comments and suggestions provided within the LSA report were the guidelines for the writing of the Ordinance.

Mr. Hopkins stated he feels the devil is in the details.

Chairman Wheatley stated he understood where Mr. Hopkins is coming from, however, they are not the people who write Ordinances.

Mr. Hopkins questioned why there is a 100-ft buffer requirement.

Mr. Robertson stated they attempted to ensure if this type of high density were to be placed in other residential areas, they offer some separation; that this type of separation is offered in other areas of the County Code, such as with RPCs; that also due to the permitted height increase; that they considered ratios of the height to the setbacks, but this was found to be very complicated to plan; that they proposed the 100-ft. buffer as it would provide a vegetated buffer and separation from the property boundaries and the development; that this is one reason they requested AECOM; that they wanted to ensure they were not impacting the ability to construct 12 units to the acre by imposing the 100-ft. separation and buffer; that they, as staff, drafted the proposed Ordinance based on the information provided in the LSA report and the Comprehensive Plan; that many people had an opportunity to participate in the drafting of the Comprehensive Plan; that they did not invent an Ordinance that was not based upon all of the stakeholder information provided in the LSA report and

Comprehensive Plan; that there was a lot of thought that went into the Ordinance, as well as a lot of verification was performed to ensure the Ordinance would work;

Chairman Wheatley stated he feels there should be some consideration given to small projects that may be achievable without central water and sewer; that he is very concerned about the DART route requirement; that he feels the DART route requirement will be the chokepoint for the Ordinance; that he feels consideration should be given for a circumstance where DART was to agree, in writing, to provide service for a complex once the apartments are available for rent, even if the service or route does not currently exist; that otherwise, construction of projects would be waiting on DART; that if one can build the project, people will come and if one cannot get permission to build a project, the people will not come.

Mr. Robertson stated they did have conversations regarding the DART requirement; that they wanted to allow the Applicant to approach DART to request a new route be created; that this would allow an Applicant to move forward with preliminary site plan approval and all State agency approvals; that the thought was during the preliminary stages, a new DART route would be in the process of being established; that the DART route would be established in time for final site plan approval, allowing building permits to be pulled and construction underway; that the Ordinance is subject to change; that their intention was to ensure there would not be constructed projects without DART nearby and they did obtain the distance number from the federal standards.

Mr. Hopkins stated the program in 2014 was a failure; that he does not want the proposed Ordinance to be a failure; that he feels the LSA report, and the proposed Ordinance are completely different and that he would like to see more involvement.

Chairman Wheatley stated that public hearings are held to promote involvement from developers and members of the public.

Mr. Robertson stated when the SCRP Program was established in 2008, everyone thought it would work; that conversations were had with developers, who provided comments they thought the SCRP Program was great; that in reality, the program did not work; that even with an amendment to the SCRP Program, it still had the same outcome; that the program only results in 30 units in the last 14 years; that with the current proposed Ordinance, they chose to frontload with hiring an expert in the field providing information on what works based on their own experience; that the experts did have conversations with advocates for housing, towns with current housing issues, housing developers, such as Christian Hudson, Doug Motley, Jack Lingo, Joseph Mastrangelo, Carl Freeman, Boardwalk Development, Kevin Gilmore with Habitat for Humanity; Ryan Homes, Ocean Atlantic, and Milford Housing; that a lot of the mentioned developers are developing multi-family housing projects currently; that the developers know the land costs; that listed in the appendix of the LSA report, it mentioned where they looked at the economics; that the numbers provided to them, were real cost numbers provided by real developers who are currently constructing and involved in multi-family projects within Sussex County; that they do not want to make the same mistake twice and they also want the Ordinance to work.

Mr. Hopkins stated he had spoken to a developer, who he believes had developed more low-income and affordable housing than anyone else; that the developer had stated he would not touch the proposed Ordinance with a 10-ft. pole.

Chairman Wheatley stated he hoped the developer would be present at the current public hearing and would tell the Commission his reasons why he does not agree with the Ordinance.

Mr. Hopkins stated the developer he mentioned was not present at the public hearing.

Chairman Wheatley questioned if Mr. Hopkins knew what the developer's issues were with the proposed Ordinance and he appreciates feedback from developers, however, if the feedback cannot be provided to the Commission it does not mean much.

Mr. Hopkins questioned if anyone was concerned that no developers had made comments regarding the proposed Ordinance.

Chairman Wheatley stated he is not yet concerned, as the public hearings are part of the public comment process; that he is not sure what else the Commission can provide other than public hearings where public comment can be given; that developers were consulted by the team who constructed the LSA report; that it is not a fact where developers had no idea the Ordinance is being proposed and if developers do not care enough to be present at the public hearings, offering concerns and comments, the Commission cannot help them.

Mr. Hopkins stated his main concern is that the density number is not high enough and the 50% open space requirement and if developers cannot make the same percentage, they will not be interested in the Ordinance.

Mr. Robertson stated they wanted to have the 50% open space, without impacting the 12 units to the acre; that they hired AECOM to ensure the requirements are achievable; that the LSA report does discuss what a developer needs to make on return; that the report looks at return on cost and yield on cost; that they mention a hurdle rate, which is the minimum percentage a project must achieve to be financially viable; that the hurdle rate is the threshold which must be met before a developer begins making any money; that the LSA report looked at what those yields were; that they mentioned return on cost at 25% and a minimum yield on cost at 7.5%; that the provided information is the reason they hired LSA to provide the evaluation and report, based off of information provided by the developers who are currently building within Sussex County; that they made every attempt to establish the Ordinance the right way, compared to the previous way in 2008 and the proposed Ordinance was constructed based off of actual data.

Mr. Hopkins stated he felt the LSA evaluation and provided data were good; that he would like to see a focus group, constructed of developers the Commission respects, voicing their interest in the Ordinance.

Ms. Stevenson stated she felt it should be mentioned within the Comprehensive Plan, locations in which Sussex County would like to see the development of this nature; that she questioned if there had been any consideration regarding the State Investment Levels and Spending and she stated the Ordinance will eventually become a political talking point.

Mr. Robertson stated consideration was not made directly based on the Delaware Strategies for State Policies and Spending; that this was due to the fact the State Levels state they are not to be used as land use tools for Sussex County to follow; that there is a strong indirect correlation with projects being limited to Growth, Developing, Coastal and Townhome Center areas; that these areas are mostly located within Investment Level Areas 1 and 2; that there have been Investment Level 4 areas being

applied for development; that the Coastal Area is not located within Investment Level 4; that he does believe the Delaware Office of State Planning & Spending recently updated their Investment Level map; that they chose to keep the Ordinance compatible with Sussex County land use and the Sussex County Comprehensive Plan; that the State can always change where Investment Levels are located, which could impact the Ordinance and locations where Sussex County desires the projects be built; that the Henlopen TID is based on density assumptions; that if a project were to be located within the Henlopen TID, the project would be required to go through the TIS process; that the developer would not be permitted to pay the TID fee and continue as the project is not two units to the acre.

Ms. Stevenson questioned if there were an additional incentive for anyone who would construct an infill project, increasing the density where it is presently located, which is mostly located within city centers where people can walk to work.

Mr. Robertson stated the Ordinance cannot offer incentives for that circumstance as those areas are located within municipalities.

Chairman Wheatley stated the Ordinance will only permit projects within Sussex County; that the requirement for central water and sewer will limit the locations projects can be located; that central water and sewer are not offered throughout Sussex County; that central water and sewer are offered more on the eastern side of the County, but not as much on the western side; that the majority of sewer is controlled within municipalities and is the reason he suggested considering a small project exemption to create a greater opportunity to expand projects within Sussex County.

Ms. Stevenson feels most of the need is on the eastern side; that most of the traffic she frequently gets stuck in is the workforce leaving the eastern side to go home to the western side and questioned if there was more affordable workforce housing located on the western side of the County.

Chairman Wheatley stated there is lower-priced housing located on the western side of the County.

Mr. Robertson stated the Ordinance is not limiting central water and sewer to be provided by Sussex County; that the water and sewer could be provided by another company, and they are not considering only housing-cost burdens, but also transportation-cost burdens; that with current gas prices, they attempted to get people living closer to the locations they work to help minimize travel costs.

Ms. Stevenson stated she agreed with Mr. Robertson, but she questioned if people will utilize transit opportunities; that the kids attempting to work at the beach, will ride the bus for 45 minutes to work and the next day decide they would rather park in town.

Chairman Wheatley stated he does agree that there should be buy-in from the developers who could be constructing the projects; that he requested to ensure a draft of the proposed Ordinance gets circulated to all the people and developers on the list within the LSA report allowing the opportunity to receive comments from them.

Ms. Stevenson questioned if Sussex County is looking at accessory dwelling units (ADU), allowing people to live in RVs and other options; that she feels other alternative options would allow a solution to the current problem without requiring people to sell all their farmland to developers.

Ms. Nauman stated she believes considering alternative dwelling options is on the radar for Sussex County, as it was mentioned during the Comprehensive Plan; that another initiative happening

currently within her office is the Housing Trust Fund; that the Housing Trust Fund just rolled out at the beginning of April; that the Housing Trust Fund initiative is hoping to address the homeownership components of the LSA report; that Sussex County is offering direct homeownership assistance with the Housing Trust Fund; that they are offering down payment closing and offering a developer grant program for those who are building affordable housing; that between the current proposed Ordinance and the current Housing Trust Fund initiative, it has been two large lifts for the six staff members within the Sussex County Community Development Department and homelessness is also an issue they hope to address.

The Commission found that Mr. Christian Hudson spoke on behalf of the proposed Ordinance; that he is glad to see Sussex County attempting to address the affordable housing issue; that he feels affordable housing is a massive crisis; that he feels it has taken too much time for action to be taken for the issue; that he had not heard any comment, since providing comment to LSA in the summer of 2019; that he had heard no talk regarding the current Ordinance or any other Ordinance related to the affordable housing issue; that the provided population consortium numbers are laughable; that had Sussex County used other population growth estimates back when the 2018 Comprehensive Plan was written, Sussex County would most likely not be in its current predicament; that many people within the development community warned Sussex County during the Comprehensive Plan process and the 37 public hearings; that the 10-acre model provided by AECOM is completely unworkable; that he does not believe AECOM was aware of current Fire Marshal regulations; that the buildings do not have drive-aisle or fire lanes located on all four sides of the buildings; that he would assume, based on the model, AECOM does not know much about the groundwater table for Sussex County, especially locations down below the Indian River; that there are no turning radiuses referenced in the model parking lot; that depicted on the model are nice, square, right angle turns; that there are violations to the Sussex County Code in regards to how many parking spaces can be placed side by side; that he can point out these issues, which ensure the model is a very unbuildable plan, after only reviewing the plan for 30 seconds; that the mentioned issues are the reasons he greatly advocates for a task force or working group where the people included on LSA's list and any other person could be requested to provide critical input and feedback on the proposed Ordinance; that he mentioned the Ordinance stated projects are subject to "public" sewer and water; that he would suggest the Ordinance state projects are subject to "central" sewer and water to allow Artesian and Tidewater to provide those services; that he does understand and agrees with the concern and comments regarding the location distance to nearby DART routes; that he feels the limiting factors should be the project location near a DART route and central sewer and water; that he does not feel the limitation should be the DART route, central water and sewer and growth zoning; that he feels with all three requirements, a lot of Sussex County will be cut out; that this is due to the map for the State Strategies for Spending are not always accurate; that years ago, he was before the Commission for his application for Chapel Farm; that DelDOT had budgeted \$30,000,000 for infrastructure at the intersection of Cave Neck Rd. and Rt. 1; that the Chapel Farm project bordered the proposed infrastructure improvements on two sides and yet the project was designated within Level 4; that within Level 4 designates for no State spending; that he had approached Mr. David Edgell's predecessor regarding updating the Investment Level maps to reflect what DelDOT had included within their budget; that the State Planning Office refused to update the maps at that time; that he questioned if there were an idea of how many units the Ordinance will provide or impact analysis performed; that a shortened version of his comments would be, good, congratulations, too little too late, we are in a crisis and the current Ordinance is a band-aid; that he

feels the Ordinance is a band-aid on a big gaping wound, in a submarine hole, completely underwater; that the report was done in 2019, and prices have increased drastically since then; that he was looking at a housing project, which had been constructed near Plantation Rd. and Rt. 24 intersection; that the homes were constructed by a large home builder; that the project had been approved years ago; that the homes started at \$500,000; that now, the same homes with the same floor plan is listed within the \$800,000 range; that this price increase was over a two year time period, similar to the two year period of the home evaluation performed by LSA; that the housing crisis is even more acute than the LSA report reflected a few years ago; that when he said too little too late, he is not trying to criticize the Council; that he believes the Ordinance is heading in the right direction, however, he feels Sussex County needs to head in the right direction a lot faster; that everyone is dealing with inflation and shortages in labor, materials and supplies; that housing costs are going up; that wages have become stagnant; that this is a toxic mix for the work force; that a major issue for many employers he has spoken with is housing their workforce; that many employers are now seeking to purchase housing, to house their workforce; that he has heard stories about company towns and how awful those scenarios were; that is the direction Sussex County is heading if the housing issue does not get solved and he is in support of the permitted use provision of the Ordinance.

Mr. Robertson stated the term “public” versus “central” in regards to water and sewer, was discussed and the term used was taken from Chapter 110 of the County Code; that an impact analysis would almost require a prediction of how many parcels would utilize the Ordinance, the acreage of the parcels and the density would be; that their goal was to maximize density at 12 units to the acre; that there has been discussion at 16 units to the acre; that they chose 12 units to the acre as that is the maximum density permitted within Sussex County in any zoning; that they wanted to stay consistent with the density; that they did not go into the Ordinance with any projected numbers and he feels the proposed Ordinance is much more ambitious than the current SCRP Program.

Chairman Wheatley stated he feels the permitted use provision of the Ordinance is the biggest driving force of the Ordinance; that the current proposed Ordinance is not meant to answer the whole housing crisis within Sussex County; that it is intended to deal one this one particular part of the housing issue; that for now, they need to attempt to get this Ordinance right; that the comments made regarding the site plan model are well taken and he hopes to study the model, as the mentioned issues are concerning and he questioned if Mr. Hudson had any recommendations to how the Commission and Council could provide relief to the housing situation in a faster manner.

Mr. Hudson stated he feels the bulk standards could be lessened; that he felt the 100-ft. buffer was almost discriminative against low-income residents, in the fact, the Ordinance would require a 100-ft. buffer, but does not require single-family housing to have a 100-ft. buffer; that he questioned if the Ordinance wants density, why is there a requirement to take away land; that if the project is considered permitted and the projects are limited on the location they can be constructed, why would we not maximize the density; that these densities would be specifically located near the DART routes, with central water and sewer and located near major highway corridors; that those areas should be the densest areas within Sussex County; that the height requirement is a huge issue when considering all the other setback requirements; that he questioned if Sussex County cared what the shape or look of the building would be; that he questioned if the look and shape of the building should be an issue for the developer or the people who live in the units; that he questioned why a building could not be required to meet a square footage; that the bulk requirements are the largest limiting factor; that this

is the reason every apartment building looks like every other apartment building within Sussex County; that it is because the design is maxed out and the maximum allowed by County Code; that to allow these buildings to be efficient to build, there are exterior corridors instead of interior corridors; that this limits elevators and other ADA amenities; that there is a lot of limitation to the height requirements within the Code; that he just built a hotel; that he had to place his HVAC underground to meet the height restriction of the County Code; that a peak on a roof offers more design flexibility and allows for a more attractive look; that he suggested a working group as there are many provisions within the County Code which are technical in nature; that there has been a lot of great work completed by the Commission and by LSA; that on page 30 of the LSA report it stated *“the restrictive Land Use and Zoning Code in Sussex County born out of the efforts to reduce traffic congestion, promote environmental stewardship, preserve the County’s agricultural landscape and/or reduce strain on infrastructure, is setting rules and regulations that place limits on the number and type of housing units that can be built in areas of the County that have been designated for growth”*; that in other words, although projects may be located within a growth zone, it is still limited to what you can construct, therefore affordability is impacted; that the report continues to state *“while well intentioned the Zoning Code is inadvertently placing upward pressure on housing prices and exacerbating the same policies the restrictions are working to address, low density single-use developments, increased traffic congestion, lengthy commutes to work, the cost of installing new infrastructure and the degradation of even more land from sprawling development”*; that due to the non-by-right nature and lack of inventory of other zonings encourages sprawling development; that his application for Chapel Farm, which was approved for 10.4 units to the acre, has been the highest density the Commission has approved in the last 20 years; that the LSA report suggested a minimum of 12 units to the acre to solve the issue; that would be 1,500 units per year, being almost 30% of Sussex County built last year; that those are phenomenal numbers Sussex County must achieve; that the by-right provision is the key part of the Ordinance; that politicians are required to be re-elected every two to four years; that it is difficult to approve property for 12 units to the acre for low-income housing, when the higher-income residents will oppose; that this issue is a very big disservice to Sussex County; that this issue is causing our children a major crisis and our children are not making enough money to afford a \$800,000 home in Lewes and Rehoboth.

Mr. Robertson stated that some of the suggested bulk requirements were initiated by Fire Marshal requirements; that Mr. Hudson made many very good points; that this Ordinance is not the end of the affordable housing discussion; that there may be other areas that require attention within the Zoning Code and the limiting factors it may be causing; that he requested whatever the ending result of the proposed Ordinance would be, we get a better Ordinance through; that he would hate to see the Ordinance be held up for the rewriting of the Zoning Code, which could take years and the Zoning Code was written in 1973.

Chairman Wheatley stated he agreed with Mr. Robertson; that he does not want to get the Ordinance through and go back to sleep; that he wants to get the current Ordinance through and move on to the next affordable housing issue.

Mr. Robertson stated when Sussex County staff came up with the Ordinance the biggest factor being considered were what would the density be, and would the density be permitted; that the 100-ft buffer or the 50-ft open space requirements are not going to make or break the Ordinance; that they are components of the Ordinance, but less important than providing the housing at the density required while expediting the process by making it permitted.

Chairman Wheatley stated he agreed with Mr. Robertson's point; that he stated the buffer and open space requirements do have an impact and he feels those requirements should be reconsidered as they may potentially become the limiting factors in the proposed Ordinance.

Ms. Stevenson questioned if there was any input from the Fire Marshal's Office on the proposed Ordinance.

Mr. Whitehouse stated the model was a special concept and it did look at stormwater and separation distances and some vehicle parking standards.

The Commission found that Ms. Katie Millard who spoke in support of the Ordinance; that she supports the by-right aspect of the Ordinance; that she wished to add a personal face to the affordable housing issue of the Ordinance; that she works within Sussex County for Habitat for Humanity; that the day before the current public hearing, she gave up her apartment as she could no longer afford the rent; that she has had to move back in with her parents while attempting to find a new apartment; that it is very difficult to find affordable housing in Sussex County; that she wanted to ensure she expressed how important the proposed Ordinance is; that it will affect many people within Sussex County and she hopes it is most impactful Ordinance, ensuring the most affordable units possible.

The Commission found that Mr. Kevin Gilmore spoke on behalf of the Ordinance; that he works for Sussex County Habitat for Humanity; that he supports the proposed Ordinance; that he wanted to express how enthusiastic he is to the conversation taking place on affordable housing; that for 18 years he has worked toward addressing affordable housing within Sussex County; that in those 18 years he had never seen the current level of conversation take place regarding affordable housing; that a lot of the conversation had was regarding how does Sussex County move forward in addressing the affordable housing issues; that the proposed Ordinance is the first step in helping to fix the current issue; that he was one of the people who provided comment in the early conversations for the provided LSA report; that the big topic pieces previously discussed, shine through in the proposed Ordinance; that the key pieces to the Ordinance is the by-right use and the permitted density; that he is not a developer who focuses on rentals; that he currently focuses on affordable homeownership; that he hopes to be present to support an Ordinance for homeownership in the future; that he does appreciate some of Chairman Wheatley's comments regarding DART routes and reconsideration to smaller scale projects; that he lends his support to the Ordinance and thanked the Commission for the work they do.

Mr. Robertson requested Mr. Gilmore explain to the Commission what Habitat for Humanity is currently doing and how many houses they are constructing a year.

Mr. Gilmore stated Habitat for Humanity has built over 160 affordable homes in Sussex County; that it has taken 30 years to achieve the 160 homes; that the majority home have been built within the last 15 years; that they average about 10 to 12 affordable units per year; that Habitat for Humanity finances the unit to allow affordability to the homebuyer; that they maintain the values in the community, but allow the payments to become affordable to the homebuyer; that they have been exploring other ideas on how to make the unit affordable; that they have launched impressive programs in the past to help keep people in their current homes; that there is an aging population, who is on a fixed income, who may not always be able to perform minor repairs to their home; that last year Habitat for Humanity performed 100 repairs to homes in Sussex County; that this helped keep residents in their current homes; that these repairs were everything from placing skirting around manufactured homes, to help

improve energy efficiency to placing grab bars, tub cuts, ramps and updated windows; that the home improvements has been a growing aspect of what Habitat for Humanity does; that they are not going to be able to just build their way out of the affordable housing crisis at only 10 to 12 homes a year; that they have had over 30,000 volunteers help build houses in Sussex County; that they asked themselves what they could do in their current public forum; that they felt they could help improve housing conditions to homes, even if they are not constructing the homes themselves; that Habitat for Humanity has received support from Sussex County Council for many years; that he appreciates working with Ms. Brandy Nauman and the Sussex County Housing Development team; that they tag team on many projects to help the community; that they perform a lot of work intown as well; that they have been doing a lot of work in Georgetown, Seaford and Laurel; that they have been focusing on blocks; that if a block has eight houses, they may try to focus on five homes to improve; that this may be tearing down homes and rebuilding or renovating existing homes and by doing this is causes the market to go up and encourages people to invest more money into the properties.

Chairman Wheatley stated the work performed by Habitat for Humanity has made a big difference in the town of Laurel.

The Commission found that Mr. Robert Mitchell spoke on behalf of the Ordinance; that he has been a mortgage banker for the last 30 years; that affordable housing has recently been getting a lot of press; that the press and conversation is a great move forward in the right direction; that the LSA report was done in 2019; that unfortunately in the last three years the curve for housing has gone straight up; that the need for housing has increased due to the pricing of housing; that within the last three years Sussex County has issued 1,500 building permits; that he questioned what the average price was for the homes issued building permits; that two and a half years ago it was recognized there was an issue with affordable housing; that over the last three years Sussex County has issued 1,500 building permits, for the vast majority of the houses to unaffordable for the majority of Sussex County residents; that he looked over the LSA report; that he feels the LSA report establishes the 12 units to the acre as a minimum; that the Ordinance does require 100-ft buffer on each side of the property; that when meeting the Ordinance, projects will be utilizing less than 50% of the property; that the 100-ft. buffer requirement, placed on a nine acre parcel, would create almost five acres of open space when located on a perfectly square lot; that he questioned how many parcels are available to meet the Ordinance criteria and requirements; that he questioned if there was an analysis to how much acreage it would take to perform a project; that staff had two and a half years to perform these analysis; that he asked these questions in hopes to obtain a goal; that the goal would help provide a target number of affordable homes the Ordinance would be projected to provide; that he questioned if 12 units to the acre enough density to provide the units needed; that he questioned if the people who have had to leave their homes care about the 100-ft. buffer and 50% open space; that he questioned why the Ordinance could not propose 15 to 16 units to the acre; that he feels the 100-ft. buffer requirement is a lot to be required on every side of the property; that when reading the Ordinance he felt it portrayed, affordable housing being an issue, the Ordinance being what Sussex County wants to do about the issue, but the Ordinance is also how Sussex County will protect certain areas of the County from affordable workforce housing from being built, that he is concerned the Ordinance will be pushed through, but be impossible to make work

Mr. Whitehouse stated Sussex County would be able to state the estimated cost for building the home, which received a building permit, but Sussex County would not know the selling price of the home, as Sussex County does not collect data on selling price; that he would estimate, under \$200,000 on average, considering all units that received building permits; that manufactured homes do bring down

the pricing of larger homes; that they did conduct an analysis to look at how many parcels could be subdivided, how many parcels are undeveloped near transit areas; that he did not have the number in front of him, but an analysis was performed; that they do have a number to the acreage, but he did not have the exact number at that moment

Mr. Robertson stated the 50% open space and 100-ft buffer requirements are not separate; that those requirements may overlap each other; that the setback areas may be counted toward the 50% open space requirement of the Ordinance and they do have the number related to acreage; that the information regarding acreage can be pulled from the Sussex County GIS Mapping System; that they currently do not have the exact number in front of them; that he questioned Mr. Mitchell if he is suggesting Commission hold the Ordinance until the numbers and information are provided; that based on the comments and complaints on how long the Ordinance has taken to come forward, he struggled with the idea of holding the Ordinance any longer, unless there were valid reasons to do so; that the number of 12 units to the acre was provided by the LSA report; that 12 units to the acre are also the current maximum density permitted in any zoning with Sussex County Code; that the reasoning for the proposed design criteria is due to projects being located in areas that are not high density areas; that the by-right portion of the Ordinance would permit 12 units to the acre in AR-1, where currently only two units to the acre is permitted; that the Code does currently have separation requirements for residential adjacent to commercial, for example; that the reason for the design requirements was due to the potential difference in density; that the proposed numbers are a starting point; that they could consider reduction of the 50% open space or the 100-ft. buffer to ensure the 12 units to the acre or would it allow better design flexibility to build a better project; that he questioned what number Mr. Mitchell felt would work regarding the open space and buffer requirements; that he stated the other portion of the Ordinance is it increases the permitted height from 42-ft to 52-ft. to allow for an extra story and a pitched roof; that the thought process was if it was permitted to go up, the project to could come in more and spread out less; that this would create more of a Cluster design;

Chairman Wheatley stated if Mr. Mitchell had an issue with the timing of the performed analysis and Ordinance, he would need to express his issues with Sussex County Council, as they are the governing body that regulates the time management of the Ordinance; that he agrees if the questions to the number of units and acreage can be calculated with accuracy, he agreed, the Commission should review the numbers; that he feels the market will answer some of the questions; that in some cases the answer will be a judgment call; that there may be a parcel that meets the Ordinance requirements, but may not be a location that developers would be interested building in; that there may also be a case where there are geological issues which exclude the parcel but would not be found in a calculation; that he understands Mr. Mitchell's desire to have answers to his questions, but he questions how valuable the information and numbers would be;

Mr. Mears stated he disagreed with Mr. Mitchell on his impression of what the proposed Ordinance is trying to achieve, and he does not feel the proposed Ordinance is being put through to, in the end, not want to do it.

Ms. Wingate stated the Commission just went through a similar issue within the Town of Bethany; that she questioned if a project is constructed adjacent to single-story or two-story residential homes, then placing a 52-ft building next to the homes, the people within the 52-ft. units will likely be able to see through the windows of the single-story and double-story homes; that people have previously testified to have concern and issues with that fact; that she stated a 100-ft. buffer may be too large, but there does need to be a consideration for the communities already existing

Mr. Robertson stated that the RPC section of the County Code does discuss that issue and states there needs to be an appropriate transition between densities; that he stated the proposed number may not be right; that they felt having a defined number was more appropriate, than an undefined number and would allow a developer to know the number and progress on.

Mr. Mitchell stated maybe the 100-ft. buffer is needed adjacent to residential communities, but possibly that adjacent to a highway the buffer could be lessened to allow for more units.

Chairman Wheatley stated he feels a 50-ft. buffer would suffice for the projects.

Ms. Wingate and Mr. Mears stated they both agree with Chairman Wheatley's comment that a 50-ft. buffer requirement would suffice for proposed projects.

Ms. Stevenson questioned if the Sussex County Code defines what an apartment is; that she questioned why dorm-style units are not being constructed, where people would have an individual room but would share a kitchen and bathroom; that she questioned if dorm-style units are currently permitted; that she questioned if the location where individual people sleep considered a dwelling unit and she questioned if the sleeping quarters or the kitchen defined a dwelling unit.

Mr. Whitehouse stated in the County Code there is a definition as to what a dwelling unit is; that the definition is based on the number of related and/or unrelated individuals; that this is currently stated in Chapter 115 of the County Code; that if there were eight people sharing cooking facilities, who were unrelated, it would be considered outside the definition of a dwelling unit; that the definition would then become multi-family and the definitions would not be changed by the proposed Ordinance.

Ms. Stevenson stated that dorm-style units could be a solution to help cut into the current affordable housing problem.

The Commission found there was no one present by teleconference who wished to speak in support or opposition to the proposed Ordinance in relation to the workforce housing.

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 the Ordinance. Motion by Mr. Hopkins to hold the record open for written comment until the next regular Planning & Zoning Commission meeting for the receipt of additional written comments, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

Minutes of the May 12, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Ordinance, which was heard on April 28, 2022, and the record was left open until the current meeting to allow for receipt of additional written comments.

Mr. Whitehouse stated that seven additional documents and responses that had been received; that the correspondence was circulated to the Commission within the Paperless Packets; that there were additional comments received after the publication of the Paperless Packet; that those comments were printed and circulated to the Commission; that within the printed documents was a report received from Century Engineering; that there was some discussion during the public hearing regarding the number of parcels County wide could potentially, from a numerical point of view, benefit from the potential Ordinance; that Century Engineering provided a County wide analysis, that the majority of the document outlines the methodology applied within the analysis; that Century Engineering did use real-time data provided from the Planning & Zoning Department; that at the bottom of the second page, the report stated the total number of parcels that met the criteria established as part of the analysis is over 2,521 acres; that a one acre threshold was chosen due to the Ordinance's buffer requirement; that they chose to exclude parcels of less than one acre; that County-wide, 612 potential parcels were found that fulfilled the requirements of the Ordinance; that the 612 parcels totals 6,291-acres; that he mentioned other multi-family housing examples within Sussex County; that not all of the existing multi-family housing examples currently offer affordable housing units within the program; that the offer examples show the ability to offer the proposed number of stories, the number of units and the amount of open space; that Beach Plum Dunes currently has a density of 3.25 dwelling units to the acre, which equals 144 units; that staff requested attention be drawn to the open space of 89%; that the Ordinance requirements are physically capable to being achieved currently in projects that are or have already been built; that Costal Tide offers 168 units on 18.33 acres; that Costal Tide was able to deliver 63% open space with a density of 9.17 dwelling units to the acre; that all of the current examples are compliant with the 42-ft. maximum height requirement; that Weston Willows is a three-story building, which still complied with the 42-ft. maximum building height; that Weston Willows offered 287 units, with a density of approximately 10.65 dwelling units to the acre; that Weston Willows was still able to deliver 48% open space for the project; that the final example was Sea Glass, which is a four story building with a flat roof design; that Sea Glass also complied with the 42-ft. maximum building height requirement; that Sea Glass offered 224 units on 18.75 acres; that this offered an approximate density of 11.94 dwelling units to the acre and these examples show, even at below 12 dwelling units to the acre, the deliverable percentages of open space are in the region of 50% or more.

Mr. Robertson stated that there were a couple of variables to mention; that the Commission is somewhat seeing the proposed Ordinance for the first time; that County Council has been discussing the issue for some time; that the examples shown were information staff had when heading into the County Council presentations; that there are some notable differences; that the buildings of Beach Plum Dunes are 42-ft. in height; that the Ordinance proposes 52-ft., which would allow for another story; that the addition of another story would increase the ability to have more affordable units and greater density; that the threshold for open space within the Ordinance is 50% and the open space offered in Beach Plum Dunes is 89%.

Chairman Wheatley reminded the Commission, that due to not having a full Commission, and without having any serious pressure to vote, the Commission is not obligated to vote; that he did feel it would be good if all five Commissioners had the opportunity to vote and the Commission is welcome to have a discussion.

Mr. Hopkins stated the issue is similar to taking a drink from a fire hydrant; that all the information received as been good information; that the Workforce Housing issue is such a large issue for Sussex County; that he recalled the LSA report stated the approximate total workers within Sussex County was 8,000 workers; that the AMI, at the time, was about \$50,000 annually per worker; that the Commission is trying to help people find homes, allowing them to serve in all the capacities Sussex County needs; that he wished the Commission had the opportunity to be involved in workshops related to the Ordinance; that he views the Ordinance as one solution; that he feels the Commission needs to be unfolding multiple solutions; that he feels the Ordinance is concentrated to locations where the highest dollar amount of land is; that the bulk of the potential locations are within the Coastal Area; that the evaluation discussed multiple different analysis which were made; that the Ordinance made the most sense on areas closest to the shore; that he feels the Ordinance may be good for the three categories mentioned in the Ordinance; that he stated Sussex County also needs workforce housing within the Georgetown area and beyond; that in order for the numbers to work, the Commission must go back to consider density; that it is difficult to attempt to figure everything out on a Thursday evening; that the Ordinance is an amendment to the original Ordinance written in 2008; that the Ordinance was amended in 2016; that no one seemed interested in the previous Ordinances; that County Council has been involved and discussing the issue the past two and a half years; that he counted the items and lines deleted and added from the original Ordinance; that there were about 26 items deleted and 16 items added for the proposed Ordinance; that he does believe the Ordinance will work in the growth areas; that he feels there should be another option, in the other areas, as staff looks at areas further west; that he believes the report reflects the requirement to increase density when moving further west, to allow projects to work and he feels they could do better; that he questioned how many of the 612 parcels are ten acres or more and he requested this numerical data be presented at the next scheduled meeting.

Mr. Whitehouse stated to achieve the number of how many of the 612 parcels are ten acres or more, would require additional math and calculation; that he could provide the information by the next scheduled meeting, and he requested the Commission leave the record open allowing for the receipt of the data information requested in relation to parcel distribution.

Mr. Robertson stated within the past two and a half years, the COVID-19 pandemic stopped everything for a while; that the Commission and County Council were not permitted to have meetings in person to allow discussion; that over the past two and a half years, the Coastal Tide project was being put to use; that Coastal Tide offered real-time education about the SCRP Program and how the program was working or not working; that staff utilized information learned from experiencing a project in real-time; that this offered opportunities to see issues which needed to be fixed and Chapter 72; that they spent a lot of time reviewing the LSA report; that they spent a lot of time to ensure a project would be feasible with the Ordinance requirements and the few changed lines was not the cause of the delay.

Chairman Wheatley stated Sussex County will have to do better with the workforce housing issue; that he believes the proposed Ordinance is not the end, but intended to be the beginning; that the Ordinance is one piece of a very large pie; that apartments and houses cost the same amount regardless of where they are built; that housing will cost the same in Seaford, as they would in Rehoboth; that the variable cost for developers is the land; that the construction cost is the same; that the land cost will not come down to the point it will cause a large disparity, due to the construction costs being

fixed; that in order to offer more reasonable rents in areas which are less desirable, the Commission may have to consider additional incentives on the western side of the County; that when it comes to specifics, he is still concerned about a 50-ft. setback versus a 100-ft. setback, as well as the 50% versus 30% of open space; that after the numerical data and project examples, he does recognize the 50% open space is achievable; that deferring action would allow the Commission time to digest the newly presented information; that he does agree the Ordinance needs to be advanced; that he stated the Commission should keep in mind, many projects are built upon multiple parcels which are purchased and combined into one parcel; that the data being presented is based on individual tax parcels; and he requested to know the distribution numbers, from one to five acre parcels, five to ten acre parcels, 10 to 20 acre parcels and 20+ acre parcels.

Mr. Hopkins requested the parcel distribution data include parcels of 20 to 30 acres and 30+ acre parcels as well.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action, holding the record open for the receipt of additional information requested to be provided from the Planning & Zoning staff. Motion carried 4-0.

The vote by roll call; Ms. Stevenson – yea, Mr. Hopkins – yea, Mr. Mears – yea, Chairman Wheatley – yea

Minutes of the May 26, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Ordinance, which had been deferred since April 28, 2022; that the Commission meeting of May 12, 2022, the record was left open for the receipt of additional information requested to be provided from the Planning & Zoning staff in relation to the distribution data to applicable properties within Sussex County.

Mr. Whitehouse advised the Commission that there were no additional comments from members of the public. He submitted the requested GIS Spatial Analysis report into the public record.

The Commission discussed the proposed Ordinance in relation to the SCRP Program.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion 4-0.

Minutes of the June 9, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Ordinance which had been deferred since May 26, 2022.

Ms. Wingate moved that the Commission recommend approval of the Ordinance to amend various sections of Chapters 72 and 115 of the Sussex County Code, known as the Affordable Housing Ordinance, based on the record made during the public hearings and for the following reasons:

1. It is undisputed that there is a real need for more affordably priced housing opportunities in Sussex County. This ordinance will help serve that need through incentives to private developers to provide affordably priced units as part of multi-family developments here in Sussex County.

2. This Ordinance is the result of a study commissioned by the Sussex County Council to determine the current deficiencies in the County Code and recommend improvements that can be made to the Code to enable more affordable rental units in Sussex County.
3. Chapter 72 of the Sussex County Code previously established the Sussex County Rental Program or SCRP. In the years that the SCRP Program has been in existence, only one development has utilized it. For that reason and based upon lessons learned from the process involved in establishing the SCRP units within that lone development, an amendment to Chapter 72 is appropriate. This Ordinance significantly improves and streamlines the existing SCRP Program.
4. There was little or no opposition to the Ordinance. Instead, constructive comments were received from the public, housing advocates, and developers suggesting possible improvements so that it is utilized, and more affordably priced rental units are actually constructed in Sussex County.
5. By creating a “by-right” process for multi-family developments that provide at least 30% affordably priced rental units, the uncertainty associated with a rezoning or conditional use is eliminated.
6. As stated in the “Whereas” clauses of the Ordinance, this type of amendment was described in Sussex County’s Comprehensive Plan and its Goals, Objectives, and Strategies.
7. The affordable rental units created by operation of this Ordinance will be monitored by Sussex County’s Community Development and Housing Department to ensure that they are occupied by, and available to, qualifying households.
8. This ordinance promotes the health, safety, and welfare of current and future Sussex County residents by enabling the creation of more affordably priced rental units in Sussex County.
9. This recommendation is subject to the following suggested improvements to the Ordinance:
 - A. In Sections 2, 4, 6, 8, and 10 of the Ordinance, the listing of appropriate “Areas” designated on the Future Land Use Map for the affordably priced units should include the “Commercial Area” in addition to the “Town Center”, “Developing Area” and “Coastal Area” as currently required in the Ordinance. “Commercial Area” locations are appropriate for affordably priced rental units because they are adjacent to major roadways, near DART routes, and by their nature are employment centers.
 - B. In Sections 2, 4, 6, 8, and 10 of the Ordinance, Council should consider reducing the Open Space requirements from 50% to 30%. I am concerned that the 50% Open Space requirement in the ordinance as introduced is too limiting and will inhibit the creation of new affordable housing opportunities.
 - C. In Sections 2, 4, 6, 8, and 10 of the Ordinance, the setback requirements should be revised so that they state that if the proposed buildings do not exceed 42 feet in height, which is the current maximum height for building in these zoning districts, then the setback shall only be 50 feet which is what is currently required by Code. If the building heights exceed 42 feet up to the maximum of 52 feet as provided in the Ordinance, then the greater setback of 100 feet shall be required as currently stated in the introduced version of the Ordinance.
 - D. In Sections 2, 4, 6, 8, and 10 of the Ordinance, the requirement for proximity to DART Routes should be amended so that the development can also occur in a location where DART certifies in writing that a DART Route will be established within 3 years from the date of Final Site Plan approval for the development, OR the Developer obtains a written commitment from DART that it will serve the development no later than when 50% of the leasable units are fully constructed and ready for occupancy.

Motion by Ms. Wingate, seconded by Mr. Mears and carried to recommend approval of the Ordinance to amend various sections of Chapters 72 and 115 of the Sussex County Code, known as the Affordable Housing Ordinance for the reasons and conditions stated in the motion. Motion carried 3-2.

Ms. Stevenson stated: “I vote no. While I agree that there is a need for more workforce and affordable housing in the eastern part of the county, and I appreciate the effort put into this ordinance, I see this as doing little to resolve the actual problems of affordable rental housing in the county. In fact, it could actually exacerbate other problems that already exist.

For every three units created of affordable housing, it would also create another 7 units of market-rate housing.

Those seven units, and indeed the entire 10 units, would contribute to the already overburdened road system of the county and create more congestion and dangerous situations. Yes, I understand the requirement for it to be near a bus route – or what might become a bus route, but the reality is that most, if not all, of the people moving to these apartments, would be using their own automobiles to get around on a regular basis. And much of that driving would probably be on two-lane country roads, as they are often called, where there are little or no shoulders.

The by-rights feature that is said to be needed to make this ordinance work could allow high-density apartment buildings to be built within otherwise low-density housing areas, without allowing for input from those people already living in those areas. Under this ordinance, my understanding is that someone could build an apartment building on a one-acre lot in AR zoning. We don’t even allow duplexes in this zoning, but now we could have an apartment building?

The map areas where these units would be allowed are too broad – The coastal area and developing areas encompass most of the county. An apartment building could crop up almost anywhere under this ordinance. Keeping it within the town center areas and/or possibly creating a new designation on the comprehensive plan maps could keep this type of high density closer to already developed areas where there would be possibilities for walking, biking, and using public transportation on a more regular basis.

I believe this ordinance would provide very little in the way of affordable and workforce housing.

Options such as ADU’s additional dwelling units, and garage apartments could create immediate supply. The county could support dormitory-style housing and non-profits that build workforce housing. The county could also create incentives such as waivers on height restrictions to allow companies to provide housing on top of new business construction. The county could even up-zone areas where there are already affordable housing developments so more of that housing could be built as in-fill. Support of tiny homes, manufactured housing (land-lease), and even year-round campground options could provide more equitable, faster, and broader relief for the problems we face in the workforce housing arena”.

Mr. Hopkins stated: “In a nutshell, the affordable housing crisis is a supply issue. There simply isn’t a supply of moderately priced housing in Sussex County. This has the greatest negative impact on

gainfully employed hard-working middle-class citizens. I think Sussex County should be a wonderful place to work and live for people of all economic backgrounds.

As we all learned in school, when there is an issue of supply and demand, the solution is obvious. There aren't enough moderately priced houses. Despite the complaints of so many who speak before this commission, the issue in Sussex County isn't over development, it's not enough development across the economic spectrum. We need to create more housing for people who want to live, raise a family, and call Sussex County home for generations to come.

I think this can be done without creating sprawl and overdevelopment.

I also think that, if we are not careful, the government will end up being part of the problem rather than the catalyst for the solution. Poor planning by the Sussex County government has played a role in creating the issues we are facing today.

As pointed out in the H.O.M.E. report it is a problem created by County Ordinance and Policy:

Quote:

"The restrictive land use and zoning code in Sussex County, born out of efforts to reduce traffic congestion, promote environmental stewardship, preserve the County's agricultural landscape, and/or reduce strain on infrastructure, is setting rules and regulations that place limits on the number and type of housing units that can be built in areas of the County that have been designated for growth.

While well-intentioned, the zoning code is inadvertently placing upward pressure on housing prices and exacerbating the same policies, the restrictions are working to address. Low-density, single-use developments increase traffic congestion, lengthen commutes to work, increase costs of installing new infrastructure, and promote the degradation of even more land from sprawling development."

End of Quote.

The combination of low-density policies, lack of undeveloped inventory in all residential districts except AR-1, overly restrictive bulk standards, and an arbitrary land-use decision-making process has left our middle-class and financially disadvantaged citizens out in the cold. To quote President Ronald Reagan "Government is not the solution, government is the problem".

It is a government-caused problem that has grown over time into a crisis. According to the 2019 final HOME report, approximately 50% of our workforce can only afford a home that costs \$250,000 or less. As of today, there aren't many of those to be found.

The County recognized affordable housing was an issue in 2008. This effort failed miserably. So much so that it amazes me that it took ten years to recognize the failure. Even after the 2018 Comprehensive plan review highlighted the growing crisis it has taken the County four years to move forward with a partial solution that doesn't offer a fee simple purchase option. It is noteworthy that home ownership is the single largest store of wealth in the United States.

Ignoring this crisis for so long and then only offering a partial solution indicates that either the County Government simply doesn't care, or it is a governing body that willfully discriminates against its middle- and lower-income citizens.

Even the proposed partial solution was drafted with the intent to limit its success. A proposed 100-foot setback. Really, do these citizens have leprosy or something? A draft with a 50% open space requirement. A requirement that reduces the economic viability of a project. A draft with an arbitrary cap of 12 units per acre even if the project could achieve higher density while adhering to building setbacks and bulk standards. A draft requiring a specific building footprint rather than allowing builders design flexibility which might make a project more economically feasible.

Do you think citizens that are struggling to put a roof over their head want to hear an excuse? That fourteen years after recognizing a problem we couldn't rectify it sooner because of Covid? Well, those citizens have had to live those fourteen years with or without Covid in spite of the inaction of the County.

While I believe this ordinance will perform better than its predecessor, it appears to me that this ordinance was drafted for public relations purposes rather than address the multiple issues clearly identified in the H.O.M.E. report.

I do commend the Commission for recommending changes to improve the ordinance. However, it is not easy attempting to make chicken salad out of chicken manure.

Mr. Chairman, we can do better than this. I am voting against this ordinance. While something is better than nothing, I do not want to be a part of a half-hearted, self-serving effort that does little more than present office holders with a public relations opportunity.

Mr. Chairman, I vote no".

Ms. Wingate voted yes for the reasons stated in the motion.

Mr. Mears stated "That we all know that affordable housing is a massive need. As we discussed in the Hearing, this is a small step of many steps that need to occur. But at least we are making a step, therefore, I vote yes for the reasons stated in the motion".

Chairman Wheatley voted yes for the reasons stated in the motion.

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

1 **AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY,**
2 **CHAPTER 72, ARTICLE II, SECTIONS 72-16 THROUGH 72-28**
3 **AND CHAPTER 115, ARTICLE IV, V, VI, VII AND VIII**
4 **SECTIONS 115-20, 115-25, 115-29, 115-34, 115-37, 115-42, 115-45,**
5 **115-50, 115-53 AND 115-58 REGARDING AFFORDABLY PRICED**
6 **RENTAL UNITS AND THE SUSSEX COUNTY RENTAL UNIT**
7 **(SCRIP) PROGRAM.**

8
9 WHEREAS, Sussex County Council has adopted the 2018
10 Comprehensive Development Plan (the “Plan”); and

11
12 WHEREAS, The Housing Element of the Plan contains the following
13 “Housing Vision”: To ensure the provision of decent, safe, affordable and
14 safe housing opportunities to improve communities and quality of life for
15 the residents of Sussex County; and

16
17 WHEREAS, The Housing Element of the Plan recognizes that an influx
18 of new residents in Sussex County has fueled prosperity in the County’s
19 real estate market, hospitality industry, and related economic sectors, yet
20 most housing, particularly on the eastern side of the County, is new and
21 often unaffordable to low-income families, seasonal employees, entry-
22 level workers, or recent college graduates; and

23
24 WHEREAS, The Housing Element of the Plan recognizes that “the
25 shortage of affordable housing remains a very real problem for low to
26 moderate-income households in Sussex County, including many with
27 full-time, year-round jobs; and

28
29 WHEREAS, Goal 8.2 of the Housing Element within the Plan states that
30 Sussex County should “Ensure that a diversity of housing opportunities
31 are available to meet the needs of residents of different ages, income
32 levels, abilities, national origins and household configurations”; and

34 WHEREAS, Objective 8.2.1 and Strategy 8.2.1.1 of the Housing Element
35 within the Plan states that Sussex County will “Affirmatively further
36 affordable and fair housing opportunities in the County to accommodate
37 the needs of all residents” and in so doing “improve the County’s SCRP
38 and MPHU Programs to provide incentives to properly reflect the housing
39 market and incentivize developers to participate in the provision of
40 affordable housing”; and

41
42 WHEREAS, Strategy 8.2.1.3 of the Housing Element within the Plan
43 states that Sussex County should “explore ways for private developers to
44 provide multi-family and affordable housing opportunities; and

45
46 WHEREAS, Objective 8.2.3 and Strategies 8.2.3.1, 8.2.3.2 and 8.2.3.6 of
47 the Housing Element within the Plan state that Sussex County should
48 “facilitate and promote land use policies that enable an increase in the
49 supply of affordable housing in areas with adequate infrastructure” by
50 “increasing affordable housing options, including the supply of rental
51 units, near employment opportunities”; by reviewing “County code to
52 determine if there are regulatory barriers to development of affordable
53 housing”; and by “revisiting [the] zoning code to determine in districts
54 where multifamily housing is currently a conditional use, if it should be
55 made a permitted use if water and sewer are already present and available
56 on the site”; and

57
58 WHEREAS, Strategy 8.3.1.1. of the Housing Element within the Plan
59 states that Sussex County should “evaluate current County code on an on-
60 going basis to determine if any regulatory barriers exist that impede the
61 development of multi-family and affordable housing”; and

62
63 WHEREAS, this Ordinance is in furtherance of these Goals, Objectives
64 and Strategies as set forth in the of the Housing Element within the Plan;
65 and

66

67 WHEREAS, Sussex County Council commissioned a study of Housing
68 Opportunities and Market Evaluation to evaluate and recommend
69 strategies and policies designed to promote housing choice and economic
70 vitality for Sussex County’s residents and workforce; and

71
72 WHEREAS, in November of 2019, LSA, the housing consultant retained
73 by Sussex County Council, issued its Final Report on “Housing
74 Opportunities and Market Evaluation” following an eight-month
75 initiative that included input from residents, homebuilders, developers,
76 housing advocates, County staff, County Council and Planning
77 Commissioners (“the LSA Report”); and

78
79 WHEREAS, one of the primary Strategy Recommendations included in
80 the LSA Report was a recommendation to “Modify the Zoning Code to
81 promote housing affordability in the Growth Areas identified in the
82 Comprehensive Plan, including the allowance for a maximum density of
83 12 units per acre “by-right” where affordable housing units are provided;
84 and

85
86 WHEREAS, this Ordinance carries out the Goals, Objectives and
87 Strategies of the Sussex County Comprehensive Plan and the LSA
88 Report; and

89
90 WHEREAS, Sussex County Council, with the assistance of the Office of
91 Community Development and Housing, has determined that the current
92 Sussex County Rental Unit program contained in Chapter 72 of the Code
93 of Sussex County requires an update based upon lessons learned in the
94 implementation and application of that Chapter to the single rental project
95 in Sussex County that has utilized the Program; and

96
97 WHEREAS, Sussex County Council, with the assistance of the Office of
98 Community Development and Housing, has determined that the current
99 Sussex County Rental Unit program contained in Chapter 72 of the Code

100 of Sussex County should be revised to attract more affordable housing
101 developments within Sussex County; and

102
103 WHEREAS, it has been determined that this Ordinance promotes and
104 protects the health, safety, convenience, orderly growth and welfare of
105 the inhabitants of Sussex County.

106
107 **NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY**
108 **ORDAINS:**

109
110 **Section 1. The Code of Sussex County, Chapter 72, Article II, §72-16**
111 **through 72-28 is hereby amended by deleting the language in**
112 **brackets and inserting the italicized and underlined language as**
113 **follows:**

114
115 **§ 72-16 Intent.**

116
117 This chapter seeks to better protect the health, safety and welfare of
118 Sussex County's residents and workforce by stimulating the provision of
119 affordable rental housing for residents with low and moderate incomes
120 and is hereafter known as the "Sussex County Rental Program" or
121 "SCRIP" or "program."

122
123 **§ 72-17 Governmental findings.**

124
125 The Sussex County Council hereby finds that a shortage exists within the
126 County for housing for residents with low and moderate incomes.
127 Specifically, the Council finds that:

- 128
129 A. It is well known that Sussex County rents have inflated far beyond
130 the ability of an average wage earner to pay. It is also known that
131 federal rental assistance programs, such as the state-administered
132 Public Housing and Section 8 Housing Choice Voucher

133 Programs, are unable to completely satisfy the need for affordable
134 rental housing.

135
136 B. Council finds that new development is not adequately addressing
137 the rental housing needs of the County's low- and moderate-
138 income residents and workforce. Without influencing this trend,
139 local employers will have a difficult time maintaining an ample
140 workforce.

141
142 C. Without an adequate supply of affordable rental housing in close
143 proximity to employment and Town Centers, the County's
144 workforce must commute a great distance for work. Not only do
145 long commutes have a negative effect on the environment and
146 transportation, but commuting also comes with high fuel
147 expenses.

148
149 D. Given the proper incentives, the private sector possesses the
150 necessary resources and expertise to provide the type of
151 affordable rental housing needed in Sussex County.

152
153 **§ 72-18 Declaration of public policy.**

154
155 The Sussex County Council hereby declares it to be the public policy of
156 the County to:

157
158 A. Encourage the creation of a full range of housing choices,
159 conveniently located in suitable living environments, for all
160 incomes, ages and family sizes.

161
162 B. Encourage the production of affordable rental units to meet the
163 existing and anticipated future employment needs in the County.

164
165 C. Assure that affordable rental units are dispersed throughout the
166 County consistent with the Comprehensive Plan.

167

168 D. Encourage developments in Growth Areas as defined within the
169 County's most current comprehensive plan and Areas of
170 Opportunity as defined by the Delaware State Housing Authority
171 to include [a minimum percentage of] affordable rental units on
172 public water and sewer systems.

173
174 E. Provide incentives for developers to construct affordable rental
175 units through tools such as the density incentive and expedited
176 review (defined below).

177
178 **§ 72-19 Definitions.**

179
180 The following words and phrases have the following meanings:

181
182 **APPLICANT**

183 Any person, firm, partnership, association, joint venture,
184 corporation, or other entity or combination of entities owning or
185 controlling via contract qualifying land (defined below) and any
186 transferee or successor in interest of all or part of the qualifying land
187 pursuing the development of affordable rental housing under the
188 SCRCP that:

189 A. Submits to the County for approval or extension of approval a
190 plan of housing development for any type of site plan review,
191 subdivision plan or development approval (hereinafter, a "site
192 plan") that provides for the development of affordable rental
193 units on qualifying land in one or more subdivisions, parts of
194 subdivisions, resubdivisions, multi-family townhouse
195 developments or phases of development under the terms and
196 conditions as set forth in this article.

197 B. With respect to land in zones not subject to subdivision approval
198 or site plan review, applies for building permits for the
199 construction of affordable rental units on qualifying land under
200 the terms and conditions as set forth in this article.

201 AREA MEDIAN INCOME

202 The midpoint family income for Sussex County, calculated each year
203 by the U.S. Department of Housing and Urban Development (HUD),
204 adjusted for household size.

205

206 AT ONE LOCATION

207 All land of the [a]Applicant if:

208 A. The property lines are contiguous; or

209 B. The property lines are separated only by a public or private right-of-
210 way at any point; or

211 C. The property lines are separated only by other land of the
212 [a]Applicant and not subject to this section at the time of the
213 submission of an application or development plan by the
214 [a]Applicant.

215

216 [CERTIFICATE OF ELIGIBILITY

217 A certificate valid for a period of time, which is issued to eligible
218 tenants by the landlord (defined below) and supplied to the
219 Department (defined below) as further set forth within this article.
220 This certificate must be issued before a tenant will be permitted to
221 sign a lease agreement.]

222

223 [CONTROL PERIOD

224 The time a SCRP unit is subject to rental controls and occupancy
225 requirements. The control period is 30 years and begins on the date
226 of lease (defined below).]

227

228 DATE OF LEASE

229 The date of the initial lease agreement signing of an approved
230 [e]Eligible [t]Tenant for a SCRP [u]Unit.

231

232 DENSITY INCENTIVE

233 [Any increase in density pursuant to § 72-21 that allows a residential
234 development to achieve a density greater than would have been
235 possible under the applicable provisions of current and future zoning
236 ordinances and the County subdivision regulations then in effect.]
237 The density permitted by §72-21 and as a permitted use for SCRP
238 projects in Chapter 115.

239
240 DEPARTMENT

241 The Sussex County Department of Community Development and
242 Housing or its successors.

243
244 DEPARTMENT-DESIGNATED ENTITY (DDE)

245 Any agency, authority or political subdivision of the State of
246 Delaware or any other public housing development agency or
247 nonprofit housing corporation, land trust or similar entity designated
248 by the Department and approved by the County Administrator.

249
250 DIRECTOR

251 The head of the Department of Community Development and
252 Housing or head of a DDE, as applicable.

253
254 DWELLING

255 Any building, structure, or portion thereof which is occupied as, or
256 designed or intended for occupancy as, a residence; and any vacant
257 land which is offered for sale or lease for the construction or location
258 thereon of any such building, structure, or portion thereof.
259 "Dwelling" shall not include hotels, motels, motor lodges, boarding
260 and lodging houses, tourist houses, or similar structures.

261
262 ELIGIBLE INCOME

263 The levels of income designated by the County Administrator which
264 prohibit or severely limit the financial ability of persons to rent a
265 dwelling unit in Sussex County. Eligible [i]Income is low- to
266 moderate-income, defined as 30% to 80% of the area median
267 income for Sussex County adjusted for household size as defined by

268 the U.S. Department of Housing and Urban Development (HUD).
269 Income includes gross salary, wages, dividends, interest and all
270 other sources recognized by HUD from the [e]Eligible [t]Tenant and
271 all other adults (age 18 and older) who will occupy the SCRP
272 [u]Unit. Income will be verified by a copy of the filed income tax
273 returns from the previous year and any other personal and financial
274 information requested by the [l]Landlord in order to accurately
275 verify the potential tenant's qualifications and income, which may
276 include, but is not limited to, a credit history report and a criminal
277 background report on the proposed adult tenants, so long as these
278 are requirements for all leases in the housing development.

279
280 ELIGIBLE TENANT

281 Person(s):

282 A. Whose household *income is within the Eligible Income* [is of low or
283 moderate income;].

284 [B. Who has been found eligible to participate in the Sussex County
285 Rental Program; and

286 C. Who holds a valid certificate of eligibility from the landlord.]

287
288 EXPEDITED REVIEW

289 A project entering the SCRP will receive priority in the County's
290 planning and zoning process, with the Director of Planning and
291 Zoning and the County Administrator to determine the
292 [a]Applicant's placement in the list of pending applications. The
293 expedited review is provided to the [a]Applicant to assist the
294 [a]Applicant in managing, to the extent possible, the risk of changes
295 to cost, interest rates, schedule and other factors that the [a]Applicant
296 is taking on by virtue of participation in the SCRP. If an [a]Applicant
297 at any time during processing elects to withdraw from the SCRP,
298 any approvals granted for the development through the date of
299 withdrawal will be vacated and the [a]Applicant will have to

300 resubmit the project through the normal County process. A project
301 receiving expedited review does not exempt the project from the
302 County's planning and zoning process, nor guarantee approval
303 through that process.

304
305 FORECLOSURE EVENT

306 A foreclosure, deed-in-lieu of foreclosure or other court-ordered
307 sale of the rental unit or of the subdivision or development in which
308 the unit is located, subject to rental restrictions continuing in force
309 after foreclosure sale of disposition.

310
311 LANDLORD

312 The owner of the property that contains SCRCP [u]Units or an entity
313 designated by the owner to manage and lease dwelling units.

314
315 QUALIFYING LAND

316 All land that:

- 317 A. Is owned by or under contract to the [a]Applicant; and
- 318 B. *[Is located within a Growth Area as defined within the County's most*
319 *current comprehensive plan or within an Area of Opportunity as*
320 *defined by the Delaware State Housing Authority; and] Allows the*
321 *SCRP Units as a Permitted Use pursuant to Chapter 115.*
- 322 *[C. Requires the submission and approval of a site plan or, where a site*
323 *plan is not required, one or more building permits; and*
- 324 *D. Is served by a public water and sewer system; and*
- 325 *E. Is at one location as defined above.]*

326
327 SUSSEX COUNTY RENTAL PROGRAM UNIT (SCRP UNIT)

328 A dwelling which is:

- 329 A. Offered for lease to [e]Eligible [t]Tenants through or pursuant to the
330 provisions of this article and any regulations promulgated

331 thereunder by the Department and approved by the County
332 Administrator; or

333 B. Leased under another government program designated by the County
334 Administrator designed to assist in the construction or occupancy of
335 affordable rental housing.

336

337 **§ 72-20 Minimum standards of eligibility for tenants.**

338

339 A. Eligible [t]Tenants must:

340

341 (1) Have proof of citizenship.

342

343 (2) Be of [e]Eligible [i]Income, as defined in § 72-19 above,
344 and be able to pay the first month's rent and any required
345 security deposit.

346

347 (3) Be employed [and live] in Sussex County for at least one
348 year preceding application to the SCRP. Sussex County
349 employers may seek waivers to this restriction from the
350 Director and County Administrator. Waivers are evaluated
351 on a case-by-case basis and are not guaranteed.

352

353 (4) Provide proof that adult tenants have not been convicted of
354 a felony and have a satisfactory credit and criminal history,
355 so long as these are requirements of all leases within the
356 proposed housing development.

357

358 (5) Occupy the SCRP [u]Unit as the tenant's principal residence
359 during the lease period. Each [e]Eligible [t]Tenant must
360 certify before taking occupancy that the tenant will occupy
361 the SCRP [u]Unit as the tenant's principal residence. Any
362 tenant who violates occupancy requirements will be subject
363 to eviction procedures.

364

365 B. Where necessary or advisable to achieve the objectives of this
366 chapter or to comply with state or federal housing laws, the
367 Department may propose changes to these standards for approval
368 by the County, including changes to eligibility requirements for
369 tenants as recommended by the Department.

370
371 **§ 72-21 Density and expedited review incentives.**

372
373 A. Density incentive. [Subject to meeting the requirements outlined
374 in § 72-22, a proposed development on qualifying land at one
375 location may receive a density bonus of 20%. The project entering
376 the SCRCP with the execution of a SCRCP [a]Agreement will be
377 allowed to utilize the density permitted by the zoning district in
378 which the property is located, provided that the total density,
379 including any SCRCP density bonus, shall not exceed 12 units per
380 acre.] See Permitted Uses in Chapter 115.

381
382 B. Expedited review. A project entering the SCRCP through execution
383 of an SCRCP [a]Agreement will receive expedited review, as
384 defined in § 72-19 above, through the County's Planning and
385 Zoning process.

386
387 C. Incentives will only be granted to projects submitted for new
388 development that meet all requirements of this program.

389
390 [D. To the extent necessary, Council shall amend the provisions of
391 the County's Zoning Ordinances as needed to achieve the density
392 incentives and the specific design elements (e.g., minimum lot
393 sizes, setbacks, building heights, parking requirements, etc.) of
394 approved SCRCP projects.]

395
396 **§ 72-22 Minimum standards of eligibility for SCRCP developments.**

397
398 [A. Applicants must contribute 12.5% of all units to SCRCP inventory.
399 In applying and calculating the number of affordable units within

400 a proposed development, any decimal fraction less than or equal
401 to 0.50 may be disregarded, and any decimal fraction greater than
402 0.50 shall be constructed as one unit. In the case where the total
403 number of units being constructed is four or less, the minimum
404 number of SCRП units must be one unit.

405
406 B.] A. All parcels in the proposed project must be on qualifying land,
407 as defined in § 72-19.

408
409 [C]B. All units contributed as SCRП [u]Units will remain at the
410 affordable rental rates specified herein [for the remainder of the
411 control period]. SCRП [u]Units shall never be leased as market-
412 rate units [during the control period], regardless of vacancy,
413 except in accordance with § 72-23N(1).

414
415 D. SCRП [u]Units must be fully integrated into the communities of
416 which they are a part and shall not be substantially different in
417 external appearance from market-rate units. SCRП [u]Units shall
418 be equipped with the same basic appliances as the market rate
419 units, such as an oven, refrigerator, dishwasher, and washer and
420 dryer.

421
422 **§ 72-23 SCRП Agreements.**

423
424 To participate in the SCRП and secure any incentives provided for
425 herein, an [a]Applicant must execute an SCRП [a]Agreement
426 prepared by the Department and the County Attorney. Each
427 agreement must include, at a minimum, the following information
428 and/or evidence the following agreements and any others deemed
429 necessary by the Department and the County Attorney to properly
430 implement the chapter:

431
432 A. The specific number of SCRП [u]Units to be constructed in the
433 project. If a final site plan has not been approved when the SCRП
434 [a]Agreement is executed, an amendment to the SCRП

435 [a]Agreement will be made to incorporate the approved final site
436 plan.

437
438 B. [The schedule pursuant to which the SCRP units will be
439 constructed, marketed, and delivered and explaining the
440 relationship between the delivery of market-rate units and the
441 delivery of SCRP units (i.e., a stated number of SCRP units to be
442 created for each market-rate unit created).] A description of how
443 the SCRP Units will be marketed and delivered. The SCRP Units
444 must be constructed and delivered in equal proportion to non-
445 SCRP Units within the development.

446
447 (1) Applicants [should] *shall* affirmatively market the SCRP
448 [U]Units to diverse populations, and meet with the
449 surrounding residents early in the development approval
450 process.

451
452 C. Any economic risk created by changes, whether within or outside
453 of the [a]Applicant's control, in development and construction
454 costs, interest rates, processing and construction schedules,
455 permitting and any other factor impacting the [a]Applicant's costs
456 and development obligations are borne solely by the [a]Applicant.

457
458 D. Building permits, performance bonds and letters of credit.

459
460 [(1)] No building permits shall be issued in any subdivision or
461 housing development where SCRP [u]Units are included until
462 the [a]Applicant executes a valid SCRP [a]Agreement which
463 applies to the entire subdivision.

464
465 [(2)] If an applicant does not build the SCRP units in accordance
466 with the construction schedule along with or before other
467 dwelling units the County Administrator may withhold
468 building permits or call in performance bond or letter of credit
469 from the applicant until the SCRP units contained in the

470 construction schedule are built and contributed to SCRP rental
471 inventory to the satisfaction of the Department.]
472

473 E. Be signed by the [a]Applicant and all other parties having an
474 interest in the property whose signatures are required for the
475 effective and binding execution of contracts conveying real
476 property. SCRP [a]Agreements must be executed in a manner that
477 will enable them to be recorded in the land records of the County.

478 [If the applicant is a corporation or limited liability company, the
479 principal officers of the entity must sign the agreements
480 individually and on behalf of the corporation pursuant to a duly
481 adopted resolution.]
482

483 F. Partnerships, associations, corporations and other entities may not
484 evade the requirements of the SCRP [a]Agreement through
485 voluntary dissolution, bankruptcy, or the sale or transfer of
486 qualifying land.
487

488 G. The SCRP [a]Agreement may only be assigned with the prior
489 written approval of the Department and only if the proposed
490 assignee demonstrates the financial ability to fulfill all of the
491 [a]Applicant's obligations under the SCRP [a]Agreement.
492

493 H. Landlords are responsible for marketing, leasing, and determining
494 tenant eligibility for the SCRP [u]Units. [A lease agreement shall
495 not be signed unless validated by a certificate of eligibility.] A
496 landlord shall not be permitted to refuse to rent a unit to an
497 [e]Eligible [t]Tenant [without providing the Department with just
498 cause, to the Department's satisfaction, for the refusal]. The
499 reasons for a refusal to rent to an Eligible Tenant shall be
500 documented and included in the Annual Audit and Certification
501 required by §72-28
502

503 I. If the [a]Applicant is not also the builder, the relationship between
504 the [a]Applicant and the builder shall be fully disclosed to the

505 Department's satisfaction, as soon as the relationship is
506 established.

507
508 J. SCRP [u]Units must be fully integrated into the communities of
509 which they are a part (not separated geographically from the
510 market rate units and not grouped together) and shall not be
511 substantially different in external appearance from non-SCRIP
512 [u]Units. When the SCRP [u]Units are a part of a phased
513 development, a proportionate number or percentage of said
514 [u]Units will be placed within each phase and/or constructed
515 within each housing type appearing in the development. The
516 planning and design of individual SCRP [u]Units must be
517 consistent with the planning and design of non-SCRIP Units (i.e.
518 market-rate units) within a single project.

519
520 (1) The ratio of SCRP [u]Units by type must reflect the ratio by
521 type of market rate units, to the extent feasible. For instance,
522 if a development has 200 two-bedroom dwelling units and
523 100 one-bedroom dwelling units, the ratio of two-bedroom to
524 one-bedroom SCRP [u]Units should also be 2:1.

525
526 K. [The applicant will execute and record covenants confirming
527 that]The SCRP Agreement shall be recorded in the Office of the
528 Recorder of Deeds confirming that:

529
530 (1) The covenants contained within it will bind the [a]Applicant,
531 any assignee, mortgagee, or buyer and all other parties that
532 receive title to the property. In the event the mortgagee
533 acquires the property through a foreclosure or acceptance of
534 deed-in-lieu of foreclosure, the SCRP [a]Agreement
535 covenants will continue in effect. The covenants must be
536 senior to all instruments securing financing.

537
538 (2) In any deed or instrument conveying title by the [a]Applicant,
539 the property shall remain subject to all of the terms and

540 conditions contained in the SCRP [a]Agreements by the
541 [a]Applicant required under the chapter [during the control
542 period]. The source of the SCRP [a]Agreements and any deed
543 restrictions related thereto must be included in the public land
544 records so that they are readily identifiable in a routine title
545 search.

546
547 L. Where the [a]Applicant is a DDE, agreements will be negotiated
548 between the Department and the DDE so as to be consistent with
549 the mission, strategies, business plans and operating procedures
550 of the DDE and may, with Council approval, deviate from the
551 requirements of this chapter.

552
553 M. The SCRP [a]Agreement requires that the [l]Landlord ensure that
554 the SCRP [u]Units are occupied only by tenants whose [monthly]
555 *annual* income levels do not exceed the eligible income limit, and
556 shall prohibit tenants from subletting or subleasing the [u]Units.
557 [The agreement shall also require the landlord to submit a copy of
558 the initial and all renewal leases to the Director within 30 days of
559 signing the lease.]

560
561 (1) In addition, the [l]Landlord must supply the information listed
562 below in a format acceptable to the Director on an annual
563 basis:

564
565 (a) The number of SCRP [u]Units, by bedroom count, that are
566 leased to [e]Eligible [t]Tenants and those that are vacant,
567 and the monthly rent charged for each SCRP [u]Unit;

568
569 (b) For each SCRP [u]Unit, the tenant's name, household size,
570 and total household income as of the date of the lease, and
571 the effective date of the lease;

572

573 (c) A statement that, to the best of the [l]Landlord's
574 information and knowledge, tenants who are leasing the
575 SCRP [u]Units meet the eligibility criteria[; and
576

577 (d) A copy of each new or revised certificate of eligibility
578 obtained since the last annual report].
579

580 (2) The Department shall audit the report and may require such
581 additional information *monthly* needed to evaluate and accept
582 the annual report.
583

584 N. The tenant must vacate the SCRP [u]Unit if the tenant's household
585 income exceeds 80% of the area median income by 20% *at the*
586 *time of lease renewal*. The [a]Applicant must take the necessary
587 action to have the tenant vacate the SCRP [u]Unit within six
588 months of receiving information that the tenant's household
589 income exceeds the [e]Eligible [i]Income limit.
590

591 (1) Notwithstanding the provisions of § 72-23N above, if the
592 [a]Applicant immediately designates an additional
593 comparable unit as an affordable dwelling unit to be leased
594 under the controlled rental price and requirements of the
595 SCRP program, the tenant of such SCRP [u]Unit referenced
596 in § 72-23N above may continue to lease such [u]Unit at the
597 market value rent.
598

599 *O. The Landlord shall comply with the Annual Audit and*
600 *Certification Requirements of Section 72-28*
601

602 § 72-24 SCRP [u]Units.

603

604 A. Rent.

605

606 (1) Rent shall be established and updated annually by the
607 Department based upon 25% of household income for 50% of

608 the area median income adjusted for household size and unit size
609 and shall not include trash services, parking, water and sewer
610 utilities and any other charges to be paid by the tenant.

611
612 (2) The [e]Eligible [t]Tenant must provide to the [l]Landlord income
613 tax returns (and proof of payment of any taxes owed) from the
614 previous year for all members of the household who were
615 required to file such returns. If an [e]Eligible [t]Tenant was not
616 required to file tax returns or if the [l]Landlord believes that
617 information from the previous tax returns is insufficient to
618 determine income, the [l]Landlord is authorized to request such
619 information as it deems necessary to confirm the income levels
620 of the proposed tenants.

621
622 B. Unit and household size. Households must be placed in units
623 according to the following distribution:
624

Unit Size (number of bedrooms)	Household Size
Efficiency	1
1	1 to 2
1 plus Den	2 to 4
2	2 to 4
2 plus Den	2 to 4
3	4 to 6
4	5 to 8

625 **§ 72-25 Leasing of SCRP [u]Units.**

626
627 A. Leases to [e]Eligible [t]Tenants.

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- (1) Every SCRP [u]Unit constructed under this program must be offered to all [e]Eligible [t]Tenants for lease as the [e]Eligible [t]Tenant's principal residence. Notification to the public of SCRP [u]Unit availability will be made by the [l]Landlord and is recommended to be made by advertising on DelawareHousingSearch.org *and similar sites*. The Department may, but is not obligated to, provide notice of SCRP [u]Unit availability through the Department's website.
- (2) The [l]Landlord will determine SCRP tenant eligibility under § 72-20[, and lease agreements shall not be signed until the tenant has received a certificate of eligibility from the landlord].
- (3) Annually, the Department will provide updated income guidelines and rental rates to the [l]Landlord for use in leasing the SCRP [u]Units.
- (4) Lease agreements shall contain the same terms and conditions as the lease agreements with market-rate renters with the exception of the rental rates and other terms and conditions as required under this article.
- (5) All lease agreements of SCRP [u]Units shall cover a period of one year.
- (6) An [e]Eligible [t]Tenant already occupying a SCRP [u]Unit *[has]shall have a* first-option to renew the lease agreement each year, as long as the tenant maintains good standing with the [l]Landlord and continues to qualify as an [e]Eligible [t]Tenant. *[The Department shall be notified by the landlord of the intent to evict and the reasons therefor at the same time the landlord first provides notice to the tenant.]*

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B. Tenants of SCRP [u]Units shall provide an executed affidavit on an annual basis certifying their continuing occupancy of the unit as their principal residence. Tenants shall provide such affidavit to the [l]Landlord by the date that may be specified in their lease or that may otherwise be specified by the [l]Landlord.

C. In the event the tenant of an SCRP [u]Unit fails to provide his or her [l]Landlord with an executed affidavit as provided for in the preceding paragraph within 30 days of written request for such affidavit, then the lease shall automatically terminate, become null and void and the occupant shall vacate the [u]Unit within 30 days of written notice from the [l]Landlord.

§ 72-26 Foreclosure or default.

A. The [l]Landlord must provide the Department with a copy of any mortgage default notification immediately upon receipt and a written explanation of how the default will be remedied.

B. If a foreclosure event occurs [during the control period], the covenants endure through the transfer of property [until the end of the control period].

[C. If the foreclosure event occurs after the thirty-year control period, then all binding restrictions of this chapter will dissolve.]

§ 72-27 Implementation.

Improvements to concepts, processes and rules and regulations of the SCRP program will be incorporated into future amendments of this article. Council views this article as a living document that will be modified as needed to respond to economic, housing, development, land use and other trends in the County and to best practices in affordable rental programs.

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§72-28 Annual Audit and Certification.

The Landlord shall contract with an independent Delaware Certified Public Accountant that has no other relationship with the Landlord/Developer/Owner/Manager to audit the Landlord's Compliance with this Chapter 72, the conditions of approval for the project, the terms of the SCRP Agreement, the rental of the SCRP Units and the status of the Eligible Tenants (and their Eligible Income) within the project. In this engagement, the Delaware Certified Public Accountant will perform this obligation in accordance with attestation standards established by the American Institute of Certified Public Accountants. This annual audit and report shall certify that the project remains in compliance with (i) all of the Chapter 72 requirements and the terms of the SCRP Agreement; (ii) the status of each of the SCRP Units (whether leased or vacant); (iii) certification that each of the Eligible Tenants renting an SCRP Unit within the project are an Eligible Tenant as of the date of the annual audit and report; (iv) the status and duration of any vacancy of any SCRP Unit; (v) the marketing efforts to re-let any vacant SCRP Unit to an Eligible Tenant; (vi) the status of any list of Eligible Tenants waiting for an SCRP Unit to come available; and (vii) such other information as the Delaware Certified Public Accountant and/or the Community Development and Housing Office may deem appropriate and necessary. This annual audit and report shall be submitted to both the Office of Planning & Zoning and the Community Development & Housing Office no later than March 1 of each year.

§ 72-2[8]9 Government regulations; enforcement.

A. The Department will maintain a list of all SCRP [u]Units constructed and leased under this program, and the Council hereby authorizes the County Administrator to promulgate and

733 adopt regulations and approve the various agreements/documents
734 necessary to administer this program.

735
736 B. The Director may, with Council approval, waive or modify the
737 provisions of the program if the Director finds the program in
738 conflict with state or federal housing laws.

739
740 C. This program applies to all agents, successors, and assigns of an
741 [a]Applicant. A building permit shall not be issued and a
742 preliminary plan of subdivision, development plan, or site plan
743 shall not be approved for a development that will contain
744 affordable rental units to be submitted to this program unless it
745 meets the requirements of this program. The County
746 Administrator may deny, suspend, or revoke any building or
747 occupancy permit upon finding a violation of this program. Any
748 prior approval of a preliminary or final plan of subdivision,
749 development plan or site plan may be suspended or revoked upon
750 the failure to meet any requirement of this chapter. An occupancy
751 permit shall not be issued for any building to any [a]Applicant, or
752 a successor, or assign of any [a]Applicant, for any construction
753 that does not comply with this program. The County
754 Administrator may also withhold or call in performance bond
755 funds, letters of credit, and certificates of compliance or
756 occupancy from the [a]Applicant for any violation of this
757 program.

758
759 D. In the event that the Landlord rents any of the SCRP Units at non-
760 SCRIP Unit rates (i.e. market rental rates) so that the
761 proportionate share of SCRP Units versus non-SCRIP Units as
762 originally approved is not maintained, the Landlord of the project
763 shall be required to pay to Sussex County the monthly market rent
764 collected from any such SCRP Unit that is rented at a non-SCRIP
765 Unit Rate. Any such funds collected by Sussex County shall be
766 used for housing purposes and administered by the Sussex County
767 Office of Community Development and Housing.

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D)E. The Director is authorized to pursue any available remedy, legal or equitable in nature, to enforce the requirements of this program or to prevent or abate a violation of this program.

[E)F. The Director may take legal action to stop or cancel any lease of an SCRIP [u]Unit if any party does not comply with all requirements of this program. The Director may recover any funds improperly obtained from the rental of a SCRIP [u]Unit in violation of this chapter.

[F)G. In the event of litigation to enforce the terms and conditions of this chapter or any agreement or obligation under the SCRIP program, the Department shall be entitled to an award of legal costs and fees to be collected from the party who is determined to be in violation of such agreements and obligations.

Section 2. The Code of Sussex County, Chapter 115, Article IV, §115-20 “Permitted Uses”, is hereby amended by inserting the italicized and underlined language as a new subpart A.(17) thereof as follows:

§115-20 Permitted Uses.

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

...

(17) A Sussex County Rental Program, or SCRIP, townhouse or multi-family development governed by, and subject to, Chapter 72, where at least 30% of all dwelling units are SCRIP Units pursuant to Chapter 72. The SCRIP development must satisfy the following criteria:

801 (a) The site must be located within a Town Center, a Developing
802 Area, or the Coastal Area as described within the Land Use
803 Element and as shown on the Future Land Use Plan of the
804 adopted Sussex County Comprehensive Plan.

805
806 (b) The site shall be located within 2,640 feet of an existing or
807 proposed DART Route operated by the Delaware Transit
808 Corporation. In the case of a proposed DART Route, Final Site
809 Plan approval shall not be granted until the Route is in existence
810 and operated by DART.

811
812 (c) The site must be served by a central sewer system and a central
813 water system.

814
815 (d) The total maximum number of dwelling units (including both
816 SCRP Units and non-SCRP Units) that may be permitted shall be
817 determined by dividing the gross area by 3,630 square feet.
818 "Gross area" shall exclude any area designated as a tidal
819 tributary stream or tidal wetlands by § 115-193.

820 (e) There shall be a one-hundred foot wide setback around the
821 entire site, which shall incorporate the "Forested and/or
822 Landscaped Buffer Strip" identified in Section 99-4. This setback
823 shall include walking and biking trails.

824 (f) The height of any townhouse or multi-family buildings shall
825 not exceed 52 feet or four stories, whichever is greater.

826 (g) There shall be sidewalks on all streets, roadways and parking
827 areas, with interconnectivity to adjacent walkway systems.

828 (h) There must be interconnectivity with any adjacent property
829 that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

830 (i) There shall be open space that exceeds fifty percent of the
831 gross area of the entire site. The Primary view from each

832 dwelling unit shall be directed to open space and recreational
833 amenities.

834
835 **Section 3. The Code of Sussex County, Chapter 115, Article IV, §115-**
836 **25 “Height, Area and Bulk Requirements”, is hereby amended by**
837 **inserting the italicized and underlined language as a new subpart G**
838 **thereof as follows:**

839
840 **§115-25 Height, Area and Bulk Requirements.**

841
842 . . .

843
844 G. Sussex County Rental Unit development permitted by §115-20A.(17).
845 The minimum lot size, lot area per dwelling unit, open space, height and
846 setback requirements for a Sussex County Rental Unit development
847 permitted by §115-20A.(17) shall be governed by the dimensional
848 requirements set forth in that Section.

849
850 **Section 4. The Code of Sussex County, Chapter 115, Article V, §115-**
851 **29 “Permitted Uses”, is hereby amended by inserting the italicized**
852 **and underlined language as a new subpart K. thereof as follows:**

853
854 **§115-29 Permitted Uses.**

855
856 A building or land shall be used only for the following purposes:

857
858 . . .

859
860 K. A Sussex County Rental Program, or SCRP, townhouse or multi-
861 family development governed by, and subject to, Chapter 72,
862 where at least 30% of all dwelling units are SCRP Units pursuant
863 to Chapter 72. The SCRP development must satisfy the following
864 criteria:

865 (1) The site must be located within a Town Center, a Developing
866 Area, or the Coastal Area as described within the Land Use
867 Element and as shown on the Future Land Use Plan of the
868 adopted Sussex County Comprehensive Plan.

869
870 (2) The site shall be located within 2,640 feet of an existing or
871 proposed DART Route operated by the Delaware Transit
872 Corporation. In the case of a proposed DART Route, Final Site
873 Plan approval shall not be granted until the Route is in existence
874 and operated by DART.

875
876 (3) The site must be served by a central sewer system and a central
877 water system.

878
879 (4) The total maximum number of dwelling units (including both
880 SCRIP Units and non-SCRIP Units) that may be permitted shall be
881 determined by dividing the gross area by 3,630 square feet.
882 "Gross area" shall exclude any area designated as a tidal
883 tributary stream or tidal wetlands by § 115-193.

884 (5) There shall be a one-hundred foot wide setback around the
885 entire site, which shall incorporate the "Forested and/or
886 Landscaped Buffer Strip" identified in Section 99-4. This setback
887 shall include walking and biking trails.

888 (6) The height of any townhouse or multi-family buildings shall
889 not exceed 52 feet or four stories, whichever is greater.

890 (7) There shall be sidewalks on all streets, roadways and parking
891 areas, with interconnectivity to adjacent walkway systems.

892 (8) There must be interconnectivity with any adjacent property
893 that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

894 (9) There shall be open space that exceeds fifty percent of the
895 gross area of the entire site. The Primary view from each

896 dwelling unit shall be directed to open space and recreational
897 amenities.

898
899 **Section 5. The Code of Sussex County, Chapter 115, Article V, §115-**
900 **34 “Height, Area and Bulk Requirements”, is hereby amended by**
901 **inserting the italicized and underlined language as a new subpart D.**
902 **thereof as follows:**

903
904 **§115-34 Height, Area and Bulk Requirements.**

905
906 . . .
907

908 D. Sussex County Rental Unit development permitted by §115-29K. The
909 minimum lot size, lot area per dwelling unit, open space, height and
910 setback requirements for a Sussex County Rental Unit development
911 permitted by §115-29K shall be governed by the dimensional
912 requirements set forth in that Section.

913
914
915 **Section 6. The Code of Sussex County, Chapter 115, Article VI, §115-**
916 **37 “Permitted Uses”, is hereby amended by inserting the italicized**
917 **and underlined language as a new subpart C. as follows:**

918
919 **§115-37 Permitted Uses.**

920
921 Permitted uses are as follows:
922 . . .

923
924 C. A Sussex County Rental Program, or SCRP, townhouse or multi-
925 family development governed by, and subject to, Chapter 72, where at
926 least 30% of all dwelling units are SCRP Units pursuant to Chapter
927 72. The SCRP development must satisfy the following criteria:

928 (1) The site must be located within a Town Center, a Developing
929 Area, or the Coastal Area as described within the Land Use
930 Element and as shown on the Future Land Use Plan of the
931 adopted Sussex County Comprehensive Plan.

932
933 (2) The site shall be located within 2,640 feet of an existing or
934 proposed DART Route operated by the Delaware Transit
935 Corporation. In the case of a proposed DART Route, Final Site
936 Plan approval shall not be granted until the Route is in existence
937 and operated by DART.

938
939 (3) The site must be served by a central sewer system and a central
940 water system.

941
942 (4) The total maximum number of dwelling units (including both
943 SCRP Units and non-SCRP Units) that may be permitted shall be
944 determined by dividing the gross area by 3,630 square feet.
945 "Gross area" shall exclude any area designated as a tidal
946 tributary stream or tidal wetlands by § 115-193.

947 (5) There shall be a one-hundred foot wide setback around the
948 entire site, which shall incorporate the "Forested and/or
949 Landscaped Buffer Strip" identified in Section 99-4. This setback
950 shall include walking and biking trails.

951 (6) The height of any townhouse or multi-family buildings shall
952 not exceed 52 feet or four stories, whichever is greater.

953 (7) There shall be sidewalks on all streets, roadways and parking
954 areas, with interconnectivity to adjacent walkway systems.

955 (8) There must be interconnectivity with any adjacent property
956 that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

957 (9) There shall be open space that exceeds fifty percent of the
958 gross area of the entire site. The Primary view from each

959 dwelling unit shall be directed to open space and recreational
960 amenities.

961
962 **Section 7. The Code of Sussex County, Chapter 115, Article VI, §115-**
963 **42 “Height, Area and Bulk Requirements”, is hereby amended by**
964 **inserting the italicized and underlined language as a new subpart D.**
965 **thereof as follows:**

966 **§115-42 Height, Area and Bulk Requirements.**

967
968 . . .

969
970 D. Sussex County Rental Unit development permitted by §115-37C. The
971 minimum lot size, lot area per dwelling unit, open space, height and
972 setback requirements for a Sussex County Rental Unit development
973 permitted by §115-37C shall be governed by the dimensional
974 requirements set forth in that Section.

975
976 **Section 8. The Code of Sussex County, Chapter 115, Article VII,**
977 **§115-45 “Permitted Uses”, is hereby amended by inserting the**
978 **italicized and underlined language as a new subpart F. thereof as**
979 **follows:**

980
981 **§115-45 Permitted Uses.**

982
983 Permitted uses are as follows:

984
985 . . .

986
987 F. A Sussex County Rental Program, or SCRP, townhouse or multi-
988 family development governed by, and subject to, Chapter 72, where at
989 least 30% of all dwelling units are SCRP Units pursuant to Chapter
990 72. The SCRP development must satisfy the following criteria:

991 (1) The site must be located within a Town Center, a Developing
992 Area, or the Coastal Area as described within the Land Use Element
993 and as shown on the Future Land Use Plan of the adopted Sussex
994 County Comprehensive Plan.

995
996 (2) The site shall be located within 2,640 feet of an existing or
997 proposed DART Route operated by the Delaware Transit
998 Corporation. In the case of a proposed DART Route, Final Site Plan
999 approval shall not be granted until the Route is in existence and
1000 operated by DART.

1001
1002 (3) The site must be served by a central sewer system and a central
1003 water system.

1004
1005 (4) The total maximum number of dwelling units (including both
1006 SCRP Units and non-SCRP Units) that may be permitted shall be
1007 determined by dividing the gross area by 3,630 square feet. "Gross
1008 area" shall exclude any area designated as a tidal tributary stream or
1009 tidal wetlands by § 115-193.

1010 (5) There shall be a one-hundred foot wide setback around the
1011 entire site, which shall incorporate the "Forested and/or Landscaped
1012 Buffer Strip" identified in Section 99-4. This setback shall include
1013 walking and biking trails.

1014 (6) The height of any townhouse or multi-family buildings shall
1015 not exceed 52 feet or four stories, whichever is greater.

1016 (7) There shall be sidewalks on all streets, roadways and parking
1017 areas, with interconnectivity to adjacent walkway systems.

1018 (8) There must be interconnectivity with any adjacent property
1019 that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

1020 (9) There shall be open space that exceeds fifty percent of the
1021 gross area of the entire site. The Primary view from each dwelling
1022 unit shall be directed to open space and recreational amenities.

1023
1024 **Section 9. The Code of Sussex County, Chapter 115, Article VII,**
1025 **§115-50 “Height, Area and Bulk Requirements”, is hereby amended**
1026 **by inserting the italicized and underlined language as a new subpart**
1027 **G. thereof as follows:**

1028
1029 **§115-50 Height, Area and Bulk Requirements.**

1030
1031 . . .

1032
1033 G. Sussex County Rental Unit development permitted by §115-45F. The
1034 minimum lot size, lot area per dwelling unit, open space, height and
1035 setback requirements for a Sussex County Rental Unit development
1036 permitted by §115-45F. shall be governed by the dimensional
1037 requirements set forth in that Section.

1038
1039 **Section 10. The Code of Sussex County, Chapter 115, Article VIII,**
1040 **§115-53 “Permitted Uses”, is hereby amended by inserting the**
1041 **italicized and underlined language as a new subpart K. thereof as**
1042 **follows:**

1043
1044 **§115-53 Permitted Uses.**

1045
1046 A building or land shall be used only for the following purposes:

1047
1048 . . .

1049
1050 K. A Sussex County Rental Program, or SCRP, townhouse or multi-
1051 family development governed by, and subject to, Chapter 72, where at

1052 least 30% of all dwelling units are SCRP Units pursuant to Chapter
1053 72. The SCRP development must satisfy the following criteria:

1054 (1) The site must be located within a Town Center, a Developing
1055 Area, or the Coastal Area as described within the Land Use Element
1056 and as shown on the Future Land Use Plan of the adopted Sussex
1057 County Comprehensive Plan.

1058
1059 (2) The site shall be located within 2,640 feet of an existing or
1060 proposed DART Route operated by the Delaware Transit
1061 Corporation. In the case of a proposed DART Route, Final Site Plan
1062 approval shall not be granted until the Route is in existence and
1063 operated by DART.

1064
1065 (3) The site must be served by a central sewer system and a central
1066 water system.

1067
1068 (4) The total maximum number of dwelling units (including both
1069 SCRP Units and non-SCRP Units) that may be permitted shall be
1070 determined by dividing the gross area by 3,630 square feet. "Gross
1071 area" shall exclude any area designated as a tidal tributary stream or
1072 tidal wetlands by § 115-193.

1073 (5) There shall be a one-hundred foot wide setback around the
1074 entire site, which shall incorporate the "Forested and/or Landscaped
1075 Buffer Strip" identified in Section 99-4. This setback shall include
1076 walking and biking trails.

1077 (6) The height of any townhouse or multi-family buildings shall
1078 not exceed 52 feet or four stories, whichever is greater.

1079 (7) There shall be sidewalks on all streets, roadways and parking
1080 areas, with interconnectivity to adjacent walkway systems.

1081 (8) There must be interconnectivity with any adjacent property
1082 that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

1083 (9) There shall be open space that exceeds fifty percent of the
1084 gross area of the entire site. The Primary view from each dwelling
1085 unit shall be directed to open space and recreational amenities.

1086

1087 **Section 11. The Code of Sussex County, Chapter 115, Article VIII,**
1088 **§115-58 “Height, Area and Bulk Requirements”, is hereby amended**
1089 **by inserting the italicized and underlined language as a new subpart**
1090 **E. thereof as follows:**

1091

1092 **§115-58 Height, Area and Bulk Requirements.**

1093

1094 . . .

1095

1096 E. Sussex County Rental Unit development permitted by §115-53K. The
1097 minimum lot size, lot area per dwelling unit, open space, height and
1098 setback requirements for a Sussex County Rental Unit development
1099 permitted by §115-53K shall be governed by the dimensional requirement
1100 set forth in that Section.

1101

PROPOSED



Green
OK 7.20

SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

SECTION 1 APPLICANT INFORMATION

ORGANIZATION NAME: **Milton Community Foundation Inc.** ✓

PROJECT NAME: **Plastic water bottle refill system**

FEDERAL TAX ID: **205187833** ✓ NON-PROFIT: YES NO

DOES YOUR ORGANIZATION OR ITS PARENT ORGANIZATION HAVE A RELIGIOUS AFFILIATION?
 YES NO *IF YES, FILL OUT SECTION 3B.

ORGANIZATION'S MISSION: Established in 2005, MCF's purpose is to undertake projects that enhance the community, and to partner with individuals, civic organizations, local businesses, and the Town of Milton in ways that enrich peoples' lives.

ADDRESS: **P.O. Box 12**

Milton **DE** **19968**
 (CITY) (STATE) (ZIP)

CONTACT PERSON: **Steve Crawford**

TITLE: **President**

PHONE: **1-973-714-0348** EMAIL: **s.crawford68gs@gmail.com**

TOTAL FUNDING REQUEST: \$1,500.00

Has your organization received other grant funds from Sussex County Government in the last year? YES NO

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

If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for? YES NO

Are you seeking other sources of funding other than Sussex County Council? YES NO

If YES, approximately what percentage of the project's funding does the Council grant represent? **25%**

SECTION 2: PROGRAM DESCRIPTION

PROGRAM CATEGORY (choose all that apply)		
Fair Housing	Health and Human Services	Cultural
<input checked="" type="checkbox"/> Infrastructure ¹	Other	Educational
BENEFICIARY CATEGORY		
Disability & Special Needs	Victims of Domestic Violence	Homeless
Elderly Persons	Low to Moderate Income ²	Youth
Minority	<input checked="" type="checkbox"/> Other Population of Milton	
BENEFICIARY NUMBER		
Approximately the total number of Sussex County Beneficiaries served annually by this program:		
3,000		

SECTION 3: PROGRAM SCOPE

- A. Briefly describe the program for which funds are being requested. The narrative should include the need or problem to be addressed in relation to the population to be served or the area to benefit.

Milton Memorial Park, the town's public park, is used by people of all ages and nearly year round. During the summer a concert is held each Wednesday night, and is attended by people of all ages. The park also has a well maintained playground that is in constant use, and the town's sole public boat ramp is located in the park. The Foundation has pledged \$3,000 towards the \$6,000 needed to install a plastic water bottle refill unit in the park to reduce discarded plastic water bottles. The Town has agreed to install and maintain it. The Town of Milton will contribute \$1,500 towards the cost of the unit. This grant is seeking \$1,500 to complete the funding for the project.

B. IF RELIGIOUS AFFILIATION WAS CONFIRMED ABOVE IN SECTION 1, PLEASE FILL OUT THE FOLLOWING SECTION. IF RELIGIOUS AFFILIATION WAS NOT CHECKED IN SECTION 1, THIS SECTION MAY BE LEFT BLANK.

A faith-based nonprofit organization is eligible to receive and apply for a grant on the same basis as other nonprofit organizations, with respect to programs which are eligible. In the selection of grantees, the County will not discriminate for or against an organization on the basis of the organization's religious characterization or affiliation. However, certain requests to utilize funding for programs with religious purposes may not be eligible due to constitutional principles of the United States and/or the State of Delaware.

Briefly describe the components of the program that involve religious purposes and the components that involve secular purposes, or non-religious purposes. If both non-religious and religious purposes are involved in the program, this narrative must include the specific actions that will be implemented in order to ensure that the funding is solely used for non-religious purposes and will not be used to advance or inhibit religious or faith-based activities.

After the awarded funds have been made, receipts of the non-religious purchases shall be submitted in accordance with Section 5 below before funds will be disbursed.

SECTION 4: BUDGET

REVENUE	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
TOTAL REVENUES	3,000.00
EXPENDITURES	
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
Cost of Bottle Refill Station	-\$ 6,000.00
Town of Milton Contribution	\$ 1,500.00
TOTAL EXPENDITURES	-\$ 4,500.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	-\$ 1,500.00

SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the **Milton Community Foundation** agrees that:
(Name of Organization)

- 1) For non-religious organizations, all expenditures must have adequate documentation and must be expended within one (1) year of receipt of award funds. The funding awarded to the organization must be used in substantial conformity with the anticipated expenditures set forth in the submitted application. All accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.
- 2) For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before the funding is released.
- 3) No person, on the basis of race, color, or national origin, should be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination under the program or activity funded in whole or in part by these Grant funds.

SUSSEX COUNTY COUNCIL NON-PROFIT GRANT PROGRAM
GUIDELINES FOR SUBMITTAL AND AFFIDAVIT OF UNDERSTANDING

The Sussex County Council makes available a limited amount of funding to non-profit organizations that serve the citizens of Sussex County. Each application for funding shall be evaluated by Sussex County administrative staff and shall be subject to final approval from Sussex County Council.

In the attached application, each organization must outline its intended uses for the awarded funding and provide a detailed breakdown of the expenses and costs for such uses. Any funding awarded to the organization must be used in substantial conformity with anticipated expenditures of the submitted application.

All expenditures must have adequate documentation and must be expended within one (1) year of award of funds.

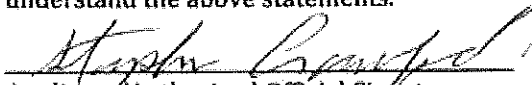
For non-religious organizations, all accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.

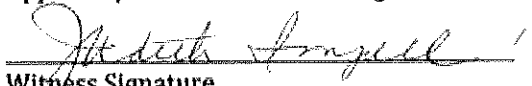
For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before funding is released. Grant is relinquished if supporting documentation is not provided within one year of County Council award.

Certain programs are not eligible for funding pursuant to United States Constitution and State of Delaware Constitution. Those constitutional principles prohibit the use of funding to advance or inhibit religious activities. By signing below, the organization acknowledges that the funding shall be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious activities.

In the event that such funding is used in violation of the requirements and assurances contained in this grant application, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.

I acknowledge and represent on behalf of the applicant organization that I have read and understand the above statements.


Applicant/Authorized Official Signature


Witness Signature

MCF President


Title

7/15/2022

Date

SECTION 5: STATEMENT OF ASSURANCES (continued)

- 4) All information and statements in this application are accurate and complete to the best of my information and belief.
- 5) All funding will benefit only Sussex County residents.
- 6) All documents submitted by the applicant are defined as public documents and available for review under the Freedom of Information Act of the State of Delaware.
- 7) All funding will be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious purposes.
- 8) **In the event that the awarded funding is used in violation of the requirements of this grant, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.**


Applicant/Authorized Official Signature

7/15/2022

Date


Witness Signature

7/15/2022

Date

Completed application can be submitted by:

Email: casey.hall@sussexcountyde.gov

Mail: Sussex County Government
Attention: Casey Hall
PO Box 589
Georgetown, DE 19947

Rieley
OK. 7/28.

Council Grant Form

Legal Name of Agency/Organization	CHEER, Inc. ✓
Project Name	CHEER 12th Annual Car-Truck-Bike Show
Federal Tax ID	51-0112599 ✓
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	No
Organization's Mission	CHEER's mission statement is "to promote and maintain the highest quality of life and independence by developing and providing services and programs that meet the continuing need of seniors 50+" living in Sussex County.
Address	546 SOUTH BEDFORD STREET
Address 2	
City	Georgetown
State	DELAWARE
Zip Code	19947
Contact Person	Ken Moore
Contact Title	Development Manager

Contact Phone Number 3025153065

Contact Email Address kmoore@cheerde.com

Total Funding Request 1000

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? 11.1

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

Program Category Other

Primary Beneficiary Category Elderly Persons (62 +)

Beneficiary Category
Other

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 4809

Scope

On Saturday, August 6, 2022, CHEER is holding our 12th annual Car-Truck & Bike Show at the Warren L. and Charles C. Allen Jr. CHEER Community Center on Sand Hill Road in Georgetown. The show will benefit CHEER senior service programs throughout Sussex County.

Each year there is one vehicle chosen as "Best from Sussex County" and the owner receives the Sussex County Council Trophy. This is a special honor for a proud Sussex Countian! Thank you for your consideration of the sponsorship. We are asking for each Councilperson to support the project with \$200 from their district.

As CHEER has experienced a number of changes due to the pandemic, we continue to adapt to a new normal in our programs and are experiencing hardships in filling job vacancies as are many businesses throughout the county. These are examples of the programs which will receive support from funds raised via the Car-Truck & Bike Show.

- Nutrition served 3,545 seniors in the past 12 months with meals, including Grab & Go lunches, served at 7 CHEER Activity Centers, 2 independent senior centers and delivered to homebound Meals on Wheels clients. Over 300,000 meals were served, so that "no senior goes hungry!"

- Personal in-home Assistance Services were provided to nearly 300 seniors to enable them to continue living in their home. The assistance is with activities of daily living and housekeeping.
- The CHEERMobile mobile grocery delivery took groceries to the home of a senior 296 times in the past 12 months. This enables seniors who cannot drive or get transportation to the grocery store to have food in their home.
- 85 seniors attended the Adult Day program designed for seniors with cognitive memory impairment, Alzheimer's disease and related dementia. This enables their family members and caregivers to have time to take care of their personal matters or employment yet the senior is able to continue living in their home.
- Many other services and support groups occur regularly at CHEER.

The Car-Truck & Bike Show is known as the premier show of Sussex County. This year the theme recognizes "Georgetown's 100 year old American France Fire Apparatus." Several local car clubs are joining to raise funds for the campaign. Cars from throughout the east coast are expected for display at this annual show.

**Religious
Components**

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

9,000.00

Description

Supplies for Car Show

Amount

500.00

Description Marketing

Amount 500.00

Description DJ Services

Amount 300.00

Description Meal expenses

Amount 1,000.00

Description

Amount

Description

Amount

Description

Amount

Description

Amount

TOTAL EXPENDITURES 2,300.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** 6,700.00

Name of Organization CHEER, Inc.

Applicant/Authorized Official Ken Moore

Date 07/18/2022

Affidavit Yes

Acknowledgement

Mark as Spam in D3 Forms. Please do not mark as spam in your email client, as it will result in you no longer receiving D3 Forms notifications. Feel free to email info@d3forms.com with any questions.

Green
Yes 7/30

Council Grant Form

Legal Name of Agency/Organization *Bridgeville* Apple Scrapple Festival, Inc. ✓

Project Name 30th Annual Apple Scrapple Festival

Federal Tax ID 510399198 ✓

Non-Profit Yes

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

Organization's Mission Large open-air festival that is a fundraiser for many local non-profits and civic organizations, promoting local tourism and highlighting agri-business in Western Sussex County.

Address P.O. Box 206

Address 2 600 South Cannon Street

City Bridgeville

State Delaware

Zip Code 19933

Contact Person Karen Johnson

Contact Title Executive Chair

Contact Phone Number 302-337-7401

Contact Email Address karen.johnson@lib.de.us

Total Funding Request 6000.00

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? 6000

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? 20

Program Category (choose all that apply) Cultural, Educational

Program Category Other

Primary Beneficiary Category Other

Beneficiary Category Other All

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 20000

Scope As an open air street festival we are known for our free entrance, free bus service, free parking, and free entertainment. All residents/festival goers are able to enjoy our festival for a minimum cost. The funds we are requesting will go directly to hospitality costs; including tents, tables, chairs, sanitation services, and entertainment. Your support would help our festival provide the best festival experience to our guests from across the Eastern Shore.

Religious Components

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) 30,000.00

Description Tents, tables, and chairs

Amount 2,900.00

Description	Portapotties
Amount	7,500.00
Description	Advertising
Amount	5,000.00
Description	Bus Service
Amount	7,000.00
Description	Entertainment
Amount	7,500.00
Description	Janitorial
Amount	2,500.00
Description	Trash Service
Amount	1,500.00
Description	Traffic Control
Amount	8,500.00
TOTAL EXPENDITURES	42,400.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	-12,400.00
Name of Organization	Apple Scrapple Festival

**Applicant/Authorized
Official** Karen Johnson

Date 07/07/2022

**Affidavit
Acknowledgement** Yes

Mark as Spam in D3 Forms. Please do not mark as spam in your email client, as it will result in you no longer receiving D3 Forms notifications. Feel free to email info@d3forms.com with any questions.

Green.
Yes 7/30

Council Grant Form

Legal Name of Agency/Organization	Cornerstone Community Center ✓
Project Name	Holiday Extravaganza
Federal Tax ID	86-3066808 ✓
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	No
Organization's Mission	At Cornerstone Community Center, our mission is to further the common good and general welfare of the community by encouraging and strengthening education and addressing mental, emotional, and physical health disparities within the community.
Address	100 Market St
Address 2	
City	Bridgeville
State	De
Zip Code	19933
Contact Person	Latoya Harris
Contact Title	Executive Director

Contact Phone Number 3023443712

Contact Email Address mstoyasg@gmail.com

Total Funding Request 5,000

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? No

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

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

Program Category Other

Primary Beneficiary Category Youth

Beneficiary Category Other

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 100

Scope This program will provide a Christmas experience for underserved youth in the Bridgeville, Seaford, and Greenwood areas. Our mission is to ensure that the children and families in our community will have a positive holiday season. This program will provide toys to children, gift cards to families, and health screenings.

Religious Components

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

Description location

Amount 500.00

Description toys

Amount 2,500.00

Description gift cards

Amount 1,000.00

Description food

Amount 1,000.00

Description

Amount

Description

Amount

Description

Amount

Description

Amount

TOTAL EXPENDITURES 5,000.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -5,000.00

Name of Organization Cornerstone Community Center

**Applicant/Authorized
Official** Latoya Harris

Date 07/24/2022

Affidavit Yes

Acknowledgement

Mark as Spam in D3 Forms. Please do not mark as spam in your email client, as it will result in you no longer receiving D3 Forms notifications. Feel free to email info@d3forms.com with any questions.

Hudson

Yes via phone

8.2.22

Council Grant Form

Legal Name of Agency/Organization	Operation Seas The Day INC.
Project Name	Operation Seas The Day
Federal Tax ID	46-4645525 ✓
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 organize and facilitate a beach week event for our wounded soldiers and their families as a means of showing our appreciation for their service and sacrifice. It is our hope that such a community based gesture of support will be comforting and help ease their transition back into civilian life.
Address	PO Box 811
Address 2	
City	Bethany Beach
State	DE
Zip Code	19930
Contact Person	Colleen Kellner

Contact Title	Board Member
Contact Phone Number	3022493482
Contact Email Address	cckellner3@gmail.com
Total Funding Request	\$1000
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?	No
If YES, approximately what percentage of the project's funding does the Council grant represent?	N/A
Program Category (choose all that apply)	Other
Program Category Other	Military

Primary Beneficiary Category Other

Beneficiary Category Other Military

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 5000

Scope Our organization brings approximately 25 Wounded Soldiers and their families to the beach for a week of relaxing and planned events. During the week long vacation for our wounded soldiers and their families there is a parade that departs Bethany and travels to the Freeman Stage in Selbyville. Also during the week our soldiers and their families are transported to Fort Miles in Lewes for a tour. In years past the company that provided the school busses donated their time and gas. With rising gas prices and employee shortages we now have secured a new company for transportation which is unable to donate the whole cost.

Religious Components

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) 20,000.00

Description Travel expense, Food, Planned Events, Housing, Cleaning, Parade, etc

Amount 20,000.00

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

TOTAL EXPENDITURES 20,000.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** 0.00

Name of Organization Operation Seas the Day

**Applicant/Authorized
Official** Colleen Kellner

Date 08/02/2022

**Affidavit
Acknowledgement** Yes

If you feel this is not a valid submission please log into D3Forms to update this submissions status.
Please feel free to email clientservices@d3corp.com with any questions.

To Be Reintroduced: 8/9/22

Council District 3: Mr. Schaeffer

Tax I.D. Nos.: 334-6.00-511.02, 334-6.00-511.06, 334-6.00-513.00

911 Addresses: 17611, 17623 & 17637 Shady Road Lewes, DE 19958

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MEDICAL OFFICE BUILDINGS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 2.29 ACRES, MORE OR LESS

WHEREAS, on the 22nd day of September 2021, a conditional use application, denominated Conditional Use No. 2316 was filed on behalf of Southern Delaware Medical Center, LLC; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2316 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2316 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 southeast side of Shady Road (S.C.R. 276), approximately 0.14-miles northeast of the intersection of Shady Road and Plantations Road (Rt. 1D). Being more particularly described in the attached legal description prepared by Baird Mandalas Brockstedt, LLC, said parcel(s) containing 2.29 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: 8/9/22

Council District 1: Mr. Vincent
Tax I.D. No.: 232-5.00-11.03 (p/o)
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 39.45 ACRES, MORE OR LESS

WHEREAS, on the 11th day of January 2022, a conditional use application, denominated Conditional Use No. 2336 was filed on behalf of Community Power Group LLC; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2336 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2336 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 Broad Creek Hundred, Sussex County, Delaware, and lying on the north side of Woodland Ferry Road (SCR 78) 0.15 miles east of the intersection of Woodland Ferry Road (SCR 78) and Bethel Road (SCR 493) and on the east side of Bethel Road (SCR 493) 0.2 miles north of the intersection of Woodland Ferry Road (SCR 78) and Bethel Road (SCR 493) being more particularly described in the attached legal description prepared by Steven M. Adkins Land Surveying, LLC, said parcel containing 25.012 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: 8/9/22

Council District 2: Mrs. Green
Tax I.D. No.: 230-26.00-39.00 (p/o)
911 Address: 18019 Beach Highway, Milton

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 25.327 ACRES, MORE OR LESS

WHEREAS, on the 11th day of January 2022, a conditional use application, denominated Conditional Use No. 2337 was filed on behalf of Community Power Group, LLC; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2337 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2337 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 Cedar Creek Hundred, Sussex County, Delaware, and lying on the north side of Beach Highway (Route 16), approximately 0.20 mile east of Dupont Boulevard (Route 113), and being more particularly described in the attached legal description prepared by Steven M. Adkins Land Surveying, LLC, said parcel containing 25.327 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: 8/9/22

Council District 1: Mr. Vincent
Tax I.D. No.: 232-5.00-11.03 (p/o)
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 39.45 ACRES, MORE OR LESS

WHEREAS, on the 11th day of January 2022, a conditional use application, denominated Conditional Use No. 2336 was filed on behalf of Community Power Group LLC; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2336 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2336 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 Broad Creek Hundred, Sussex County, Delaware, and lying on the north side of Woodland Ferry Road (SCR 78) 0.15 miles east of the intersection of Woodland Ferry Road (SCR 78) and Bethel Road (SCR 493) and on the east side of Bethel Road (SCR 493) 0.2 miles north of the intersection of Woodland Ferry Road (SCR 78) and Bethel Road (SCR 493) being more particularly described in the attached legal description prepared by Steven M. Adkins Land Surveying, LLC, said parcel containing 25.012 acres, more or less.

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

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
(302) 855-7878 T
(302) 854-5079 F
jamie.whitehouse@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: August 5, 2022

RE: County Council Report for C/Z 1961 filed on behalf of Country Lawn Care & Maintenance, LLC

The Planning and Zoning Department received an application (C/Z 1961 filed on behalf of Country Lawn Care & Maintenance, LLC) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District. The property is located at 24347 Lewes-Georgetown Highway (Rt.9). The change of zone is for 7.75 acres, more or less.

The Planning and Zoning Commission held a public hearing on July 14. At the meeting of July 28, 2022, the Commission recommended approval of the application for the 9 reasons as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meetings of July 14, 2022 and July 28, 2022.

[Draft Minutes of the July 14, 2022 Planning & Zoning Commission Meeting](#)

C/Z 1961 Country Lawn Care & Maintenance, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 7.75 ACRES MORE OR LESS. The property is lying on the north side of Lewes-Georgetown Highway (Route 9), approximately 0.89 mile east of Steiner Road. 911 Address: 24347 Lewes-Georgetown Highway (Route 9). Tax Parcel: p/o 135-11.00-32.00.



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

Mr. Whitehouse advised the Commission that submitted into the record was a survey, Exhibit Booklet, Staff Analysis, a letter from the Sussex County Engineering Department Utility Planning Division, the DelDOT Service Level Evaluation Response, and zero comments.

The Commission found that Mr. Mark Davidson, Principal Land Planner with Pennoni Associates, spoke on behalf of the Application; that also present were Mr. Gerald Dougherty and Ms. Stephanie Dougherty, who are the owners of Country Lawn Care & Maintenance, LLC; that the application is to request a Change of Zone of 7.75-acres, located on the northside of Lewes Georgetown Hwy., within the AR-1 (Agricultural Residential) to C-2 (Medium Commercial) Zoning District; that the remainder of the property is 3.85 acres, which is currently zoned as C-1 (General Commercial); that they propose the 3.85 acres to remain C-1 (General Commercial); that the property is bordered on the east by Weston Willows Apartments, being commercially zoned; that Country Lawn Care & Maintenance, LLC recently received the contract to maintain the lawncare for Weston Willows Apartments; that should the Application receive approval, the business will be located adjacent to the property they will be providing services for; that to the north of the property is a major subdivision, Azalea Woods; that to the west of the property, there are multiple split zoned properties, being zoned for commercial and agricultural use; that the purposed of the C-2 (Medium Commercial) District is to support uses which include retail sales and performance of consumer services, permitting a variety of retail, professional and business services, being located near arterial and collector streets; that in Ordinance 2250, County Council desired to create a more specific C-2 (Medium Commercial) Zoning District with smaller, more related uses, within the District, to promote better planning and predictability within Sussex County; that the Applicant proposes to utilize the site as the headquarters for their landscaping business named Country Lawn Care; that the business currently employs 22 employees; that currently the business is located west of the property; that the Applicant was leasing their current property; that the leased property has now been sold, requiring the Applicant to vacate the property; that the commercial use of the property will not diminish property values of surrounding areas or create a public nuisance with an increase of public expenditures; that there are multiple other businesses in the surrounding area; that these business include Sequoia Landscaping, M&V Tire, Rt. 9 Industrial Center, VS Service & Cycle Center and the DelDOT Maintenance Yard; that the rezoning request is consistent with the Comprehensive Plan; that Rt. 9 is considered a business corridor, with a mixture of business and residential uses; that according to the Sussex County Future Land Use Map, the property is located within a commercial land use area; that the Comprehensive Plan requires the rezoning of a property to help promote growth and development where capital facilities and infrastructure is already available, being adequate to support the growth; that Artesian offers water and sewer services to the area; that the Comprehensive Plan promotes commercial development in designated commercial and industrial areas and scaled intensity, distance appropriate to adjacent residential neighborhoods; that they feel the nearby residential neighborhoods will benefit from the fact the subject property is in close proximity to service the residences with future landscape services, such as lawn maintenance and landscape design; that due to the close proximity to residences, there will be less travel required to the residential areas; that the zoning map shows the subject property is an appropriate location for C-2 zoning; that the Applicant will work with DelDOT on road improvements, transportation projects and dedication of additional right-of-way along Rt. 9; that the proposed land use of the property is expected to increase a trip generation of fewer than 50 vehicle trips per day; that this is considered a negligible amount of traffic; that since Rt. 9 is a principal arterial road, setback requirements are increased to allow for future right-of-way dedication, permanent easements and additional stormwater management setbacks; that Table 4.5-2 references the applicable zoning designations which match the Future Land Use Map; that within Table 4.5-2 the C-2 Zoning District is considered applicable; that there are isolated wetlands located on the property; that the

wetland area has been delineated; that the report was included within the Exhibit Booklet; that no disturbance of the wetland area will occur during the development of the site; that the property is located within Flood Zone X; that along the easternly property line there is a tax ditch, with 85-ft. maintenance easements; that court order change requests have been submitted to DNREC, requesting a reduction in the easement from 85-ft. to 25-ft.; that the DNREC request is currently under review; that the site is not located within a Groundwater Protection Zone; that the properties are located within Investment Level 3 and Investment Level 4; that they feel the proposed zoning request meets the general purpose of the Zoning Ordinance, being the property is located in an appropriate location, meeting the strategies and objectives of the Comprehensive Plan, promoting the growth and development in an area located along a principal arterial roadway; that a sufficient dedication for expansion of the highway will be provided, where a general mixture of commercial and services activities exist; that the rezoning is essential and desirable to the general convenience, orderly growth, prosperity and the welfare of the County and he requested to submit a revised set of Findings of Fact.

Mr. Hopkins questioned if there were wetlands present on the site; that he stated there is a tax ditch that runs through the property and questioned how the tax ditch was currently functioning.

Mr. Davidson stated there are isolated wetlands on the site, located adjacent to the tax ditch; that the wetlands have been delineated; that the report was included within the Exhibit Booklet; that there is a tax ditch that runs along the eastern border of the property and he believes the tax ditch is currently functioning and draining appropriately.

Mr. Young advised the Commission that the adjacent property is Weston Willows; that the Planning & Zoning Commission did condition that Weston Willows provide interconnectivity, as staff knew about the potential of having two commercial properties adjacent to each other.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to the Application.

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

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

In relation to Application C/Z 1961 Country Lawn Care & Maintenance, LLC. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

Draft Minutes of the July 28, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since July 14, 2022.

Ms. Wingate moved that the Commission recommend approval of C/Z 1961 Country Lawn Care & Maintenance, LLC for a Change in Zone from AR-1 Agricultural-Residential Zoning to C-2 “Medium Commercial” Zoning based on the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.

2. The Applicant’s property is located along Route 9 which is classified as a “Principal Arterial” roadway. The front 3.85 acres of the property is currently zoned C-1. The Applicant seeks to rezone the back 7.75 acres of the property to the C-2 Medium Commercial District so that the entire property is commercially zoned. This is an appropriate location for C-2 zoning.
3. The property is bordered on the east side by a commercially-zoned property that has developed as an apartment complex. It is bordered on the north by a property approved for a major subdivision and on the west by another split-zoned property with commercial zoning. This is an appropriate location for C-2 zoning.
4. C-2 Zoning at this location along Route 9 will benefit nearby residents of Sussex County by providing a commercial location for the Applicant’s business.
5. There is no evidence that this rezoning will have an adverse impact on neighboring properties and area roadways.
6. The site is in the “Commercial Area” according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.
7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
8. No parties appeared in opposition to the rezoning application.
9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/Z 1961 Country Lawn Care & Maintenance, LLC for the reasons and conditions stated in the motion. Motion carried 3-0. Madam Chair Stevenson abstained.

The vote by roll call: Mr. Hopkins – yea, Mr. Mears – yea, Ms. Wingate - yea

PLANNING & ZONING COMMISSION

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



Sussex County

DELAWARE
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302-854-5079 F
JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: July 14th, 2022

Application: C/Z 1961 Country Lawn Care & Maintenance, LLC

Applicant: Country Lawn Care & Maintenance, LLC (c/o Jerry Dougherty)
30435 Hollymount Road
Harbeson, DE 19951

Owner: Country Lawn Care & Maintenance, LLC (c/o Jerry Dougherty)
30435 Hollymount Road
Harbeson, DE 19951

Site Location: 24347 Lewes-Georgetown Highway (Route 9). Lying on the north side of Lewes-Georgetown Highway (Route 9), approximately 0.89 mile east of Steiner Road.

Current Zoning: AR-1 – Agricultural Residential District

Proposed Zoning: C-2 – Medium Commercial District

Comprehensive Land Use Plan Reference: Commercial Area

Councilmanic District: Mr. Rieley

School District: Indian River School District

Fire District: Georgetown Fire Company

Sewer: Artesian

Water: Artesian

Site Area: 7.75 acres +/-

Tax Map ID.: p/o 135-11.00-32.00



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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Ms. Lauren DeVore, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and applicant
Date: June 13, 2022
RE: Staff Analysis for C/Z 1961 Country Lawn Care & Maintenance, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application C/Z 1961 Country Lawn Care & Maintenance, LLC to be reviewed during the July 14, 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 a portion of Tax Parcel 135-11.00-32.00 to allow for a change of zone from an Agricultural Residential (AR-1) District to Medium Commercial (C-2) District. The property is lying on the north side of Lewes-Georgetown Highway (Route 9), approximately 0.89 mile east of Steiner Road. The entire parcel consists of 11.66 acres, with the relevant portion of the parcel to be rezoned being approximately 7.75 acres +/-.

Further Site Considerations

County records indicate that there is a Tax Ditch present on the eastern portion of the site, the Koeppel-Robinson Tax Ditch. A related Tax Ditch right-of-way does impact the subject property and is measured 80-ft from the Top of Bank (TOB) of the ditch. Further annotation indicates that the Tax Ditch ROW was minimized through a Court Order Change (COC #1). If any further requests to reduce this right-of-way are made, a Change Request Form will have to be submitted to the Delaware Department of Natural Resources and Environmental Control (DNREC).

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

The parcel lies within Flood Zone "X" – Areas Determined to be outside of the 100-year Floodplain.

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 "Commercial Area" The properties to the south (including on those on opposite side of Route 9 (Lewes-Georgetown Highway), the properties to the east and west of the subject property all have a designation of "Commercial Area."



Commercial Areas include concentrations of retail and service uses that are mainly located along arterials, and highways. As opposed to small, traditional downtown areas that are often historic and pedestrian-friendly, Commercial Areas include commercial corridors, shopping centers, and other medium and large commercial vicinities geared towards vehicular traffic. In addition to primary shopping destinations, this area would also be the appropriate place to locate hotels, motels, car washes, auto dealerships, and other medium and larger scale commercial uses not primarily targeted to the residents of immediately adjacent residential areas. These more intense uses should be located along main roads or near major intersections. Institutional and commercial uses may be appropriate depending on surrounding uses. Mixed-use buildings may also be appropriate for these areas (Sussex County Comprehensive Plan, 4-17).

The properties immediately north of the subject property contain the land use designation “Low Density Areas.”

As outlined in the 2018 Sussex County Comprehensive Plan, the primary uses envisioned in Low Density Areas are agricultural activities and homes. Business development should be largely confined to businesses addressing the needs of these two uses. Industrial and agribusiness uses that support or depend on agriculture should be permitted. The focus of retail and office uses in Low Density Areas should be providing convenience goods and services to nearby residents. Commercial uses in these residential areas should be limited in their location, size and hours of operation. More intense commercial uses should be avoided in these areas. Institutional and commercial uses may be appropriate depending on surrounding uses (Sussex County Comprehensive Plan, 4-19).

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 Commercial (C-2) District is listed as an Applicable Zoning District within the “Commercial Area.” (Sussex County Comprehensive Plan, 4-25).

The property is dual-zoned with approximately 3.91 acres of the southern portion of the property (with frontage along Lewes-Georgetown Highway (Route 9)), being zoned General Commercial (C-1) District. The northern portion of the property consisting of 7.75 acres is currently zoned Agricultural Residential (AR-1) District.

The adjacent parcel to the east is zoned General Commercial (C-1) District and the as is the southern portion of the parcel to the west. All parcels along Lewes-Georgetown Highway (Route 9) from French Road to Gravel Hill Road (Route 30) are zoned General Commercial (C-1) District. The northern and remaining portion of the parcel to the west is zoned Agricultural Residential (AR-1) District. The parcels due north of the site 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. 1750 BLN, LLC for a change of zone from an Agricultural Residential (AR-1) District to a Commercial Residential (CR-1) District.

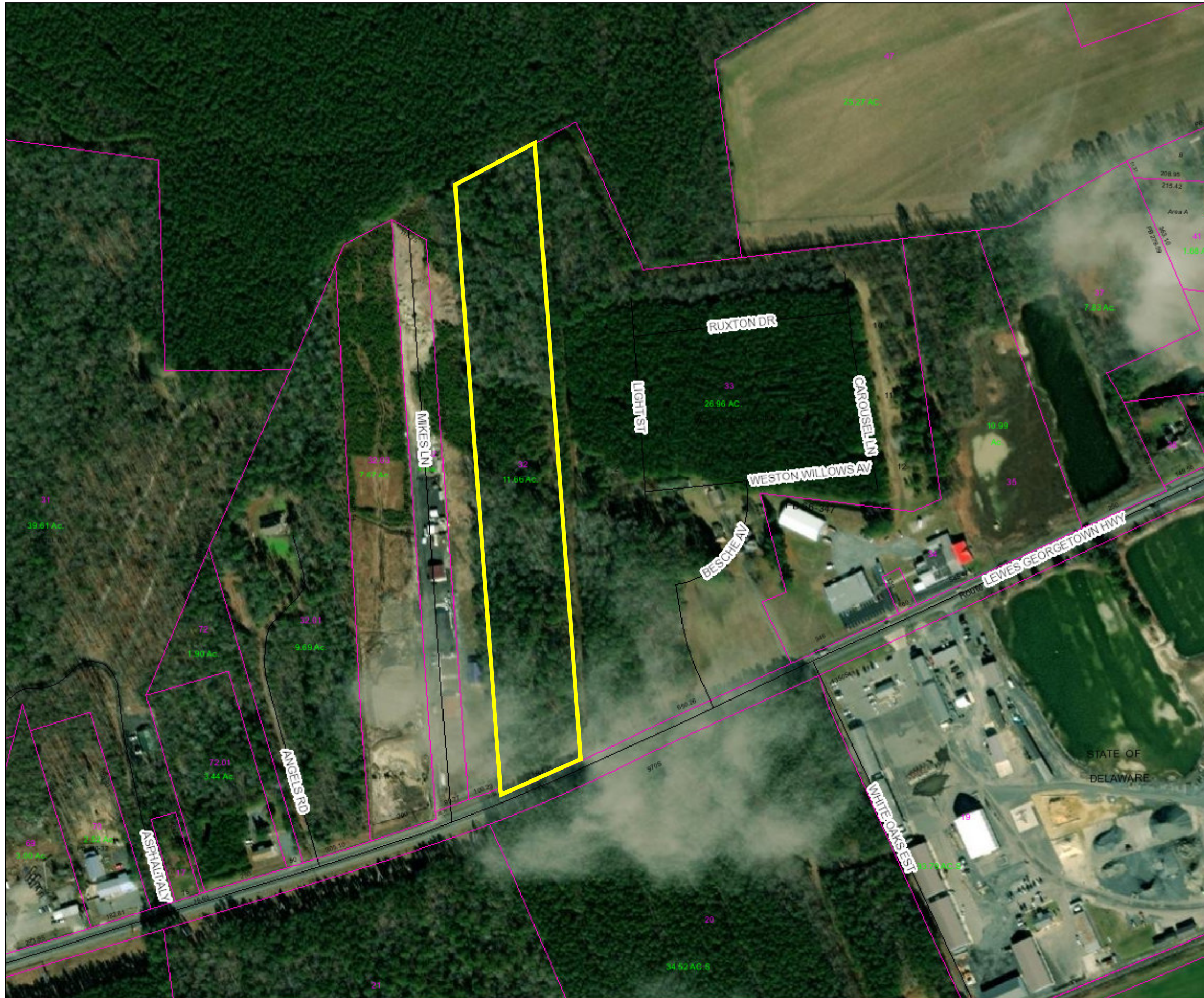
The application was recommended denial by the Planning and Zoning Commission at their meeting of Thursday, May 22, 2014. The application was considered at the July 15, 2014, meeting of the Sussex County Council and then was subsequently withdrawn before a decision was rendered. The second application is for Change of Zone No. 1830 H. Dale Parsons for a change of zone from an Agricultural Residential (AR-1) Zoning District and a General Commercial (C-1) District to a General Commercial (C-1) District and Commercial Residential (CR-1) District. The application was recommended approval by the Planning and Zoning Commission at their meeting of Thursday, November 16, 2017. The application was approved by the Sussex County Council at their meeting of Tuesday, November 28, 2017, and the change was adopted through Ordinance No. 2534. The third application is for Change of Zone No. 1838 Two Farms, Inc. for a change of zone from an Agricultural Residential (AR-1) District to a Neighborhood Business (B-1) District. The application was recommended approval by the Planning and Zoning Commission at their meeting of Thursday, November 16, 2017. The application was approved by the Sussex County Council at their meeting of Tuesday, January 9, 2018, and the change was adopted through Ordinance No. 2539.

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from an Agricultural Residential (AR-1) District to a Medium Commercial (C-2) District could be considered as being consistent with the land use, area zoning and surrounding uses.

Change of Zone Applications (w/in a 1 mile radius of the subject site)*								
Application Number	Application Name	Current Zoning	Proposed Zoning	P&Z Decision	P&Z Decision Date	CC Decision	CC Decision Date	Ordinance Number
C/Z 1750	BLN, LLC	AR-1	CR-1	Recommended Denial	5/22/2014	Withdrawn	Withdrawn	N/A
C/Z 1830	H. Dale Parsons	AR-1 & C-1	C-1 & CR-1	Recommended Approval	11/16/2017	Approved	11/28/2017	2534
C/Z 1838	Two Farms, Inc.	AR-1	B-1	Recommended Approval	11/16/2017	Approved	1/9/2018	2539



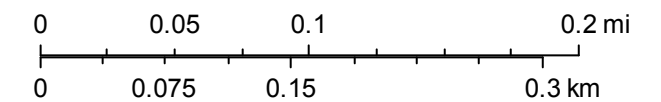
Sussex County

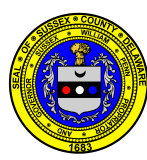


PIN:	135-11.00-32.00	
Owner Name	COUNTRY CARE AND MAINTENANCE LLC	LAWN AND MAINTENANCE LLC
Book	5611	
Mailing Address	30435 HOLLYMOUNT RD	
City	HARBESON	
State	DE	
Description	N/RT 9	
Description 2	4368' E/RD 320	
Description 3	N/A	
Land Code		

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

1:4,514





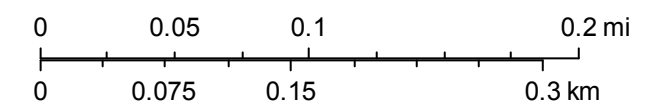
Sussex County

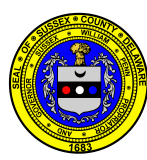


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