

# **Sussex County Council Public/Media Packet**

**MEETING:  
January 25, 2022**

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**Sussex County Council  
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Georgetown, DE 19947  
(302) 855-7743**

## 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

JANUARY 25, 2022

10:00 A.M.

#### Call to Order

#### Approval of Agenda

#### Approval of Minutes – January 11, 2022

#### Reading of Correspondence

#### Public Comments

#### Consent Agenda

1. Use of Existing Wastewater Infrastructure Agreement, IUA-724-1  
Egret Shores, Millville Area

#### Todd Lawson, County Administrator

1. Recognition of Retirees
  - a. Robin Griffith
  - b. Bradbury (Brad) Hawkes
  - c. Deborah (Debbie) Holding
2. Administrator's Report



**Gina Jennings, Finance Director**

1. Discussion and Possible Introduction of a Proposed Ordinance entitled “AN ORDINANCE AMENDING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2022 TO INCORPORATE ADDITIONAL REALTY TRANSFER TAX REVENUE AND STATE PASSTHROUGH GRANT REVENUE AND THE ALLOWABLE EXPENDITURES RELATED TO THE ADDITIONAL REVENUE”

**Hans Medlarz, County Engineer**

1. Discussion and Possible Introduction of a Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$959,888 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE EMERGENCY PINTAIL POINTE PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”
2. Discussion and Possible Introduction of a Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$2,376,356 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE OAK ACRES AND TANGLEWOOD SEPTIC ELIMINATION PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”
3. South Coastal WRF Treatment Process Upgrade No. 3 & Rehoboth Beach WTP Capital Improvement Program, Phase 2
  - a. General Construction, Project C19-11, Change Order Nos. 17 & 18
  - b. Electrical Construction, Project C19-17, Change Order No. 15
4. Granting of Residential Access Easement, Tax Parcel # 134-13.00-34.03

**Old Business**

“AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 AND 532-19.00-1.00”

“AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-23.00-2.02 (PORTION OF), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, AND 235-23.00-2.01”

**Grant Requests**

1. Kim and Evans Family Foundation, Inc. for SuperHero 5K Run/Walk Fundraiser
2. Tether Foundation for Camp Abilities Delaware

**Introduction of Proposed Zoning Ordinances**

Council Members' Comments

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

Possible action on Executive Session items

1:30 p.m. Public Hearings

Conditional Use No. 2277 filed on behalf of Avalon Woods Owners Association, Inc.

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR GENERAL RESIDENTIAL DISTRICT TO DESIGNATE LOT 39, BLOCK A WITHIN THE EXISTING AVALON WOODS SUBDIVISION AS OPEN SPACE AND TO ALLOW FOR A SHED AMENITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.42 ACRES, MORE OR LESS.” (property lying on the southwest side of Avalon Drive within the existing Avalon Woods Subdivision, approximately 0.25 mile south of Avalon Road [S.C.R. 302A]). (911 Address: 27826 Avalon Drive, Georgetown) (Tax Parcel: 234-15.00-81.00)

Change of Zone No. 1947 filed on behalf of Kenneth P. Adams

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT AND AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 4.33 ACRES AND 0.08 ACRE, MORE OR LESS.” (property lying on the southwest side of DuPont Boulevard (Route 113) approximately 351 feet northwest of Governor Stockley Road [S.C.R. 432]) (911 Addresses: 25116, 25076 & 25136 DuPont Boulevard, Georgetown) (Tax Parcels: 133-6.00-50.00 & p/o 50.02)

Change of Zone No. 1948 filed on behalf of The Grande at Canal Point Maintenance Corporation

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL NUMBER 15 OF C/Z 1538 (ORDINANCE NO. 1700) AND C/Z 1926 (ORDINANCE NO. 2786) IN RELATION TO PIERS, DOCKS, BOAT RAMPS AND OTHER WATER RELATED RECREATIONAL FACILITIES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 180.60 ACRES, MORE OR LESS.” (property lying on the east side of Hebron Road, approximately 0.19 mile south of the intersection of Hebron Road and Holland Glade Road [S.C.R. 271]) (911 Address: N/A) (Tax Parcel: 334-13.00-334.00, 1448.00-1750.00)

Adjourn

**-MEETING DETAILS-**

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on January 18, 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, JANUARY 11, 2022**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 11, 2022, at 9:00 a.m., in Council Chambers, with the following present:**

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

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

**Call to  
Order**

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

**M 001 22  
Approve  
Agenda**

**A Motion was made by Mr. Schaeffer, 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**

**Election of  
Officers**

**Mr. Lawson noted the requirement that the County Council must elect officers for 2022.**

**M 002 22  
Appoint  
President**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that Mr. Vincent serve as President of the Sussex County Council in 2022.**

**Motion Adopted: 4 Yeas, 1 Nay**

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

**M 003 22  
Appoint  
Vice  
President**

**A Motion was made by Mr. Rieley, seconded by Mr. Vincent, that Mr. Hudson serve as Vice President of the Sussex County Council in 2022.**

**Motion Adopted: 5 Yeas.**



**Approve  
2022**                    **Sussex County Council approves the 2022 Rules of Procedure, as presented.**

**Rules of  
Procedure**            **Motion Adopted:        5 Yeas.**

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

**M 007 22**            **At 9:08 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson,**  
**Go Into**                **to recess the Regular Session and go into Executive Session for the purpose**  
**Executive**              **of discussing matters relating to pending/potential litigation and land**  
**Session**                **acquisition.**

**Motion Adopted:        5 Yeas.**

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

**Executive**            **At 9:12 a.m., an Executive session of the Sussex County Council was held in**  
**Session**                **the Basement Caucus Room to discuss matter relating to pending litigation**  
**and land acquisition. The Executive Session concluded at 10:00 a.m.**

**M 008 22**            **At 10:05 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley,**  
**Reconvene**            **to come out of Executive Session and reconvene the Regular Session.**  
**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**

**M 009 22**            **A Motion was made by Mr. Rieley, seconded by Mr. Shaeffer to grant the**  
**Land**                    **County Administrator the ability to negotiate and enter into a contract and**  
**Acquisition**           **proceed to closing on parcel identified as 2021W.**  
**Approval**

**Motion Adopted:        5 Yeas.**

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

**Lockhaven**           **Mr. Moore shared that Mr. Shaeffer was not involved in the conversations**  
**Appeal**                **during the Executive Session or when any discussions took place**  
**Possible**               **considering this appeal.**  
**Action**

**Mr. Lawson commented that an appeal hearing was held on December 14,**  
**2021, relating to this matter. At the conclusion of that hearing, Council**  
**decided to not take action.**



**M 010 22  
Lockhaven  
Appeal**

A motion was made by Mr. Vincent, seconded by Mr. Hudson relating to the appeal of the Planning and Zoning Commission's (the "Commission") denial of a subdivision application (the "Application") for Lockhaven Subdivision No. 2020-8 (the "Subdivision") filed by Lockwood Farms, LLC (the "Appellant"). I move that the Council affirm the Commission's denial of the Application for the following reasons:

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

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

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

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

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

In its December 13, 2021, appeal letter ("Appeal Letter"), Appellant states, and relies upon the principal, that, "[t]he Delaware Supreme Court has held that people who own land zoned for a specific use are entitled to rely on the fact that they can implement that use, provided the project complies with the subdivision ordinances subject to reasonable conditions

**M 010 22  
Lockhaven  
Appeal  
(continued)**

imposed by the Planning Commission to minimize impact.” Appeal Letter, p. 1. However, the Appellant did not effectively address the mandatory considerations for all subdivision applications that are set forth in Sussex County Code, § 99-9C.

Sussex County Code § 99-9C sets forth seventeen (17) mandatory factors the Commission must consider in its decision whether to approve or deny a subdivision plan.<sup>2</sup> Of these factors, the record demonstrates that Appellant’s Application and presentation did not provide adequate or current information pertaining to eight (8) separate categories. Each of these deficiencies were outlined in the Commission’s reasons 2 through 9 for denying the Application. *See Commission Minutes, October 13, 2021, pp. 2-4.*

Though the attorney for the Appellee, mostly focused on one of the deficiencies during his argument, a review of the records shows many concerns.

More specifically, as addressed by the Commission in detail, Appellant did not adequately satisfy the following considerations:

3. This application does not adequately satisfy Section 99-9C(1) which requires the consideration of “an integration of the proposed subdivision into the existing terrain and surrounding landscape.” The subdivision has extensive wetlands and woodlands, all of which are located within individual lots. Even the buffers are located within the individual lots. There is no protection against future tree clearing or disturbance of the wetlands or the buffer areas by future lot owners.
4. This application does not adequately satisfy Section 99-9C(2) which requires the “minimal use of wetlands and floodplains”. In this case, the wetlands are located solely within the lot lines. In fact, 13 of the 25 lots contain wetlands. This is not the “minimal use of wetlands”. Although there is a 50-foot wetlands buffer proposed, it is also located within each lot, which offers no guarantee that the buffer or the wetlands will be used or disturbed in the future once homes are built on the various lots.
5. This application does not adequately satisfy Section 99-9C(3) which requires the consideration of the “preservation of natural and historical features.” While there are no known historic features on the site, 13 of the lots contain wetlands. The design of the subdivision is counter to the preservation of the natural areas since the lots are oriented to the perimeter of the

**M 010 22  
Lockhaven  
Appeal  
(continued)**

site where the wetlands and waterways are located, and not towards the interior of the site that was previously farmed and no natural features exist.

6. This application does not adequately satisfy Section 99-9C(4) which requires a consideration of the “preservation of open space and scenic views.” The design of the subdivision includes 14.75 acres of open space that is mainly oriented to the center of the site. The design does not preserve scenic views, particularly where the primary scenic view is the man-made lagoon and its view of the Broadkill River beyond it, all of which is located within a single lot (Lot 15) that is not accessible to the other lots within the development.
7. This application does not adequately satisfy Section 99-9C(5) which requires a consideration of the “minimization of tree, vegetation and soil removal and grade changes.” As already stated, all 38 acres of the existing forest is located within the individual lots. Although the applicant has stated that the forested areas will be preserved, the site plan that was submitted states that the “treeline is shown for estimated lot clearing. Actual lot clearing varies.” I am not satisfied that tree clearing will be minimized on these lots once homes are designed and built with rear yards, wells, and septic systems.
8. I am not satisfied that the Applicant has adequately addressed the provision for sewage disposal as required by Section 99-9C(8). The Applicant is proposing 25 individual septic systems and I am not satisfied that the soils are adequate based upon the information contained in the record, which includes a fifteen-year-old soil study from 2006 that reviewed a completely different site plan with two cul de sacs and a different lot layout. In December of 2015, which is now almost six years ago, DNREC indicated that 4 of the lots in that old subdivision design were marginal for On-Site Wastewater Treatment and Disposal Systems and that one of the former lots was not feasible for an on-site system at all. The developer has redesigned the subdivision to address the lot with the bad soils, but DNREC has not reviewed the current plan to confirm that each of the lots will have adequate soils for on-site septic systems.
9. This application does not adequately satisfy Section 99-9C(11) which requires the consideration of safe vehicular movement within the site and to adjacent ways and Section 99-9C(15) which requires the consideration of the effect on area roadways. The site is located along Round Pole Bridge Road, which is an unlined tar and chip roadway with no shoulders and failing pavement edges. DelDOT has stated that it has no plans for any improvement of this roadway. The proposed entrance to the site

**M 010 22  
Lockhaven  
Appeal  
(continued)**

is approximately 500 feet from a 90-degree turn in the road, making it difficult to anticipate oncoming traffic. I am not satisfied that these circumstances provide for safe vehicular and pedestrian movement onto adjacent roadways and the entrance creates an unsafe effect on the already marginal Round Pole Bridge Road.

The Commission's findings include detailed, thorough and well-thought-out reasons for its unanimous vote to deny the Application, including, *inter alia*, inadequate wetland, scenic view and tree protection, as well as the questionable viability of on-site individual septic systems. Of utmost importance, and as outlined by the Commission's December 13, 2021 Letter, the proposed on-site individual septic systems were based on a 15-year-old soil evaluation from 2006 and a 6-year-old review thereof from 2015<sup>3</sup>, both of which were based on a totally different plan than was provided to the Commission with this Application and reviewed at the public hearing<sup>4</sup>. In fact, the DNREC review did not reflect the current Subdivision plan lot numbers;<sup>5</sup> "that even under the old plan, several of the lots would need mound systems (being lots with different locations from the plan that was presented to the Commission)"<sup>6</sup>; that, after repeated contacts to do so, the Appellant chose not to connect to the sewer which would have directly addressed this issue<sup>7</sup>; and that Appellant acknowledged that the plan contains "some bad areas" for septic systems<sup>8</sup>.

Moreover, the Commission expressed additional concern that the site is located in an environmentally sensitive area that "is bounded by Beaverdam Creek and the Broadkill River and contains 28.7 acres of wetlands...contains 38.44 acres of woodlands and 'pretty much everywhere you see woods has wetlands.'"<sup>9</sup> This Application does not provide adequate assurance that the woodlands, wetlands and buffer areas will be protected<sup>10</sup>, especially since they are located on the lots themselves which will require on-site individual septic systems. The site plan even states, "treeline is shown for estimated lot clearing. Actual lot clearing varies."<sup>11</sup>

The foregoing facts demonstrate many deficiencies in the Subdivision record presented to the Commission. These facts were collectively confirmed by statements in the record at the public hearing and, as Appellee explained in the Commission's December 13, 2021 letter (the "Commission's December 13, 2021 Letter"), there is substantial evidence in the record to deny the Subdivision plan based solely on Appellant's inability to adequately address the concerns raised by § 99-9C(8). *See Commission's December 13, 2021 Letter* at p. 2.

While the Appellant argues that approval is required subject to the imposition of reasonable conditions, imposing conditions based on Appellant's wide-ranging deficiencies under Section 99-9C would require the Commission to engage in a complete redesign of the Subdivision plan which is beyond the purview of its responsibilities.

**M 010 22  
Lockhaven  
Appeal  
(cont.)**

**The Commission’s findings speak for themselves. The Commission’s reasons for its unanimous denial of the Subdivision plan clearly demonstrate its decision was the result of an orderly and logical review of the evidence, that there was substantial evidence in the record to support its decision and that it engaged in the proper interpretation and application of the chapter.**

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

<sup>2</sup> Sussex County Code, § 99-9C requires consideration of the following factors prior to subdivision approval:

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

<sup>3</sup> *Transcript of June 24, 2021 Public Hearing* at p.15, line 22.

<sup>4</sup> *Commission’s December 13, 2021 Letter* at p. 2.

<sup>5</sup> *Transcript of June 24, 2021 Public Hearing* at p. 20, lines 15-23.

<sup>6</sup> *Commission’s December 13, 2021 Letter* at p. 2, citing *Transcript of June 24, 2021 Public Hearing* at p. 19, lines 8-15 “It looks like DNREC is not excited about your plan”.

<sup>7</sup> *Transcript of June 24, 2021 Public Hearing* at p. 12, line 2.

<sup>8</sup> *Transcript of June 24, 2021 Public Hearing* at p. 21, line 7.

<sup>9</sup> *Commission’s December 13, 2021 Letter* at p. 2-3.

<sup>10</sup> *Commission’s December 13, 2021 Letter* at p. 3, citing *Transcript of June 24, 2021 Public Hearing* at p. 29, lines 20-24 (“Unfortunately, if the best septic area gets into the deeper section of the woods, we don’t want to put a septic in the worst area and then – you know, you want to clear those woods for that septic.”)

<sup>11</sup> *Id.*

**M 010 22  
Lockhaven  
Appeal  
(continued)**

**Motion Adopted: 4 Yeas, 1 absent**

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

**Minutes**

**The minutes of December 14, 2021 were approved by consent.**

**Mr. Schaeffer returned to the meeting.**

**Corre-  
spondence**

**Mr. Moore read correspondence received from Cape Henlopen Senior Center, Delaware Breast Cancer Coalition, Good Samaritan Aid Organization, Food Bank of Delaware and Multiplying Good in appreciation of grants received.**

**Public  
Comments**

**Public comments were heard and the following spoke:**

**Michael Houlihan, Mayor of Delmar, DE spoke regarding the Old Business items on today's agenda addressing the amendments to the future land use maps.**

**Mr. Moore commented that the Public Hearing for this item was held on December 14, 2021. At that time, the record was left open for written comments, therefore, written comments can still be accepted at this time.**

**Mr. Jeff Stone representing SARG spoke about the process or lack thereof used by the County to consider potential changes to land use maps for the comprehensive plan. He believes that the 19-year-old document needs to be updated and modernization.**

**Mr. Todd Bauer from Delmar, DE spoke about the Jackson Branch tax ditch.**

**Mr. David See, 38297 Providence Church Road, Delmar, DE expressed concerns, and subsequent opposition to the proposed ordinance to change the density of land use in the County's comprehensive growth plan.**

**Ms. Lee came forward to discuss the procedure of land use maps. She expressed a concern of it being difficult to know what area is being proposed to change and expressed the need for more clarification.**

**County  
Council  
Redistrict-  
ing**

**Mr. Moore reported that he has reviewed all the letters and emails received concerning both the process and the proposed maps presented during the Council meeting on December 14, 2021. Mr. Moore stated that the comments before the maps were presented were overwhelmingly in support of the League of Woman Voters maps. Since the maps have been unveiled, the comments have been supportive about the drafting of the maps.**

**Mr. Moore added that it has been asked several times regarding if an**

**County  
Council  
Redistrict-  
ing  
(continued)**

election would be held after the process for all the districts. Mr. Moore stated that he was tasked with drafting maps and to ensure that they complied with the guidelines set by the courts.

Mr. Moore further explained that this is a state-wide issue that occurs in each County. After redistricting has occurred, there has never been special elections or truncated terms as stated in the Delaware Code for any of the Counties.

Mr. Moore is currently in the process of drafting an ordinance for introduction that he hopes to introduce at the next meeting. The software that has been used to draft the maps is the same software that is used by the Board of Elections that are being worked on to better identify properties and include the maps.

Mr. Moore reported that once the ordinance is introduced, a public hearing will be held. He emphasized that the public hearing will be held on the maps themselves.

**Adminis-  
trator's  
Report**

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

**1. Delaware State Police Activity Report**

The Delaware State Police year-to-date activity report for November 2021 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 189 troopers assigned to Sussex County for the month of November.

**2. Projects Receiving Substantial Completion**

Per the attached Engineering Department Fact Sheets, Welches Pond (formerly known as Fieldstone – The Grove at Love Creek) – Phase 1A (Construction Record) and Outer Banks South (Construction Record) received Substantial Completion effective December 13<sup>th</sup> and December 21<sup>st</sup>, respectively.

**3. Council Meeting/Holiday Schedule**

County offices will be closed on Monday, January 17<sup>th</sup> for the Martin Luther King, Jr. Holiday. Offices will reopen on Tuesday, January 18<sup>th</sup>, at 8:30 a.m. Council will not meet on January 18<sup>th</sup>. The next regularly scheduled Council meeting will be on Tuesday, January 25<sup>th</sup> at 10:00 a.m.

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

**Bank  
Account  
Resolution**

**Mrs. Jennings presented for Council's consideration a Proposed Resolution authorizing signatures on the accounts of Sussex County Council with various financial institutions and investment firms due to the change in leadership.**

**M 011 22  
Adopt  
R 001 22**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to Adopt Resolution No. R 001 22 entitled "AUTHORIZING THE SIGNATURES ON THE ACCOUNTS OF THE SUSSEX COUNTY COUNCIL WITH VARIOUS FINANCIAL INSTITUTIONS AND INVESTMENT FIRMS TO BE MICHAEL H. VINCENT, PRESIDENT; DOUGLAS B. HUDSON, VICE PRESIDENT; AND GINA A. JENNINGS, FINANCE DIRECTOR/CHIEF OPERATING OFFICER".**

**Motion Adopted: 5 Yeas.**

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

**Update  
FY22  
Budget**

**Mrs. Jennings provided an update on the FY22 budget. Mrs. Jennings reported that as of the first quarter, the general budget fund expenses were under budget by \$2 million. However, the revenues were over by \$10 million; all of which deals with Realty Transfer Tax. As the second quarter of the budget is ending, expenses are still under budget and revenues are still over budget due to Realty Transfer Tax. Mrs. Jennings reminded the Council that Realty Transfer Tax may only be spent on certain items. Mrs. Jennings asked for consideration to amend the FY22 budget by introducing a Budget Amendment Ordinance at the next meeting to spend the extra Realty Transfer Tax funds. Mrs. Jennings recommends spending \$12 million to include \$6.4 million to the Towns and the rest going to land acquisition for open space. Mrs. Jennings also requested to include the State passthrough grant revenue in the Proposed Ordinance.**

**It was agreed by consensus to have the Ordinance be brought back at the next meeting.**

**Old  
Business/  
Proposed  
Ordinance/  
Land Use  
Map  
Amendment  
(Delmar  
Area)**

**Mr. Whitehouse reminded Council that a public hearing was held on December 14, 2021, for this item. At the conclusion of that hearing, the record was left open to receive additional comments. Since that meeting, no additional comments have been received in relation to this Proposed Ordinance.**

**Mr. Whitehouse shared that since the December 14<sup>th</sup> meeting, staff has had discussions with the State Planning Office relating to the process of future land use map amendments. The outcome of those meetings will be reported to Council at a future meeting.**

**Mr. Vincent commented that after the last meeting, it was requested of Mr. Whitehouse to meet with State Office of Planning in relation to some issues**



that were brought forward. As reported by Mr. Whitehouse, those meetings have started and will continue to occur until a resolution is agreed upon.

**M 012 22**  
**Defer Action**  
**on Proposed**  
**Ordinance/**  
**Land Use**  
**Map**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to defer and to leave the record open until the next meeting for public written comment for the Proposed Ordinance to amend the future land use map of the Comprehensive Plan in relation to Tax Parcel Numbers: 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 and 532-19.00-1.00.

**Amendment**  
**(Delmar**  
**Area)**      **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/**  
**Proposed**  
**Ordinance/**  
**Land Use**  
**Map**

Mr. Whitehouse reminded the Council that a public hearing was held on December 14, 2021, for this item. At the conclusion of that hearing, the record was left open to receive additional comments. Since that meeting, 143 written comments have been received in opposition and 49 comments in support of this Proposed Ordinance.

**Amendment**  
**(Route 1)**      Mr. Whitehouse has been in discussion with the State Planning Office in reference to this ordinance as well as the previous ordinance for the same reasons with the outcome to be brought back at a future date.

**M 013 22**  
**Defer Acton**  
**on Proposed**  
**Ordinance/**  
**Land Use**  
**Map**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to defer and to leave the record open until the next meeting for public written comment for the Proposed Ordinance to amend the future land use map of the comprehensive plan in relation to Tax Parcel Numbers: 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 and 532-19.00-1.00.

**Amendment**  
**(Route 1)**      **Motion Adopted:**      5 Yeas.

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

It was noted that even if these ordinances were approved, that does not mean that any parcel is applying or receiving a change of zoning. Furthermore, currently, there are no applications currently pending for any development West of Delmar or on Route 1. It was also noted that if an application was received, that would require additional public hearings.

**Public**  
**Hearing/**  
**Ordinance**  
**to Amend**  
**Chapter 99**  
**and 115**

Mr. Whitehouse reported that on October 12, 2021, the County Council introduced an Ordinance to amend Chapter 99 and Chapter 115 of the Code of Sussex County regarding certain drainage features, wetlands, and water resources and buffers thereto.

The Planning and Zoning Commission held a public hearing on November

**(Wetland,  
Water  
Resources  
and Buffers)  
(continued)**

**4, 2021. During the December 16, 2021, meeting, the Commission recommended adoption of the Ordinance subject to the recommended revisions.**

**As of today, there have been 99 written responses received of which some may be duplicates. Mr. Whitehouse commented that the majority of the comments are in support of the Proposed Ordinance that have been circulated to Council.**

**Mr. Vincent Robertson, Assistant County Attorney presented information regarding the buffer initiative history to amend Chapter 99 and 115 of the Code of Sussex County. Mr. Robertson pointed out that this incentive does not apply to undeveloped land or land that does not have a resource on it. The Proposed Ordinance only applies to lands that are in the development process and have a resource. In addition, this Proposed Ordinance is not intended to address density.**

**Mr. Robertson explained that this Proposed Ordinance is an attempt to get away from an arbitrary line on a plot which was done through buffer averaging. Incentives were also added to get better designs and some flexibility. During discussions, it was found that resource maintenance also needed to be addressed. The code needed updating to include terms to define, update language and address loopholes.**

**Mr. Robertson presented the goals, objectives, and strategies from the 2018 Comprehensive Land Use Plan that deal with or support the initiative of the current Proposed Ordinance.**

**The background and history of the working group was shared by Mr. Robertson. Staff also reviewed the Proposed Ordinance and provided input to get the Ordinance to the point of introduction.**

**Mr. Robertson presented the initiative details and discussed the four functions of a buffer that appear in the Proposed Ordinance. Mr. Robertson pointed out that it was an addition, that it is not subdivided. Therefore, the buffer area will be considered open space or common areas that will be owned by a homeowner's association.**

**The ordinance details were discussed by section of the Proposed Ordinance as follows:**

- 1 – Definitions**
- 2 – General Requirements and Restrictions**

**Section 2 requires that buffers be resource buffers to be depicted on the preliminary and final plot plans for each major subdivision.**

- 3 – Preliminary Conference**

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and Buffers)  
(continued)**

**In this section, the definition of minor and major subdivision was amended which impacts when buffers would apply.**

#### **4 – Information to be shown**

**This section lists the information to be shown on a preliminary plat when submitted to include the buffer, location of the resources, access easements to the buffers so that maintenance can occur and the existing forest at time of application. It was also added to show the location of walkways and type of materials to be used in those walkways.**

#### **5 – Supporting Statements**

**This requires a resource and resource buffer management plan to be prepared and recorded as part of the subdivision.**

#### **6 – Information to Be Shown**

**This section lists the information to be shown on a preliminary plat when submitted to include the buffer, location of the resources, access easements to the buffers so that maintenance can occur and the existing forest at time of application. It was also added to show the location of walkways and type of materials to be used in those walkways.**

#### **7 – Plans**

**This section deals with construction plans reviewed by Mr. Whitehouse and Mr. Medlarz's offices as the project works through the process of being constructed.**

#### **8 – Definitions and Word Usage**

#### **9 – Height, Area and Bulk Requirements**

#### **10 – Resource Protection**

**10a. - Requires Resource Buffer widths and listed the Resource Buffer widths**

**The working group recommended the following resource buffer widths:**

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<i><u>Table 1: Resource Buffer Widths</u></i>			
<i><u>Resource Type (See Definitions, §115-4B)</u></i>	<i><u>Full Buffer Width (ft)</u></i>	<i><u>Zone A (ft)</u></i>	<i><u>Zone B (ft)</u></i>
<i><u>Tidal Waters</u></i>	<i><u>100</u></i>	<i><u>50</u></i>	<i><u>50</u></i>
<i><u>Tidal Wetlands</u></i>	<i><u>100</u></i>	<i><u>50</u></i>	<i><u>50</u></i>
<i><u>Perennial Non-tidal Rivers and Streams</u></i>	<i><u>50</u></i>	<i><u>25</u></i>	<i><u>25</u></i>
<i><u>Non-tidal Wetlands</u></i>	<i><u>30</u></i>	<i><u>15</u></i>	<i><u>15</u></i>
<i><u>Intermittent Streams</u></i>	<i><u>30</u></i>	<i><u>15</u></i>	<i><u>15</u></i>
<i><u>Ephemeral Streams</u></i>	<i><u>0</u></i>	<i><u>0</u></i>	<i><u>0</u></i>

**10b. – Defines Resource Buffer Averaging**

**This allows for flexibility for the proposed development; however, it only applies to Zone B. With that average, it shall not be expanded more than double the width of Zone B Resource Buffer.**

**10c. – Lists the Resource Buffer permitted activities by Zone**

**This is shown in Table 2 in the Ordinance that describes what can and cannot occur in Buffer Zones A and B. Mr. Robertson pointed out that if it is not identified in the table than it is prohibited.**

**10d. – Defines the Resource Buffer Standards**

**This keeps established native forests and non-forest meadows predominated by non-invasive species.**

**10e. – Regulates Invasive Species Removal**

**As a result of the comments received, the Planning and Zoning Commission recommended deletion of selective cutting from this section.**

**10f. – Defines the Maintenance of Drainage Conveyances including for a Drainage Assessment Report**

**This section also establishes the need for an easement for future maintenance.**

**10g. – Defines Resource Buffer options to Incentivize the Retention of Forests and the Retention or Expansion of Resource Buffers**

**Public Hearing/ Ordinance to Amend Chapter 99 and 115 (Wetland, Water Resources and Buffers) (continued)**

**Mr. Robertson shared that staff came up with how to incentivize good preservation practices.**

**10h – Defines the Resource and Resource Buffer Maintenance and Management Requirements**

**10i – Defines the Requirements for the Planning and Zoning Commission to grant an exception or modification**

**Mr. Robertson shared the criteria created that would need to be met before an exception or modification could be granted as follows:**

**When the Commission finds that special conditions or circumstances exist that are peculiar to the land or structure and that a literal enforcement of a specific requirement of this section would result an unwarranted hardship.**

**That the modification or exception request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.**

**That the granting of a modification or exemption will not adversely affect the functions of the Resource, or its Resource Buffer as set forth in the definition of that term. Waivers shall be in harmony with the general spirit and intent of this section and any subsequent regulations.**

**That the basis for the modification or exception cannot be achieved through Resource Buffer Width Averaging as provided by Sections 115-193B.**

**That is no event shall there be a modification or exception to the width of requirements of Zone A.**

**11 – Preliminary Site Plan requirements**

**12 – Final Site Plan requirements**

**13 – Effective date**

**Mr. Robertson reminded the Council that when this Proposed Ordinance was introduced, the effective date given at that time was six months from the date of adoption.**

**The recommendations of the Planning and Zoning Commission were then shared. The revisions included: several edits to provide better clarity in the Proposed Ordinance wording. Improving the information required on the preliminary plat submissions. Eliminating the term and activity of “selective cutting” and only permitting invasive species removal with licensed and/or certified oversight. Clarifying the language in Section 10 relating to conservation easement creation.**

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**It was then opened to the public for any comments.**

**Mr. Edward Launay from Environmental Resources, Inc. came forward to speak in support of the proposed ordinance in a professional capacity as well as a resident of Sussex County.**

**Mr. Launay explained that he was a member of the Wetland Working Group that helped in the preparation of the Proposed Ordinance. He recognized that the role of the Wetland Working Group was to develop a draft. Ultimately, the Wetland Working Group was disbanded, and that work product was the County's. He stated that the draft ordinance was the County's, and they have not amended and modified the ordinance. As an example, Section G., Resource Buffer Options was not a work product of the Wetlands Working Group.**

**However, certain aspects of this draft ordinance were critical components of the Wetlands Working Group contributions including deciding upon the Resource Buffer widths in Table 1 and developing Table 2, Resource Buffer zone. Table 2 lists activities which are not permitted within the Zone A and Zone B portions of the Resource Buffer.**

**Mr. Launay expressed concerns about how the section on "Walking Trails" is currently written. The current way it is written is substantially different from that of the Wetlands Working Group's March 4, 2020, draft. Mr. Launay requested that the two components related to walking trails in the Wetlands Working Group's March 4, 2020, draft replace the language on walking trails in the ordinance currently being presented today.**

**Mr. Launay stated that the error in the draft ordinance presented today may be an oversight since he reviewed various versions of the ordinance where corrections on this subject were not carried through. During the Planning Commission Hearing, a civil engineer commented on the topic of "walking trails", therefore, he realized after that meeting that the ordinance currently under review was not properly worded.**

**Mr. Launay provided copies of emails that he has sent to the County with the language of the March 4<sup>th</sup> draft. Incorporating the language on Walking Trails as it is in the March 4<sup>th</sup> draft is important because he does not believe that any member of the Working Group thought that allowing walking trails in the Zone A portion of the Resource Buffer was acceptable. He added that the March 4<sup>th</sup> draft allows only walking trails in the Zone B Resource Buffer. The draft also makes a single exception for a portion of walking trails that may need to cross through or over a Resource (wetland or stream) and the Zone A buffer, so as long as a suitable wetland permit is obtained from a regulatory agency.**

**Mr. Launay emphasized that the two-part definitions in the March 4<sup>th</sup> draft are important. He believes that it was likely just an oversight by the staff working on the ordinance and asked that it be corrected. If it was not an**

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oversight, he asked that the wishes of the Wetland Working Group on this particular topic be respected. There should walking trails allowed in Zone A buffer except where a regulatory permit is issued for the incidental crossing of the buffered Resource.

Mr. Launay provided another recommendation or clarification that involves page 26 line 728. He believes that the word “located” needs to be replaced with the word “restored”. The current sentences as written does not seem to make sense.

Mr. Launay then discussed Section G. Resource Buffer Options (Lines 782 though 878). This section was developed by County Staff to “incentive the retention of forest” by augmenting various options beyond those already provided in the Resource Buffer Width Averaging, Section B of the ordinance.

Generally, he supports Section G of the ordinance with the condition that word additions, clarifications and other suggestions as he proposes herein are incorporated into the current draft.

Mr. Launay expects that Council Members will hear a wide range of options on Section G during these proceedings, many of which will be unfavorable. Understanding the benefits that Section G provides requires a good measure of “out of the box” thinking. As example, the way stormwater moves post development vs. predevelopment is one item to be considered. While parts of Section G perhaps focus more on providing enhanced water quality benefits, there may be unavoidable tradeoffs on other Resource Buffer functions should Section G be included in the final ordinance.

Another fair criticism of Section G is the complexity it adds to the interpretation and implementation of the ordinance. As a person familiar with the development of the ordinance, he recognizes that understanding the components of Section G and exactly how they work is currently a challenge.

However, despite having a few reservations and based upon his reading of Section G, including the discussion that he has had with the County staff about how it would be applied, he generally supports including it in the ordinance with his edits. He believes the cumulative benefits of Section G to the overall watershed merits it’s consideration. He shared that all the edits that he is proposing have been discussed with the County Engineer prior to this hearing and he believes he supports them.

The most important of these are the clarifications and edits are to Section G. 2a and 2c where it needs to be clearer the 2a(i) and 2c(i) is an offsite area that does not consist of natural existing forest, where 2a(ii) and 2c(ii) applies to an offsite Resource Buffer that is composed of natural forest. In the case of 2a(i) and 2c(i) it must also specify in the Conservation Easement that farming is not permitted within the offsite Resource Buffer. Without that

**Public Hearing/ Ordinance to Amend Chapter 99 and 115 (Wetland, Water Resources and Buffers) (continued)**

**clarification the intended benefits of the Item 2, Resource Buffer Options are not fully provided.**

**Mr. Launay then went on to discuss Section G, Conservation Easement Requirement. He stated that parts of this section require the additional protections through the implementation of a “Conservation Easement” of offsite Resource Buffers. Other than just stating the requirement, little information is provided.**

**He asked what would the Conservation Easement prohibit and permit? Exactly who will determine who is qualified to be a grantee and long-term steward of the area subject to the Conservation Easement. What role will the County have to see that the Conservation Easement is not modified by an outside party at a later date. What monitoring and reporting responsibilities will the designated conservation organization (Grantee) have.**

**Mr. Launay submitted an example of a “Declaration of Conservation Easement” which involved 313.66 acres of protected land that is part of the Americana Bayside residential planning community, west of Fenwick Island. As part of the Corps of Engineering permitting that project, protection of these 313.66 acres of natural lands was proposed. The template of the document is the general format which is currently used by the Philadelphia District Corps of Engineers.**

**Mr. Launay shared that his support of Section G is based upon the County developing their own very similar “Conservation Easement” that would become a standard agreement for all off-site Resource Buffer protection requirements. As in the Americana Bayside document, at a minimum the County would reserve the right to approve any future changes to that document, including consenting to any unforeseen action, even though they are not the actual grantee.**

**Mr. Launay would also expect that the final version of the ordinance specific that only a suitable organization as determined by some combination of the County Council, Planning Commission, or Planning Director be designated as the Grantee or steward of the County’s standard Conservation Easement. In addition, some minimum standard for the Grantee’s responsibility for routine monitoring and reporting back to the County about the conditions of the offsite Resource Buffer Conservation Easement must also be developed and implemented if Section G is included in the final ordinance.**

**Mr. Medlarz confirmed that Mr. Launay has shared his information with him, and he does support the modifications as presented.**

**Mr. Martin Ross 16366 Whitesville, Delmar, DE then came forward discussing the federal wetland regulations; the only non-tidal wetland laws or rules that currently exist and the oath of office.**



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**Mr. Ross shared that a few years ago during the Obama Administration, EPA proposed rules that would substantially expand federal wetland regulations. Several states supported by numerous Counties throughout the County filed a lawsuit against EPA in the court system to stop this action. Mr. Ross stated that Sussex County was one of those that supported that lawsuit. A US District County issued a stay on those regulations both confirming the standing of the lawsuit and stating that the lawsuit had merit. In 2016, the new President promised and delivered regulatory relief and the lawsuit was dropped. In 2020, a new President was elected that brought new and more restrictive rules that are being written with anticipated relief this Spring. Mr. Ross stated that once these new regulations are adopted, a new lawsuit will be filed.**

**Mr. Ross then discussed the history of wetlands which have been regulated since 1889. During this period, wetlands were easy to identify, and regulations were pretty straight forward. In 1972, the Clean Water Act was passed, the Rivers and Harbors Act was merged into the Clean Water Act virtually unchanged. There was one major change, the EPA was made administrator of the new Section 404. One the EPA became pushing the core very hard to expand the definition of wetlands and the core fought very hard against that expansion of regulatory authority. It was recognized that any expansion was outside of the original law. In the mid-1980s, EPA prevailed.**

**Mr. Ross discussed the lawsuits that he previously mentioned. The State's that sued claimed that the lands in question were not interstate waterways at all. They also claimed that the lands in questions were lands of the individual states. Lastly, they claimed that even if the court agreed that the lands were not land at all but water, then the water was waters of the individual states and not waters of the US. Under the current federal regulations according to DNREC, there are approximately 220,000 acres of freshwater wetlands in Sussex County.**

**Mr. Ross further explained that the Comprehensive Plan identifies land uses, establishes zoning districts to accommodate those land uses and tells the land use of the County.**

**Mr. Ross believes that this Proposed Ordinance would deny use of over 200,000 acres of private property for any intensive purpose. If it is redefined of what land and what is, then the oath of office that has been sworn is worthless. He added that private property ownership is a right not a privilege. Regulating the ability to use land to the point of being unable to use the land is a violation of those private property rights and a violation of the oath of office.**

**Mr. Ross stated that he is opposed to this Proposed Ordinance. This Ordinance violates the oath of office and place restrictions on property owners on properties that are desired to be preserved. He added that a way would be found to provide value for natural resource preservation and not**

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**reduce the value.**

**Mr. Ross encouraged the Council to vote no to this Proposed Ordinance.**

**Mr. Tom Bower from Delmar, who currently serves as a HOA President and Tax Ditch Commissioner came forward stating he believes that it should be a responsibility of the HOA. Many of the HOA's have enough trouble collecting their dues. This is just another form of an unfunded mandate that should not be allowed or tolerated.**

**Mr. Thomas Bower from Bethany Beach, DE expressed a concern regarding minor subdivisions and individual property owners.**

**Mr. Robertson replied that it does not apply to existing subdivisions and lots; only applies to new subdivisions that go through the approval process and major subdivisions; not minor subdivisions.**

**Mr. Chris Bason, Executive Director of the Delaware Center for the Inland Bays then came forward to speak on the Proposed Ordinance. Mr. Bason reviewed the Delaware Inland Bays Comprehensive Conservation Management Plan that was revised last year. Included in the plan, there are sixty-seven actions that focused on reducing nutrient pollution to achieve water quality, protecting, and restoring natural habitats, public education and engagement and mitigating and adapting to flooding and climate change. The County was one of seven plan signatories to that plan.**

**Mr. Bason shared a picture and discussed a highly functioning buffer located in Love Creek. Mr. Bason shared that the main problem is there is an excess nutrient in the water that does not allow light to hit the bottom of the water. Mr. Bason believes that increase action needs to occur to help with pollution; buffers can help with that. Due to multiple sources, the amount of nitrogen and phosphorus that is going into the water resources has increased over the years. In 2021, there was a record set of Inland Bays fish killed mainly due to low dissolved oxygen from pollution.**

**On an average, 51% of forest in a proposed Sussex development is cleared. From 108 Preliminary Land Use application over 2017-2019, two square miles of forest were intended for clearing.**

**Mr. Bason shared that from 2010 to 2017, Sussex County had the third highest number of homes built in a ten-year flood risk zone of any ocean coastal county in the US.**

**Mr. Bason discussed the Salt Marsh acreage that is important, however over 3,000 acres has been lost since the 1930s. The direct lost of Salt Marsh has stopped mostly related due to the Delaware Wetlands Act in the 1970s. However, marshes are now being lost to sea-level rise.**

**Mr. Bason discussed the achievements of this Proposed Ordinance. It**

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**includes consensus points of buffer work group regarding features, widths, activities, and site design flexibility (buffer averaging only), specifies purposes of buffer, requires management plan, excludes lot lines from the buffer, addresses invasive species and includes access to features through easement.**

**Mr. Bason reviewed the purposes of this ordinance. These include protecting the resources and their associated functions, improve/protect water quality via sediment filtration, reduce impact of nutrient loading on Resources, moderate water temperature, and enhance infiltration and stabilization of channel banks. Also, to provide wildlife habitat via nesting, breeding, and feeding opportunities; provide sanctuary/refuge during high water events; protect critical water's edge habitat; and protect rare, threatened and endangered species associated with each Resource and its upland edge. To enhance and/or maintain the floodplain storage functionality via reduction of flood conveyance velocities as well as dissipation of stormwater discharge energy.**

**Mr. Bason discussed buffer widths, and further explained that the wider the buffer the more functional, to a point. The minimum effective widths vary by buffer purpose and buffer type. The very wide buffers are needed for marsh mitigation and wildlife protection. The narrow parts of the buffer can reduce its effectiveness. The streamside buffers often recommended at 100 feet minimum. Mr. Bason pointed out that other jurisdictions do not allow buffer width averaging.**

**Mr. Bason commented that vegetation is a very important part of a buffer ordinance.**

**Mr. Bason reviewed his requested amendments to the Proposed Ordinance. First, requirement for protecting and restoring forest in Resource Buffer Standards (Section D begins at line 701). Removal of Resource Buffer Options (Section G begins at line 781). Clarify Maintenance of Drainage Conveyance and specify enforcement and penalties.**

**A quote from the Chesapeake Bay Executive Council from 2006 was shared relating to why buffers should be forested.**

**Mr. Bason explained that forests provide better water quality protection than a grassed buffer. The forested buffers remove 36% more nitrogen on average than grassed buffers. Forested buffers take up 11-37 pounds of nitrogen and 2-5 pounds of phosphorus per acre per year into wood. He added that soil organic matter is over twice as high in forested buffers. Forested buffers improve instream processing of nutrients, and they also support wildlife habitat and don't contribute pollution.**

**Mr. Bason shared why native forests are essential for habitat. The amount of forest in an estuary's watershed, particularly near the water, has significant positive influence on the health of the estuary's baygrasses,**

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crabs, and marsh birds. Each layer provides habitat niche for wildlife and physical buffering. He added that native species are essential to support the foodweb.

Mr. Bason recommends eliminating non-forest buffer standards and requiring forest in all buffer areas except where otherwise permitted by activities list. Buffers without forest at time of application must submit native species planting plan and invasive species control plan to restore native forest to defined standard and time period. This would include a similar approach to forested and/or landscape buffer strip code as well as forest maintenance requirements in management plan. The requirements would include a diversity of Delaware native trees and shrubs. The planting and survival standards by stock size and natural revegetation would be allowed within 25 feet of mature native forest.

Mr. Bason discussed the resource buffer options description. He explained that retaining a forest in a buffer allows reduction of buffer width by half and allows reduction of development perimeter buffer. In addition, retaining forest connected to but not within buffer allows reduction in buffer width by half. He added that preserving wider wetland buffers allows reduction in development perimeter buffers.

Mr. Bason suggested the removal of resource buffer options of the ordinance. There is a need for flexibility in site design provided by buffer averaging. The options should not reduce width of buffers which are already on the low end of effectiveness. The options should not reduce the effectiveness of another ordinance with a separate purpose (perimeter buffer) to attempt to create an effective waterway and wetland buffer ordinance.

Mr. Bason provided a clarification of maintenance of drainage conveyances which is location in Section F2 of the Proposed Ordinance. Mr. Bason expressed his support of Page 27, Line 763 that reads “The location of any stream blockages such as debris jams, fallen or unstable trees, beaver dams or similar impediments to conveyance ...” He recommended adding the following language for clarification “that have high likelihood of causing flooding resulting in damage to property and infrastructure.” He also recommended to further define “positive conveyance.”

Mr. Bason believes that stormwater features do not belong in a buffer because they do not meet the purposes of the ordinance. Mr. Bason shared a picture of an area in Love Creek that was providing no habitat. Mr. Medarlaz explained that the table allows conveyance; this is a practice that is shown which is not allowed. It was further explained that the picture shared is a pre-developed site.

Mr. Bason requested provisions on enforcement to include penalties when buffers are torn down.

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**Mr. Bason believes that many parts of the ordinance are good; the areas that need to be fixed will clear up problems. This is a good opportunity for water quality, wildlife and the way of life in Sussex County.**

**Mr. Jeff Seemans from Milton, DE thanked the Council for supporting this ordinance conceptually, and the members of the working group for the many hours of their time that they gave to help produce the ordinance to its current form.**

**Mr. Seemans commented on the enforcement of this ordinance. By his interpretation, there is no current section describing any penalties for the intentional or accidental destruction of these critically important wetland buffers. From his experience, there are five entities that could do damage to these buffers: a developer/land flipper, a builder, a rogue or careless site contractor, a HOA or a lot owner/homeowner.**

**Mr. Seemans commented that after all of the time spend on this ordinance, it would be an affront to this County Council and the members of the working group if these buffers were intentionally or even accidently disregarded and destroyed. His suggestion was to add a new separate section on enforcement and penalties. He believes that an actual posted physical sign should be completed. Mr. Seemans shared that the Critical Area Buffer Resources Guide of the State of Maryland describes a subsection entitled buffer signs:**

**Post permanent signs delineating the upland boundary of the Buffer with at least one sign per lot or one per each 200 linear feet of shoreline, whichever is applicable; and**

**Design each sign so that it:**

**Is at least 11 inches in width and 15 inches in height;  
Is placed at a height of 4.5 feet, but not attached to at tree;  
Clearly states “Critical Area Buffer – No clearing or disturbance permitted.”**

**Mr. Seemans provided two examples from the Critical Area Guide.**

**Mr. Seemans commented that financial penalties for the cutting of trees or shrubs within the prescribed wetlands, or the illegal filling or hard-surface construction within the buffer should be implied. He suggested that a dollar amount per square foot of disturbance if, for example, filling or hard-surface construction has taken place. He added that dollar amounts per cut tree would be difficult to calculate if the tree and its stump have both been removed. However, the financial penalty should be high enough to get someone’s attention.**

**He also recommends the removal of any illegal fill or hard-surface construction and mitigation replanting. The aforementioned Guide suggests**

**Public  
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Chapter 99  
and 115  
(Wetland,  
Water  
Resources  
and Buffers)  
(continued)**

**a 4:1 mitigation ratio for any penalty for a violation.**

**Mr. Seemans also suggested to shorten the effective date. Currently, Section 13 has it as six months after adoption by Sussex County Council. He believes that it too long and too many applications will be filed to get in under the wire. The net result would be more trees lost; he suggests that it take effect immediately upon adoption.**

**Mr. Rich Borasso representing SARG then came forward to speak. Mr. Borasso stated that the Proposed Ordinance Amendment tackles the modernization of the 32-year-old buffer zones for wetlands ordinance. The Proposed Ordinance Amendments are focused on improved protection, property values and safety of its residents by requiring more extensive natural buffers between new residential developments in its wetlands and water. It also provides enhancements to the ensure that Sussex County drainage network is improved now and maintained in the future.**

**The goal of the working group that he was apart of was to provide recommendations to Sussex County Council for updating the County buffer ordinance as it applies to development projects submitted to Sussex County for new residential developments for major subdivisions, cluster subdivisions, residential planned communities, and residential conditional uses.**

**In September of 2019, the process update was presented to the Sussex County Council. At that time, it was reported that consensus was reached on the following aspects: resources subject to the ordinance, definitions of those resources, definition and function of buffers, buffer widths to protect each resource, two-zone buffer management approach, the width of each zone in each buffer, some activities allowed or prohibited in each buffer zone, buffer averaging permitted in Zone B and buffer and resources would not be located on any individual subdivided lots. At that time, area requiring further discussion included the criteria for buffer averaging, resource mapping, management requirements, waiver program and incentive programs.**

**Since that time, there have been County official discussions, one-offs between citizens and County Officials and informal WBWF member discussions. However, there has been no effort by the County to reconvene the working group to gain consensus. On September 14, 2021, Council discussed and voted to proceed with drafting of an ordinance. On November 4, 2021, the Planning and Zoning Commission held a Public Hearing and made a recommendation to move forward. Mr. Borasso pointed out during that hearing; the Planning & Zoning Commission voted immediate to approve this ordinance with no discussion.**

**This ordinance promotes and protects the health, safety, convenience, orderly growth, and welfare of the inhabitants of Sussex County.**

**Public  
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and 115  
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Water  
Resources  
and Buffers)  
(continued)**

**Mr. Borasso shared that SARF endorses A-F and H-I but not G. He further explained that he understands that any improvements to the resource wetland buffers are not intended to reduce density.**

**Mr. Borasso stated that the group consensus reached that not all buffers characteristics are equal, averaging offers flexibility to developers. He believes that the resource buffer options section is overly complicated, creates contradictions and holes throughout the proposed amendment. Lastly, the resource buffer options would be an enforcement nightmare for Sussex County.**

**Mr. Borasso then went on to discuss Section G of the Proposed Ordinance relating to resource buffer options. This section is designed to incentive the retention of forests as well as incentivize the retention or expansion of Resource Buffers or provide for additional functional benefit of Resource Buffers.**

**Mr. Borasso believes that there are contradicts with the purpose of the forested and/or landscaped buffer required in Chapter 99.**

**Mr. Borasso discussed the incentives of the retention of forests; he questioned the equivalent of what was being exchanged. Mr. Borasso expressed a lack of satisfaction with some of the buffer options. These options may address or remedy one of the three purposes in the function of buffers. Those functions include improve and protect the water, provide wildlife habitat and enhance or maintain flood storage. If an off-site easement cannot demonstrate equal or greater net benefits; then it should not be allowed.**

**Mr. Borasso asked if it is really about retention of forest and expansion of buffers, or it is an accommodation to allow developers to builder closer to water resources.**

**Mr. Borasso believes that Section G must be removed from the proposed drainage features, wetland and water resources and the buffers amendments.**

**Mr. James H. Baxter, IV 24933 Governor Stockley Road, Georgetown, spoke to represent agriculture and farming practices. Mr. Baxter believes that agriculture is doing a good job adopting these practices and moving them forward.**

**Mr. Baxter expressed the need to keep agriculture viable. Mr. Baxter stated that a ditch infrastructure has been relied on for several years. There can be conveyance problems in ditches. Mr. Baxter expressed a concern of how he could convince a developer that a ditch needs to be cleaned out to get water away to be able to maintain his farming business.**

**Mr. Baxter shared that agriculture was willing to give up a buffer along**

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and 115  
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Resources  
and Buffers)  
(continued)**

these conveyances in exchange for being able to maintain the ditches. He added that without a buffer or an easement, nobody is allowed to go on the land. Furthermore, selective cutting is not allowed; all these items need to be addressed. Mr. Baxter explained that the agriculture community was willing to give up buffer to have the maintenance option on conveyances.

Mr. Baxter believes that Section G needs to be kept in, but it needs to include the maintenance option which is the whole purpose of Section G.

Mr. Baxter expressed the need of keeping Zone A except for maintenance.

Ms. Christina Darby, 4408 Woodland Church Road, Seaford expressed the need of the Proposed Buffer ordinance to have “enough teeth”, however, it needs meaningful oversight or strict penalties. Without those things, it will all be for naught. She added that there should be repercussions for deforestation. Ms. Darby believes that this Proposed Ordinance is important for the protection of the future.

Mr. Keith Steck of Milton, President of DE Coalition for Open Government then came forward. Mr. Steck expressed his appreciation of the working group, County officials and staff for working diligently on this ordinance.

Mr. Steck believes that there is more work that needs to be done to revise the document prior to its adoption.

He will not speak on the technical issues, as he largely deferred to and not repeat comments by other speakers – notably from the Centers from the Inland Bay and the SARF, Sussex Alliance for Responsible Growth and those highly knowledgeable on the technical aspects.

Mr. Steck believes that increasing the buffer width to 100 feet of perennial nontidal rivers and streams in Table 1 is essential. Removing the allowance of non-forest meadow from the Resource Buffer Standards Subsection 10.D. and require the maintenance of the existing forest and replanting of non-forested areas with trees and shrubs to specific densities (lines 718-724).

Mr. Steck suggested the elimination of Subsection G of the Resource Buffer Option (lines 781-878) to keep options to endorse false equivalencies. He further explained that allowing these options is allowing for destruction. Allowing for the destruction of acres of adjoining property will harm, not benefit, the mature trees and other land saved. That destruction will destabilize soils and eliminate vegetation and its ability to absorb large quantities of water and act as windbreaks; once cut and destroyed, these resources and their benefits will be lost for decades if not permanently. This will place further burden on the adjoining saved resources, especially if the cut or destroyed area is paved and/or otherwise diverts water and wind to the saved areas.

Mr. Steck suggested to add a section on specific enforcement provisions and



**Public Hearing/ Ordinance to Amend Chapter 99 and 115 (Wetland, Water Resources and Buffers) (continued)**

penalties for not following the law. He added that currently, there are no consequences for not following the law.

Mr. Steck commented that not all of the ordinance language is supported by evidence. He also believes that there are some issues with some of the definitions specifically the wetlands definition needs clarification.

Mr. Steck asked the rationale of why subdivisions and sizes of subdivisions are referenced in this ordinance. He believes that the discussions of subdivisions should be removed from the ordinance and consider those separately.

Lastly, Mr. Steck believes that the ordinance should be effective three months after adoption.

Ms. Lee commented that due to Zone A not being “touchable”, she opposes that option. Ms. Lee asked for consideration to investigate the process further.

Ms. Lee provided a handout with suggested changes to the Proposed Ordinance.

Mr. Dave Breen from 3122 Ringtail Drive, Lewes asked for consideration of the Council to have an environmental specialist be a part for the enforcement of the ordinance.

Mr. Breen discussed Hydrology and the need to have buffers in place due to storms. He added that storm events such as a Nor’easter can take years to get rid of the salt in the land.

Mr. Breen explained the need to keep mature forest in place and the reason why buffers should be kept.

Mr. Breen explained that it can be expected for Sea Level Rise to increase 2-2 ½ feet higher in the next ten years.

Ms. Marlene Mervine, Nanticoke Watershed Conservancy stated a quote from Amanda Gorman, “We have lost too much to lose.”

**M 014 22 Recess**

At 2:56 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess until 3:15 p.m.

**Motion Adopted: 5 Yeas.**

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

**M 015 22**      **A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to reconvene**  
**Reconvene**      **at 3:25 p.m.**

**Public**      **There were six people who spoke via teleconference about the Proposed**  
**Hearing/**      **Ordinance.**  
**Ordinance**

**to Amend**      **Most were in favor of the ordinance with proposed changes relating to**  
**Chapter 99**      **enforcement, the section relating to buffer options and encouraged the**  
**and 115**      **Council to hold off on voting on this ordinance.**  
**(Wetland,**

**Water**      **A concern was expressed that HOA do not have the funds allocated to**  
**Resources**      **enforce this ordinance. In addition, HOA's does not have powers to enforce**  
**and Buffers)**      **this ordinance.**

**(continued)**

**It was stated that buffers are important to protecting the legacy of Sussex**  
**County and the speakers encouraged the Council to think about the years to**  
**come.**

**M 016 22**      **There were no additional public comments. At that time, the public hearing**  
**Defer Acton**      **record was closed.**  
**on Proposed**

**Ordinance**      **A Motion was made by Mr. Shaeffer, seconded by Mr. Hudson to suspend**  
**to Amend**      **this public hearing pursuant to Sussex County Rules of Procedure 1.4 and**  
**Chapter 99**      **continue this hearing on February 22, 2022, with advertising as required for**  
**and 115**      **public hearings on ordinances.**  
**(Wetland,**

**Water**

**Motion Adopted:      5 Yeas.**

**Resources**

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

**and Buffers)**

**Mr. Moore clarified that due to this being a suspension of the public**  
**hearing, that would mean that the hearing would continue on. Therefore, if**  
**someone spoke at today's hearing, they would not get the opportunity to**  
**speak again. All email correspondence will be handled as it is normally**  
**done.**

**Herring**      **Mr. Medlarz, County Engineer reported that the project is moving forward**  
**Creek Pump**      **at a low speed and has caused problems with various HOA's in**  
**Station**      **subdivisions. The contract has been put on notice on notice that liquidated**  
**Project**      **damages will be accessed. Currently, there is a need to get some items off of**  
      **the books; majority are credits.**

**M 017 22**      **A Motion was made by Mr. Rieley, seconded by Mr. Hudson to accept the**  
**Herring**      **recommendation of the Sussex County Engineering Department, that**  
**Creek Pump**      **Change Order #2 for Contract S20-06, Herring Creek & Chapel Branch**  
**Station**      **Sanitary Sewer Districts with Robinsonville Road Development Area Pump**  
**Project**      **Station Stations, Phase 1 be approved, decreasing the contract by**

**M 017 22**      **\$54,098.91, for a new contract total of \$5,254,121.09, contingent upon USDA concurrence.**

**Herring  
Creek Pump  
Station  
Project  
(continued)**

**Motion Adopted:      5 Yeas.**

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

**SCRWFT & Rehoboth Capital Improvement Projects**      **Mr. Medlarz presented information on the project that were all modifications to scope that were requested. He further explained that the largest request was the city requesting assistance to do the pump station work. He added that the city will pay that change order directly. The other change order is for the effluent force main through the outfall.**

**M 018 22**      **A Motion was made by Mr. Rieley, seconded by Mr. Hudson to accept the recommendation of the Sussex County Engineering Department, that Change Order Nos. 15 and 16 for contract C19-11, South Coastal WRF Treatment Process Upgrade No. 3 and Rehoboth Beach WTP Capital Improvement Program, Phase 2 – General Construction, be approved, increasing the contact by \$324,996.81 and \$88,132.23 respectively.**

**SCRWFT & Rehoboth Project Change Order Nos. 15 and 16**

**Motion Adopted:      5 Yeas.**

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

**M 019 22**      **A Motion was made by Mr. Rieley, seconded by Mr. Hudson to accept the recommendation of the Sussex County Engineering Department, that Change Order Nos. 15 and 16 for contract C19-11, South Coastal WRF Treatment Process Upgrade No. 3 and Rehoboth Beach WTP Capital Improvement Program, Phase 2 – General Construction, be approved, increasing the contact by \$324,996.81 and \$88,132.23 respectively.**

**SCRWFT & Rehoboth Project Change Order Nos. 13 and 14**

**Motion Adopted:      5 Yeas.**

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

**EMS Public Safety Building**      **Mr. Medlarz explained that this change order includes minor changes to outlet configurations. These changes will accommodate the selected A/V equipment. He added that the work is complex requiring scope modifications for eight trades and will close out the issue of the stairs.**

**M 020 22**      **A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to accept the recommendation of the Sussex County Engineering Department, that Change Order No. 5 for Contract C19-04, Sussex County Public Safety**

**EMS Public Safety**

**Building**                    **Building be approved, increasing the contract by \$58,245.80.**

**Motion Adopted:        5 Yeas.**

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

**DE Coastal**                    **Mr. Parker reminded Council that a total of five bids were received and  
Business**                    **opened publicly on November 18, 2021. After reviewing all of the bids, there  
Park**                            **were numerous discrepancies found in multiple bids effecting potential  
Improve-**                    **award recommendations. As a results, the Engineering Department and  
ments**                        **Council approved the rejection of all bids on November 30, 2021, with an  
                                 immediate project rebid.**

**The project was rebid on December 1, 2021, with a total of six bids received  
and opened publicly on December 21, 2021. After a detailed review of the  
bids, there were no major discrepancies found in the submitted bids. The  
low apparent bidder was submitted by A-Del Construction with a total  
project bid of \$3,839,433.00.**

**M 021 22**                    **A Motion was made by Mr. Hudson, seconded by Mr. Shaeffer to accept the  
DE Coastal**                    **recommendation of the Sussex County Engineering Department, that the  
Business**                    **low total project Rebid for Project A21-11, Delaware Coastal Business Park  
Park**                            **Improvements, be awarded to A-Del Construction in the amount of  
Improve-**                    **\$3,839,433.00.**  
**ments**

**Motion Adopted:        5 Yeas.**

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

**Millville by**                    **Mr. Ashman shared that this is an expansion of Sussex County Unified  
the Sea**                    **Sanitary Sewer District in the Millville Area. The Engineering Department  
Villages A-D**                    **has received several requests from GMB, LLC on behalf of their client, ASF  
Expansion**                    **MBTS, LLC, Inc. the owners/developers of a project to be known as  
of Sanitary**                    **Millville by the Sea.**  
**Sewer**

**This request includes parcels 134-15.00-91.01, 134-15.00-16.00, 134-15.00-  
19.00 and 134-15.00-18.00. These four parcels will make up Villages A thru  
D and are proposed at 601 EDUs.**

**The project will be responsible for System Connection Charges of \$6,600.00  
per EDU based on current rates.**

**Mr. Ashman requested permission to prepare and post notices for a Public  
Hearing on the annexation of the area.**

**M 022 22**  
**Millville by**  
**the Seas**  
**Villages A-D**  
**Expansion**

A motion was made by Mr. Rieley, seconded by Mr. Hudson made a motion to authorize the Sussex County Engineering Department to prepare and post notices for the Millville by the Sea, Villages A-D expansion of the Sussex County Unified Sanitary Sewer District to include parcels 134-15.00-91.01, 134-15.00-16.00, 134-15.00-19.00 and 134-15.00-18.00 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**

**Grant**  
**Requests**

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

A Motion was made by Mr. Schaeffer, seconded by Mrs. Green, to give \$5,000.00 (\$3,000.00 from Mr. Schaeffer's Councilmanic Grant Account, \$500.00 from Mrs. Green's Councilmanic Grant Account, \$500.00 from Mr. Rieley's Councilmanic Grant Account, \$500.00 from Mr. Vincent's Councilmanic Grant Account and \$500.00 from Mr. Hudson's Councilmanic Grant Account) to William T. Spooner American Legion Post 17 for kitchen range replacement.

**M 023 22**  
**American**  
**Legion Post**  
**19 Grant**  
**Request**

**Motion Adopted: 5 Yeas.**

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

**M 024 22**  
**Seaford**  
**Tomorrow**  
**Grant**  
**Request**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to give \$2,000.00 from Mr. Vincent's Councilmanic Grant Account to Seaford Tomorrow for community event expenses.

**Motion Adopted: 5 Yeas.**

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

**M 025 22**  
**Clothing**  
**Our Kids**  
**Grant**  
**Request**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to give \$5,000.00 (\$2,500 from Mr. Rieley's Councilmanic Grant Account, \$500.00 from Mr. Vincent's Councilmanic Grant Account, \$2,000.00 from the County-wide youth account) to Clothing Our Kids for operating expenses.

**Motion Adopted: 5 Yeas.**

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

**Introduction  
of Proposed  
Ordinances**

**Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRNAT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (42 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND EING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 9.72 ACRES, MORE OR LESS”.**

**Mr. Rieley introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AG-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERICAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GUMBORO HUNDRED, SUSSEX COUNY, CONTAINING 10.546 ACRES, MORE ORE LESS”.**

**Mr. Rieley introduced the Proposed Ordinance entitled “AN ORDINACE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL OF CHANGE OF ZONE NO. 1858 (ORDINANCE NO. 2621) RELATING TO THE WORKFORCE HOUSING REQUIREMENTS, INTERNAL ROAD STANDARDS AND AMENITIES DEADLINES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.8455 ACRES, MORE OR LESS”.**

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

**Council  
Members’  
Comments**

**There were none.**

**M 026 22  
Adjourn**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to adjourn at 4:08 p.m.**

**Motion Adopted: 5 Yeas.**

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

**Respectfully submitted,**

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

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

**Consent Agenda 1-25-2022**

**Egret Shores**

**Existing Sewer Infrastructure Use Agreement – IUA-724-1**

**Stafford Street Capital, LLC to pay \$124,932.00 for 140.00 EDUs**

**Millville Area**



## ENGINEERING DEPARTMENT

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



# Sussex County

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

## Memorandum

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

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

RE: *Existing Wastewater Infrastructure Use Agreement  
Egret Shores IUA-724-1  
File: OM 9.01*

DATE: January 25, 2022



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

The Engineering Department requests approval of an agreement for the existing wastewater infrastructure use with **Stafford Street Capital, LLC** for the **Egret Shores** project in the Millville Area. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, the **Egret Shores** project will connect to the existing County owned wastewater infrastructure. In return for utilization of said infrastructure **Stafford Street Capital, LLC** will contribute **\$124,932.00** for the financial catch-up contribution of the existing infrastructure to serve **140.00** Equivalent Dwelling Units. Payment will be required prior to receiving beneficial acceptance of the on-site pumpstation. System Connection Charges in place at the time of building permit request will still apply.



# Use of Existing Infrastructure Egret Shores

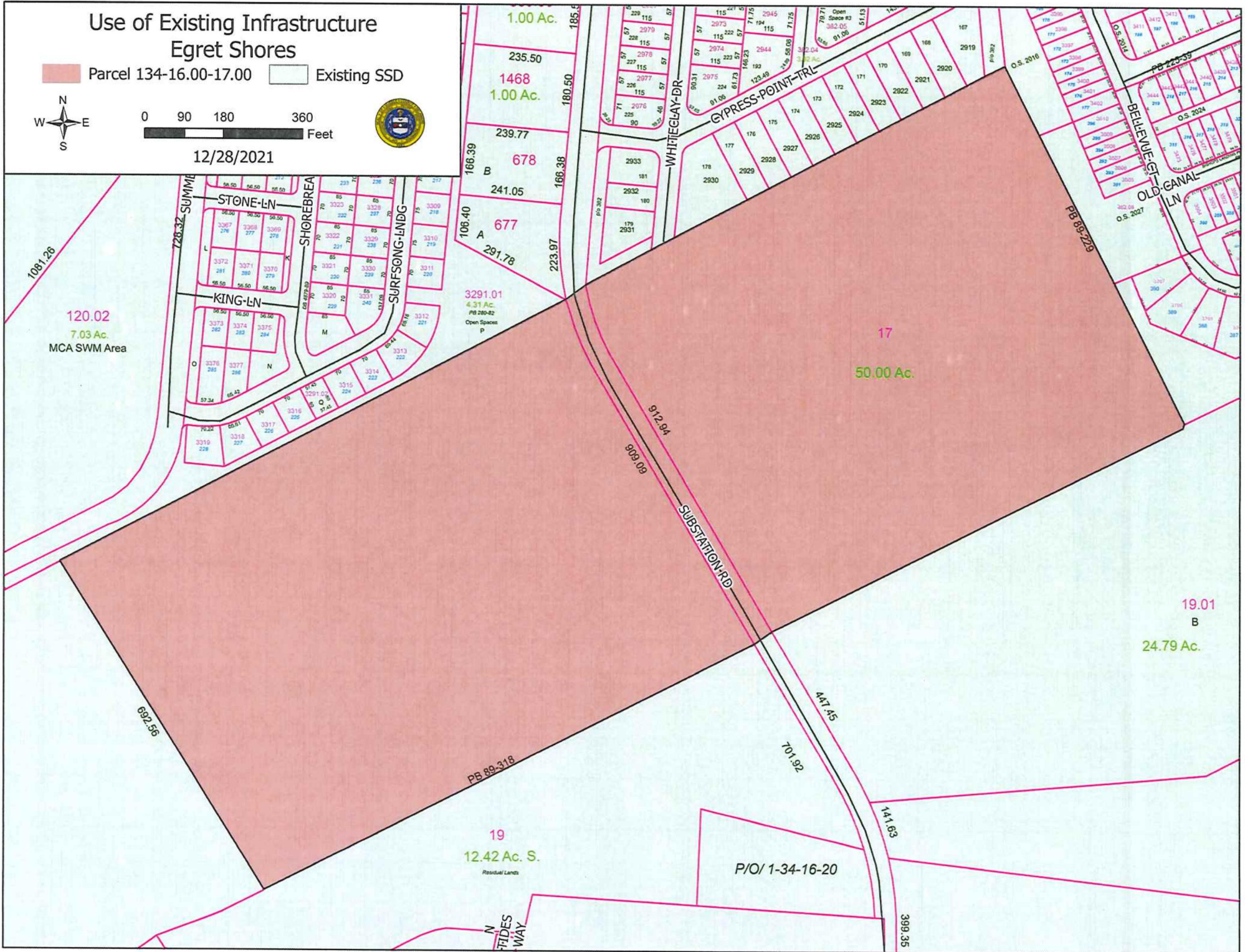
 Parcel 134-16.00-17.00     Existing SSD



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Feet



12/28/2021



**EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT**

**Egret Shores IUA – 724-1**

THIS AGREEMENT (“Agreement”), made this 11<sup>TH</sup> day of JANUARY 2022, by and between:

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

**STAFFORD STREET CAPITAL, LLC** a Limited Liability Corporation and developer of a project known as **Egret Shores (Substation Road Subdivision)**, hereinafter called the “Developer.”

**WITNESSETH:**

**WHEREAS**, Developer is developing a tract of land identified as Tax Map parcel 134-16.00-17.00 be known as **Egret Shores (“Project”)** and;

**WHEREAS**, the Project is within the boundary of the Sussex County Unified Sanitary Sewer District (Millville Area) and;

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

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

- (1) Developer is proposing to utilize County’s existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to **140.00** additional equivalent dwelling units to County’s existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of **\$124,932.00** for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **Payment of the contribution must be submitted prior to beneficial acceptance of the onsite collection system.**
- (5) If the Project (as currently submitted) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement

may be declared by County to be null and void, and any unused payments made pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.

- (6) The contribution is to be placed in County's sewer capital fund and expended towards overall debt reduction or at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires capital improvements (See Chapter 110-96 of the Sussex County Code).
- (7) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of the *Sussex County Code* for all lots, due at such time the Developer receives the sewer connection permit.
- (8) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
- (9) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of the *Sussex County Code*.
- (10) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
- (11) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
- (12) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of litigation, arising out of Developer's negligence in connection with its performance of this Agreement, including but not limited to damage to the County's infrastructure

in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is **179 Rehoboth Ave., Rehoboth Beach Delaware 19971.**

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

**FOR THE COUNTY:**

{Seal}

By: \_\_\_\_\_  
(President - Sussex County Council)

\_\_\_\_\_ (DATE)

ATTEST:

\_\_\_\_\_  
Robin A. Griffith  
Clerk of the County Council

**FOR STAFFORD STREET CAPITAL, LLC**

By: Joel Sens (Seal)  
Joel Sens - Authorized signatory

12/14/21 (DATE)

WITNESS: \_\_\_\_\_

GINA A. JENNINGS, MBA, MPA  
FINANCE DIRECTOR

(302) 855-7741 T  
(302) 855-7749 F  
gjennings@sussexcountyde.gov



**Sussex County**

DELAWARE  
sussexcountyde.gov

MEMORANDUM:

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

FROM: Gina A. Jennings  
Finance Director/Chief Operating Officer

RE: **Budget Amendment**

DATE: January 20, 2022

At the January 11<sup>th</sup> Council meeting, I mentioned that we have additional realty transfer tax revenue over the budgeted amount that Council could amend the budget if it chooses. At the January 25<sup>th</sup> Council meeting, I will propose the attached ordinance for your consideration and introduction. The ordinance increases realty transfer tax revenue by \$12 million and it increases eligible expenses for this revenue. The proposal is to allocate \$6.4 million to the municipalities of Sussex County and \$5.6 million for land acquisition for open space.

I will give a presentation on Tuesday on the proposal to disburse the additional realty transfer tax revenue.

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

Attachment

pc: Todd F. Lawson

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

**AN ORDINANCE AMENDING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2022 TO INCORPORATE ADDITIONAL REALTY TRANSFER TAX REVENUE AND STATE PASSTHROUGH GRANT REVENUE AND THE ALLOWABLE EXPENDITURES RELATED TO THE ADDITIONAL REVENUE**

WHEREAS, on June 22, 2021, the Sussex County Council adopted the Annual Operating Budget for Fiscal Year 2021; and

WHEREAS, the Sussex County Realty Transfer Tax Revenue has exceeded the approved budget amount; and

WHEREAS, to reflect revenues and expenditures and to be fiscally responsive to the needs of the citizens, the Sussex County Council desires to amend the Anticipated General Fund Revenues, the Anticipated General Fund Appropriations and the Anticipated Capital Project Fund Revenues and Expenditures in the Annual Operating Budget Ordinance for the Fiscal Year Ending June 30, 2022 as more fully set forth herein.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The “Anticipated General Fund Revenues” for the Fiscal Year Ending June 30, 2022 set forth in the Annual Operating Budget Ordinance for the Fiscal Year 2022 is hereby amended by deleting the language in brackets and by adding the language in bold and underlined as follows:

THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Statement of Anticipated General Fund Revenues for the Fiscal Year Ending June 30, 2022 is as follows:

	Amount Year Ending June 30, 2022
Revenues:	
<u>Taxes</u>	
Real Property - County	\$ 15,342,000
Real Property - Library	1,799,000
Realty Transfer	<b><u>[24,900,000]</u></b>
Fire Service	1,700,000
Lodging Tax	1,000,000
Penalties and Interest	100,000
<u>Intergovernmental</u>	
Federal Grants	
Emergency Operations	256,250
Housing and Urban Development	2,603,000
Library	90,000
Payments in Lieu of Taxes	6,000



		Amount Year Ending June 30, 2022
<u>State Grants</u>		
Economic Development		150,000
Local Emergency Planning Commission		72,000
Library		330,000
Other	<b>[84,250]</b>	<b><u>300,250</u></b>
Paramedic		5,100,000
<u>Charges for Services</u>		
<u>Constitutional Office Fees</u>		
Marriage Bureau		160,000
Recorder of Deeds		4,065,000
Recorder of Deeds - Maintenance		42,000
Recorder of Deeds - Town Realty Transfer Tax		78,000
Register of Wills		1,200,000
Sheriff		1,000,000
<u>General Government Fees</u>		
Building Permits & Zoning Fees		2,500,000
9-1-1 System Fee		559,630
Manufactured Home Placement Fee		130,000
Building Inspection Fees		1,960,000
Airport Operations/Economic Development		676,000
Miscellaneous Fees		56,000
Private Road Review & Inspection Fees		1,500,000
<u>Miscellaneous Revenue</u>		
Fines and Forfeits		60,000
Investment Income		1,000,000
Miscellaneous Revenues		195,200
<u>Other Financing Sources</u>		
Interfund Transfers In		48,700
Appropriated Reserve		8,956,291
Total Revenues	<b>[\$77,719,321]</b>	<b><u>\$89,935,321</u></b>

Section 2. The “Anticipated General Fund Appropriations” for the Fiscal Year Ending June 30, 2022 set forth in the Annual Operating Budget Ordinance for the Fiscal Year 2022 is hereby amended by deleting the language in brackets and by adding the language in bold and underlined as follows:

Expenditures	Amount Year Ending June 30, 2022
General Government	
County Council	707,710
Administration	537,263
Legal	550,000
Finance	2,220,001
Assessment	4,510,466
Building Code	1,486,533
GIS	928,252
Human Resources & General Employment	894,431
Records Management	257,170
Facilities Management	2,389,963
Information Technology	2,366,338
Constable	1,410,346
Planning and Zoning	1,760,249
Paramedics	17,357,091
Emergency Preparedness	4,933,790
Engineering	1,949,560
Library	
Administration	767,803
Operations	2,863,446
Economic Development	
Economic Development	681,427
Safety and Security	478,260
Airport and Business Park	1,014,087
Community Development	2,948,683
Grant-in-aid	<b>[21,411,362]</b>
	<b><u>28,071,362</u></b>
Constitutional Offices	
Marriage Bureau	230,891
Recorder of Deeds	1,034,519
Register of Wills	657,124
Sheriff	657,056
Other Financing Uses	
Transfers Out	<b>[115,500]</b>
Reserve for Contingencies	600,000
	<b><u>5,671,500</u></b>
Total Expenditures	<b>[77,719,321]</b>
	<b><u>\$89,935,321</u></b>

Section 3. The “Anticipated Capital Project Fund Revenues and Expenditures” for the Fiscal Year Ending June 30, 2022 set forth in the Annual Operating Budget Ordinance for the Fiscal Year 2022 is hereby amended by deleting the language in brackets and by adding the language in bold and underlined as follows:

		Amount Year Ending June 30, 2022
Revenues and Other Financing Sources		
Appropriated Reserves		\$ 23,222,500
Federal Grant		2,475,000
Investment Income		37,500
State Grant		15,000
Transfer In		<u>5,556,000</u>
Total Revenues and Other Financing Sources	<b>[25,750,000]</b>	<b><u>\$ 31,306,000</u></b>
 Expenditures		
Administrative	<b>[6,850,000]</b>	<b><u>12,406,000</u></b>
Information Technology		3,000,000
Airport and Business Park		8,750,000
Engineering		450,000
Public Safety		6,700,000
Total Capital Improvement Expenditures	<b>[25,750,000]</b>	<b><u>\$ 31,306,000</u></b>

Section 4. This Ordinance shall become effective immediately upon its adoption.

SYNOPSIS

This Ordinance amends Annual Operating Budget Ordinance for the Fiscal Year 2022 to incorporate additional Sussex County Realty Transfer Tax revenue and passthrough State grants along with the allowable expenditures associated with the additional revenue by amending the Anticipated General Fund Revenues, the Anticipated General Fund Appropriations and the Anticipated Capital Project Fund Revenues and Expenditures in the Annual Operating Budget Ordinance for the Fiscal Year Ending June 30, 2022.

All new language is in bold and underlined. All deleted language is in brackets.

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

\_\_\_\_\_  
TRACY TORBERT  
CLERK OF THE COUNCIL

## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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**Sussex County**  
DELAWARE  
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## 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  
John J. Ashman, Sr. Manager of Utility Planning & Design Review

**DATE:** January 25, 2022

**RE:** *Pintail Pointe Area Expansion of the Unified Sanitary Sewer District Approval of SRF Funding Offer*

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

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

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

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



The Finance and Engineering Departments now recommend introduction and ultimately approval of the associated debt ordinance authorizing the issuance of up to \$959,888.00 of general obligation bonds of Sussex County in connection with the construction and equipping of the Pintail Pointe Expansion of the Unified Sanitary Sewer District.

ORDINANCE NO. [ \_\_\_\_\_ ]

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$959,888 OF  
GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH  
THE EMERGENCY PINTAIL POINTE PROJECT 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 the Emergency Pintail Pointe Project, which will finance construction of a County pump station that serves all of the Pintail Pointe homes and connect the station to an existing Artesian force Main. Artisean will treat and dispose of the wastewater through an interchange agreement with Sussex County (collectively, 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 \$959,888 (the "Bonds") to finance or reimburse the County for a portion of the cost of the design, construction and equipping of the Project, with the expectation that up to \$579,000 of principal forgiveness will be applied in order to reduce the principal amount of the Bonds outstanding to \$380,888 upon Project completion.

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.

ORDINANCE NO. [ \_\_\_\_\_ ]

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$959,888 OF  
GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH  
THE EMERGENCY PINTAIL POINTE PROJECT 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 the Emergency Pintail Pointe Project, which will finance construction of a County pump station that serves all of the Pintail Pointe homes and connect the station to an existing Artesian force Main. Artisean will treat and dispose of the wastewater through an interchange agreement with Sussex County (collectively, 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 \$959,888 (the "Bonds") to finance or reimburse the County for a portion of the cost of the design, construction and equipping of the Project, with the expectation that up to \$579,000 of principal forgiveness will be applied in order to reduce the principal amount of the Bonds outstanding to \$380,888 upon Project completion.

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.

ORDINANCE NO. [ \_\_\_\_\_ ]

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$959,888 OF  
GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH  
THE EMERGENCY PINTAIL POINTE PROJECT 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 the Emergency Pintail Pointe Project, which will finance construction of a County pump station that serves all of the Pintail Pointe homes and connect the station to an existing Artesian force Main. Artisean will treat and dispose of the wastewater through an interchange agreement with Sussex County (collectively, 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 \$959,888 (the "Bonds") to finance or reimburse the County for a portion of the cost of the design, construction and equipping of the Project, with the expectation that up to \$579,000 of principal forgiveness will be applied in order to reduce the principal amount of the Bonds outstanding to \$380,888 upon Project completion.

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.



ADOPTED this [ ] day of [January], 2022.

SUSSEX COUNTY, DELAWARE

---

Tracy N. Torbert  
Clerk of the Council

SYNOPSIS: This Ordinance provides for the issuance of up to \$959,888 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 the Emergency Pintail Pointe Project, which will finance construction of a County pump station that serves all of the Pintail Pointe homes and connect the station to an existing Artesian force Main. Artisean will treat and dispose of the wastewater through an interchange agreement with Sussex County (collectively, the "Project"), with the expectation that up to \$579,000 of principal forgiveness will be applied in order to reduce the principal amount of the Bonds outstanding to \$380,888 upon Project completion.

## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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## 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  
John J. Ashman, Sr. Manager of Utility Planning & Design Review

DATE: January 25, 2022

RE: Tanglewood / Oak Acres Area  
Sussex County Unified Sanitary Sewer District  
Approval of SRF Funding Offer

County Council included the Tanglewood and Oak Acres areas in a sewer district annexation back in February 2008 for the Estuary project upon the request of the residents. These two projects were relying on infrastructure from a large, proposed subdivision project known as The Estuary. The Estuary project was halted due to a downturn in the economy and until recently had not installed the infrastructure required for these projects to proceed. With one section of that infrastructure complete and the other now scheduled the Engineering Department updated and submitted a Notice of Intent (NOI) to DNREC that included both projects in August 2021.

The Preliminary Engineering Reports and the Environmental Information Documents required for submittal of the funding application to Delaware State Revolving Fund (SRF) were finalized in April 2020. On July 21, 2021 these Documents were combined with the overall funding application prepared by the Finance Department and filed with DNREC for \$2,376,356.00. On December 30, 2021 the County received the Binding Commitment Letter from DNREC Environmental Finance. On January 3, 2022, the County accepted the Binding Commitment Offer and the obligating documents associated in the loan amount of **\$2,376,356.00** and **\$1,532,000.00** of principal forgiveness.

The Finance and Engineering Departments now recommend introduction and ultimately approval of the associated debt ordinance authorizing the issuance of up to **\$2,376,356.00** of general obligation bonds of Sussex County in connection with the construction and equipping of the Tanglewood / Oak Acres project in the Miller Creek Area of the Sussex County Unified Sanitary Sewer District.



ORDINANCE NO. [ \_\_\_\_\_ ]

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$2,376,356 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE OAK ACRES AND TANGLEWOOD SEPTIC ELIMINATION PROJECT 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 the Oak Acres And Tanglewood Septic Elimination Project, which will finance the connection of the Tanglewood and Oak Acres communities to the nearby existing County sanitary sewer by installing gravity main and lot laterals (collectively, 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 \$2,376,356 (the "Bonds") to finance or reimburse the County for a portion of the cost of the design, construction and equipping of the Project, with the expectation that up to \$1,532,000 of principal forgiveness will be applied in order to reduce the principal amount of the Bonds outstanding to \$844,356 upon Project completion.

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 Subdivision.

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 thirty (30) years from the date of completion of the Project, 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 State of Delaware Water Pollution Control Revolving Fund (acting by and through the Delaware Department of Natural Resources and Environmental Control) (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.

ADOPTED this [ ] day of [January], 2022.

SUSSEX COUNTY, DELAWARE

---

Tracy N. Torbert  
Clerk of the Council

SYNOPSIS: This Ordinance provides for the issuance of up to \$2,376,356 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 the Oak Acres And Tanglewood Septic Elimination Project, which will finance the connection of the Tanglewood and Oak Acres communities to the nearby existing County sanitary sewer by installing gravity main and lot laterals (collectively, the "Project"), with the expectation that up to \$1,532,000 of principal forgiveness will be applied in order to reduce the principal amount of the Bonds outstanding to \$844,356 upon Project completion.



## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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

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



# Sussex County

DELAWARE  
[sussexcountyde.gov](http://sussexcountyde.gov)

## Memorandum

TO: Sussex County Council  
The Honorable Michael H. Vincent, President  
The Honorable 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: ***South Coastal WRF Treatment Process Upgrade No.3 & Rehoboth Beach WTP Capital Improvement Program, Phase 2***  
***A. General Construction, Project C19-11 Change Order Nos. 17 & 18***

DATE: January 25, 2022

In summary, the South Coastal WRF Treatment Process Upgrade No.3 encompasses the following components and statuses:

- a. Effluent Forcemain Relocation/Replacement; Completed in fall of 2019.
- b. Influent Forcemain Consolidation; Completed in May of 2020.
- c. Drainage Network Rerouting;  
This scope was not included in the base bid. After cost comparison between the General Labor & Equipment Contract versus a change order under Ronca's general construction contract; Council awarded the stand alone Change Order Request 554-001 to Ronca & Sons, Inc. in the amount of \$104,592.96 on March 10, 2020. The construction was completed in July 2020.
- d. **General Construction Project C19-11**; awarded on December 17, 2019 to M.F. Ronca & Sons, Inc.

On March 10, 2020 Council authorized Change Order No.1 in the net amount of \$97,294.31 for deletion of the record drawing requirement and the modification of the RBWTF influent forcemains.

On May 12, 2020 Council authorized credit Change Order No. 2 in the amount of (\$12,705.00) eliminating an explosion proof motor requirement.



On July 28, 2020 Council approved credit Change Order No. 3 in the combined amount (\$9,764.30) for use of surplus materials projects.

Change Order No.4 in the amount of \$871,000.00 for the repairs of partial failures at the two City of Rehoboth's wastewater treatment plant oxidation ditch systems was also approved on July 28, 2020. M.F. Ronca & Sons, Inc. completed the scope in May of 2021 and the County increased the flow contribution to the City's plant.

On December 15, 2020 County Council approved Change Order No. 6 for steel framing repairs in the first oxidation ditch on a time & material basis up to \$10,500.00. This is in addition to the concrete repairs which are being conducted per the awarded contingent unit price schedules.

The County initiated RFP-019 addressing modifications to the interior headworks piping the second one and RFP-023 covering the addition of a cross connection between the existing 14-inch process drain header for Aeration Tank Nos. 1-4 and the new header for the Aeration Tank Nos. 5-8. On September 22, 2020 Council approved Change Order No.5 in the combined amount of \$32,991.66.

GHD issued RFP-031 for the installation of plug valves on each of the 12-inch recycle influent pipes to be connected to the existing Aeration Tank Nos. 1-4 and to the new Aeration Tank Nos. 7-8. On December 15, 2020, Change Order No. 7 was approved for said shut off valves in the amount of \$31,974.51.

The new South Coastal aeration basin had to be connected to the existing large diameter sludge return piping requiring a forward flow stoppage. Minimizing the joint risk M. F. Ronca proposed a line stop approach under Change Order No. 8. Since it also gained construction efficiency, they offered to only charge for the subcontractor work.

In the spring of 2021, the Rehoboth Beach WTP oxidation ditch rehabilitation was receiving expansive attention including:

- Contingent Unit Price Concrete Repairs, Bid Items F-19 & F-20
- Steel Repairs authorized under Change Order No. 6
- Steel Coatings authorized as part of Change Order No. 4

In addition, all of the leaking expansion joints have been repaired under a time & material approach. On March 9, 2021, County Council approved Change Order Nos. 8 and 9 in the respective amounts of \$34,765.50 and \$45,600.00.

Only one of the two headworks influent pipes has a shut off valve and we requested another 20" valve in the second vertical influent pipe. In addition, two of the existing headworks slide gates were compromised in need of

replacement and we requested the replacement. On May 25, 2021, Council approved Change Order No. 10 in the aggregate amount of \$34,160.64.

The County initiated RFP-039 addressing modifications to two slide gates avoiding conflict with the new air piping. In addition, it was discovered during the rehabilitation work in the grit tanks, that the existing influent chutes to the stacked tray grit removal systems were significantly compromised. On June 22, 2021, Council approved Change Order No. 11 in the aggregate amount of \$59,557.16.

The design team initiated RFP-038 for exhaust duct modifications associated with the new turbo blowers. The headworks cross channel is lower, and the existing channels have steps incorporated, which differs from the as built information available. RFP-041 proposes to construct the Screen Channel No. 3 at the same elevation incorporating modifications to the proposed Screen SCN-103. On July 13, 2021, Council approved Change Order No. 12 to M.F. Ronca & Sons in the amount of \$14,700.07.

The contract as bid includes concrete repairs to the City's headworks and influent splitter box. With the structures in question by-passed and accessible, the full extent of the damage was evident requiring an alternative approach to the proposed refurbishment as detailed in RFP-037.

The newly revealed site conditions required the full demolition of the upper level of the headworks as well as the channel between it and the splitter box. All the associated gates and plating had to be replaced in a massive effort. Michael F. Ronca & Sons, Inc. proposed to perform the modifications for \$1,043,243.92. GHD, the City Engineer and the County Engineer supported the approach, and the change order was within budget of the City's financing arrangements previously approved by the City and County elected officials. On August 10, 2021, Council approved Change Order No. 13 to M.F. Ronca & Sons in the amount of \$1,043,243.92.

The City requested M.F. Ronca & Sons' assistance in the wetwell cleaning of the State Rd. pump station to allow a full evaluation in preparation of the upgrade design. In addition, the City requested to modify the air intake for B-10 Building ventilation from a roof mount to an existing window opening. On November 30, 2022, County Council approved Change Order No. 14 in the aggregate amount of \$7,380.37.

Upon exposure of the normally submerged piping at the oxidation ditches, GHD formulated an initial repair scope for the influent, return sludge & air piping including replacement of valves and fittings. It was subsequently reduced and Michael F. Ronca & Sons, Inc. proposed to perform the modified repair scope for \$324,996.81. GHD, the City Engineer and the County Engineer supported the modified approach. However, this amount is not within budget of the City's financing arrangements previously approved. The City

will pay for this change order directly out of City funds. County Council approved Change Order No. 15 on January 11, 2022, subject to direct payment by the City. Since then, it was determined that the pipe support configuration for the replacement of oxidation ditch influent piping at the City's WTP required additional supports and RFP-056 issued. Michael F. Ronca & Sons, Inc. proposed to perform the expanded repair scope for \$ \$8,992.49. The Engineering Departments recommends issuance of Change Order No. 17 to M.F. Ronca & Sons in the amount of \$8,992.49.

GHD's design scope included a separate task for the hydraulic transient analysis of the South Coastal effluent force under various pumping scenarios. After County approval of the findings, GHD issued RFP-052 for replacing air valves on the effluent force main and installing additional air valves at new locations. This work scope was not known at time of base bid and hence not included. On January 11, 2022 County Council issued Change Order No. 16 to M.F. Ronca & Sons in the amount of \$88,132.23.

The South Coastal RWF has an existing return sludge pumping station with three (3) pumps two of which have been upgraded. The third unit recently experienced a failure, and the Environmental Services team requested the replacement of the pump and piping be integrated in the project as per RFP-053. Michael F. Ronca & Sons, Inc. proposed to perform the replacement scope for \$ 31,101.61 and the Engineering Department recommends issuance of Change Order No. 18 in that amount.

- e. **Electrical Construction Project C19-17**; awarded on December 17, 2019 to BW Electric, Inc.

On February 4, 2020 Council awarded Change Order No.1 in the credit amount of (\$759,374.80) mostly for changes to the conduit materials. A second credit change order was approved on March 10, 2020 in the amount of (\$6,800.00) for ductbank modifications.

On April 7, 2020 Council approved Change Order No.3 in the not to exceed amount of \$235,637.33 for DP&L requested changes to the utility power service entrance location at the RBWTP.

On May 12, 2020, Council authorized Change Order No.4 in the amount of \$11,350.00 for reconstruction of the original electrical equipment in South Coastal's sludge handling building electrical room accommodating a longer motor control center.

On July 28, 2020 Council approved Change Order No.5 in the combined amount of \$37,830.00 for the removal of an existing electrical handhole and duct bank and the modification of the duct bank between the DP&L utility switching pedestal and the transformer.

On September 22, 2020 Council approved Change Order No.6 in the amount of \$16,550.00 for the change of the sewer service for the Return Sludge Building No. 2 from a gravity drain to a pumped approach.

On September 22, 2020 Council approved Change Order No. 7 in the not to exceed amount of \$307,300.00 for the City's oxidation ditch complete electrical equipment replacement. This change order had an allowance for sensor replacements which proved too low and required an increase of \$6,582.80. Council approved the modification to Change Order No. 7 on November 10, 2020.

On November 10, 2020 Council approved Change Order No. 8 in the aggregate amount of \$2,249.00 covering RFP-027, RFP-028, RFP-029 & RFP-030. GHD has concluded that RFP-029 can be rescinded in its entirety. Therefore, the scope of work in the Sludge Building reverts to the Drawings, as modified by Change Order No. 4 associated with RFP-016.

On December 15, 2020, Council approved the modification reducing Change Order No. 8 by \$9,040.00 for a modified net total credit of (\$6,791.00).

On February 9, 2021 Council approved Change Order No. 9 in the aggregate amount of \$30,554.00 covering RFPs-032 & 033. The first RFP provided upsized control panels, conduit and conductors associated with the two (2) Jet Mixing Pump VFDs while the second dealt with a modified temporary electrical feeder arrangement and a redirection of the medium voltage loop.

Under RFP- 035 the Environmental Services team requested waterproofed convenience receptacles at the return sludge building's pump room. While under RPP-040 they requested additional site lighting in the area of the generator and blower buildings. BW Electric, Inc. proposed and on August 10, 2021, Council approved Change Order No. 10 in the aggregate amount of \$7,320.00.

The City initiated RFPs-042 & 44. The first one replaces the deteriorated pull box at building B-10 with a stainless steel one and provides temporary power during installation. The second one addresses modifications to the garage feeder after an unknown electrical structure was discovered. On October 12, 2021 Council approved Change Order No. 11 in the aggregate amount of \$47,328.70.

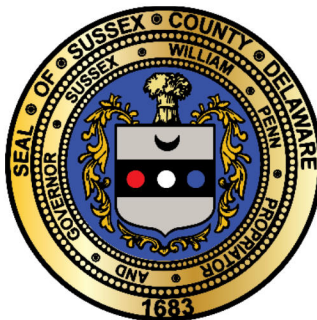
The Environmental Services team initiated RFP-045 for modification to the aeration basin lighting. It modifies some light locations and reduces the light pole height for the remaining interior poles out of operational safety concerns. On October 12, 2021 Council approved Change Order No. 12 in the amount of \$4,779.38.

The City initiated RFPs -043 & 049. The first one relates to the electrical control requirements for a City-furnished booster pump for installation in Building T-1. The second one addresses rewiring of the two (2) level sensors and dissolved oxygen probes at the oxidation ditches. On January 11, 2022 County Council issued Change Order No. 13 in the aggregate amount of \$20,018.56.

The Environmental Services team initiated RFP-048 for modification to four valves eliminating the actuators and on January 11, 2022 County Council issued the associated Change Order No. 14 in the credit amount of (\$6,485.87).

- f. Mobile Belt Filter Press; awarded on January 7, 2020 Council to Kershner Environmental Technologies. The unit was deployed at the Inland Bays RWF reducing legacy lagoon solids accumulation and is currently stationed at the LBPW Plant.
- g. DP&L expenses; on February 4, 2020 Council approved the electric utility service relocation contract.
- h. The Rehoboth Beach WTP was built on a municipal landfill and the design anticipated removal, but the actual amount trash encountered exceeded expectations. Therefore, Council approved a stand-alone purchase order to Melvin L. Joseph Construction Company, Inc. for material hauling & screening on July 14, 2020. The work is complete, and the screening was effective reducing the cost by over 60%.

The updated expenses associated with the South Coastal WRF Treatment Process Upgrade No.3 & Rehoboth Beach WTP Capital Improvement Program; Phase 2 are summarized in the attached spreadsheet.



**SUSSEX COUNTY  
CHANGE ORDER REQUEST**

**A. ADMINISTRATIVE:**

1. Project Name: **SCRWF Treatment Process Upgrade No. 3 & RBWTP Capital Improvement Program, Phase 2 – General Construction**
2. Sussex County Project No.           C19-11
3. Change Order No.           17
4. Date Change Order Initiated -           1/25/21
5.
  - a. Original Contract Sum           \$39,526,400.00
  - b. Net Change by Previous Change Orders           \$2,773,170.84
  - c. Contract Sum Prior to Change Order           \$42,299,570.84
  - d. Requested Change           \$      8,992.49
  - e. Net Change (No. of days)           0
  - f. New Contract Amount           \$42,308,563.33
6. Contact Person: Hans Medlarz, P.E.  
Telephone No. (302) 855-7718

**B. REASON FOR CHANGE ORDER (CHECK ONE)**

1. Differing Site Conditions
2. Errors and Omissions in Construction Drawings and Specifications
3. Changes Instituted by Regulatory Requirements
4. Design Change
5. Overrun/Underrun in Quantity

— 6. Factors Affecting Time of Completion

\_\_\_ 7. Other (explain below):

**C. BRIEF DESCRIPTION OF CHANGE ORDER:**

Additional supports for pipe change configuration at the oxidation ditches.

**D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?**

Yes   X   No \_\_\_\_\_

**E. APPROVALS**

1. M.F. Ronca & Sons, Inc., Contractor

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Representative's Name in Block Letters

2. Sussex County Engineer

\_\_\_\_\_  
Signature Date


3. Sussex County Council President

\_\_\_\_\_  
Signature Date





# Request for Proposal

<b>Project Title</b>	SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2		
<b>Owner</b>	Sussex County, Delaware		
<b>Contract No.</b>	C19-11: General Construction	<b>GHD Project No.</b>	11121182
Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order.			
<b>RFP No.</b>	056		
<b>RFP Subject</b>	RBWWTP T-2A/B Influent Pipe Supports		
<b>Issued By</b>	S. Clark, S. Anderson	<b>Issue Date</b>	Jan. 11, 2022

## Description of proposed changes:

To address a deficiency in the original pipe support configuration, provide additional supports on the exterior wall of T-2A and T-2B to support the new influent piping.

Each tank shall have a dual bracket configuration (similar to Detail 8 on SC-M6006), made up of 6x6x3/8 angle members, with the angle brackets 6' in length and height. Provide two 3/4" SS anchor bolts within the top 6" of the assembly, and additional anchor bolts at 12" spacing along the remaining length of the vertical members. Anchor bolts shall be adhesive type and shall have minimum 6" embedment into wall. Provide a W6x15 beam member framed on top of and spanning between the brackets to support the two pipe saddles. Bolt pipe saddles to W6x15 per project standard details. Bolt the bottom flange of the W6x15 beam to the top of the L6x6 brackets with (2)-3/4" SS bolts each end. For lateral stability of the brackets, bolt or weld an L3x3x3/8 angle diagonally between the diagonal L6x6 bracket members. Bracket assembly, beam, and pipe seats shall be hot-dip galvanized.

Each assembly shall support the two influent pipes associated with a tank.

## GHD

16701 Melford Boulevard Suite 330 Bowie Maryland 20715 USA  
T 240 206 6810 F 240 206 6811 W [www.ghd.com](http://www.ghd.com)

N:\US\Bowie\Projects\111\11121182 South Coastal Expansion\TECH\Construction\Work Changes\Request for Proposals\RFP-056 RBWWTP T-2AB Influent Pipe Supports\RFP-056 RBWWTP T-2AB Influent Pipe Supports.docx



Michael F.  
**RONCA**  
& Sons, Inc.

TELEPHONE 610/759-5100  
FACSIMILE 610/746-0974



CONTRACTORS

179 Mikron Road, Bethlehem, PA 18020

January 17, 2022

Mr. Steven Clark, P.E.  
GHD  
16701 Melford Boulevard, Suite 330  
Bowie, MD 20715

Re: Sussex County  
SCRWF-RBWWTP CIP Phase 2 Upgrades  
Proposed Change Order Request No. 554-025  
RBWWTP Ox. Ditch Influent Pipe Supports

Dear Mr. Clark:

Please consider this writing to be Michael F. Ronca & Sons, Inc.'s formal change order request for performance of the above referenced work, in the amount of Eight Thousand Nine Hundred Ninety Two Dollars and 49 Cents.....(\$8,992.49).

Enclosed for your review is a corresponding breakdown of costs.

Should this change order request be acceptable as provided, please prepare the appropriate change order documentation and forward the same to our office for further processing. Until then, should you have any questions, or require additional information, please do not hesitate to contact me.

Regards,

*Scott Wachinski*

Project Manger

cc: HO file 554  
Hans M. Medlarz, P.E. – Sussex Co.  
David A. Ronca – M.F. Ronca

**Sussex County - SCRWF-RBWWTP CIP Phase 2 Upgrades**

PCOR 554-025 RBWWTP Ox. Ditch Influent Pipe Supports

1/17/2022

**CHANGE ORDER SUMMARY**

Item 1 Furnish and Installation of 2 EA HDG Dual Bracket Configuration Pipe Supports on Exterior Walls of T-2A and T-2B for Supporting Replacement 16" Ox. Ditch Influent Piping per RFP-056.

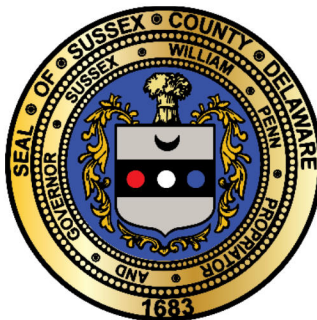
<b>Labor</b>	\$2,400.72
<b>Materials</b>	\$3,545.00
<b>Equipment</b>	\$1,873.84
<b>Subcontract</b>	\$0.00
<b>Subtotal</b>	\$7,819.56
<b>Contractor Overhead &amp; Profit @ 15%</b>	\$1,172.93
<b>Contr. Overhead &amp; Profit on Subcontr. @ 5%</b>	\$0.00
<b>Item Total</b>	<b>\$8,992.49</b>
<b>Change Order Total</b>	<b>\$8,992.49</b>

**Sussex County - SCRWF-RBWWTP CIP Phase 2 Upgrades**

PCOR 554-025 RBWWTP Ox. Ditch Influent Pipe Supports

1/17/2022

<u>Item</u>	<u>Description</u>					
Item 1	Furnish and Installation of 2 EA HDG Dual Bracket Configuration Pipe Supports on Exterior Walls of T-2A and T-2B for Supporting Replacement 16" Ox. Ditch Influent Piping per RFP-056.					
	<b>Labor:</b>	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>	
	Mechanic/Fitter	8.00	MH	\$122.18	\$977.44	
	Operating Engineer	8.00	MH	\$106.59	\$852.72	
	Laborer	8.00	MH	\$71.32	\$570.56	
						Labor Total: \$2,400.72
	<b>Materials:</b>	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>	
	Pipe Supports	1.00	LS	\$3,170.00	\$3,170.00	
	Misc. Epoxy Kits, Etc.	1.00	LS	\$375.00	\$375.00	
						Material Total: \$3,545.00
	<b>Equipment:</b>	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>	
	75 T RT Crane	8.00	HR	\$160.07	\$1,280.56	
	Man Lift	8.00	HR	\$58.50	\$468.00	
	STS	8.00	HR	\$15.66	\$125.28	
						Equipment Total: \$1,873.84
	<b>Subcontract:</b>	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>	
					\$0.00	
						Subcontract Total: \$0.00
						Item Total: \$7,819.56



**SUSSEX COUNTY  
CHANGE ORDER REQUEST**

**A. ADMINISTRATIVE:**

1. Project Name: **SCRWF Treatment Process Upgrade No. 3 & RBWTP Capital Improvement Program, Phase 2 – General Construction**
2. Sussex County Project No.           C19-11
3. Change Order No.           18
4. Date Change Order Initiated -           1/25/21
5.
  - a. Original Contract Sum           \$39,526,400.00
  - b. Net Change by Previous Change Orders           \$2,782,163.33
  - c. Contract Sum Prior to Change Order           \$42,308,563.33
  - d. Requested Change           \$ 31,101.61
  - e. Net Change (No. of days)           0
  - f. New Contract Amount           \$42,339,664.94
6. Contact Person: Hans Medlarz, P.E.  
Telephone No. (302) 855-7718

**B. REASON FOR CHANGE ORDER (CHECK ONE)**

1. Differing Site Conditions
2. Errors and Omissions in Construction Drawings and Specifications
3. Changes Instituted by Regulatory Requirements
4. Design Change
5. Overrun/Underrun in Quantity

— 6. Factors Affecting Time of Completion

\_\_\_ 7. Other (explain below):

**C. BRIEF DESCRIPTION OF CHANGE ORDER:**

Replacement of pump at the South Coastal RWF.

**D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?**

Yes   X   No \_\_\_\_\_

**E. APPROVALS**

1. M.F. Ronca & Sons, Inc., Contractor

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Representative's Name in Block Letters

2. Sussex County Engineer

\_\_\_\_\_  
Signature Date

3. Sussex County Council President

\_\_\_\_\_  
Signature Date



# Request for Proposal

<b>Project Title</b>	SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2		
<b>Owner</b>	Sussex County, Delaware		
<b>Contract No.</b>	C19-11: General Construction	<b>GHD Project No.</b>	11121182
Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order.			
<b>RFP No.</b>	053		
<b>RFP Subject</b>	Sludge Building Drain Pumps		
<b>Issued By</b>	S. Clark	<b>Issue Date</b>	Jan. 7, 2021

## Description of proposed changes:

Demolish the existing two Sludge Building Drain Pumps located in the Sludge Building Drain Pump Station and provide two new pumps. The new pumps shall be submersible pumps in accordance with Sections 11300 and 11307 and the following additional requirements:

1. Manufacturer: Flygt, N Series, Model NP3153.185 with 465 Hard Iron Impeller
2. Performance Requirements
  - a. Quantity: 2
  - b. Tag Numbers DP-1, DP-2
  - c. Pumped Liquid: Dewatering filtrate and lagoon supernatant (0-2% solids)
  - d. Primary Design Point: 500 gpm @ 57 ft TDH
  - e. Minimum Allowable Shutoff Head: 80 ft
  - f. Minimum Allowable Operating Range: 35-60 ft TDH
  - g. Minimum Allowable Efficiency at Primary Design Point: 68%
  - h. Minimum Sphere Passing Size: 3 inches
  - i. Minimum NPSHA throughout Operating Range: 35 ft
3. Discharge Nozzle Size: 4 inches
4. Motor Parameters
  - a. Maximum Allowable Motor Horsepower: 12 hp
  - b. Motor Selection: Submersible
  - c. Motor Speed (Nominal): 1,800 rpm
  - d. Minimum Allowable Motor Efficiency at Full Load: 88%
  - e. NEMA Design: B
  - f. Duty: Continuous



- g. Insulation: Class H
  - h. Insulation, Temperature Rise: Class B
  - i. Voltage, Phase, and Hertz: 460V, 3 Phase, 60 Hz
  - j. Service Factor: 1.15
  - k. Motor Enclosure: Submersible
  - l. Protection: MWTS, Seal Leak Sensor
  - m. Minimum Starts Per Hour (Allowable): 10, evenly spaced
5. Pumps shall be controlled using full-voltage non-reversing starters provided by the Electrical Contractor.

Contractor shall demolish existing discharge assemblies and guide rails and install new discharge assemblies and guide rails. Motor temperature and seal monitoring module shall be furnished by the General Contractor to the Electrical Contractor. Owner shall set float switches in the wet well.



Michael F.  
**RONCA**  
& Sons, Inc.



CONTRACTORS

TELEPHONE 610/759-5100  
FACSIMILE 610/746-0974

179 Mikron Road, Bethlehem, PA 18020

January 7, 2022

Mr. Steven Clark, P.E.  
GHD  
16701 Melford Boulevard, Suite 330  
Bowie, MD 20715

Re: Sussex County  
SCRWF-RBWWTP CIP Phase 2 Upgrades  
Proposed Change Order Request No. 554-024  
SCRWF Replacement RAS Pump

Dear Mr. Clark:

Please consider this writing to be Michael F. Ronca & Sons, Inc.'s formal change order request for performance of the above referenced work, in the amount of Thirty One Thousand One Hundred One Dollars and 61 Cents.....(\$31,101.61).

Enclosed for your review is a corresponding breakdown of costs.

Should this change order request be acceptable as provided, please prepare the appropriate change order documentation and forward the same to our office for further processing. Until then, should you have any questions, or require additional information, please do not hesitate to contact me.

Regards,

*Scott Wachinski*

Project Manger

cc: HO file 554  
Hans M. Medlarz, P.E. – Sussex Co.  
David A. Ronca – M.F. Ronca

**Sussex County - SCRWF-RBWTP CIP Phase 2 Upgrades**

PCOR 554-024 SCRWF Replacement RAS Pump

1/7/2022

**CHANGE ORDER SUMMARY**

Item 1 Furnish and Installation of Replacement Gorman-Rupp Model T10AS-B Horizontal Centrifugal Self-Priming RAS Pump per Plant Personnel's Request.

<b>Labor</b>	\$1,954.88
<b>Materials</b>	\$25,090.00
<b>Equipment</b>	\$0.00
<b>Subcontract</b>	\$0.00
<b>Subtotal</b>	\$27,044.88
<b>Contractor Overhead &amp; Profit @ 15%</b>	\$4,056.73
<b>Contr. Overhead &amp; Profit on Subcontr. @ 5%</b>	\$0.00
<b>Item Total</b>	<b>\$31,101.61</b>
<b>Change Order Total</b>	<b>\$31,101.61</b>

**Sussex County - SCRWF-RBWWTP CIP Phase 2 Upgrades**

PCOR 554-024 SCRWF Replacement RAS Pump

1/7/2022

<u>Item</u>	<u>Description</u>					
Item 1	Furnish and Installation of Replacement Gorman-Rupp Model T10AS-B Horizontal Centrifugal Self-Priming RAS Pump per Plant Personnel's Request.					
	<b>Labor:</b>	<b>Qty</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Total</b>	
	Mechanic/Fitter	16.00	MH	\$122.18	\$1,954.88	
						Labor Total: \$1,954.88
	<b>Materials:</b>	<b>Qty</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Total</b>	
	Gorman-Rupp Model T10AS-B Horizontal Centrifugal Self-Priming RAS Pump w/Startup Assist	1.00	LS	\$24,590.00	\$24,590.00	
	Misc. Hardware/Materials	1.00	LS	\$500.00	\$500.00	
						Material Total: \$25,090.00
	<b>Equipment:</b>	<b>Qty</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Total</b>	
						Equipment Total: \$0.00
	<b>Subcontract:</b>	<b>Qty</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Total</b>	
					\$0.00	Subcontract Total: \$0.00
						Item Total: \$27,044.88

Envirep, Inc.  
3705 Trindle Road  
Camp Hill, PA 17011-4334  
(717) 761-7884 p  
(717) 737-5817 f



www.envirep.com

TLC Environmental, Inc.  
2733 Columbia Avenue  
Lancaster, PA 17603  
(717) 299-3596 p  
(717) 299-8953 f

reply to:

reply to:

## QUOTATION

January 5, 2022

Sussex County South Costal RWF  
33711 South Costal Lane  
Frankford, DE 19945

RE: Sussex County South Costal RWF  
RAS Pump #3  
Frankford, DE

Attn: Bob Moore

In accordance with the Terms and Conditions listed herein, we are pleased to offer you the following equipment:

1 - Gorman-Rupp Model T10A3S-B horizontal centrifugal, self-priming sewage pump (bare)

Includes:

- Continuous Vein Impeller and seal plate - (ADI)
- Wear plate for continuous vein impeller - (ADI)
- Manufacturer's warranty, (5 year)
- Manufacturer's prime/finish coating, (blue)
- Suction Spool Flange ("goose neck") 10"

**Note:** Discharge spool piece not provided

**TOTAL SELLING PRICE FOR ABOVE EQUIPMENT: \$ 23,390.00**

As a courtesy to the buyer the following is a partial list of items not included in the above pricing:

- Freight
- Startup services
- Mechanical, electrical, or structural installation
- Federal, State, or Local taxes
- Suction and discharge spool flanges
- Mounting hardware
- Suction piping or valving
- Discharge piping or valving
- Anchor bolts
- Motor
- Controls
- Pump base
- V belt drive components
- Spool flange



Sussex County South Costal RWF  
RAS Pump #3  
Frankford, DE

Envirep Quotation  
January 5, 2022

**OPTIONAL SERVICE:**

Check any desired options. Price of options selected will be added to the selling price shown above.

**Installation Assistance and Startup: \$1200.00**

Includes:

One (1) man-day labor by Envirep for assisting with installation/wiring of the new pump, followed by startup and functional testing of the new pump. NOTE: Lifting equipment for pump removal/installation is by others.

Payment Terms: Net 30 days from date of shipment

Delivery: Direct to the job site via common carrier

Estimated shipment: Approximately 15 to 17 weeks after receipt of approved signed Quotation by Envirep, Inc.

This quotation includes only equipment specifically mentioned herein and does not include, or infer inclusion of, any additional equipment, piping, valves, wiring, installation or services etc., regardless of its relation to the quoted equipment.



Sussex County South Costal RWF  
RAS Pump #3  
Frankford, DE

Envirep Quotation  
January 5, 2022

### TERMS AND CONDITIONS

1. Terms are F.O.B. factory, freight prepaid and added to invoice, NET 30 DAYS FROM DATE OF SHIPMENT. Startup shall not be performed until payment is received. Terms subject to credit approval at time of shipment. These terms are independent of, and are not contingent upon, the time or manner in which the purchaser may receive payment from others.
2. 1½% per month service charge will be assessed on unpaid balances after 30 days old. Any obligation of Envirep to provide start-up, supervision, and operator training is contingent upon timely payment of all sums required to be paid to the Seller under the payment terms of this Quotation. Start up will not be performed until full payment is received.
3. If the Seller finds it necessary to place any indebtedness herein in the hands of an attorney for collection, purchaser shall pay all expenses and costs for collection, including reasonable attorney's fees.
4. Purchase prices are valid for 30 days from the date of this Quotation.
5. State and or local taxes will be charged unless we receive a valid tax exemption certificate.
6. Order may be cancelled only with Envirep's written consent and on terms that will indemnify Envirep against loss. If the order is cancelled prior to releasing the equipment to fabrication, cancellation fees shall be assessed for work already completed, not to exceed 50% of the Total Selling Price. If the order is cancelled following the release to fabrication, cancellation fees shall be assessed for work already completed, up to 100% of the Total Selling Price.
7. All drawings, specifications, designs, plans, computer programs, submittals, documents, information, correspondence, or data prepared by Envirep in connection with this Quotation, and all related intellectual property rights, shall remain the property of Envirep. Envirep hereby grants to Customer a non-exclusive, non-transferable license to use any such information for Customer's use, maintenance, or repair of the Equipment. In no case shall Customer provide such information to third parties without Envirep's prior written consent.
8. Title to the equipment and to any and all additions and accessories shall remain in Seller's name until the purchase price is paid in full.
9. Warranty is subject to the individual manufacturer's warranty. Envirep will not extend or modify these warranties without written consent from the manufacturer.
10. Warranty shall not apply to: (a) damage due to any weather-related or other conditions beyond the control of Envirep; (b) defects or malfunctions resulting from the Goods not installed, operated, or maintained in accordance with manufacturer's instructions, applicable codes, ordinances, or accepted trade practices; (c) failures resulting from abuse, misuse, accident, or negligence; or (d) Goods repaired and/or modified without prior written authorization from Envirep.
11. TO OBTAIN WARRANTY SERVICE: Buyer shall assume all responsibility and expense for removal, reinstallation, and freight associated with any warranty service. Any Goods to be repaired or replaced under this warranty must be returned to Envirep, or such place as designated by Envirep. Buyer can contact Envirep Service Department at 800-733-7884 for an RMA on any Goods being submitted for a warranty claim.
12. This equipment requires startup by a factory trained service technician. Failure to provide startup and testing by a factory trained startup technician or operating the equipment prior to startup may void the warranty.
13. Any claims for damaged, lost, or misplaced items must be made in writing within 15 days of delivery of equipment to jobsite or designated location provided by the contractor/purchaser/owner.
14. All information contained in this quotation regarding the equipment and the price is submitted without cost to the Customer but with the understanding that such information is for the use of the Customer and that the Customer will not disclose it to anyone outside its own organization.
15. Delivery dates or expected dates of shipment from the factory represents Seller's best judgment, but shipment on those dates is not guaranteed.
16. Seller shall not be liable for consequential damages. Consequential damages shall include, but not limited to, loss of use, income, or profit, or loss of or damage to property arising out of operation, use, installation, repair, or replacement of equipment.
17. Seller will not accept a contract containing a penalty or liquidated damages clause relating to failure or inability to ship within a specified time.
18. Terms inconsistent with those stated herein which may appear on Purchaser's formal order will not be binding to the Seller.
19. Terms shall be governed by and enforced in accordance with the laws of the State of Pennsylvania.
20. **Order will be placed with Envirep, Inc., 3705 Trindle Road, Camp Hill, PA 17011-4334.**



Sussex County South Costal RWF  
 RAS Pump #3  
 Frankford, DE

Envirep Quotation  
 January 5, 2022

Thank you for the opportunity to submit this Quotation. To order this equipment, please complete the information requested below, sign this Quotation where indicated and return to Envirep, Inc., via email to [sales@envirep.com](mailto:sales@envirep.com) or fax to 717-737-5817.

Submitted by: Joshua Price ([jprice@envirep.com](mailto:jprice@envirep.com))  
 Prepared by: Dillon Bennett ([dbennett@envirep.com](mailto:dbennett@envirep.com))  
 Envirep, Inc.  
 (717) 761-7884

Accepted this \_\_\_\_ day of \_\_\_\_\_, 2022

Buyer: \_\_\_\_\_ Telephone: \_\_\_\_\_

By: \_\_\_\_\_ Email: \_\_\_\_\_  
 Authorized Signature

By: \_\_\_\_\_ Title: \_\_\_\_\_  
 Print name of Authorized Signer Title of Authorized Signer

Bill To Address: \_\_\_\_\_ Ship To Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Accepted this \_\_\_\_ day of \_\_\_\_\_, 2022

Seller: Envirep, Inc.

By: \_\_\_\_\_  
 Authorized Signature

# South Coastal RWF & Rehoboth Beach WTF Upgrade

1/25/2022

Vendor/Contract	Description	Contract Value
Michael F. Ronca & Sons, Inc.	SCRWF/RBWWTP General Construction	42,339,664.94
BW Electric Inc.	SCRWF/RBWWTP Electrical Construction	21,888,835.77
BW Electric Inc. CO#3	DP&L Service Entrance Modification Conduit System	235,637.33
BW P.O.	Soil Screening @ Rehoboth Plant	4,504.50
City of Rehoboth	Direct Payment for repairs to piping in oxidation ditches	324,996.81
GHD	Amd 11 - SCRWF Expansion to 10mgd - Planning & Concept	241,938.68
	Amd 12 - SCRWF Expansion Construction Docs	2,240,280.73
	Amd 13 - Value Engineering	95,080.15
	Amd 14 - Rehoboth WTP Capital Improvement Program Upgrade Phase 2/Joint Project with SCRWF Expansion	398,410.63
	Amd 16 - Ocean Outfall Discharge Modeling & Wetlands Delineation for SCRWF and Add'l Design Services for Rehoboth WTP Capital Improvement Program	181,089.72
	Amd 18 - RBWTP CIP Upgrade Phase 2 - Add'l Design	172,153.01
	Amd 19 - SCRWF Upgrade 3 Add'l Design	108,073.71
	Amd 20 - SCRWF Upgrade 3/RBWTP Upgrade Phase 2 Construction Engineering	6,589,558.49
Core & Main	Influent FM Consolidation Materials	339,944.59
Core & Main	Effluent FM Pipeline Materials	227,603.39
Delmarva Power	Improve service entrances for both projects. Payment not distributed.	175,000.00
G&L	FM Consolidation & Influent Consolidation Phase II	973,229.04
G&L Work- Effluent Relocation		316,635.20
G&L Work - RB Treatment Plant	Parking Lot Repavement	
Kershner Environmental Technologies	Belt Press	295,000.00
Melvin Joseph	Material Screening	80,000.00
DSWA	Loading, Hauling & Disposal of Debris	33,000.00
	Hauling of Rehoboth Oxidation Ditch Remnants	39,663.15
Totals		77,300,299.84



Tax Parcel No. 134-13.00-34.03

Prepared by and Return to:

SUSSEX COUNTY ENGINEERING  
#2 The Circle  
P.O. Box 589  
Georgetown, DE 19947

### ACCESS EASEMENT AGREEMENT

This Access Easement Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2022, by and between Sussex County, a political subdivision of the State of Delaware, with an address of 2 The Circle, Georgetown, Delaware 19947 party of the first part (hereinafter referred to as “the Grantor”, and Janice Jarus, Living Trust, with an address of 38 Atlantic Ave., Ocean View, DE 19970 (hereinafter referred to as “the Grantee”).

WHEREAS, the Grantor is the owner of that certain tract of lands and premises located in Baltimore Hundred, Sussex County and State of Delaware, and said parcel of land (hereinafter referred to as “the Property”), being described as Tax Parcel No. 533-18.00-34.03. This is a Sussex County Pump Station Site.

NOW, THEREFORE, the parties to the Easement and Agreement do hereby agree as follows:

1. The Grantor does hereby grant and convey unto the Grantee a 20 feet wide residential access easement along the eastern boundary of land of parcel 533-18.00-34.03 across, and through a limited portion of the Property to parcel known as 134-13.00-34.01 as defined and described herein below for the purpose of ingress & egress as shown on that certain plot prepared by Sussex County, dated January 11, 2022, known as “Exhibit A”, attached.
2. The Grantee shall have uninterrupted right of ingress and egress to and from the easement. Notwithstanding the granting of the aforesaid access easement and right of way, the Grantor reserves unto itself and its successors, heirs and assigns, the limited use and enjoyment of the Property.
3. The easement and right of way granted hereunder, and all the mutual promises and covenants contained herein shall be deemed to be easements, right of way, and promises and covenants running with the land, and accordingly, the same shall be binding upon the successors, heirs and assigns of the respective parties hereto.

THE REMAINDER OF THE PAGE IS BLANK

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

Signed in the Presence of:

\_\_\_\_\_  
Attest

By: \_\_\_\_\_  
Janice Jarus, Living Trust

STATE OF DELAWARE :  
: SS.  
COUNTY OF SUSSEX

BE IT REMEMBERED, that on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Ms. Janice Jarus, representing the Living Trust, known to me personally to be such, and she acknowledged said Indenture to be her act and deed.

\_\_\_\_\_  
Notary Public

SUSSEX COUNTY, DELAWARE

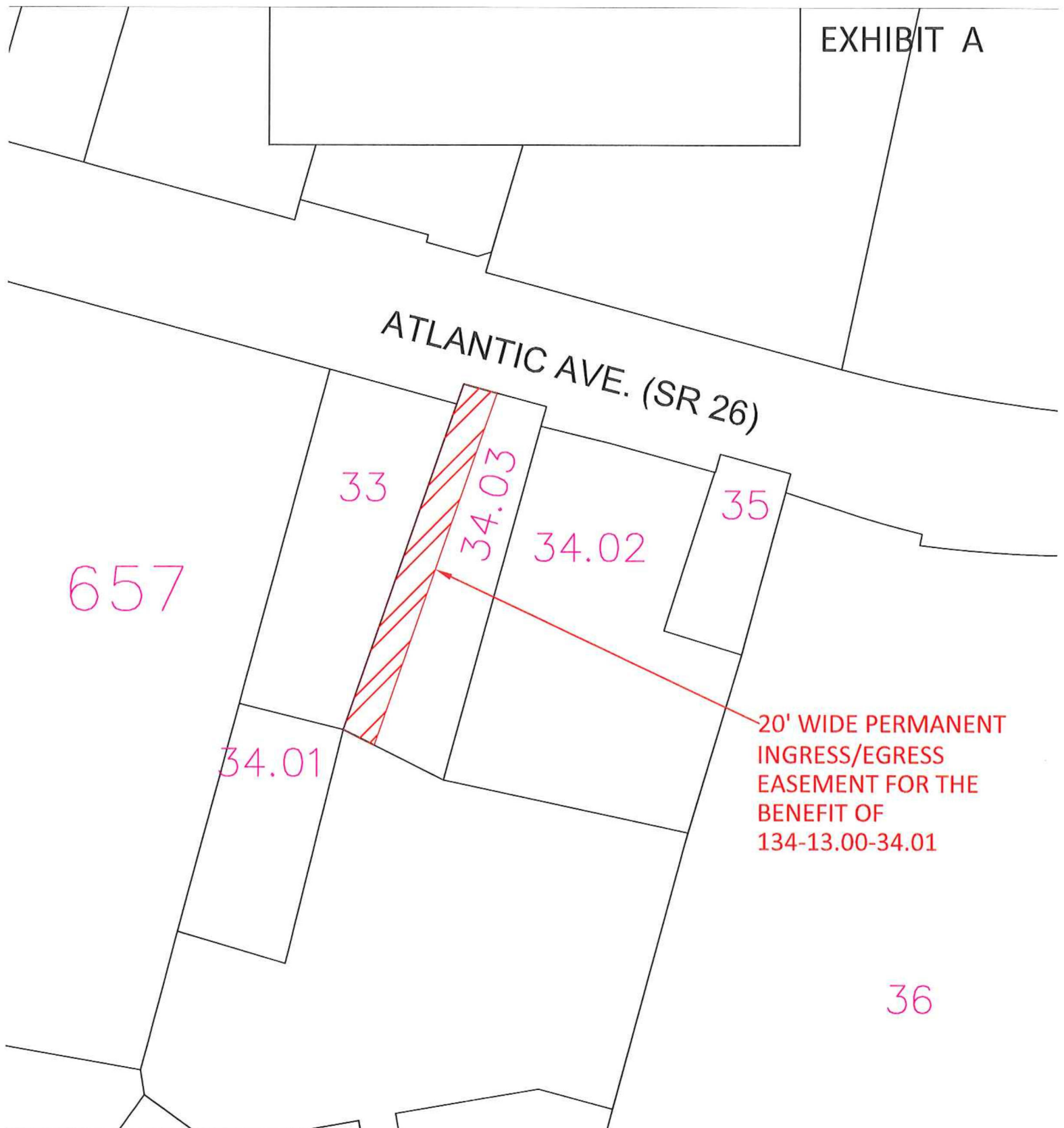
\_\_\_\_\_  
Attest

By: \_\_\_\_\_ (SEAL)  
Michael H. Vincent, President  
Of Sussex County Council

STATE OF DELAWARE :  
: SS.  
COUNTY OF SUSSEX

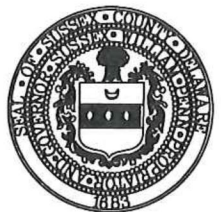
BE IT REMEMBERED, that on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Michael H. Vincent, known to me personally to be such, and he acknowledges said indenture to be his act and deed and the act and deed of said company.

\_\_\_\_\_  
Notary Public



20' WIDE PERMANENT  
INGRESS/EGRESS  
EASEMENT FOR THE  
BENEFIT OF  
134-13.00-34.01

NOTE: PROPERTY LINES ARE APPROXIMATE  
AND HAVE NOT BEEN SURVEYED



SUSSEX COUNTY ENGINEERING DEPARTMENT

DATE 1/11/2022

134-13.00-34.03 (SUSSEX COUNTY)



## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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

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



# Sussex County

DELAWARE  
[sussexcountype.gov](http://sussexcountype.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, County Engineer

RE: ***Granting of Residential Access Easement  
TP# 134-13.00-34.03***

DATE: January 25, 2022

In 1999 The County constructed the Millville Sewer District infrastructure. Part of the system improvements was a pump station located on tax parcel # 134-13.00-34.03. In April of 1999 the Engineering Department advised Ms. Janice Jarus, owner of adjoining parcel 134-13.00-34.01, also known as 38 Atlantic Avenue in Ocean View, of the impending construction.

Ms. Jarus responded to the Department and shared her 1976 deed which mentioned an access easement. In June of 1999 the County Engineer responded and said, "The layout of the station will allow continued ingress/egress across the County's property." However, he also mentioned a title search being performed to confirm any claims. In October of 1999, the County Engineer responded to another inquiry of Ms. Jarus by stating:

*"Regarding the ingress and egress issue, Sussex County has performed a title search and found nothing that would preclude the placement of the pump station at the proposed location. I will follow up with the county attorney to see whether an ingress/egress document can be provided to you to ease your fear of being denied future access across the property."*

This issue was never concluded all awhile Ms. Jarus continued to use the access across the pump station. Now she wants to sell her property and the counsel representing the buyers approached the Department and requested to close the issue by granting the Ms. Jarus an official residential access easement. This easement would be along the eastern boundary of the County owned land allowing residential access to their property as well as pump station maintenance. The Engineering Department recommends the granting of an access easement for landlocked tax parcel 134-13.00-34.01.



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: January 21, 2022

RE: County Council Report for Ordinance to Amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No. 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 and 532-19.00-1.00

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On May 7, 2021, the Planning and Zoning Department received a request on behalf of the property owner(s) to consider a potential revision to the Future Land Use Map element of the Comprehensive Plan in relation to Tax Parcel No. 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 and 532-19.00-1.00.

The request was for the Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan to be amended to change the Area designation part of Sussex County Parcel No. 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 and 532-19.00-1.00 from the Low Density Area and/or Existing Development Area to the Developing Area. The parcels to be considered are identified in Exhibit A, attached hereto and incorporated herein.

The revisions were submitted to the Office of State Planning for PLUS review in June, 2021. Following the PLUS review and receipt of the PLUS comments (included in Council's Paperless Packet), and Ordinance was introduced by the County Council on October 19, 2021.

The Planning and Zoning Commission held a public hearing on November 18, 2021. At the meeting of December 9, 2021, the Commission recommended adoption of the Ordinance for the 12 reasons outlined within the motion (included below).

The County Council held a Public Hearing at its meeting on December 14, 2021. At the conclusion of the meeting, Council left the record open to receive additional comments. The County Council considered the Ordinance at its meeting of January 11, 2022 and a motion was passed to defer action



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

on the Ordinance until the next County Council meeting, and to leave the Public Record open for the receipt of additional comments.

Below are the minutes from the Planning & Zoning Commission meeting of November 18, 2021 and the minutes of the Planning & Zoning Commission meeting of December 9, 2021.

Minutes of the November 18, 2021 Planning & Zoning Commission Meeting

**AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 AND 532-19.00-1.00**

Mr. Whitehouse advised the Commission that submitted into the record is an exhibit booklet received from the land owner, an exhibit map from the land owner, a copy of an exhibit map from Sussex County, a copy of the Ordinance's PLUS submission, which was submitted to the Office of State Planning and one letter in opposition, which was circulated to the Commission within the paperless packet.

Mr. Whitehouse reminded the Commission the public hearing is not for a Change of Zone application; that the public hearing is for an Ordinance to consider a potential revision to the Future Land Use Map; that the Delaware Code mandates all counties and municipalities have a Comprehensive Plan in place; that counties and municipalities must review and update the plans for State certification every year while also providing annual updates on the progress of implementation; that Sussex County's Comprehensive Plan was adopted by the Sussex County Council on Tuesday, December 4, 2018; that following the adoption, the Comprehensive Plan was certified by the Governor on March 19, 2019; that within the Comprehensive Plan there is a Future Land Use Map; that within the Future Land Use Map there is Future Land Use Categories; that staff often refer to these categories in terms of applicable zoning districts for decision making; that in Table 4.5-2 states some applicable zoning districts translate to certain categories and designations on the Future Land Use Map; that in May 2021 staff received a request to consider a potential revision to the Future Land Use Map for the five parcels; that upon receiving the request staff prepared a submission to the State Planning Office to submit; that any change to the Future Land Use Map must be reviewed by the State Planning Office; that it was submitted to PLUS for review in June 2021; that following that submission staff received comments in July 2021, which have been included within the paperless packets; that following discussions with the State Planning Office, and discussions with the land owner of the parcels, it was agreed to bring the parcels forward for further consideration as part of the public hearing process; that this is the process which has led to the current public hearing for the Ordinance; that Mr. Whitehouse presented Mr. David Edgell and Ms. Dorothy Morris, from the Delaware State Planning Office and suggested the representatives for the State of Delaware provide comment first, prior to any land owners.

The Commission found that Mr. David Edgell spoke in opposition of the proposed Ordinance; that he is the Director of the Office of State Planning Coordination; that he is opposing the plan amendment and the change to the Future Land Use Map on behalf of State agencies; that the Sussex County Comprehensive Plan was certified in 2019; that the plan was prepared by Sussex County through an inclusive process that involved an extensive public outreach effort; that the plan was

thoroughly reviewed by State agencies and the Cabinet Committee of State Planning Issues before being certified by the Governor; that certification of the plan indicates the plan is consistent with the Strategies for State Policies and Spending; that it also indicates the State agencies will work collaboratively with the local government to implement the plan; that the plans are long-range documents which are relied upon by many private and public sector entities as they make long-term plans for investments and infrastructure services; that this is why any amendments to the certified plans are reviewed by State, through the Preliminary Land Use Service process; that in this case, the proposed amendment was determined not to be in compliance with the State Strategies; that it represented a major change from the certified plan, which warranted the State's objections; that he requested to summarize the PLUS letter comments for the record; that the parcels are located within a low density area of the Sussex County Plan; that the parcels are located within Investment Level 4 of the State Strategies and Policies for Spending; that one of the parcels is located within an existing development area; that this represents areas which are existing uses; that they are currently zoned, but are scattered throughout the county; that the proposed Ordinance Application is to bring all of the proposed parcels into a developing area; that developing areas are identified as new or emerging growth areas which demonstrate the characteristics of developmental pressures; that most of the development areas are adjacent to municipalities, within or adjacent to future annexation areas or adjacent to town centers; that the parcels in question do not meet the definition of a developing area; that the properties are not adjacent to the Town of Delmar; that the properties are not within or adjacent to potential annexation areas of the town; that the Town of Delmar plan has recently been updated and certified; that the properties were not included in the Town of Delmar's planned growth area; that there has been no justification mentioned for why development would be needed in that area of the County; that the State sees no reason for the proposed change from Investment Level 4 to an area that would allow more growth and development; that the Sussex County Certification letter was issued by the Governor in April 2019 indicating the plan was certified providing no major changes are enacted; that the proposed Ordinance Application is not something the State was anticipating; that the request is considered a major change; that the process the State follows in rare cases such as this, is his office works through the Cabinet Committee on State Planning Issues; that this advises the Governor on these matters; that if there is an objection, the State must enter into a 45 day negotiation period with the local government; that this negotiation period has been started; that he has been working closely with Mr. Whitehouse and the planning staff; that as part of the process it was mutually agreed upon to extend the time period to allow the public hearings to proceed; that this would allow the Applicant to have their local review process as appropriate; that there are two potential paths forward; that there is another public hearing scheduled before Sussex County Council; that his office did report on the progress to the Cabinet Committee of State Planning Issues at their meeting of September 30, 2021; that at the meeting they reviewed and discussed the summary of what was just described within the PLUS comments; that the Cabinet Committee unanimously approved a motion to support the State's position as described in the PLUS letter; that his hope is the Commission will choose to stick to the current Comprehensive Plan; that no further action by the Cabinet Committee or the Governor would be necessary if the Commission denies the Ordinance; that should County Council proceed with approval after hearing the Application, the State would request County Council table the action and refer the matter back to the Cabinet Committee of State Planning Issues for a dispute-resolution process; that this process is spelled out within the Delaware Code; that he is hopeful this will not occur in this Application's case; that they have worked very closely with the

Sussex County staff and reviewed the Application very carefully; that they are working through the Sussex County process to allow everyone to be heard and he hopes this allows for a good decision which is beneficial for all parties involved.

The Commission found that Mr. David Hutt, Esq. spoke on behalf of the proposed Ordinance; that he is representing Double H Properties 2, LLC and Blackwater Shawfield, LLC; that also present are Mr. Bobby Horsey and Mr. Zac Crouch; that proposed is an Ordinance which was drafted to amend the Future Land Use Map in Chapter 4 of the Comprehensive Plan; that the Ordinance is regarding five parcels, which is approximately 895 acres; that in September 2006 the Planning & Zoning Commission considered the Blackwater Creek project; that it consisted of the same parcels with the exception of one parcel; that parcel 532-12.00-27.00 was not originally part of the Blackwater Creek project; that in 2006 the Blackwater Creek project consisted of four applications in front of the Planning & Zoning Commission; that it eventually became three applications in front of County Council; that the four Applications for Blackwater Creek consisted of C/Z 1595; that this sought to change the zoning designation for 3.2 acres from AR-1 Agricultural Residential to B-1 Neighborhood Business District; that this is now a closed district within the current zoning code; that C/Z 1596 which was an AR/RPC Application for 233 acres; that C/Z 1597 was a GR/RPC Application for 274 acres; that the fourth Application, which only the Planning Commission could consider, was for a 2005-57 cluster subdivision application for 400 units on 200 acres; that the Planning Commission recommended approval of all three of the Change of Zone Applications; that the Commission also recommended approval for 2005-57 subdivision; that a month later County Council conducted public hearings on the three Change of Zone Applications; that in January 2007 Sussex County adopted C/Z 1595, C/Z 1596 and C/Z 1597; that in 2008 the real estate market became depressed; that the project did not move forward at that time; that in 2008 Sussex County updated the Comprehensive Plan and the Future Land Use Plan; that he presented the previous Land Use Plan from 2008; that at that time all of the subject properties were located within a developing area; that at that time there was a small portion of the northeast parcel which was located in the GR General Residential; that there is a portion of property between the two located with the low density; that the Comprehensive Plan was update in 2018, that the update was adopted by the Governor in 2019; that there was an extensive public process for the adoption of the 2018 Comprehensive Plan to occur; that he and Mr. Horsey attended many of the meetings; that the product of all the public hearings was a recommendation for the Future Land Use Plan which the Planning & Zoning Commission sent to County Council; that the recommendation for the 2018 Future Land Use Map had two designations for the proposed parcels; that the designations were a mixed residential and developing area; that Providence Church Rd. divided the two designations; that both of the designations were listed as growth areas within Sussex County; that the recommendation stayed consistent with the 2008 Comprehensive Plan; that the recommendation was forwarded to Sussex County Council; that when County Council received the recommendation, there were significant changes made to Chapter IV and the Future Land Use Map; that not only did the map change, but new land use categories were added; that certain categories were renamed; that there was a wholesale change from the recommended Planning & Zoning Commission version; that County Council conducted a similar process; that County Council then released their version of the Future Land Use Plan which the public was able to review and provide comment on; that on the County Council recommendation a new category, Existing Developing Area, was added; that Existing Developing Area became the new designation for many of the proposed parcels; that after the version of County Council's recommendation was released, County Council conducted a



final public hearing; that based off of the approved Future Land Use Map, two western parcels and a portion of the northeastern parcel are located within the Existing Development Area; that on County Council's recommended version of the Future Land Use Map, the southeast side of the intersection of Providence Church Rd. and Delmar Rd. was no longer listed within a growth area; that on the northside of Delmar Rd. all of the proposed properties are listed within the developing areas; that this is not reflected on the final version of the Future Land Use Map which was certified by the Governor; that most presently development is focused on the eastern side of Sussex County; that what was explained during the 2006 public hearings before both the Planning & Zoning Commission and Sussex County Council for Blackwater Creek was how ideal the location is for a number of reasons; that these thoughts were reflected on the 2008 Comprehensive Plan, the Planning & Zoning Commissions recommended version and the initial version recommended by County Council; that the close proximity to the city of Salisbury, Maryland is one of the primary reasons for how ideal the property is for development; that Salisbury is the largest city on the Eastern Shore; that Salisbury is a city that is growing; that the city of Salisbury is a major employment center; that the two most significant employers in Salisbury are Tidal Health and Perdue; that from the proposed properties, there are ways to enter into Salisbury without the need to go onto the highway of Rt. 13; that since the Blackwater Creek project was approved in 2007, Sussex County has grown and the City of Salisbury has grown; that Tidal Healthcare has expanded its footprint, which now includes Seaford and Millsboro; that within the project book is a map showing numerous other employment opportunities within the area; that there is also a map showing places of higher education and healthcare providers within the area; that there was a request made to amend the Future Land Use Map which lead to the current public hearing; that as the City of Salisbury and Sussex County have grown, so has the need for the proposed development; that the interest to construct something similar to Blackwater Creek is still present and the demand is still strong; that the Applicant looked at the current Future Land Use Map and attempted to choose the best Future Land Use category within the Code to match the area and the area characteristics; that the category which best matched the area, formal approval and formal designations on prior Future Land Use plans was the Developing Area Designation; that the Office of State Planning Coordination has a different view of whether or not the Developing Area is appropriate for the properties; that Mr. Edgell previously stated the properties are within a Level 4 area; that he agrees that is the designation on the State Strategies Map; that the designation comes largely from the designation, set by Sussex County, on their Future Land Use Map; that he has had many conversations with Ms. Dorothy Morris; that he has always been told the single most important factor, when determining the State Strategies Map, is the designation on the underlining local government's Future Land Use Map; that this is why the plans get certified through the State; that there is a very high emphasis placed on the underline designation on a Future Land Use Plan from the local jurisdiction in which it arises; that due to this, it is not surprising that the three parcels on the right hand side of Providence Church Rd. are shown within Level 4; that this is due to being designated within a Low Density Area on Sussex County's Future Land Use Map; that the Office of State Planning Office coordinates various State agencies; that principally among the agencies is DelDOT; that the PLUS comments within the letter provided in the materials is instructive on the Application; that the PLUS comments related back to the Blackwater Creek project; that there was a TIS Traffic Impact Study performed for the Blackwater Creek project; that noted in the PLUS comments, was due to the designation on the State Strategies Map, the improvements would not be provided by the State; that improvements would be the responsibility of the property owner or developer of the

project; that this is consistent with the designations and the past history of the property; that in Chapter 4 of the Comprehensive Plan, each of the various growth areas has the same bulleted points set forth within it; that the first bulleted point within the designation categories is Permitted Uses; that Permitted Uses within a Developing Area is to support a variety of housing types in selected areas and at appropriate intersections and commercial uses should be allowed; that looking back on the Blackwater Creek project, that was essentially what was proposed at the intersection of Providence Church Rd. and Delmar Rd.; that on the zoning map, in the northeast corner of the intersection, there is 3.2 acres which were originally zoned B-1 through the process; that at an appropriate intersection, with the appropriate improvements made by the property owner it is appropriate within a Developing Area as set forth in the County Code; that even though the Blackwater Creek project did not move forward, the B-1 Change of Zone designation carries forward with the property itself; that the second bullet point within each category refers to Density; that in each of the categories it always starts with the County's baseline of two units to the acre; that the Comprehensive Plans the medium and higher densities can be appropriate when meeting guiding factors; that these guiding factors include when central water and sewer are present, when near sufficient commercial uses, when along a major road or near a major intersection; that there are other considerations which flow from there; that the first of those is the availability of water and sewer; that this factor often drives density and helps to determine if a project should be the standard two units per acre or not; that for these properties Tidewater Environmental Services, Inc. has the CPCN for each of the proposed parcels, except for the parcel located in the northeast corner; that Tidewater will soon be known as Artesian; that Artesian would be available to provide public wastewater service to the site; that there is a CPCN listed for all parcels, including the parcel located to the northeast corner; that another consideration is the property is ideally suited for commercial uses; that the third category references infrastructure; that it states within each various growth area that central water and sewer are strongly encouraged; that central water and sewer would be used at the proposed site; that within the bulleted points of a developing area within the Comprehensive Plan there is a sentence that states, Master Planning should be encouraged, especially for large scale developments, on large parcels or groups of parcels, higher density and mixed-use developments to provide flexibility and site design; that it would be far superior to have a Master Plan for 800(+) acres, which would proceed through a Master Planning process rather than a piecemeal process over time; that Sussex County's Comprehensive Plan encourages a Master Plan zoning district in the future; that he understands this is an Ordinance currently being worked on by Mr. Whitehouse and County staff; that Table 4.5-2 shows each of the Future Land Use Map categories, as well as corresponding zoning district which would be appropriate for that; that in almost each category, new zoning districts are applicable; that this would mean if Sussex County adopted a new zoning classification, such as a Master Plan Zoning classification, it would fit into almost every one of the zoning classifications; that there is only one classification it would not fit into; that classification is the Existing Development Area; that majority of the parcels are located in the Existing Development Area; that the request was made to amend the Future Land Use Map to a developing area; that in the developing area it does have the new zoning classification permissibility; that Master Planning would be appropriate for the five parcels; that all of the presented factors and additional information provided in the project book support the property being within a Developing Area; that these factors are further supported by the history of the properties; that the history includes the approvals in 2007, the 2008 Future Land Use Plan itself and the versions of the 2018 Future Land

Use Plan which were recommended by the Planning & Zoning Commission and the initial recommended version by County Council.

The Commission found that Mr. Robert Horsey spoke on behalf of his Application; that he is part owner of the property, along with his brother; that he feels Mr. Edgell portrayed the request to be an abrupt turn of what the public requested on the 2018 Comprehensive Plan; that after ten months of workshops the Planning & Zoning Commission performed, aside from five workshop, he attended almost every workshop; that he feels many members of the public were disheartened when a member of the Commission made a suggestion, which went to the County Council; that when it went to County Council it was amend and some of the suggestions were removed; that on his side there was a lot of public disappointment; that there was a lot of time and effort put into something the public thought the Commission suggest would stand on the 2018 Comprehensive Plan; that Mr. Edgell was incorrect; that the public sediment did have a growth area in the southwestern corner of Sussex County; that when looking at the growth maps, everyone looks at Sussex County with a line across; that this is not true; that Sussex County is adjacent to the largest city south of Wilmington; that the City of Salisbury has nearly grown to the line of Sussex County, approximately being within a mile along the Rt. 13 corridor; that he feels it would be a grave mistake to not place a growth area on the southwestern portion of Sussex County to accommodate the work force of the metropolitan area south of the area; that the maps currently do not show this; that he believes the Level 4 State Strategies Map was put on during the Ruth Ann Minner Administration; that he feels it is just a line on a plan; that his family bought the farm in 2004; that the previous land owner has subdivided every lot they could; that strip lots have been placed on White Deer Rd. and Providence Church Rd. since then; that it is a little hamlet of housing that has been created in southwestern Sussex County; that Delmar has one of the best school districts in Sussex County; that people raising families attract to a nice school district; that he recently celebrated 36 years in business as a family company; that about 33 of those years they have been working with developers; that he did not attend college; that he does not have a degree; that he does know a successful development attracts to where people like to congregate and live; that the hamlet of houses shows that people want to live on the southwestern portion of the Sussex County; that this is due to the school district and the employment to the south of the area; that Providence Church Rd. turns into Jersey Rd. once it hits the Maryland line; that Jersey Rd. is approximately 5.5-miles to Naylor Mill Rd. which runs dead center of north Salisbury commercial district; that from the property one could get to Tidal Health in approximately 10-12 minutes; that this is not a quick process; and the process has changed in his 33 years of business; that he is not asking for a plan approval; that the request is to change the Future Land Use Map; that this request will not happen overnight; that it is a long process; that he is requesting to get the process started and request the Commission consider the request in a positive way.

Mr. Hopkins stated he recalls the Commission spending a lot of time on the Ten Year Land Plan; that the Commission could have spent ten times more on analyzing where growth should take place; that it is almost impossible for a body, such as the Planning & Zoning Commission, to anticipate exactly where growth should be; that when the recommendation left Planning & Zoning and was submitted to County Council, there were changes me; that he did find it disheartening; that the next Ordinance request is another example of the same situation and he feels the Commission should have an open mind about making changes without waiting ten years to readdress some of these issues.

Ms. Wingate stated she joined the Commission while the Comprehensive Plan was being approved and she appreciated the comments from Mr. Hopkins.

Mr. Mears stated he was not part of the Comprehensive Plan process; that he does agree with Mr. Hopkins's comments; that the Commission cannot estimate and get it right the first time and small adjustments are not a bad thing, they are a positive thing.

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

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

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

Ms. Stevenson stated the caller did have a good point in regard to placing a sign on the property to alert the public of the Ordinance.

Chairman Wheatley questioned the differences in notifications for Ordinances versus Land Use Applications.

Mr. Whitehouse reminded the Commission the current Application was for an Ordinance and not a Change of Zone; that under Title IX, under Comprehensive Plan amendments of the Sussex County Code it does not require public notification by sign and if there were such a requirement to send a postcard notice for every Ordinance amending the Comprehensive Plan, it would be required to mail every landowner within Sussex County a postcard for each Ordinance Application.

In relation to the Ordinance. Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration. Motion carried 5-0.

#### Minutes of the December 9, 2021 Planning & Zoning Commission Meeting

The Commission discussed the Ordinance which had been deferred since November 18, 2021.

Ms. Stevenson moved the Commission recommend approval of the Ordinance to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for Parcels 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00, and 532-19.00-1.00 from a Low-Density Area to the Developing Area based upon the record made during the public hearing and for the following reasons:

1. This area of Sussex County at the intersection of Delmar Road and Providence Church Road currently has two Area designations according to the Future Land Use Map in the Sussex County Comprehensive Plan: the Existing Development Area and the Low-Density Area. This Ordinance seeks to convert the subject properties in this location from the Low Density Area designation to the Developing Area.
2. The subject properties were previously identified as being within the Developing Area according to the Future Land Use Map found in the 2008 Sussex County Comprehensive Plan. Returning these properties to the Developing Area is consistent with that prior Plan and Map.

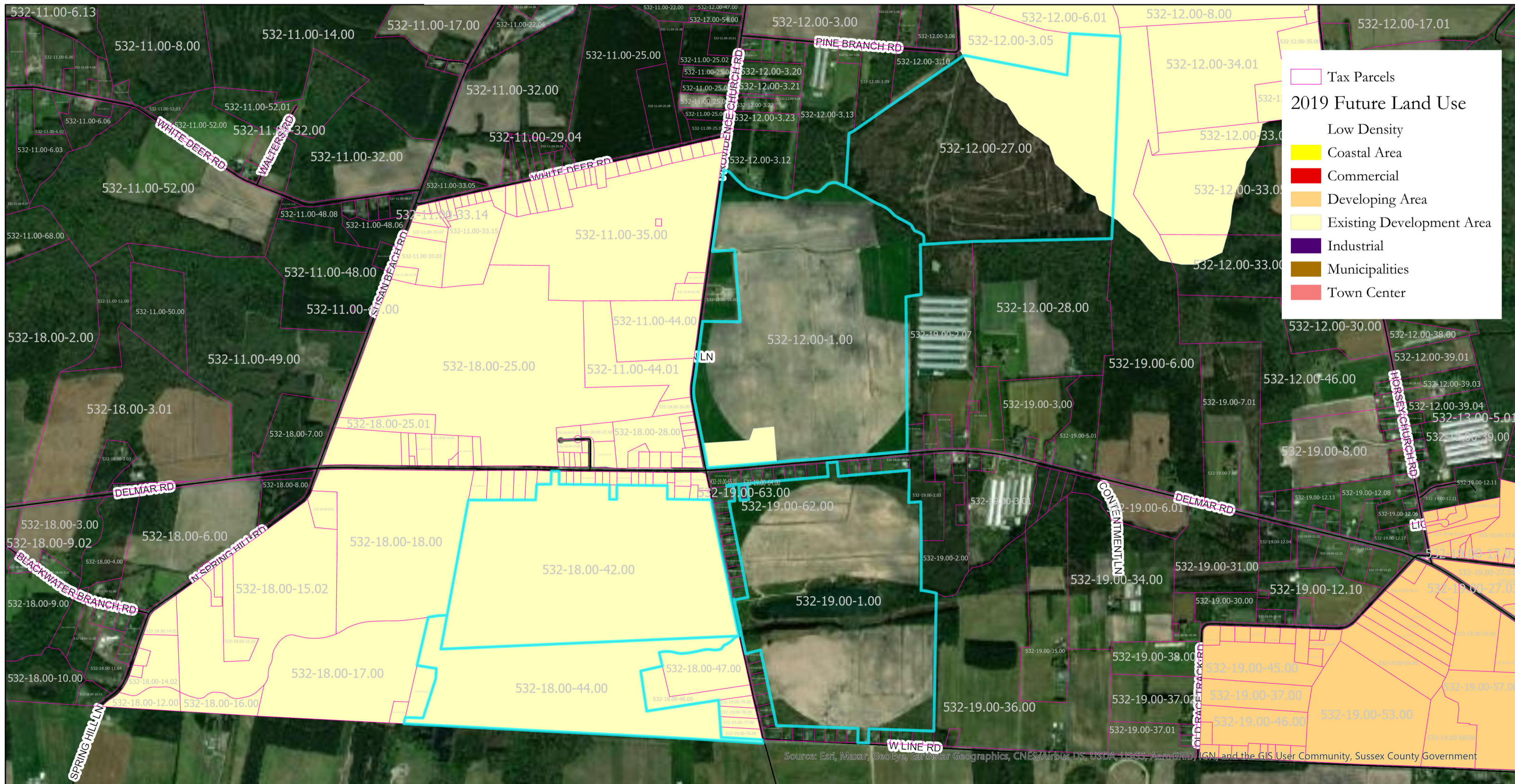
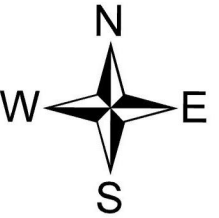
3. The subject properties are currently zoned GR, AR-1 and B-1. The combination of these zoning classifications and the facts that (a) the properties are adjacent to the Map's "Existing Development Area" and (b) were previously identified as being within the Developing Area prior to 2018 make this Map amendment appropriate.
4. These properties are in close proximity to the Town of Delmar as well as the City of Salisbury and the commercial corridor and employment centers there. It is also near the Route 13 corridor of Seaford, Blades and Laurel and those commercial uses and employment centers. These factors make this an appropriate location for the Developing Area Map designation.
5. There is central water and sewer available to these properties according to the public utilities that will provide these services.
6. This proposed Map amendment satisfies the criteria set forth in Section 4.4.2.1 of the Comprehensive Plan for a Growth Area, since: (a) the properties are in close proximity to the Town of Delmar and even the Maryland state line where significant commerce and employment exists; (b) the properties will be served by water and sewer; (c) the properties are near the Route 13 corridor; (d) the Map change will enable development that is in character with what exists or may occur in the area (including the adjacent "Existing Development Area" and GR and B-1 zoning; (e) the Map change will not adversely impacting any major preserved lands; and (f) the properties in question are not in close proximity to any water bodies.
7. While the Office of State Planning Coordinator has objected to this Map Amendment, the County in its Comprehensive Plan "is signaling that selected new growth areas may be needed to accommodate future development in places the State does not currently view as growth centers according to its 'Delaware Strategies for State Policies and Spending' document". Here, when the properties were previously identified as being in the Developing Area, where they are adjacent to the "Existing Developing Area" and where they are so near the commerce and employment centers of Route 13, Delmar and Salisbury this is an appropriate location for the State to recognize that a return of these properties to the "Developing Area" designation is appropriate.
8. By the terms of the Delaware Strategies for State Policies and Spending document, all land use authority remains vested with Sussex County. This is reiterated within the current Sussex County Comprehensive Plan. While the County certainly takes into account the State's recommendations with regard to a Map amendment, the circumstances that have been presented with this application justify a revision, if not a correction, to the Map.
9. This recommendation is consistent with the Commission's prior recommendation for this Future Land Use Map as part of the process to adopt the current Comprehensive Plan. That prior recommendation identified these properties as being within the Developing Areas.
10. This revision to the Future Land Use Map will not adversely affect neighboring properties, area roadways or future land-use planning in the area.
11. Any proposed use under the Developing Area designation will still require public hearings and site plan approvals. This will enable the County, with ample public participation, to determine whether any specific use or type of development is appropriate here.
12. This revision of the Future Land Use Map is appropriate given the particular circumstances involved at this location. When several factors like these exist, the consideration and approval of an amendment to the Future Land Use Map is appropriate.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to recommend approval of the Ordinance, for the reasons and conditions stated in the motion. Motion carried 5 – 0.

Exhibit A : Potential  
Comprehensive Plan Amendment



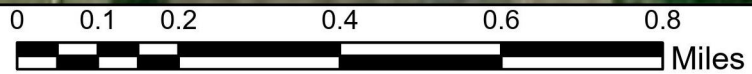
# Sussex County



**2019 Future Land Use**

- Tax Parcels
- Coastal Area
- Commercial
- Developing Area
- Existing Development Area
- Industrial
- Municipalities
- Town Center

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Sussex County Government



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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: January 21, 2022

RE: County Council Report for Ordinance to Amend the Future Land Use Map of the Comprehensive Plan in Tax Parcel No. 235-23.00-2.02 (Portion Of), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, and 235-23.00-2.01

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On February 25, 2021, the Planning and Zoning Department received a request on behalf of the property owner(s) to consider a potential revision to the Future Land Use Map element of the Comprehensive Plan in relation to Tax Parcel No. 235-23.00-2.02 (Portion of), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, and 235-23.00-2.0. The total area of the parcels is approximately 247 acres. The parcels are located on the northeast side of SR.1, east of the intersection of SR.1 and Cave Neck Rd.

The request was for the Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan to be amended to change the Area designation part of Sussex County Parcel. 235-23.00-2.02 (Portion of), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, and 235-23.00-2.01 from the Low Density Area to the Coastal Area. The parcels to be considered are identified in Exhibit A.

The revisions were submitted to the Office of State Planning for PLUS review in June 2021. Following the PLUS review and receipt of the PLUS comments (included in Council's Paperless Packet), and following discussions with the Cabinet Committee on State Planning Issues at its meeting of September 30, 2021, an Ordinance was introduced by the County Council at its meeting of October 19, 2021.

The Planning and Zoning Commission held a public hearing on November 18, 2021. At the meeting of December 9, 2021, the Commission recommended the adoption of the Ordinance for the 14 reasons outlined within the motion (included below).



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The County Council held a public hearing at its meeting of December 14, 2021. At the conclusion of the meeting, County Council left the record open until its meeting of January 4, 2022 for the submission of additional comments. The County Council considered the Ordinance at its meeting of January 11, 2022 and a motion was passed to defer action on the Ordinance until the next County Council meeting, and to leave the Public Record open for the receipt of additional comments.

Below are the draft minutes from the Planning & Zoning Commission meeting of November 18, 2021, and the draft minutes of the Planning & Zoning Commission meeting of December 9, 2021.

Minutes of the November 18, 2021, Planning & Zoning Commission Meeting

**AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-23.00-2.02 (PORTION OF), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, AND 235-23.00-2.01**

Mr. Whitehouse advised the Commission that submitted into the record a copy of the staff's application submitted to the State Planning Office as part of the PLUS process, the comments of the PLUS review, a letter from the landowner, a copy of the Ordinance for the Application file, a copy of the land owner's exhibit booklet, a copy of the Applicant's exhibit maps, a copy of Sussex County's exhibit maps as part of the Ordinance, 51 letters of opposition, four letters in support, and the responses which were not included in the paperless packet have been circulated to the Commission.

Mr. Whitehouse stated this is an Ordinance to amend the Future Land Use Map of Sussex County; that there are five parcels; that an area of 247 acres would potentially be affected by the Ordinance; that the parcels are located on the northeast side of Coastal Hwy., opposite the intersection of Cave Neck Rd.; that the yellow hatching on the plan shows the proposed extension of the Coastal Area within the Future Land Use Map; that they are currently all within the low density area; that the low density areas are reflected as non-shaded areas on the map; that the yellow areas are reflected in yellow on the map; that the request was received in February 2021 to consider a potential amendment of the Future Land Use Map; that following that request it was reported to the State Planning Office; that it was then heard at the PLUS process meeting in June 2021; that following the PLUS meeting, Planning & Zoning staff have received written comments from the State Planning Office and he then introduced Mr. David Edgell and Ms. Dorothy Morris from the Delaware State Planning Office.

Mr. Thompson recused himself and left the dais.

The Commission found that Mr. David Edgell spoke in opposition to the Ordinance request; that he is the Director of the Office of State Planning Coordination; that the Strategies for State Policies and Spending were first developed in 1999 under the Governor Carper Administration; that they have been a policy of the State Government since that time; it is updated every five years; that the five year cycle is to keep up with the Comprehensive Plans of all the 57 municipalities and 3 county governments; that there are many things that go into the State Strategies; that it is not just the local government Comprehensive Plans; that the local government Comprehensive Plans are a foundational element; that there are 30 different data layers within the analysis of what designation Investment Level to give a parcel or area; that Level 1-2 are built-up urban and suburbanized areas; that Level 3 is considered for newer growth areas which are emerging; that Level 4 are for the more rural areas; that this is an area where they expect a continuation of rural, agricultural, industrial and natural resource types of activities; that the subject parcel is near Cave Neck Rd.; that there are many data



layers which are performed with mapping; that these layers relate to things that are favored in growth; that these indicated areas which are more likely to be a positive growth area; that there area number of layers that indicated favored preservation; that those areas tend to be environmental in nature; that if they favor toward growth, it receives a positive one; that if it favors toward preservation it receives a negative one; that the totals are summed up by layering maps on top of each other; that in this application's case there is a fire station within three miles and a hospital within five miles; that the application property is not located within the County growth area according to the Comprehensive Plan; that the subject property is not located within a municipality, annexation area or transferable development of right receiving area; that the property is not located in an urban area according to the census; that the property is not located within a Transportation Improvement District; that the property is not in proximity to bus stops, bike paths, trails, public libraries, public schools, State service centers, freestanding EMS and local police departments; that the property is not connected to County sewer service; that the property is located near wetlands; that the property is located with the Delaware Ecological Network; that the property is located within the Coastal Zone; that portions of the subject property are located within the 100 Year Flood Plain; that he does believe the rear property has been amended and removed from the Application submitted to PLUS; that if the property was removed, it may no longer be a specific issue; that the property is located within a low density area, subject to sea level rise inundation and in close proximity to tidal wetlands; that these are all areas of criteria analyzed through the process; that per the process, the property is designated Level 4; that this designation is not determined by drawing a line on a map; that the designation is not based completely off Sussex County's Comprehensive Plan; that they perform a very detailed analysis of all the different data layers previously mentioned; that the subject properties have been through the PLUS process multiple times for various applications; that he appreciated the presentation for the previous application; that he was not present for all of the meetings to construct the Comprehensive Plan; that he was not aware of the history of the previous applications parcel; that we must conform to what is stated within the Comprehensive Plan which was approved by the local government, legislative body and certified by the Governor; that they review about nine application to a packet; that of the nine applications, the two current applications were the two they found concerns with; that the amendment to the Coastal Area would open up a large number of options for the zoning of the property; that the low density area is limited to two units per acre; that in the Coastal Area the density could go as high as 12 units per acre, as well as allow heavy commercial uses; that they object to the current request; that the process would be in the same with the current public hearing being held and a public hearing before County Council; that should County Council agree to move forward, the application would need to be referred back to Cabinet Committee of State Planning Issues for consideration; that his office and the agencies they work with are very interested in working with Sussex County as the county grows, develops and change; that they are committed to working with Sussex County as they move forward; that this is an example of unusual and difficult situation at the end of a Comprehensive Plan period; that this went through a very long and thorough process and he understands that there were some changes made at the last minute.

The Commission found Mr. David Hutt, Esq. spoke on behalf of the Ordinance; that also present were Ms. Alice Robinson, along with her two children, Thomas and Mary Beth; that Mr. Joe Reed and his son Mr. Brent Reed were present; that they are the principals of the ownership groups for the properties; that proposed is an Ordinance to amend the Future Land Use Map designation for five parcels consisting of approximately 247 acres; that the Mr. Chapel, who was a previous owner of one

of the parcels, considered selling the property; that he learned his property was not located within Sussex County's growth areas; that it was characterized as low density; that this came as a surprise, as the area was shown within a growth area according to the 2008 Future Land Use Plan; that this was shown in the Environmentally Sensitive Overlay Zone; that the Comprehensive Plan was updated in 2018; that the Comprehensive Plan was signed by the Governor in 2019; that the property owners participated in the process; that as previously discussed in the last public hearing, there was a recommended Future Land Use Plan, which was amended by the Planning & Zoning Commission to County Council; that County Council did amend significant changes to the Future Land Use Map and area designations; that the Environmentally Sensitive Overlay Zone was renamed to Coastal Area; that County Council placed the property within the Coastal Area; that the owners were very satisfied with this as the Coastal Area was located more east than it originally did on the 2008 Future Land Use Plan; that the process after County Council released their recommended version is where the unknown elements and surprises come into play; that County Council's recommended version went to a public hearing on October 23, 2018; that at the public hearing Mr. Robertson, on behalf of the Planning Commission and Ms. Cornwell, made a presentation to County Council regarding the Comprehensive Plan and the specific chapters within the Plan; that if his notes are correct and the Sussex County minutes are correct, thirteen people spoke about the Comprehensive Plan at the October 23, 2018 public hearing; that at least two of those speakers or groups are present at the subject public hearing, that he was one of the speakers; that he was present and spoke at the public hearing in October 2018; that SARG Sussex Alliance for Responsible Growth spoke at the meeting as well; that during the October 23, 2018 public hearing there were three groups of properties discussed; that he was not present on behalf of the subject property; that the other comments largely dealt with implementation and other aspects of the plan; that there were comments regarding the need for affordable housing; that there were a number of things that occurred aside from people seeking changes to the Future Land Use Plan; that at the conclusion of the public hearing, it was closed by County Council; that Council deferred the decision on the Ordinance to approve the Comprehensive Plan, certify and send it to the Governor for his signature; that the next meeting is no longer considered a public hearing; that this means the public can view, but not provide comment, on the actions taken by the County Council; that the meeting of October 30, 2018 a number of properties, including the subject properties, were discussed; that for the first time, the Future Land Use categorization came into question; that the concern regarding the categorization of the Future Land Use Plan was unknown to the property owners; the land owners had participated in the process and assumed the recommended version would be the plan to be sent to the Governor for certification; that the Future Land Use Plan which was certified contained a significant change; that the subject 247 acres is no longer located in the Coastal Area; that the 247 acres is now located in a low density area; that he read the comments within the supplemental packet; that he feels there was some irony; that there were some comments about the amount of time people had to consider the Ordinance; that there were comments stating there was no enough time for people to adequately consider their positions or make time to attend the meeting; that the irony is the public is in a far better position than his client; that his client participated in the process for 18 months or more; that during the public process, his client was always shown a map that showed their land as being within a growth area; that when the public process was concluded, the plan was changed and sent to the Governor with the change; that regardless of ones position on a land use matter, a fundamental, logical and orderly process is an opportunity to know what is occurring and be able to comment on the matter; that anything else has the appearance of

being arbitrary; that ultimately the change occurred and was certified by the Governor; that as part of the process the property owners did not go back to check at that time; that this was indicated in the Applicant's initial letter of December 2020 to County Council; that the letter stated they acknowledge the responsibility to check, but they thought due to the history of the property, as well as the history of the recommendations from Planning & Zoning and County Council that double checking was not necessary; that the change from Growth Area to Low Density Area was discovered during the sales process; that the process of amending the Future Land Use Plan is a fairly new process; that in this new process the Office of State Planning Coordination considered the Application from Sussex County at their June 2021 meeting; that it is a public process, but it is the Applicant and various agencies who participate in the process; that this on the subject Application, there are significant gaps and differences between what the Office of State Planning thought they were considering and what the Application is; that when a letter states to the effect of there was no good reason given for the Application, the reason is the Applicant did not have enough time to provide a reason; that the Applicant would have been happy to provide a reason and would have liked to have been asked to participate in the process in June through the PLUS review process; that technically Sussex County is the Applicant and the Applicant was not allowed to participate in the process; that he feels this is pouring salt in the open wound of how this situation began in the first place; that it was hard for the Applicant after the public process was closed, realizing the map had been changed and then not being able to participate in the process after requesting for it to be amended; that an explanation from the Applicant may or may not have made any difference to the Office of State Planning; that an example, if one of the first comments within the PLUS report; that the comments reference other project they are familiar with; that in the report it was described as being an active part during the Comprehensive Plan amendment process; that the only activity occurred on the subject properties were they maintained being in a growth area; that the growth area actually expanding the growth area with a recommendation from County Council; that in addition, the Office of State Planning Coordination response indicated there are tidal wetlands contiguous to the parcel; that Director Whitehouse indicated that the State Planning Office may have been considering a larger application than the application actually is; that the nearest tidal wetlands are 625 ft. away; that the bulk of the tidal wetlands are almost a half mile away from the site; that another comment provided in the PLUS response was the parcels are not close to public services, such as water sewer, police, fire and schools; that the Applicant disputes those comments; that there was another comment that the area is a Level 4 area; that as indicated in Mr. Edgell's comments, the foundational piece used is the underlying designation on the local government's Future Land Use Plan; that once the property is in low density, being designated in Level 4 is not a surprise; that it creates a self-fulfilling prophecy for the property; that there also seemed to be confusion about the actual land; that it was thought the land extended all the way back; that there was a reference to 415 acres; that in the reference it goes on to state it would be further away from public services and utilities; that part of the difficulty in presenting on an Ordinance in this situation, is that he does not want anyone to think that this is an attack on the Office of State Planning Coordination; that they just happen to be the body that puts the information together; that in the case of this PLUS item, he does not feel the Office of State Planning Coordination had the whole picture when the information was put together; that his clients would have welcomed the opportunity to help provide a better glimpse of the overall picture; that in Sussex County's Future Land Use Plan, Chapter 4, the first basis for consideration of Future Land Use in Sussex County is to direct development to areas that have existing infrastructure or where it can be secured cost effectively;

that the Application requesting to change the designation fully recognizes that basis and is consistent with the basis through both the planned transportation improvements of Cave Neck Rd. and Rt. 1 intersection and the existence of utilities and infrastructure; that further into Chapter 4 there are guidelines for when to consider an area in a growth area or not; that a few of those guidelines are the presence of existing public sewer and water service nearby, plans by Sussex County to provide public sewage service within five years, location on and near a major road or intersection, the character and intensity of surrounding development, including proposed development and the areas environmental character; that each of the guidelines also supports the conclusion the parcels should be located in a growth area; that the parcel should be located in the Coastal Area based upon the environmental considerations; that one of the primary issues with most Applications is transportation and traffic; that being on or near a major roadway or intersection is a listed guideline; that DelDOT's proposed grade separated interchange for Rt. 1 and Cave Neck Rd. is part of the Capital Transportation Program; that the State is estimating spending \$69,000,000.00 on the project, with \$54,000,000.00 in improvements and \$15,000,000.00 is for the right-of-way acquisition; that it is stated throughout the Comprehensive Plan and the Zoning Code that projects should be located near intersections and major arterials; that this is one of the reasons the property should be located in a growth area; that the public hearing is the very beginning of the process; that there is no concept plan and nothing has been submitted to the Office of State Planning Coordination to consider; that there are years to go on whatever the process may be; that there are few years to go before the DelDOT CPT project for Cave Neck Rd and Rt. 1 takes place; that another factor in considering growth area was the existence of public water and sewer service nearby; that the property is located within wastewater service territory for Sussex County; that there are three wastewater service providers within the properties area of Sussex County; that on the map presented, Artesian is represented in red, Tidewater Utilities is represented in green and the other colors represent the various tiers Sussex County has assigned to the area; that on the eastern side of Rt. 1 Tidewater has a 12 inch water main which runs across the frontage of a portion of the property; that on the western side of Rt. 1 Artesian has an 8 inch sewer force main which is available to provide water to the property; that another growth area guideline is environmental features; that on the presented map, non-tidal wetlands are represented in blue and represented in green are tidal wetlands; that the property is 625 ft. for from the closest point to tidal wetlands; that there are many other Coastal Areas within Sussex County that extend right to the edge of present wetlands, even at times including the wetlands; that there is a significant distance between the property and the wetlands; that the bulk of the property is located over .5 mile away from the wetlands; that the proposed buffer Ordinance will further protect the wetlands on anything that would occur beyond the proposed Application for the growth area; that another characteristic and intensity of surrounding development, including proposed development; that there is already commercial zoning across the eastern side of Rt. 1 right up to the property; that directly across the property is C-1 areas and other areas which are zoned commercially; that across from the northern parcel there is a recent rezoning of MR and C-3 located at the intersection; that anticipated as part of the rezoning were the future improvements which were planned for the intersection; that what was described in the Ordinances for the rezoning equally apply to the subject properties; that the Application is not for a rezoning but the same characteristics apply regarding the appropriateness of being within a growth area; that in Ordinance 2783, which is the Medium Residential Change of Zone application; that the Ordinance states both central water and central sewer will be available; that the Ordinance states the site is the location of a grade separated interchange or overpass which will be constructed by DelDOT with on

ramps and off ramps; that proposed is one of the first great separated intersections in Sussex County; that the Ordinance states the great separated intersection gives the location an urban character; that the Ordinance states given the properties location adjacent to the interchange MR Zoning is appropriate for the property; that the Ordinance stated the property is adjacent to a property with C-1 Zoning, with other commercially zoned properties across Cave Neck Rd. from the site; that all of the characteristics are the same for the subject properties; that many of the same comments were made in Ordinance 2784 for the C-3 Change of Zone; that the Ordinance states the site has frontage along Rt. 1, at a location that is next to an existing C-1 property with various commercial uses; that this characteristic is identical to what is occurring on the eastern side of Rt. 1; that the Ordinance stated is was across Cave Neck Rd. and other commercially zoned properties and the location is appropriate for the proposed zoning; that a very similar description is given regarding the proposed grade separated interchange and the change it will bring to the property, area and character of the area; that the Coastal Area is appropriate as it has been the historic designation for the properties previously and best reflects the characteristics of the property; that according to Chapter 4 of the Comprehensive Plan the Coastal Area has two primary characteristics; that one characteristic being it is among of the most desirable locations in Sussex County; that the second characteristic is contains ecologically important and sensitive characteristics; that both characteristics are true of the subject properties; that the report from the PLUS office mentioned concern about the permitted uses for the properties; that the same concern was referenced in a number of letters and emails submitted to the Planning & Zoning Office; that this is the significance of the property being in the Coastal Area the environmental characteristics and sensitivities, authorizing the Planning Commission and County Council to ensure those items are appropriately protected; that as indicated for the bulk of the site the sensitive area are at least .5-mile away from the proposed growth area; that within Chapter 4 it mentions the need for the property to be near transportation, shopping center and office parks, located on arterial roads; that the property is located near Rt. 1 which is a major arterial road; that this characteristic was a reason stated for the approval of the previously mentioned Change of Zone; that density was a proposed concern; that within a Coastal Area there is a possibility of an increase to the base density of two units to the acre; that the Coastal Area describes when it is appropriate for the higher densities to occur; that where it is appropriate to occur is similar to the characteristics previously mentioned; that higher densities are appropriate where central water and sewer are provided, when near sufficient commercial uses and employment centers, where it keeps within the character of the area, where it is located along a main road or at or near a major intersection and where these is an adequate level of service; that the site has central water and sewer; that the site is located near many commercial uses and employment centers; that the site keeps with the characteristics of the area, and has many similar characteristics to the nearby approved Change of Zone; that the site is located along a main road and nearby intersection; that one of the basis for the Future Land Use Plan is to direct development to areas which have existing infrastructure or where it can be secured cost effectively; that when you look at the basis and consider the stated guidelines, they weigh heavily in favor for the entire four parcels and first portion of the fifth parcel being designated to the Coastal Area on the Future Land Use Map; that the Applicant request the proposed Ordinance be adopted when sending a recommendation to County Council and the requested designation would return the designation on the Future Land Use Map to the original recommended version from Planning Commission to County Council as part of the Comprehensive Plan update process.

Mr. Hopkins questioned if the site was located in the growth area, prior to the Planning Commission reviewing as part of the Comprehensive Plan update; that he stated the site was located within the Coastal Area when it was recommended to County Council; that there were many meetings held by the Planning & Zoning Commission, as well as County Council; that the public perception after the meetings was the site would remain in the growth area; he questioned if there is an idea of what happened once the recommendation left the Planning & Zoning Commission; that he questioned if there was some same on the Commission for not alerting the land owner of the change; that he stated with many years of being located within a growth zone he finds it strange the designation would go backwards, being removed from the growth area; that the Commission spends a lot of time figuring out where growth should be; that growth should be where there is infrastructure; that there is infrastructure near the site being near Rt. 1 and near the health centers at Milford and Beebe; that he does not understand what happened and why there is a need to spend so much time hashing out something that seems so obvious.

Mr. Hutt stated that when County Council issued its recommended version, the site was shown within the Coastal Area, and regarding the process, it was incredibly disappointing to a property owner, who participated in the process, to be informed of the change, without any chance to impact the change.

The Commission found Mr. Jeff Stone spoke on behalf of the Sussex Alliance for Responsible Growth (SARG), in opposition to the proposed Ordinance; that the Great Marsh and eastern Sussex County quality of life area under attack again; that this attack has profound ramifications far beyond the parcels in question; that in keeping with Mr. Hopkins' comment regarding notifying property owners, the proposal was submitted nine months ago; that there was no notice to many communities nearby and the thousands of residents in the area; that the proposed change was placed on the agenda; that the developers get nine months to work things out but the citizens are given seven day notice by way of an opaque item of a publish agenda; that he feels this is not an advertisement in transparency in government; that he feels Mr. Hutt's comment also follow along with that statement; that he feels there must be a better way of getting these applications done and to get information out; that the proposed request would make a major modification to the County's Comprehensive Plan vision and intent; that within the most recent Comprehensive Plan update, completed in 2018, County Council designated the land and most other properties north of Willow Creek Rd., on the east side of Rt. 1, as low density; that the State designates the area as Level 4 with the State Strategies; that in Investment Level 4 areas, the State's investments and policies should retain the rural landscape, preserve open spaces and farmlands, support farmland related industries and establish defined edges to more concentrated development; that stated is a precise and correct description to the nature of the area; that less than three years into a 10 year plan, the new owners are requesting to change the designation to Coastal; that this designation change would allow much more intense development which would not be limited to residential; that the current low density land use designation within the AR-1 Agricultural Residential Zoning, would permit approximately 484 single-family homes based on the gross acreage; that two residential subdivisions have been approved on the property; that if the proposed change in land use is adopted it could results in potentially 2,900 single and/or multi-family residences based on gross acreage; that it would also potentially permit a wide variety of commercial uses; that this would include retail and car dealers which are heavy commercial; that none of those things are present in the area currently; that the Delaware Office of State Planning has officially stated the position of opposition; that also opposed to the request is the Delaware Department of Natural

Resources and Environmental Control; that the acreage was designated low density for good and sound reason; that it abuts an area of significant tidal wetlands, which is a critical ecological and economic resource; that he is sure the Commission, at the time of the Overbrook Town Center proposal for rezoning, will recall that many, if not all of the same issues and concerns raised then are just as relevant and applicable today; that they provided the rationale for the County Council to deny the application twice and keep the designation as low density development; that the Comprehensive Plan has barely begun to be implemented; that now a major change, impacting thousands of residents and visitors is proposed; that Sussex County has not yet prepared an implementation plan, which is required by the Comprehensive Plan; that he recently uncovered a July 2021 Comprehensive Plan update provided by Planning & Zoning to the State; that this Comprehensive Plan update was not found on the Sussex County website; that this update shows Sussex County is apparently working on no less than 23 Comprehensive Plan Strategies regarding open space, wetlands, waterway protection, well head protection and recharge areas; that these are all issues cited by DNREC in their statement of opposition; that Sussex County's strategy efforts cited have just begun; that the adoption of this proposal would render those strategy efforts irrelevant; that Sussex County has been losing areas designated low density to development at an astonishing rate; that according to the State Planning Office, between 2016 – 2020, 93% of residential units were approved state-wide in Level 4 areas through development applications in Sussex County; that the Comprehensive Plan was prepared; that the preparation costed hundreds to thousands of dollars; that it included significant citizen input; that the Future Land Use section stated one of the goals is to protect critical and natural resources, such as inland bays and others by guarding against overdevelopment and permanently preserving selected lands; that to large measure, the resulting document, unanimously approved by County Council, responded to the concerns of citizens seeking to preserve open space, while allowing low density residential development to happen while keeping with the character of the area; that he questioned how it makes sense to throw away two years of efforts by the Sussex County government and the citizens before serious implementation efforts have begun; that he feels it makes sense to implement the plan and measure the effects on the County before making major changes; that he knows what the proposed change will lead to if approved; that other owners of low density lands will be encouraged to seek different designations which allow more intense development; that the owners and developers will file to rezone properties to allow for high density residential; that one rationale is the site is already adjacent to land already designated as Coastal Area; that this is precisely the reason County Council made the choice they did; that how often through the Comprehensive Plan process did we hear the need to preserve the rural character of Sussex County; that land use designations must begin and end somewhere; that the opportunity to provide additional protection to the Great Marsh, as well as preserving some of the rural character of the County helped County Council make the choice; that the characteristics of a Level 4 area are defined as rural in nature, open space natural areas, agribusiness activities and farm complexes; that all of these uses precisely describe the area; that State Growth Strategies for growth areas include, retain the rural related and farm related industries, establish defined edges to more concentrated development among others; that he questioned what could be more appropriate than a low density area providing a buffer between the Great Marsh, one of the State's most valuable natural areas, and a growth area west of Rt. 1; that clearly County Council sought to preserve the east side of Rt. 1 to balance and establish a defined edge to the anticipated growth on the west side, which is already apparent; that he questioned what the rationale is for changing the Future Land Use Map only three years into the plan; that the Applicant has cited the fact the new great

separate interchange will be constructed over Rt. 1 and Cave Neck Rd.; that the developer states this is the most appropriate area for high density development; that he feels this may be true in New Castle, Montgomery County Maryland, or southeastern Pennsylvania, but not in Sussex County; that the improvements now being performed along Rt. 1, under the Corridor Capacity program are a response to safety, congestion and accident concerns which were caused by inadequate infrastructure that cannot safely handle the volumes of traffic already flowing as well as the anticipated traffic in the future; that the improvements are not for the purpose of new high density development; that DelDOT's plans are based on the Comprehensive Plan; that the Comprehensive Plan designates the east side of Rt. 1 as low density; that there currently is serious capacity and safety issues west of Rt. 1, along Rt 16 and Cave Neck Rd.; that there is no capacity issue east of Rt. 1 currently; that if a low density designation is maintained there will not be; that allowing heavy commercial and high-density housing on the east side will create new and significant capacity issues on both sides; that the traffic generated will overwhelm the millions of dollars the State is investing in improvements; that this will put residents and visitors back into traffic hell; that he questions if it makes sense to create more traffic, before the improvements are even underway; that we do not know if the improvements will relieve any of the current problems; that the public has been disappointed before; that the proposal also stated it will lead to the creation of jobs; that the pandemic caused profound and fundamental change to the nation's economy; that 4,000,000 people quit their jobs nationwide last August; that unemployment in Sussex County is just above 4%; that this is slightly above historic norms; the newspapers Help Wanted sections are overflowing with advertisements; that Sussex County employers are having difficulty recruiting employees; that according to a report from Stateline, which is an initiative of The Pew Charitable Trusts, dated November 12, 2021, stated a record number of job openings and fewer workers to fill the openings, have left 42 states with more available jobs than people looking for work; that Delaware is listed as one of the 42 mentioned states with 1.3 jobs available for every job seeker; the development projects do not create jobs; that the economy and employers create jobs; that the same jobs will be created if the project were located in a more appropriate area of the County; that it is a specious argument which will sacrifice a finite resource to gain jobs; that smart planning allows places to have both; that if the proposal is approved the Commission might as well include all properties on the eastside of Rt. 1, from Willow Creek to Milford; that once one of the properties changes, especially a property as ecologically critical as the subject property, all of the dominos must fall; that he has heard the justification time and time again; that if you give it to him, you must give it to me; that this does not seem apparent in Sussex County, developers have no right to develop anything more than the land use designation and zoning allow; that there is no right to change a land use designation because it does not fit a business model; there is no right to rezoning because the yield of the current zoning does not have enough return; that Sussex County has the sole authority to determine what land use best serves the community at large; that in this case, the decision by County Council responding to the clear desire of the citizens was that the most appropriate use of lands east of Rt. 1 is low density residential and open space; that there is no evidence showing that the decision by County Council to designate the land low density was incorrect, except for the fact it does not provide a developer with a high enough margin; that the developers knew what they were getting when they bought the land; that the developers are depending on the Sussex County government to bail them out; that within the Application documents they admit they dropped the ball, now requesting the County to fix it; that there are already approved subdivisions on the properties; that the fact is they can build hundreds of homes on the property in question



without changing the land use designation or rezoning while still making a profit; that the Comprehensive Plan also permits, in addition to AR-1, business community, marine district and institutional district; that there is no need to change the land use designation to provide for commercial units to serve the residential developments there; that the County recently approved commercial development west of Rt. 1 which would easily serve the areas communities; that to his knowledge the house development has already been approved and met no opposition; that while these options may not generate as much profit as developers would like it is not the County's responsibility to maximize the developers return; that he requests the Commission not repeat the mistakes of the past, creating another Five Points, or duplicate the situation along Rt. 1 near the outlets south of Five Points; that he requested the Commission protect the Great Marsh and the rural character of Sussex County; that one positive which could result from the proposal is to strongly encourage the County, specifically the Planning & Zoning Commission, to engage in a long range quarter planning effort to better determine how to achieve the Comprehensive Plan vision by specifying the specific types of development the County should encourage and where it should be located; that if this is done in cooperation with DelDOT, it would be game changing; that the new Comprehensive Plan gives the County the opportunity to change course from haphazard overdevelopment patterns over the last 10 years to a balance between rational growth which would serve the community and the preservation of the quality of life, history and environment of Sussex County; that we need to take advantage of the opportunity and not cut it off before it begins; that the Commission should give the Comprehensive Plan a chance to be implemented; that the Commission may like the results; that if the Commission begins making changes now, we will never know what is missed; that he states it is a simple choice; that the Commission can take the old road and continue to lose the things that make Sussex County, Sussex County; that the Commission can choose a new path which would enhance the things that make Sussex County special; that he states the decision is in the Planning & Zoning Commission's hands; that Sussex Alliance for Responsible Growth request the Commission choose to preserve the rural character of the county by recommending denial of the Application and he requests the Commission keep the record open for a reasonable time; that there were a lot of people who were surprised by the Ordinance request; that they were notified of the request late last week; that members of the public wanted to have the opportunity to speak and comment but did not have the information available and due to this they request for a reasonable amount of time be set for the record to remain open.

Chairman Wheatley stated he believes most of Delaware's rural area is located within Sussex County; that he feels 93% of residential units were approved state-wide in Level 4 areas through development applications in Sussex County is an impactful statistic; that he questioned what percentage of rural land is located within Sussex County and believes it is a fairly large amount.

Chairman Wheatley questioned Mr. Whitehouse if the current public hearing was advertised the way every other public hearing has been previously advertised.

Mr. Whitehouse stated a notices were published, in advance, in two newspapers within general circulation within the County; that notice was published on the Sussex County website when the Ordinance was introduced in October, and on the County's noticeboard; that this request, prior to being introduced as an Ordinance, went through the PLUS process, which is required to be noticed on the State of Delaware's website; that the only difference being an Ordinance to amend the

Comprehensive Plan is not considered in the same way as a development application; that postcard notifications are not sent out and a site notice not displayed.

Chairman Wheatley questioned when the map was first sent to County Council, if the entire parcel, including the piece extending to the Great Marsh, was located in the Environmentally Sensitive Developing District Overlay Zone (ESDDOZ); that he believes the Commission was trying to avoid zone splitting on parcels; that the way he understands the request is to be a compromise between the original recommendation of the map and the map which was certified by the Governor and the current request is only for the front parcels, not the parcel extending back to the Great Marsh.

Mr. Whitehouse stated he believes the way Planning & Zoning staff had packaged the Application when submitting for the PLUS process had created some confusion; that the PLUS submission did refer to the entirety of the parcels; that to clarify the blue line, shown on the map, is the parcel boundary; that the hatched yellow area on the map is the subject area of the current Application.

Chairman Wheatley questioned who the current owners of the parcels are, as there was a reference to new owners, and questioned if the site was under contract to a developer subject to the outcome of the Application request.

Mr. Hutt stated that Mr. Chapel owned the northern portion of the property; that Mr. Chapel did sell the property to Seaside of Lewes, LLC; that there is another piece of property which has another LLC name; that the southern piece of the property is owned by the Robinson family and there are various heirs and LLC's associated with the subject properties.

The Commission found Mr. David Green spoke in opposition to the Application on behalf of Mr. Keith Steck, Vice President of DELCOG Delaware Coalition For Open Government; that he stated the area is designated low density and should stay as such; that he mentioned concerns with transparency and the method of notification by Sussex County to residents and feels the major change to the Comprehensive Plan should be handled by the State Cabinet Committee, not by Sussex County.

Chairman Wheatley stated the State of Delaware has delegated Land Use authority to Sussex County for the last 80 years and which is the reason Sussex County is involved in the matter.

Ms. Stevenson questioned if Mr. Edgell still presented with the same concerns after learning the Application did not include the entire parcel.

Mr. Edgell stated Mr. Whitehouse had clarified the distinction at the Cabinet Committee meeting in September 2021; that the Cabinet Committee of State Planning issues did receive a similar presentation, at their meeting of September 30, 2021, to what he presented to the Planning & Zoning Commission; that the Cabinet Committee voted unanimously to support the PLUS comments, the position of the State and its agencies; that he feels it is noteworthy to mention Ms. Nicole Majeski, Secretary of Transportation, made the motion to support the States position and comments; that the planned transportation infrastructure was planned based on the current Sussex County Comprehensive Plan and is not anticipating any additional development on the site.

Chairman Wheatley states the public hearing is part of a process; that the process was placed for a reason; that the reason being the Commission may not get the maps correct every time; that is why the process exists to be able to go back to look at things; that it is important to remember the State is

not their enemy in the process; that he has been doing the job for 25 years; that they are currently enjoying the best relationship with the State the County has ever had; that it has been a good thing; that there are nine Comprehensive Plan amendment requests in front of the State currently; that the State only has issues with the two requests subject to the current public hearing; that the State is mostly agreeing with the County; that the County and the State will not always agree; that interests of the County and State do not always coincide; that the idea is to persevere though; that he does feel there are processing issues; that he feels the process issues are with Sussex County based on the way some of the previous processes were done and the way decisions were made; that at the end of the day it is Sussex County's map that is submitted to the State; that is the reason Sussex County becomes the Applicant when submissions are made to the State; that the process may be something the County needs to work out with the State, as the property owner is not as involved in the process as they would like to be and possibly should be; that they are all finding their way through the situation and he feels it has been a good exchange of information.

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

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

In relation to the Ordinance. Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

#### Minutes of the December 9, 2021 Planning & Zoning Commission Meeting

The Commission discussed the Ordinance which had been deferred since November 18, 2021.

Mr. Hopkins moved that the Commission recommend approval of the Ordinance to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for Parcels 235-23.00-2.02 (portion of), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, and 235-23.00-2.01 from a Low Density Area to a Coastal Area based on the record made during the public hearing and for the following reasons:

1. The parcels are currently designated as "Low Density" but were previously designated in the 2008 Comprehensive Plan as "Environmentally Sensitive Development Area" – which is a term that has since been changed to "Coastal Area." When the Planning & Zoning Commission vetted the current Comprehensive Plan, the Commission recommended that these parcels be designated as "Coastal Area", which is a growth area. However, after the final public hearing on the 2018 Future Land Use Map in the Sussex County Comprehensive Plan, County Council removed the parcels from the growth area and designated the parcels as "Low Density"; which was the designation later certified by Governor John Carney in 2019. Returning the subject properties to the Developing Area is consistent with the prior plan and map.
2. This application seeks to convert the front portion of Parcel 235-23.00-2.02 and the entirety of the remaining parcels as Coastal Area. The rear portion of Parcel 235-23.00-2.02 would remain as Low Density.
3. The parcels, with the exception of Parcel 235-23.00-2.02, have frontage along Route 1. Parcel 235-23.00-2.02 is located immediately to the rear of Parcels 235-23.00-2.00 and 235-23.00-2.01.

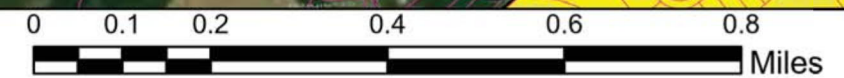
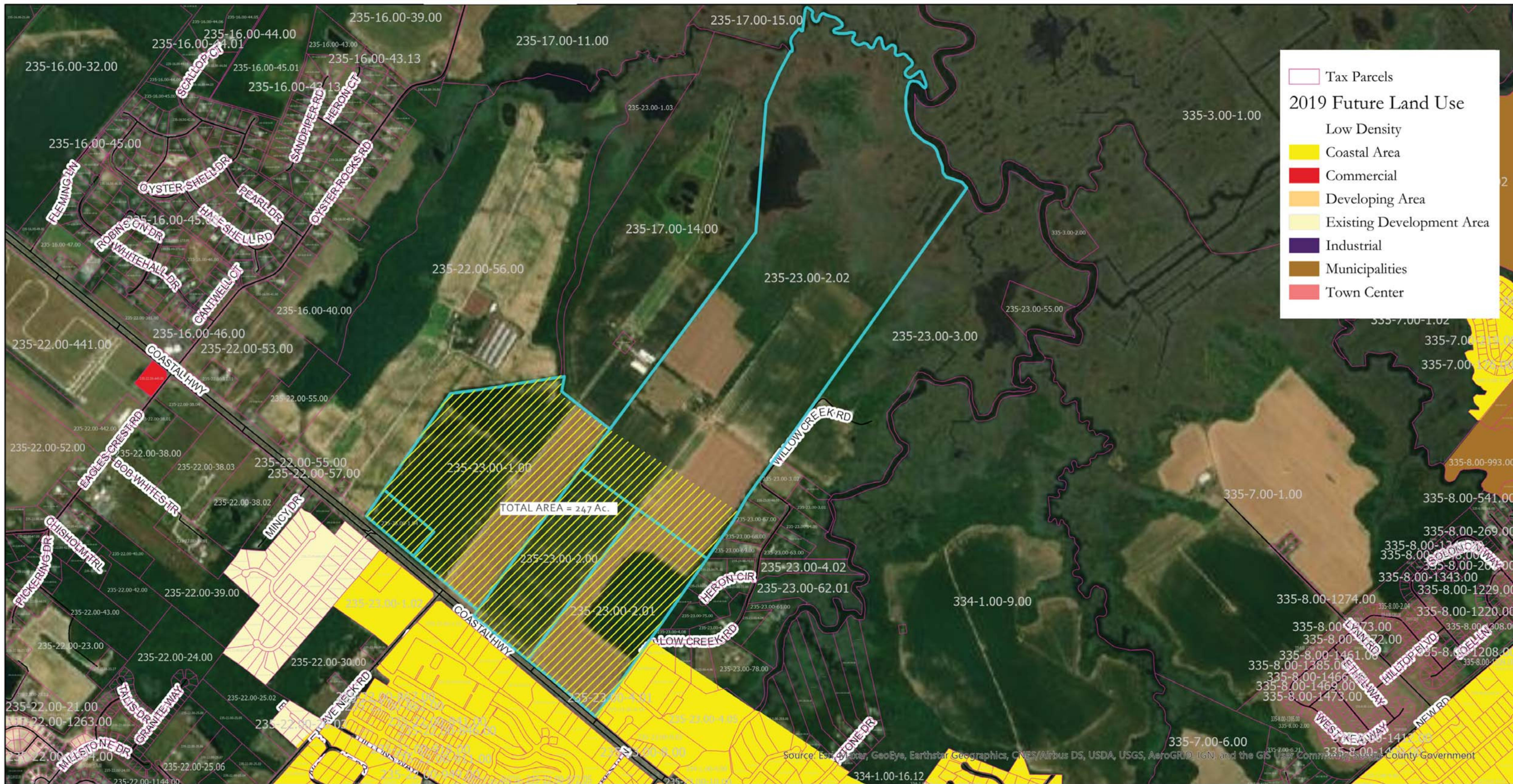
4. These parcels are located nearby a planned grade separated intersection (or overpass) at the Route 1 / Cave Neck Road intersection that is being constructed by DelDOT with on-ramps and off-ramps.
5. There are multiple public water service providers in the area.
6. While opposition noted concerns about the proximity to tidal wetlands, the nearest tidal wetlands are 625 feet away and most tidal wetlands are approximately a half mile away from the areas proposed to be designated as Coastal Area.
7. The parcels are located adjacent to other lands designated as Coastal Area on the Future Land Use Map. Other nearby lands are also zoned C-1, C-3, and MR.
8. Lands to the south and west are designated as Coastal Area on the Future Land Use Map.
9. This proposed Map amendment satisfies the criteria set forth in Section 4.4.2.1 of the Comprehensive Plan for a Growth Area, since: (a) the properties are near the presence of existing public sewer and public water service; (b) the properties are within the County's Tier 2 for sewer planning; (c) the properties are near the Route 1 corridor; (d) the properties are near the planned overpass for the Cave Neck Road / Route 1 intersection; (e) the Map change will enable development that is in character with what exists or may occur in the area; (f) the subject properties do not contain any tidal wetlands; and (g) the Map change will not adversely impact any major preserved lands.
10. By the terms of the Delaware Strategies for State Policies and Spending document, all land use authority remains vested with Sussex County. This is reiterated within the current Sussex County Comprehensive Plan. While the County certainly takes into account the State's recommendations with regard to a Map amendment, the circumstances that have been presented with this application justify a revision to the Map.
11. This recommendation is consistent with the Commission's prior recommendation for this Future Land Use Map as part of the process to adopt the current Comprehensive Plan. That prior recommendation identified these properties as being within the Developing Areas.
12. This revision to the Future Land Use Map will not adversely affect neighboring properties, area roadways, or future land-use planning in the area.
13. Any proposed use under the Developing Area designation will still require public hearings and site plan approvals. This will enable the County, with ample public participation, to determine whether any specific use or type of development is appropriate here.
14. This revision of the Future Land Use Map is appropriate given the particular circumstances involved at this location. When several factors like these exist, the consideration and approval of an amendment to the Future Land Use Map is appropriate.

Motion by Mr. Hopkins, seconded by Mr. Mears to recommend approval of the Ordinance. By roll call vote: Mr. Hopkins – yea, Mr. Mears – yea, Ms. Wingate – nay, Ms. Stevenson - nay, Mr. Wheatley - yea. Motion carried 3-2

Exhibit A : Potential  
Comprehensive Plan Amendment



# Sussex County



### Council Grant Form

<b>Legal Name of Agency/Organization</b>	Kim and Evans Family Foundation, Inc.
<b>Project Name</b>	Sussex SuperHero 5K
<b>Federal Tax ID</b>	82-3857830
<b>Non-Profit</b>	Yes
<b>Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)</b>	No
<b>Organization's Mission</b>	Our mission is to the better the lives of disadvantaged people and animals in Sussex County and beyond.
<b>Address</b>	123 Village Drive
<b>Address 2</b>	
<b>City</b>	Seaford
<b>State</b>	DE
<b>Zip Code</b>	19973
<b>Contact Person</b>	Dr. Joseph Kim
<b>Contact Title</b>	
<b>Contact Phone Number</b>	3026297166

<b>Contact Email Address</b>	<a href="mailto:kimandevansff@gmail.com">kimandevansff@gmail.com</a>
<b>Total Funding Request</b>	250
<b>Has your organization received other grant funds from Sussex County Government in the last year?</b>	Yes
<b>If YES, how much was received in the last 12 months?</b>	500
<b>Are you seeking other sources of funding other than Sussex County Council?</b>	Yes
<b>If YES, approximately what percentage of the project's funding does the Council grant represent?</b>	5
<b>Program Category (choose all that apply)</b>	Health and Human Services
<b>Program Category Other</b>	
<b>Primary Beneficiary Category</b>	Low to Moderate Income

**Beneficiary Category****Other****Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program** 100**Scope**

Our charitable foundation is excited to host our first Sussex SuperHero 5K Run/Walk scheduled for March 5, 2022 at the Seaford Senior Center/Hooper's Landing, Seaford, Delaware. Money raised will provide much-needed supplies, footwear, and food to local in-need elementary students and homeless veterans. In addition, we will be donating a portion of the proceeds to TidalHealth Nanticoke Indigent Drug Fund. The fund helps hospitalized patients afford their discharge medications. This event is dedicated to Physician Hall of Fame Inductee, Dr. Joseph Olekszyk, a devoted physician to the hospital and community. More information can be found on our website, [www.kimandevansff.org](http://www.kimandevansff.org).

**Religious Components****Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)** 5,000.00**Description** Operating**Amount** 2,500.00



<b>Description</b>	Marketing
<b>Amount</b>	500.00
<b>Description</b>	
<b>Amount</b>	
<b>Description</b>	
<b>Amount</b>	
<b>Description</b>	
<b>Amount</b>	
<b>Description</b>	
<b>Amount</b>	
<b>Description</b>	
<b>Amount</b>	
<b>TOTAL EXPENDITURES</b>	3,000.00
<b>TOTAL DEFICIT FOR PROJECT OR ORGANIZATION</b>	2,000.00
<b>Name of Organization</b>	Kim and Evans Family Foundation, Inc.

**Applicant/Authorized Official** Joseph Hill Kim

**Date** 01/07/2022

**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](mailto:info@d3forms.com) with any questions.

Vincent - OK

**Council Grant Form**

**Legal Name of Agency/Organization** Tether Foundation ✓

**Project Name** Camp Abilities Delaware

**Federal Tax ID** 84-3603778 ✓

**Non-Profit** Yes

**Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)**

No

**Organization's Mission**

Camp Abilities Delaware (CADE) is an educational sports camp for children ages 8-17 who are blind or have low vision located in northern Delaware. CADE is an overnight camp experience that introduces children to a variety of sports, including cross-country running, field events, golf, 5-a-side, soccer, team building, lacrosse, beep kickball, rugby, football, boating, and dance. The purpose of the camp is to empower children to be physically active, improve their overall health and wellness, encourage them to make food choices that support an active lifestyle, and develop their confidence and self-esteem through sport and physical activity. Camp is offered to athletes free of charge in order to provide services to the broadest range of participants.

**Address** 424 Roseanna Ave

**Address 2**

**City** Wilmington

<b>State</b>	DE
<b>Zip Code</b>	19803
<b>Contact Person</b>	Shawn Musgrove
<b>Contact Title</b>	Board of Director
<b>Contact Phone Number</b>	3022450978
<b>Contact Email Address</b>	<a href="mailto:brailletcher@comcast.net">brailletcher@comcast.net</a>
<b>Total Funding Request</b>	6000
<b>Has your organization received other grant funds from Sussex County Government in the last year?</b>	No
<b>If YES, how much was received in the last 12 months?</b>	N/A
<b>Are you seeking other sources of funding other than Sussex County Council?</b>	Yes
<b>If YES, approximately what percentage of the project's funding does the Council grant represent?</b>	10

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

Educational, Health and Human Services

**Program Category**  
Other

**Primary Beneficiary**  
**Category**

Disability & Special Needs

**Beneficiary Category**  
Other

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

5

**Scope**

Camp Abilities Delaware (CADE) is an educational sports camp for children ages 7-17 who are blind or have low vision located in northern Delaware. CADE is an overnight camp experience that introduces children to a variety of sports, including cross-country running, field events, golf, 5-a-side, soccer, team building, lacrosse, beep kickball, rugby, football, boating, and dance. The purpose of the camp is to empower children to be physically active, improve their overall health and wellness, encourage them to make food choices that support an active lifestyle, and develop their confidence and self-esteem through sport and physical activity. Camp is offered to athletes free of charge in order to provide services to the broadest range of participants in Delaware, Pennsylvania, Maryland, and New Jersey. Camp is entirely funded from grants and private donations. Since children receive 1:1 instruction throughout camp, costs of the program include room & board for sufficient staffing in addition to costs per child. 1:1 coach allows for appropriate

modifications to sport, as well as increased safety and empowerment opportunities. Camp also serves as an educational training program for college students studying physical education, PT, OT, and special education, so university students can learn to better serve their blind and visually impaired students in the future. Additionally, disability sport settings have the potential to develop a sense of community in disability identity, something many children with low-incidence disabilities lack. Camp Abilities Delaware is often the first time children meet other people with the same visual impairment as them. CADE strives to create a sense of pride in blind identity that can then be carried over to the rest of life. An overnight program is essential to fostering self-advocacy and daily living skills for our participants. Overnight programming provides increased opportunities for independence and increases social skills for children with visual impairments who often do not get to meet other kids like them. All funds will go to providing accessible housing and healthy food for participants. Camp Abilities programs foster self-determination skills in blind youth.

**Religious Components**

n/a

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

8,732.00

**Description**

Insurance

**Amount**

2,175.00

<b>Description</b>	Housing
<b>Amount</b>	10,070.00
<b>Description</b>	Meals
<b>Amount</b>	16,875.00
<b>Description</b>	Background Checks
<b>Amount</b>	2,600.00
<b>Description</b>	Facilities
<b>Amount</b>	5,950.00
<b>Description</b>	Salary
<b>Amount</b>	7,750.00
<b>Description</b>	Equipment
<b>Amount</b>	700.00
<b>Description</b>	Clothing
<b>Amount</b>	1,000.00
<b>TOTAL EXPENDITURES</b>	47,120.00
<b>TOTAL DEFICIT FOR PROJECT OR ORGANIZATION</b>	-38,388.00
<b>Name of Organization</b>	Tether Foundation

**Applicant/Authorized  
Official** Shawn Musgrove

**Date** 12/31/2021

**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](mailto:info@d3forms.com) with any questions.



To Be Introduced: 1/25/22

Council District 1: Mr. Vincent  
Tax I.D. No. 531-12.00-110.00  
911 Address: 25981 Butler Branch Road, Seaford

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTOMOTIVE REPAIR BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 0.75 ACRES, MORE OR LESS**

WHEREAS, on the 1<sup>st</sup> of November 2021, a conditional use application, denominated Conditional Use No. 2322 was filed on behalf of Spencer B. Yoder; 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. 2322 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 115, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2322 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Seaford Hundred, Sussex County, Delaware, and lying on the north side of Butler Branch Road (S.C.R. 542) approximately 924 feet east of Woodpecker Road (S.C.R. 80), and being more particularly described in the attached legal description prepared by The Smith Firm, LLC, containing 0.75 acres, more or less.

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

To Be Introduced: 1/25/22

Council District 3: Mr. Schaeffer  
Tax I.D. No. 235-21.00-48.00  
911 Address: 26182 Cave Neck Road, Milton

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOURIST HOME TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.831 ACRES, MORE OR LESS**

WHEREAS, on the 24<sup>th</sup> day of April 2021, a conditional use application, denominated Conditional Use No. 2285 was filed on behalf of Ashley DiMichele; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, 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. 2285 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. 2285 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 BroadKill Hundred, Sussex County, Delaware, and lying on the south side of Cave Neck Road (S.C.R. 88), approximately 0.43 mile west of Diamond Farm Road (S.C.R. 257), and being more particularly described in the attached deed prepared by Bonnie M. Benson P.A., said parcel containing 2.831 acres, more or less.

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

To Be Introduced: 1/25/22

Council District 3: Mr. Schaeffer  
Tax I.D. No. 334-5.00-196.00  
911 Address: 17677 Stingey Lane, Lewes

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A KITCHEN AND BATHROOM SHOWROOM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.248 ACRES, MORE OR LESS**

WHEREAS, on the 28<sup>th</sup> day of October 2021, a conditional use application, denominated Conditional Use No. 2321 was filed on behalf of Coastal Properties, 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. 2321 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. 2321 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on northeast side of Beaver Dam Road (Rt. 23), approximately 0.16 mile southwest of the intersection of Church Street and Salt Marsh Boulevard and being more particularly described in the attached legal description prepared by Morris, Hardwick & Schneider, LLC, said parcel containing 0.248 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.

Introduced 1/25/22

Council District 3: Mr. Schaeffer  
Tax I.D. No. 135-11.00-65.00  
911 Address: N/A

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

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 9.72 ACRES, MORE OR LESS**

WHEREAS, on the 20<sup>th</sup> day of October 2021, a zoning application, denominated Change of Zone No. 1959 was filed on behalf of Charles E. Turner, Jr.; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1959 be \_\_\_\_\_; and

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

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

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Georgetown Hundred, Sussex County, Delaware, and lying on the northside of Lewes Georgetown (Rt. 9) approximately 620 feet northeast of Gravel Hill Road (Rt. 30) and being more particularly described in the attached legal description prepared by Richard F. Rago, Esquire, said parcel containing 9.72 ac., more or less.

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

To Be Introduced 1/25/22

Council District 3: Mr. Schaeffer  
Tax I.D. No: 335-8.00-37.00  
911 Address: 1005 Kings Highway, Lewes, DE

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PORTION OF A PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.23 ACRES, MORE OR LESS**

WHEREAS, on the 27<sup>th</sup> day of October 2021, a zoning application, denominated Change of Zone No. 1962 was filed on behalf of Jeff-Kat, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1962 be \_\_\_\_\_; and

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

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

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of AR-1 Agricultural Residential District and adding in lieu thereof the designation of C-3 Heavy Commercial District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the east side of Kings Highway (Rt. 23), approximately 0.17-miles north of the intersection of Kings Highway and Gills Neck Road (S.C.R. 267), being more particularly described in the attached legal description prepared by Davis Bowen & Friedel, Inc. said parcel containing 1.23 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: January 21, 2022

RE: County Council Report for CU 2277 filed on behalf of Avalon Woods Owners Association, Inc.

---

The Planning and Zoning Department received an application (CU 2277 filed on behalf of Avalon Woods Owners Association, Inc.) for a Conditional Use for parcel 234-15.00-81.00 to designate Lot 39, Block A within the existing Avalon Woods Subdivision as open space and to allow for a shed amenity. The property is within the Agricultural Residential (AR-1) Zoning District and is located at 27826 Avalon Drive, Georgetown. The parcel size is 0.42 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on December 16, 2021. At the meeting of January 13, 2022, the Planning & Zoning Commission recommended approval of the application for the 6 reasons and subject to the 5 conditions of approval outlined within the motion (copied below).

Below are the draft minutes from the Planning & Zoning Commission meeting of December 16, 2021 and the draft minutes of the January 13, 2022 meeting.

Draft Minutes of the December 16, 2021 Planning & Zoning Commission Meeting

**C/U 2277 Avalon Woods Owners Association, Inc.**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District and a GR General Residential District to designate Lot 39, Block A within the existing Avalon Woods Subdivision as open space and to allow for a shed amenity to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 0.42 acres, more or less.** The property is lying on the southwest side of Avalon Drive within the existing Avalon Woods Subdivision, approximately 0.25 mile south of Avalon Road (S.C.R. 302A). 911 Address: 27826 Avalon Drive, Georgetown. Tax Parcel: 234-15.00-81.00.



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

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's survey, a copy of the Service Level Evaluation Response from DelDOT, a copy of the Applicant's exhibit booklet, a copy of the Notice of Violation (NOV) that was served on the Applicant, and 70 letters in support of and none in opposition to the Application and zero mail returns.

The Commission found that Ms. Mackenzie Peet, Esq. was present on behalf of the Applicant, Avalon Woods Owners Association, Inc. and also present are Gary Williams and Glenn Wilkerson; that the Application this evening is to pursue a Conditional Use in an AR-1 and a General Residential (GR) zoning district to designate Lot 39A within the existing Avalon Woods Community as Open Area to allow for a shed amenity to be located on the property on the southwest side of Avalon Drive; that the lot has always been used as Open Area and has one of the two pump houses on this lot; that a shed was placed on the lot and used for HOA meetings; that the HOA received an NOV in October 2019 for placing a shed on a lot without the presence of main dwelling; that the shed was placed on the lot for storage and for a meeting place for the HOA's Board; that the shed will no longer serve as a meeting place; that the Applicant is seeking to designate this lot as Open Space and allow for the shed to remain to serve as storage space for Association documents and other items such as tables and chairs; that this is a small community with no clubhouse or other amenities; that following the receipt of the NOV the Applicant met with a Planner from the P&Z office and were advised that there were two options, one was to remove the shed and the second was to seek an alteration to the Communities record plat which would have required the approval of 51% of the property owners in the Community; that there was one other option and that is the Conditional Use Application before the Commission today; that the HOA Board did attempt to get 51% approval from the lot owners to seek an alteration to the plat; that the Board thought they had 51% in approval but then discovered that they had referenced the wrong lot number on the notice to homeowners; that it was discovered that this lot could not support a main dwelling because of the location of the pump house; that there is one permit that references a pump house and a shed but that she believes that it is all part of the same pump house; that there are four lots which include the subject property that are owned by the HOA; that the plat shows that there are 162 buildable lots but in fact, there is only 158-160 buildable lots in this community; that the plans were prepared in 1973 and are different from plans submitted today; that Mr. Whitehouse advised the Applicant that a Conditional Use may be appropriate for this lot and an application was submitted in March 2021; that it will not be treated as Open Space as defined in the Code as that would not allow the pump house in an area designated for Open Space but it will be described as Open Area to support the shed amenity; that the shed is 12 ft. by 20 ft. and will be used as an amenity by the HOA to serve as storage; that only the Board of Directors will have access to this shed and only between the hours of 10:00 am – 7:00 pm daily; that there was a sign on the lot which has been removed; that the shed meets the setback requirements; that there are over 70 signatures in support of the shed remaining on this property; and that this use will not adversely affect to surrounding properties.

Mr. Whitehouse stated that a complaint was submitted to the Constable's Office.

The Commission found that Mr. Warren Jackson spoke in favor of the Application; that he is the vice-president of the HOA and that they will be good stewards of the property.

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/U 2277 Avalon Woods Owners Association, Inc. Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

Draft Minutes of the January 13, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since December 16, 2022.

Ms. Stevenson moved that the Commission recommend approval of C/U 2277 for Avalon Woods for an accessory building in the form of a shed to be located and used by the development's HOA within the development's Open Space, based upon the record made at the Public Hearing and for the following reasons:

1. The use is an existing shed located within a portion of the Open Space of the Avalon Woods subdivision. The Avalon Woods Homeowner's Association intends to use the shed for the storage of the Association's records and other items.
2. This is a very small use that will not adversely impact traffic or area roadways or any neighboring properties within the development.
3. The use will be a benefit to the Avalon Woods Homeowner's Association and the community's residents by providing a convenient and secure location for storing the HOA's records.
4. The use will not require any water or sewer service.
5. No parties appeared in opposition to this application.
6. Ordinarily, the Commission is reluctant to allow a conditional use within a subdivision. However, this is a unique situation because the Applicant is the subdivision's HOA, and the use is for the benefit of the HOA and the residents of the subdivision.
7. This recommendation is subject to the following conditions:
  - A. The site shall be located within a portion of the Open Area of the Avalon Woods Subdivision.
  - B. The use shall be limited to the existing shed, which is approximately 12 feet by 20 feet in size. This shed shall only be used for the storage of Homeowner's Association documents and other items. The shed shall not be used for meetings of any kind.
  - C. The shed shall be kept in a neat and orderly appearance.
  - D. The failure to comply with these conditions of approval may be grounds for termination of this Conditional Use.
  - E. The Final Site Plan shall be subject to review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/U 2277 Avalon Woods Owners Association, Inc. for the reasons and conditions stated in the motion. Motion carried 5 – 0.



**PLANNING & ZONING COMMISSION**

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



**Sussex County**

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

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date: December 16<sup>th</sup>, 2021

**Application:** CU 2277 Avalon Woods Owners Association, Inc.

**Applicant:** Avalon Woods Owners Association, Inc. c/o Gary Williams, President  
28706 Avalon Drive  
Georgetown, DE 19947

**Owner:** Avalon Woods Owners Association, Inc.  
28706 Avalon Drive  
Georgetown, DE 19947

**Site Location:** 28706 Avalon Drive – the property is located on the southwest side of Avalon Drive within the existing Avalon Woods Subdivision, approximately 0.25 mile south of Avalon Road (S.C.R. 302A).

**Current Zoning:** Agricultural Residential (AR-1) Zoning District & General Residential (GR) Zoning District (split-zoned)

**Proposed Use:** To designate Lot 39, Block A within the existing Avalon Woods Subdivision as Open Space and to allow for a shed amenity

**Comprehensive Land Use Plan Reference:** Existing Development Area & Low-Density Area

**Councilmanic District:** Mr. Schaeffer

**School District:** Indian River School District

**Fire District:** Millsboro Fire Department

**Sewer:** N/A

**Water:** N/A

**Site Area:** 0.42 acres +/-

**Tax Map ID.:** 234-15.00-81.00





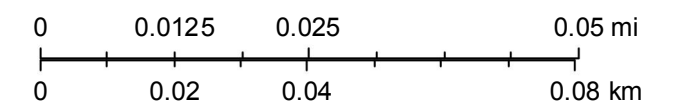
# Sussex County



<b>PIN:</b>	234-15.00-81.00
<b>Owner Name</b>	AVALON WOODS OWNERS ASSOCIATION INC
<b>Book</b>	2474
<b>Mailing Address</b>	28076 AVALON DR
<b>City</b>	GEORGETOWN
<b>State</b>	DE
<b>Description</b>	AVALON PARK
<b>Description 2</b>	LOT 39
<b>Description 3</b>	N/A
<b>Land Code</b>	

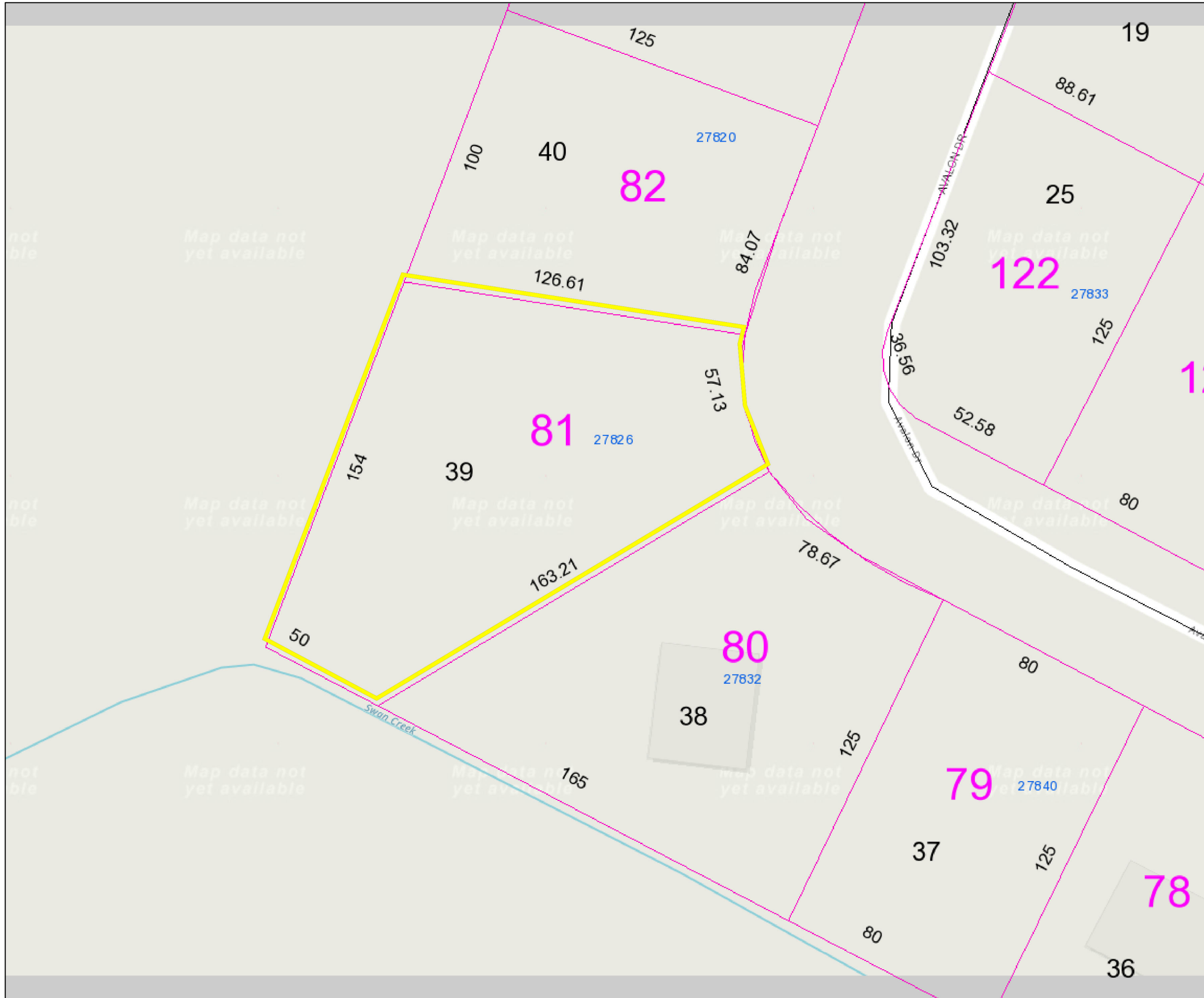
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- Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries

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# Sussex County



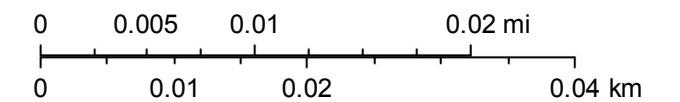
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<b>Owner Name</b>	AVALON WOODS OWNERS ASSOCIATION INC
<b>Book</b>	2474
<b>Mailing Address</b>	28076 AVALON DR
<b>City</b>	GEORGETOWN
<b>State</b>	DE
<b>Description</b>	AVALON PARK
<b>Description 2</b>	LOT 39
<b>Description 3</b>	N/A
<b>Land Code</b>	

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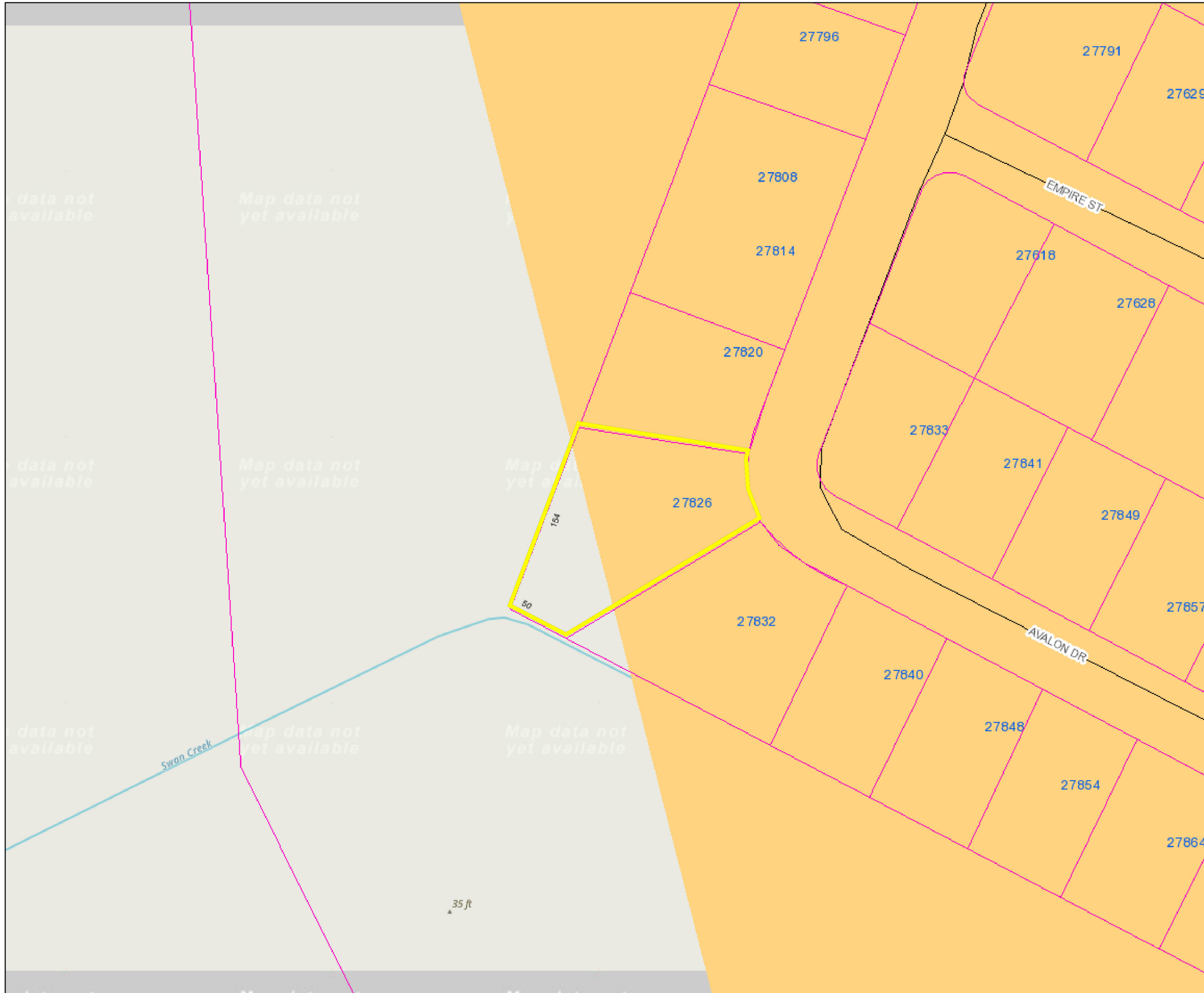
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  - Tax Parcels
  - 911 Address
  - Streets
  - County Boundaries

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# Sussex County

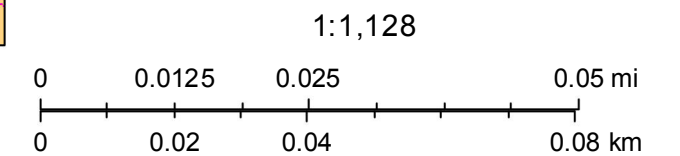


<b>PIN:</b>	234-15.00-81.00
<b>Owner Name</b>	AVALON WOODS OWNERS ASSOCIATION INC
<b>Book</b>	2474
<b>Mailing Address</b>	28076 AVALON DR
<b>City</b>	GEORGETOWN
<b>State</b>	DE
<b>Description</b>	AVALON PARK
<b>Description 2</b>	LOT 39
<b>Description 3</b>	N/A
<b>Land Code</b>	

- polygonLayer**

  - Override 1
- polygonLayer**

  - Override 1
- Tax Parcels
- 911 Address
- Streets



**Introduced 11/30/21**

**Council District 3 – Schaeffer  
Tax I.D. No. 234-15.00-81.00  
911 Address: 27826 Avalon Drive, Georgetown**

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

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR GENERAL RESIDENTIAL DISTRICT TO DESIGNATE LOT 39, BLOCK A, WITHIN THE EXISTING AVALON WOODS SUBDIVISION AS OPEN SPACE AND TO ALLOW FOR A SHED AMENITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.42 ACRES, MORE OR LESS.**

**WHEREAS, on the 24<sup>th</sup> of March 2021, a conditional use application, denominated Conditional Use No. 2277 was filed on behalf of Avalon Woods Owners Association, Inc.; 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. 2277 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 115, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2277 as it applies to the property hereinafter described.**

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

**ALL that certain tract, piece, or parcel of land, lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on the southwest side of Avalon Drive within the existing Avalon Woods Subdivision, approximately 0.25 mile south of Avalon Road (S.C.R. 302A), and being more particularly described in the attached legal description prepared by Mike S. Cotton, P.E., containing 0.42 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**

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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: January 21, 2022

RE: County Council Report for CZ 1947 filed on behalf of Kenneth P. Adams

---

The Planning and Zoning Department received an application (CZ 1947 on behalf of Kenneth P. Adams) for a Change of Zone of parcel 133-6.00-50.00 and p/o 50.02) from Agricultural Residential Zoning District (AR-1) and General Commercial (C-1) Zoning District to a Heavy Commercial District (C-3). The parcel is located on the southwest side of DuPont Boulevard (Rt. 113) approximately 351 feet northwest of Governor Stockley Road (SCR 432). The change of zone is for a 4.33 acres and 0.08 Acres, more or less.

The Planning and Zoning Commission held a public hearing on December 16, 2021. At the meeting of January 13, 2022, the Commission recommended approval of the application for the 9 reasons outlined within the motion (included below).

Below are the draft minutes from the Planning & Zoning Commission meeting of December 16, 2021 and the draft minutes of the Planning & Zoning Commission meeting of January 13, 2022.

Minutes of the December 16, 2021 Planning & Zoning Commission Meeting

### C/Z 1947 Kenneth P. Adams

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a C-1 General Commercial District and AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for certain parcels of land lying and being in Dagsboro Hundred, Sussex County, containing 4.33 acres and 0.08 acre, more or less.** The property is lying on the southwest side of DuPont Boulevard (Route 113) approximately 351 feet northwest of Governor Stockley Road (S.C.R. 432). 911 Addresses: 25116, 25076 & 25136 DuPont Boulevard, Georgetown. Tax Parcels: 133-6.00-50.00 & p/o 50.02.



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

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's rezoning plan, a copy of the Applicant's exhibit book, a copy of the Service Level Evaluation Response from DelDOT, a copy of the Staff Analysis, a copy of comments from the Sussex County Engineering Department Utility Planning Division, and no correspondence in support of or in opposition to the Application and one mail return.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Mr. Kenneth Adams; that also present are Mr. Ken Adams and Mr. Mark Davidson, Principal Land Planner with Pennoni; that there is a small piece of Parcel 50.02 which is included in the Application and is 8/10 of one acre; that the balance of the property which is 4.33 acres is to the rear of parcel 50; that the zoning line is 500 ft. back from Route 113; that all of the area south of the zoning line be changed from AR-1 to Heavy Commercial District (C-3); that there are no improvements on the portion of parcel 50.02; that there is a drive aisle from the runway to the Melvin Joseph building; that parcel 50 has several buildings and the private runway which is no longer being used; that there is other C-1 zoning in this area and a large parcel across Governor Stockley Road which is designated as Medium Commercial District (C-2); that in addition to the commercially zoned properties there are a number of Conditional Use permits in this area which are shown in the exhibit booklet; that Chapter 4 of the Comprehensive Plan states that the goal is to encourage tourism and other responsible commercial and industrial job providers to locate and invest in the County; that this Application provides for the County to provide for those opportunities; that when businesses are looking for locations, they are looking for property that is situated on highways and major routes on intersections; that this property fronts onto two roads; that the Commercial Area in the Comprehensive Plan is described as including concentrations of retail and service uses mainly located on Arterial Roads and Highways; that it also states that it includes commercial corridors, shopping centers, and other medium and large commercial vicinities geared toward vehicular traffic; that this site would also be appropriate to locate other medium and larger scale commercial uses not primarily targeted to the immediate adjacent residential areas; that these more intense uses should be located along main road or near major intersections; that this property qualifies; that the purpose of the C-3 zoning is intended for larger scale auto oriented businesses along major arterial roads that serve local and regional residents in addition to the traveling public; that C-3 was chosen as it best matches the existing C-1 district to the front of the site; that the property meets the bulk area requirements of the County Code; that there are no wetlands located on the property and the property is located in flood zone X; that the site has well-drained soils which will be suitable for on-site waste water disposal systems ; that the property is located in a fair and good ground water recharge area; that there was no Traffic Impact Study (TIS) as that will be based on the end use for this property; that a slide showing all the businesses in this area has been included in the exhibit booklet; that this is a busy commercial corridor of Route 113; and that for all these reasons Mr. Adams requests that the Commission recommend approval of the Change of Zone to the County Council.

The Commission found that Mr. Ken Adams spoke in favor of his Application and stated that there is interest in this property.

Mr. Hutt submitted proposed findings of fact.

Mr. Hopkins stated that this is an ideal location for this zoning designation.

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 1947 Kenneth P. Adams Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action for further consideration. Motion carried 5-0.

Minutes of the January 13, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since December 16, 2022.

Mr. Hopkins moved that the Commission recommend approval of C/Z 1947 for Kenneth P. Adams for a change in zone from AR-1 to C-3 “Heavy Commercial” based upon the record made during the public hearing and for the following reasons:

1. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices, and vehicle service stations.
2. The site is adjacent to C-1 property that is currently used by the Applicant’s company for its construction, site work, and paving operations.
3. The property is generally located at the corner of Route 113 and Governor Stockley Road. The land on the opposite side of Governor Stockley Road is zoned C-1 and C-2. This is an appropriate location for an expansion of the Applicant’s commercial zoning by adding additional C-3 land to the existing C-1 Zoning.
4. This location currently has several accessory buildings on the site, including a former airplane hangar. These buildings will be incorporated into the Applicant’s existing operations at the site.
5. As stated by the Applicant, there will continue to be interconnectivity between this land and the existing C-1 land that is next to it.
6. The site will be served by central water and sewer.
7. The site is in the Commercial Area according to the Sussex County Land Use Plan. C-3 Zoning is appropriate in this Area according to the Plan.
8. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to recommend approval for C/Z 1947 Kenneth P. Adams for the reasons stated in the motion. Motion carried 5-0.



**PLANNING & ZONING COMMISSION**

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



**Sussex County**

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JAMIE WHITEHOUSE, AICP, MRTPI  
DIRECTOR OF PLANNING & ZONING

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date: December 16<sup>th</sup>, 2021

Application: CZ 1947 Kenneth P. Adams

Applicant: Mr. Kenneth P. Adams  
25136 DuPont Boulevard  
Georgetown, DE 19947

Owner: Citation 49 Farms, LLC, Joe Ann Adams, Kenneth & Tracy Adams,  
Melvin L. Joseph Jr. & Virginia Kauffman, Trustee p/o (50.00) &  
Melvin L. Joseph Construction Co. Inc. p/o (50.02)

Site Location: 25116 Dupont Boulevard, Georgetown. The property is lying on the  
southwest side of DuPont Boulevard (Route 113), approximately 351  
feet northwest of Governor Stockley Road (S.C.R. 432).

Current Zoning: Agricultural Residential (AR-1) Zoning District & General Commercial  
(C-1) Zoning District

Proposed Zoning: Rezoning AR-1 portion to Heavy Commercial (C-3) Zoning District

Comprehensive Land  
Use Plan Reference: Commercial Area

Councilmanic  
District: Ms. Green

School District: Indian River School District

Fire District: Georgetown Fire Department

Sewer: Private (On-Site Septic)

Water: Private (On-Site Well)

Site Area: 4.41 acres +/-

Tax Map ID.: 133-6.00-50.00 & part of 50.02



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PLANNING & ZONING DIRECTOR  
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jamie.whitehouse@sussexcountyde.gov



**Sussex County**

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## Memorandum

To: Sussex County Planning Commission Members  
From: Lauren DeVore, Planner III  
CC: Vince Robertson, Assistant County Attorney, and applicant  
Date: December 9, 2021  
RE: Staff Analysis for CZ 1947 Kenneth P. Adams

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1947 Kenneth P. Adams to be reviewed during the December 16, 2021, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcels 133-6.00-50.00 and part of 133-6.00-50.02 to allow for a change of zone from a General Commercial (C-1) Zoning District and Agricultural Residential (AR-1) Zoning District to a Heavy Commercial (C-3) District. Specifically, the Applicant wishes to rezone the portion of these properties that are currently zoned Agricultural Residential (AR-1) to Heavy Commercial (C-3). The properties are lying on the southwest side of DuPont Boulevard (Route 113), approximately 351 feet northwest of Governor Stockley Road (S.C.R. 432) at 25116, 25076 and 25136 DuPont Boulevard in Georgetown. The parcels to be rezoned contain 4.33 acres and 0.08 acres +/-.

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 a land use designation of "Commercial Area." The properties on the opposite side of DuPont Boulevard (Route 113) also contain the Future Land Use Designation of "Commercial Area."

As outlined within the 2018 Sussex County Comprehensive Plan, 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.

The property is zoned General Commercial (C-1) Zoning District and Agricultural Residential (AR-1) Zoning District. Adjacent parcels to the north and west are also zoned Agricultural Residential (AR-1) Zoning District. The properties to the south on the opposite side of Governor Stockley Road (S.C.R. 432) are zoned General Commercial (C-1) and Medium Commercial (C-2) District.



To the east along DuPont Boulevard (Route 113), there are several properties that are zoned General Commercial (C-1) with the balance of the surrounding area being zoned Agricultural Residential (AR-1).

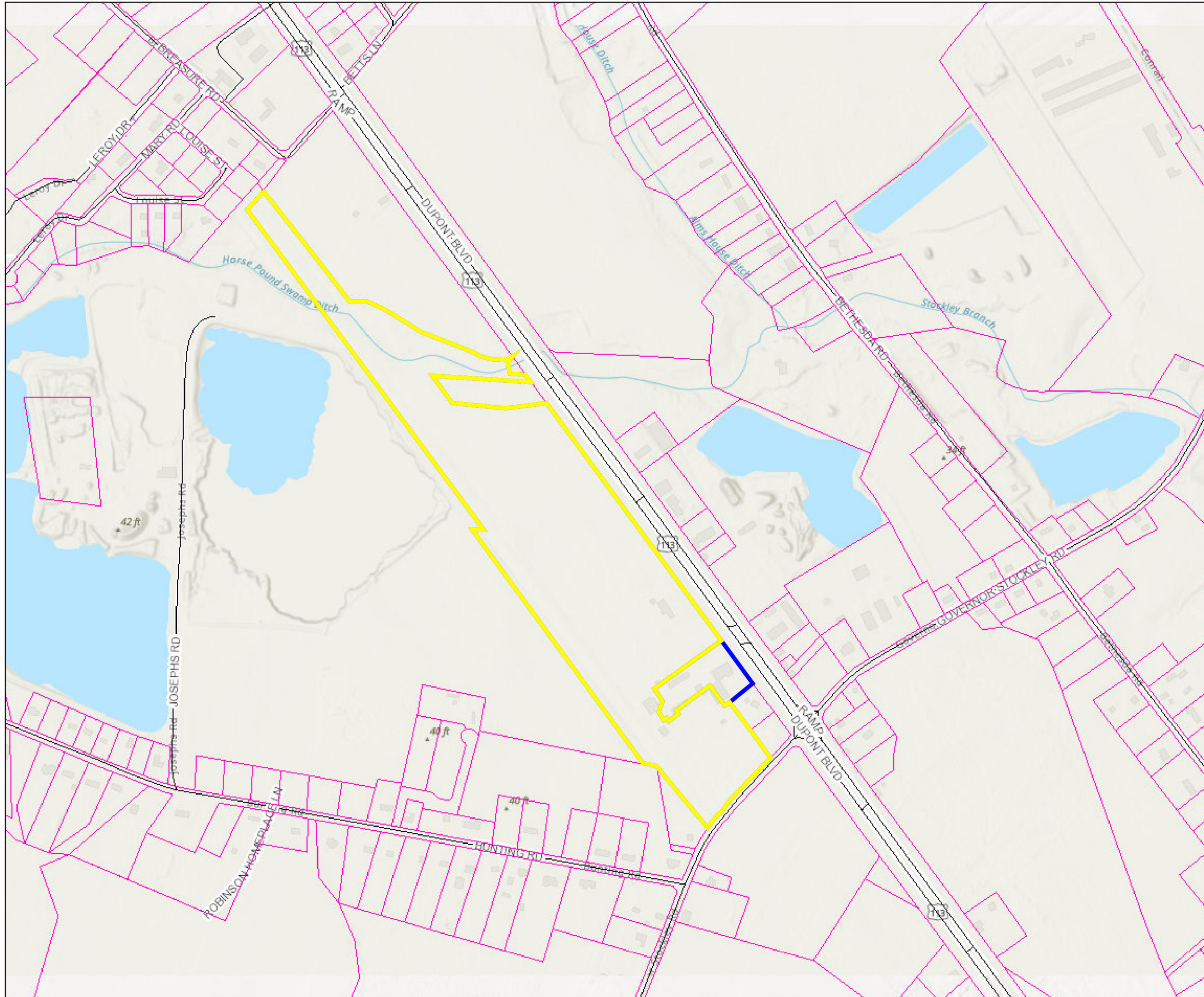
The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories,” the Heavy Commercial (C-3) Zoning District is listed as an applicable zoning district in the Commercial Area.

Since 2011, there have been two (2) Change of Zone application within a 1-mile radius of the application site. The first application is Change of Zone 1814 Stockley Tavern, LLC for a change of zone from an Agricultural Residential Zoning District (AR-1) to a Commercial Residential District (CR-1) which was recommended approval by the Planning and Zoning Commission at their meeting of Thursday, March 9, 2017. The application was also approved by the Sussex County Council on Tuesday, April 11, 2017 and adopted through Ordinance No. 2491. The second application is Change of Zone 1903 W. Wayne Baker for a change of zone from an Agricultural Residential Zoning District (AR-1) to a Medium Commercial Zoning District (C-2) which was recommended approval by the Planning and Zoning Commission at their meeting of Thursday, February 13, 2020. The application was also approved by the Sussex County Council on Tuesday, February 25, 2020 and adopted through Ordinance No. 2709.

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from a General Commercial Zoning District (C-1) and a Agricultural Residential Zoning District (AR-1) to a Heavy Commercial Zoning District (C-3) could be considered as being consistent with the land use, based on the size, scale, zoning and surrounding uses.



# Sussex County



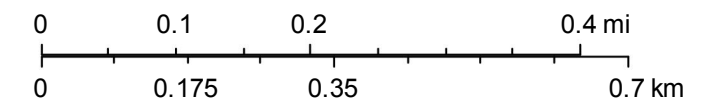
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<b>Owner Name</b>	CITATION 49 FARMS LLC & JOE ANN ADAMS
<b>Book</b>	5310
<b>Mailing Address</b>	25154 DUPONT BLVD
<b>City</b>	GEORGETOWN
<b>State</b>	DE
<b>Description</b>	W/RT 113
<b>Description 2</b>	687 NW/RT 432
<b>Description 3</b>	HOME FARM
<b>Land Code</b>	

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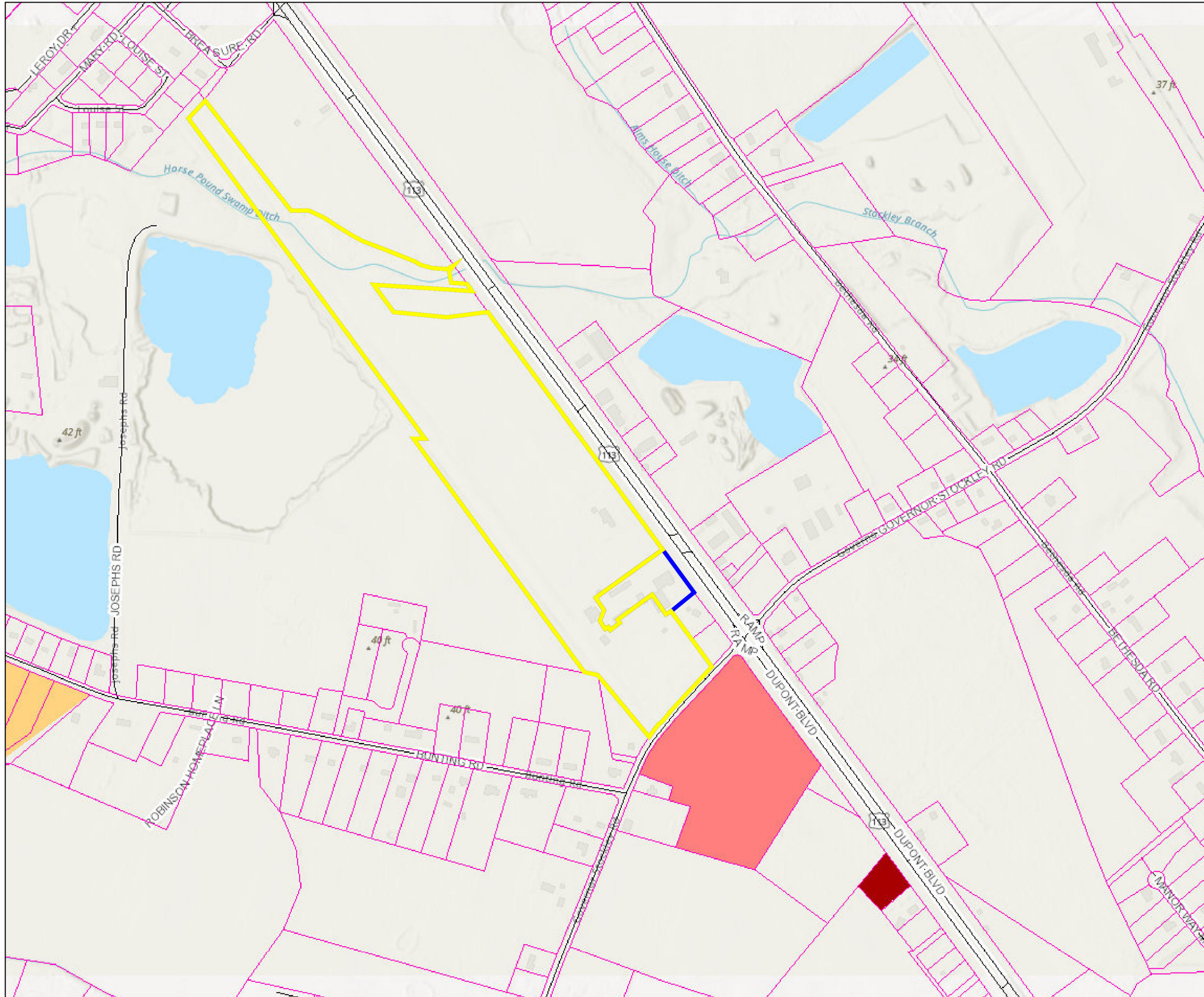
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- Tax Parcels
- Streets
- County Boundaries

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# Sussex County



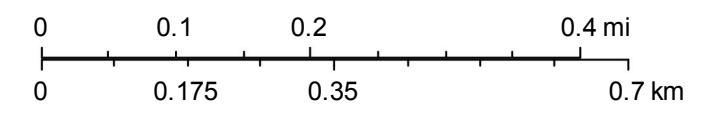
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<b>City</b>	GEORGETOWN
<b>State</b>	DE
<b>Description</b>	W/RT 113
<b>Description 2</b>	687 NW/RT 432
<b>Description 3</b>	HOME FARM
<b>Land Code</b>	

- polygonLayer**

  - Override 1
- polygonLayer**

  - Override 1
- Tax Parcels
- Streets

1:9,028



Introduced 09/14/21

Council District: Mrs. Green

Tax I.D. Nos. 133-6.00-50.00 & p/o 50.02

911 Addresses: 25116, 25076 & 25136 DuPont Boulevard, Georgetown

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT AND AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 4.33 ACRES AND 0.08 ACRE, MORE OR LESS**

WHEREAS, on the 16<sup>th</sup> day of July 2021, a zoning application, denominated Change of Zone No. 1947 was filed on behalf of Kenneth P. Adams; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1947 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

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

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of C-1 General Commercial District and AR-1 Agricultural Residential District and adding in lieu thereof the designation of C-3 Heavy Commercial District as it applies to the properties hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on the southwest side of DuPont Boulevard (Route 113) approximately 351 feet northwest of Governor Stockley Road (S.C.R. 432) and being more particularly described in the attached legal descriptions prepared by Pennoni Associates, Inc. and entitled "Rezoning Site Plan" dated May 14, 2021, said parcels containing 4.33 acres and 0.08 acre, more or less.

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

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: January 21, 2022

RE: County Council Report for C/Z 1948 filed on behalf of The Grande at Canal Point Maintenance Corporation

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The Planning and Zoning Department received an application (C/Z 1948 filed on behalf of The Grande at Canal Point Maintenance Corporation) for a Change of Zone of parcels 334-13.00-334.00, 1448.00-1750.00 from a MR-RPC Medium-Density Residential District, Residential Planned Community to a MR-RPC Medium-Density Residential District, Residential Planned Community to amend Conditions of Approval Number 15 of C/Z 1538 (Ordinance No. 1700) and C/Z 1926 (Ordinance No. 2786) in relation to piers, docks, boat ramps and other water related recreational facilities for a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 180.60 acres, more or less.

The Planning and Zoning Commission held a public hearing on December 9, 2021. At the meeting of January 13, 2022, the Commission recommended approval of the application for the 7 reasons and subject to the amended condition wording as outlined within the motion (included below).

Below are the draft minutes from the Planning & Zoning Commission meeting of December 9, 2022 and the draft minutes of the Planning & Zoning Commission meeting of January 13, 2022.

Minutes of the December 9, 2021 Planning & Zoning Commission Meeting

### **C/Z 1948 The Grande at Canal Point Maintenance Corporation**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a MR-RPC Medium-Density Residential District, Residential Planned Community to a MR-RPC Medium-Density Residential District, Residential Planned Community to amend Conditions of Approval Number 15 of C/Z 1538 (Ordinance No. 1700) and C/Z 1926 (Ordinance No. 2786) in relation to**



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

**piers, docks, boat ramps and other water-related recreational facilities for a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 180.60 acres, more or less.** The property is lying on the east side of Hebron Road, approximately 0.19 mile south of the intersection of Hebron Road and Holland Glade Road (S.C.R. 271). 911 Address: N/A. Tax Parcel: 334-13.00-334.00, 1448.00-1750.00.

Mr. Whitehouse stated submitted into the record a copy of the Applicant's exhibit booklet, a letter received from the Applicant, a copy of a letter requesting the reconsideration of C/Z 1926, a copy of C/Z 1538, a copy of comments from Sussex County Engineering Department Utility Planning Division, a copy of the Notice of Decision for C/Z 1926, 67 letters of support, one letter in opposition and eight mail returns.

The Commission found that Mr. Tim Willard, Esq. spoke on behalf of the Application C/Z 1948 The Grande at Canal Point Maintenance Corporation; that also present were Applicants Ms. Melissa Donnelly and Mr. Ken Larson; that Applicant is requesting to have the previous Conditions of Approval amended to be permitted to build their proposed dock; that previously the Commission issued recommended approvals with a sound Condition; that he previously represented the Applicant for the previous County Council public hearing; that at that hearing County Council did approve the Application, but not in a way they previously have in accepting the Planning & Zoning recommendations; that County Council added a Condition (Paragraph F), that in the Condition the Council gave Conditions for construction of the dock; that Mr. Ed Launay stated based off the Conditions for construction of the dock, it would not be approved by DNREC and The Army Corp of Engineers based on the dimensions; that the recommendation from Planning & Zoning stated the approval was subject to all applicable permits from The Army Corp of Engineers, DNREC and any other agencies having jurisdiction; that these agencies have the jurisdiction over navigable waterways; that he stated Chairman Wheatley mentioned, at the previous public hearing, people have access to the waterway, but it is unsafe in the manner they are accessing it; that after the County Council's decision he wrote a letter requesting reconsideration of the Condition; that the Applicant then re-applied; that he stated this is not re-application as the Ordinance 2786 has already passed; that the only way the Applicant could get back to Commission was to re-apply; that the Applicant is currently applying to amend Ordinance 2786; that the current Application request is the deletion of Paragraph F; that a dock was already approved by the Planning & Zoning Commission, as well as County Council for the use of kayaks and canoes; that he just received Mr. Spence's letter of opposition that day; that there are 67 letters supporting the Application request; that the current subdivision is constructed of single-family homes; that there is nothing within the Homeowner Association covenants forbidding a dock; that the HOA owns the subject parcel; that the parcel is referred to as the Park Area; that the HOA took a vote; that there were 163 votes in favor out of 180 people voting; that this equals to 90% of votes being in favor for the Application request; that the Comprehensive Plan encourages access and boating recreation; that within Ordinance 2786 are indications for all of the reasons the amendment request should be added; that in Mr. Spence's opposition letter it mentions what was permitted when the subdivision was originally approved, questioning why the laws should be changed; that he states things have changed; that at the time the subdivision was approved it was only the developer; that within the previous meeting minutes there was note of opposition; that now there are 150 residents living there, requesting to recreate; that in the opposition letter it references Rule 15.5 where it is stated only in extraordinary cases should reconsideration be permitted; that the Applicant does not consider the request as a reconsideration; that the request is to amend the Ordinance; that in the



opposition letter it references the Statue 216 D, which states reconsideration is not permitted until one year has passed; that this is only subject to Applications which have been denied; that the Applicant is requesting to amend the Ordinance; that in the opposition letter it stated they opposition would be in support of the previously designed dimensions supplied by Mr. Robert Whitford of Precision Marine; that since the Applicant began this process, it has been found there is a slither of land which comes out toward the public area; that due to this, the dock would be required to move slightly north; that due to this the previously designed dimension will not be approved; that if Commission would approve the dock, without dictation to the structure of it, The Army Corp of Engineers and DNREC will designed the dock; that it will then be required to come back to the Commission for final site plan approval; that this is similar to how the Commission would not try to construct an entrance to a subdivision; that DNREC and The Army Corp of Engineers has jurisdiction over navigable waterways; that he has prepared options for removing Paragraph F; that one option would be to delete the whole paragraph and re-recommend the previous Conditions; that this Condition stated approval would be subject to the receipt of all applicable permits from The US Army Corp of Engineers, DNREC and any other agency having jurisdiction; the Condition also stated the RPC was permitted for only one dock, for the use of residents and only being used to kayaks and canoes; that another option is to delete Paragraph 15 in its entirety; that he does not recommend this option as he believes it may open up the permitted use of motorized marine vehicles; that another option would be to delete Paragraph 15 F; that this deletion would remove only the portion which dictates the construction of the dock; that submitted into the record was the letter of reconsideration and a draft from Mr. Ed Launay regarding tract conditions; that the Applicant has no objection to any of the other Conditions proposed in Ordinance 2786 and the Applicant only request amending Paragraph F, allowing the Applicant to proceed with regulatory approval.

Ms. Stevenson questioned if electricity will be required if a gate with a fob pass will be present.

Mr. Hopkins questioned if the Applicant was opposed to having lighting in the park; that he questioned if the concern was if the lighting would be intrusive to the environment if conduit was run to the park and questioned if the lighting would be favored from a safety standpoint.

Mr. Willard stated in Paragraph E of the Conditions stated there shall be no bathrooms, running water, electricity, lighting, or parking; that in Mr. Ed Launay's previous letter to County Council he deleted this section of the paragraph because of the same reason Ms. Stevenson was asking; that the Applicant chose to not upset any of the other Conditions set by Council; that if this was a Condition the Commission would like to change the Applicant would not oppose it; that the Applicant proposed the fob be up near the street, not directly in the park; that this was a subject objectional to the Applicant, but chose not to request, due to the main concern being the proposed dock; that the Applicant was not going to challenge the Condition, but would like to see some low lighting in the park for security reasons.

Chairman Wheatley stated the issue is lighting for safety purposes; that Commission does have the ability to stipulate the lighting; that he understands lighting could be a concern from the residents across the canal and this is a subject the Commission would have to be very careful about.

The Commission found Mr. Steven Spence spoke in opposition to the Application; that he presented previously with the prior disputes over the original Application; that Ms. Mackenzie Peet represent the original Application to the Planning & Zoning Commission and Mr. John Paradee represented the original Application in front of County Council; that he did submit a letter of opposition; that there were

many drafts of the letter before submission; that the question was whether to stick solely with the procedural issues they have raised concerning Applicant's requesting to remove a Condition based upon their inability to perform what they want; that battlelines were drawn regarding whether boating should be permitted at all based off the previous Condition from 2004; that if a dock should be placed, it would be for unmotorized vehicles only; that the dock proposed to the County Council was much larger than needed; that when County Council adopted the Ordinance, which is not the subject of the current Application, some Conditions were proposed to the size and shape of the dock; that the Applicant originally came in requesting a deletion of a Condition; that the Applicant received changes to the Condition, which were not the changes the Applicant asked for; that there has been a lot of questions between Councils as to what type of Application is it considered to be; that it is his view the original Application was not granted; that the Applicant received a modification to a Condition after applying to delete the Condition all together; that the Applicant did not like the Conditions proposed; that there is no evidence in the record showing the Applicant applied the proposed dimensions to The Army Corp of Engineers or DNREC, were denied and told in writing by those agencies what was required to change; that he has read Mr. Ed Launay's letter; that he does not understand what the letter is stating other than he proposed to build the dock the way it was proposed before; that the previously proposed dock was not permitted by County Council; that he feels the Applicant is requesting the Commission reconsider something within the same year; that he feels this should not be allowed; that the Applicant should have to contact DNREC and The Army Corp of Engineers, providing a design which is compliant, have those agencies comment and then return to Commission; that he asked an independent party to design a dock which complied with the Conditions; that the only issue from the independent party design was the distance from the landward side, out into the canal; that there was difficulty, without any other evidence, determining if the dock as Conditioned by County Council would be long enough to provide the depth necessary at low tide to launch a kayak or a canoe; that he does not want persons other than members of the community to be able to use the facility; that the wanted to area to be secure; that electricity may or may not be required; that this was an issue which was not completely addressed; that in the record there is a reconsideration tract document which presents a cross out for electricity; that he is uncertain who submitted the document; that he does not want to see overhead lighting or lighting at 11:00 pm; that he does not want after dark use of the canal; that the County Council imposed conditions; that the Applicant did not like them; that the Applicant did not apply for permits; that he opposes the procedural process first; that he feels the Applicant should have to wait or be required to obtain evidence to what will work and not work; that he does not want to see the dock size originally presented; that it is too big and beyond what is necessary for the proposed limitations; that where the Applicant originally appeared to want to place the dock would cross over the property line onto Canal Corkran property; that this is one of the problems which must be resolved; that to the right of the proposed site is wetlands; that there is only so much room for what can go into the area; that he feels the Commission should express no position or recommend against any change; that they are concerned with the size, volume of use and timing of use he feels the Applicant should be going through the design phase first before requesting any change.

The Commission found there was no one present 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 1948 The Grande at Canal Point Maintenance Corporation. Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

Minutes of the January 13, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since December 9, 2022.

Mr. Mears moved that the Commission recommend approval of an amendment to Condition #15 of Change of Zone # 1926 and Ordinance #1700 regarding docks within the Grande at Canal Pointe RPC based upon the record made during the public hearing and for the following reasons:

1. This matter was previously considered by the Commission, and the Commission recommended an amendment to Condition #15 to allow one dock for kayaks and paddleboards. Since both DNREC and the U. S. Army Corps of Engineers have jurisdiction over the location and dimensions of such a dock, the recommended approval was subject to their jurisdiction. After the Council hearing, the Commission's recommendation was amended by Council to include specific dimensions of the dock, which evidently are impossible or impractical to meet according to the record from this current application. For this reason, I move that the Commission's original recommendation be followed, with the County approval being subject to the review and approval of the state and federal agencies who have jurisdiction over a dock like this. This recommendation is again based upon the following reasons:
2. Condition #15 of CZ # 1926 and Ordinance #1700 currently states that "No piers, docks, boat ramps or other water-related facilities shall be permitted" within the Canal Pointe RPC.
3. The Canal Pointe RPC is adjacent to the Lewes-Rehoboth Canal, which is a source of water-related activities for many Sussex County residents and visitors.
4. It was shown during the public hearing that this area of the Lewes-Rehoboth Canal has developed with many personal docks attached to individual lots as well as a large marina associated with the Town of Henlopen Acres.
5. The revised condition #15, which will be limited to non-motorized boats, will have less of an impact on the waterway and the environment than many of these existing docks and the motorized boats that they serve.
6. With one point of access to the Lewes-Rehoboth Canal, there will be a well-designed and permitted dock available to the residents of Canal Pointe instead of multiple undefined points of access that could cause more damage to the Canal and the environment.
7. Condition #15 of CZ # 1926 and Ordinance # 1700 should be amended to state as follows:

*"15. Subject to the receipt of all applicable permits from the U.S Army Corps of Engineers, DNREC, and any other agencies having jurisdiction, this RPC shall be permitted to have only one dock for the use of residents. This dock shall only be utilized for kayaks and paddleboards. No motorized boats shall be launched or docked at this location. No storage of kayaks, paddleboards, boats, or other marine equipment shall be permitted along the dock or landward of it within the RPC. There shall be an amendment to the Canal Pointe Master Plan and a subsequent final site plan showing the dock and its point of access from the RPC. No other piers, docks, boat ramps, or other water-related facilities shall be permitted."*

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval for C/Z 1948 The Grande at Canal Point Maintenance Corporation for the reasons stated in the motion.  
Motion carried 5-0.

**PLANNING & ZONING COMMISSION**

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



**Sussex County**

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JAMIE WHITEHOUSE, AICP, MRTPI  
DIRECTOR OF PLANNING & ZONING

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date: December 9<sup>th</sup>, 2021

Application: CZ 1948 The Grande at Canal Point Maintenance Operations Corp.

Applicant: The Grande at Canal Point Maintenance Operations Corp.  
P.O. Box 1418  
Rehoboth Beach, DE 19971

Owner: The Grande at Canal Point Maintenance Operations Corp.  
P.O. Box 1418  
Rehoboth Beach, DE 19971

Site Location: The property is lying on the east side of Hebron Rd., approximately 0.19 mile south of the intersection of Hebron Rd. and Holland Glade Rd. (S.C.R. 271)

Current Zoning: Medium Residential (MR-RPC) Residential Planned Community

Proposed Zoning: Medium Residential (MR-RPC) Residential Planned Community

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Hudson

School District: Cape Henlopen School District

Fire District: Rehoboth Beach Fire Department

Sewer: Sussex County

Water: City of Rehoboth

Site Area: 180.60 acres +/-

Tax Map ID.: 334-13.00-334.00. 1448.00 through 1750.00



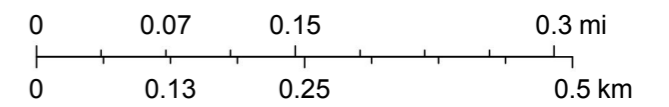
# Sussex County



November 17, 2021

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

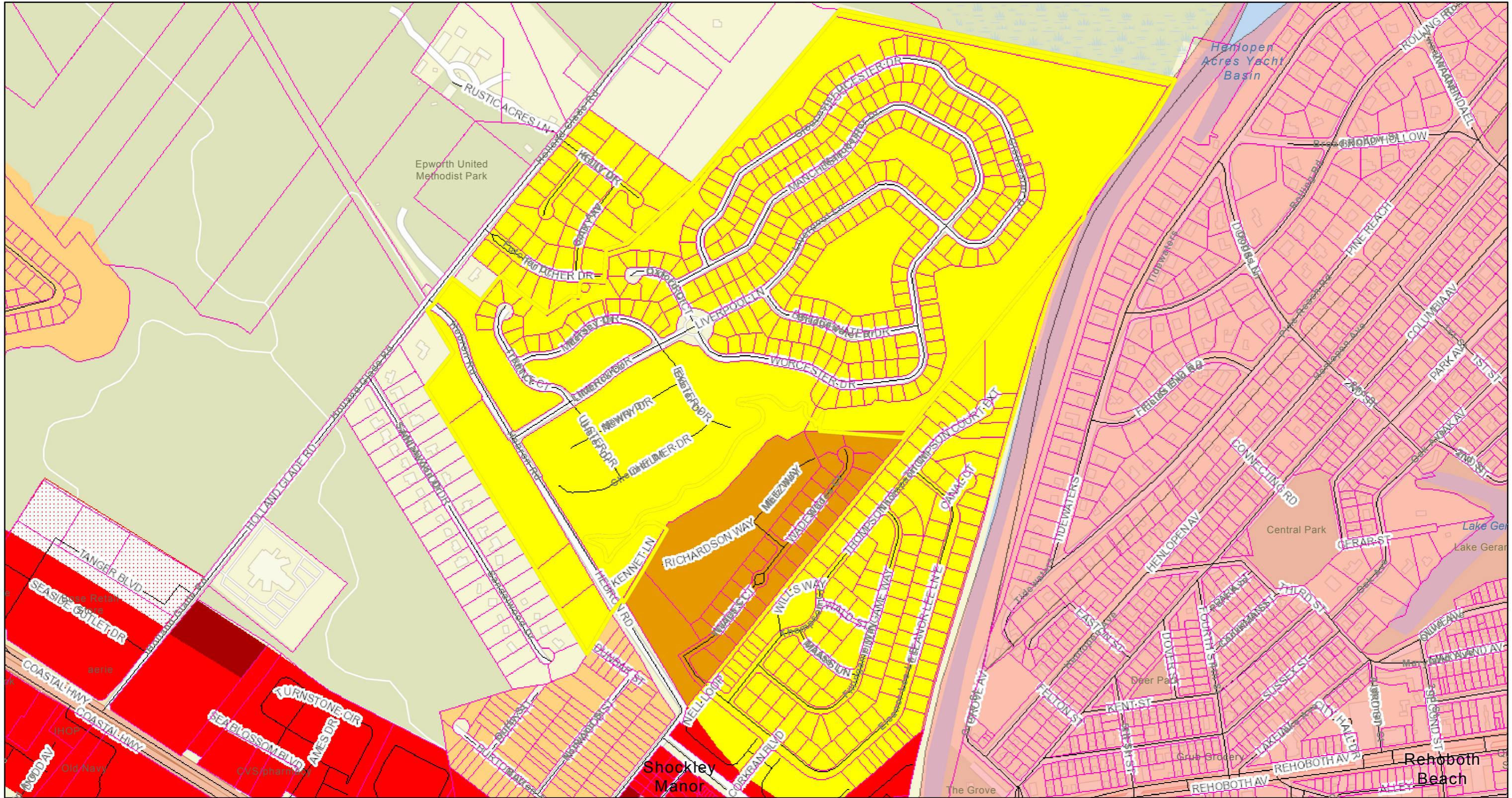
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Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, DNREC, Division of Watershed Stewardship, Drainage Program, john.inkster@state.de.us, Sussex County, Sussex County Government, Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, ©

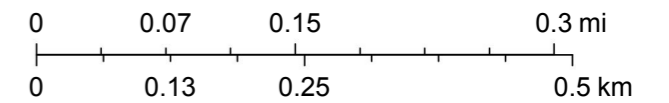


# Sussex County



November 17, 2021

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DNREC, Division of Watershed Stewardship, Drainage Program, john.inkster@state.de.us, Sussex County, Sussex County Government, Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community



Introduced 09/14/21

Council District Mr. Hudson  
Tax I.D. No. 334-13.00-334.00, 1448.00 through 1750.00  
911 Address: N/A

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

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL NUMBER 15 OF C/Z 1538 (ORDINANCE NO. 1700) AND C/Z 1926 (ORDINANCE NO. 2786) IN RELATION TO PIERS, DOCKS, BOAT RAMPS AND OTHER WATER RELATED RECREATIONAL FACILITIES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 180.60 ACRES, MORE OR LESS**

WHEREAS, on the 20<sup>th</sup> day of July 2021, a zoning application, denominated Change of Zone No. 1948 was filed on behalf of The Grande at Canal Point Maintenance Corporation; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1948 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

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

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

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

**ALL that certain tract, piece or parcel of land lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the east side of Hebron Road approximately 0.19 miles south of the intersection of Hebron Road and Holland Glade Road (S.C. R. 271), and being more particularly described in the attached legal description prepared by Canal Point, LLC, said parcel containing 180.60 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.**