

Sussex County Council Public/Media Packet

**MEETING:
January 7, 2020**

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**Sussex County Council
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COUNTY COUNCIL

MICHAEL H. VINCENT, PRESIDENT
IRWIN G. BURTON III, VICE PRESIDENT
DOUGLAS B. HUDSON
JOHN L. RIELEY
SAMUEL R. WILSON JR.



Sussex County

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SUSSEX COUNTY COUNCIL

A G E N D A

JANUARY 7, 2020

10:00 A.M.

Call to Order

Approval of Agenda

Election of Council Officers

Council Member Appointments

Appointment of Legal Counsel

Adoption of Rules of Procedure

Approval of Minutes

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

1. Recognition of Retiree – Rob Davis, Engineering Department, Utility Planning
2. Administrator's Report

Gina Jennings, Finance Director

1. 2019 Private Activity Bond Volume Cap

Eric Littleton, Airport Manager

1. Airport Advisory Committee Member Appointments



10:15 a.m. Public Hearing

“AN ORDINANCE TO RESTATE AND CLARIFY THE CODE OF SUSSEX COUNTY, CHAPTER 110, ARTICLE XIII, SECTION 110-88, SUBSECTION D RELATING TO THE ESTABLISHMENT OF ANNUAL SERVICE CHARGES; DETERMINATION OF AMOUNT OF CHARGE”

Robert Stuart, Emergency Medical Services Director

- 1. Sussex County Emergency Medical Services – Commission on Accreditation of Ambulance Services (CAAS)**

Hans Medlarz, County Engineer

- 1. Discussion and Possible Introduction of a Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$1,701,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE EXTENSION OF SANITARY SEWER SERVICES TO WOLFE RUNNE 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 \$1,526,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE EXTENSION OF SANITARY SEWER SERVICES TO MALLARD CREEK AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”**
- 3. Western Sussex Transmission Facilities: Contract 3: RT-13 Alt & Herring Run Road Force Mains, Project 19-27**
 - A. Recommendation to Award**
- 4. Western Sussex District Area Expansion**
 - A. Supplemental DNREC Funding Request**
- 5. Building Demolition and Site Restoration, Project C20-03**
 - A. Final Balancing Change Order and Substantial Completion**
- 6. Belt Press, Project M20-15**
 - A. Recommendation to Award**

Janelle Cornwell, Planning and Zoning Director

1. **Conditional Use No. 2186 filed on behalf of Mountaire Farms of Delaware, Inc. - reporting of public comments and for purpose of closing the record**

Old Business

1. **Conditional Use No. 2190 filed on behalf of Steven and Helene Falcone**
“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.26 ACRE, MORE OR LESS” (Tax I.D. No. 334-5.00-212.00 and 213.00) (911 Address: 17662 Beaver Dam Road, Lewes)
2. **Conditional Use No. 2176 filed on behalf of KH Sussex, LLC**
“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONVENIENCE STORE WITH FUELING STATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.51 ACRES, MORE OR LESS” (Tax I.D. No. 234-11.00-56.02 (portion of), 56.03, 56.06, and 56.09) (911 Address: None Available)

Introduction of Proposed Zoning Ordinances

Council Members’ Comments

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

Possible Action on Executive Session Items

Adjourn

Sussex County Council meetings can be monitored on the internet at www.sussexcountypde.gov.

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on December 31, 2019 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.

###

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 17, 2019

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 17, 2019, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Irwin G. Burton III	Vice President
Douglas B. Hudson	Councilman
John L. Rieley	Councilman
Samuel R. Wilson Jr.	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 608 19
Approve
Agenda**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to approve the Agenda, as posted.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea

Minutes

The minutes of December 10, 2019 were approved by consent.

**Corre-
spondence**

Mr. Moore read correspondence received from the following: Kent-Sussex Industries, Delaware Breast Cancer Coalition, The English as Second Language Program, and Delaware Lions Foundation.

**Public
Comments**

A public comment period was held and the following spoke: Paul Reiger and Dan Kramer.

**Procla-
mation**

The Sussex County Council recognized the Delmar High School Field Hockey Team for winning the 2019 DIAA Division II Championship. The Coach and representatives of the team were in attendance.

**DelDOT
TID
Update**

Mr. Lawson reported on the next steps for the DelDOT TID (Transportation Improvement District). At the November 19, 2019 Council meeting, DelDOT Secretary Cohan and staff provided a detailed update on the work DelDOT has conducted on the proposed Henlopen TID. Mr. Lawson reported that the next steps in the development of the Henlopen

**DeIDOT
Update
(continued)**

TID is to host a public workshop in early 2020 and then begin the drafting of the TID agreement between the agency and the County. There was no opposition from Council in regards to moving forward with the TID.

**Admin-
istrator's
Report**

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

1. Christmas and New Year's Holidays

Please note, County offices will be closed on December 23rd, 24th, and 25th to celebrate the Christmas holiday, and January 1st for the New Year's holiday. The next regularly scheduled Council meeting will be held on Tuesday, January 7, 2020, at 10:00 a.m.

2. George J. Collins

It is with sadness that we note the passing of former County Councilman George J. Collins on Saturday, December 14, 2019. Mr. Collins served two terms on County Council, from January 1991 to January 1999. We wish to extend our condolences to the Collins family.

**Quarterly
Pension
Update**

Mrs. Jennings and Michael Shone of Marquette Associates provided a quarterly pension update, including a performance summary, an actuarial update, and a report on the November 21, 2019 Pension Committee meeting. Mrs. Jennings reported that the Pension Committee looked at options to strengthen the performance of the County's pension investments and the Committee made multiple recommendations, including: adding Real Estate Investment Trusts (REITS) to the Pension and OPEB portfolios; moving all funds out of the State of Delaware Investment Pool; and increasing the services provided by Marquette Associates (Consulting Plus). Mr. Shone reported on the Pension and OPEB funds' performance from 2010 to 2019 and discussed the under-performance in the State of Delaware Investment Pool Fund.

**M 609 19
Amend
Investment
Policy
Statements
for Pension
and OPEB**

A Motion was made by Mr. Rieley, seconded by Mr. Burton, that the Sussex County Council accept the recommendation from the Pension Committee to amend the Investment Policy Statements of both the Pension and OPEB funds to include Real Estate Investment Trusts and ultimately removing all funds from the State of Delaware Investment Pool. The Investment Policy Statements of the Pension and OPEB funds will have the following targets: U.S. Stocks – 49%, International Stocks – 16%, Fixed Income – 29%, Real Estate – 5%, and Cash – 1%.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea

M 610 19 Amend Contract with Marquette Associates	<p>A Motion was made by Mr. Rieley, seconded by Mr. Wilson, that the Sussex County Council accepts the recommendation from the Pension Committee to approve the Finance Director to amend the contract with Marquette Associates to provide Consulting Plus services as explained on this date for a cost not to exceed 4 basis points.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Wilson, Yea; Mr. Burton, Yea; Mr. Vincent, Yea</p>
Medic Station 101 Lease	<p>Robert Schoonover, Manager of EMS Logistics, presented a request for a lease renewal for Medic Station 101 located in the Lincoln Community Center. The lease is for a five-year period ending on December 31, 2025, with a 6 month opt-out provision.</p>
M 611 19 Approve Lease Agreement/ Medic Station 101	<p>A Motion was made by Mr. Burton, seconded by Mr. Hudson, that the Sussex County Council approves the Lease Agreement between Lincoln Community Hall, Inc. and Sussex County, as per the terms and conditions of the written lease agreement.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Wilson, Yea; Mr. Burton, Yea; Mr. Vincent, Yea</p>
Draft Ordinance/ Clarification of EDU Assessment	<p>Hans Medlarz, County Engineer, presented a Draft Ordinance entitled “AN ORDINANCE TO RESTATE AND CLARIFY THE CODE OF SUSSEX COUNTY, CHAPTER 110, ARTICLE XIII, SECTION 110-88, SUBSECTION D RELATING TO THE ESTABLISHMENT OF ANNUAL SERVICE CHARGES; DETERMINATION OF AMOUNT OF CHARGE”.</p> <p>Mr. Medlarz reported that this Draft Ordinance clarifies and restates the contents of Ordinance No. 2677 adopted on August 20, 2019. The Draft Ordinance’s effective date shall relate back to the August 20, 2019 adoption date of Ordinance No. 2677.</p> <p>Mr. Medlarz noted that the adopted Ordinance on August 20, 2019 was introduced and voted on in a slightly different format than the one which was posted on the website. The correction pertains to medical facilities (1.0 EDU per overnight bed <u>capacity and treatment room</u> listed under Hospitals).</p>
Introduction of Proposed EDU Ordinance	<p>Mr. Burton introduced the Proposed Ordinance entitled “AN ORDINANCE TO RESTATE AND CLARIFY THE CODE OF SUSSEX COUNTY, CHAPTER 110, ARTICLE XIII, SECTION 110-88, SUBSECTION D RELATING TO THE ESTABLISHMENT OF ANNUAL</p>

Introduction (continued) SERVICE CHARGES; DETERMINATION OF AMOUNT OF CHARGE”.

The Proposed Ordinance will be advertised for Public Hearing.

SCRWF Treatment Process Upgrade and Rehoboth Beach Wastewater Treatment Plant Capital Improvement Program Upgrade/Award Recommendations

Hans Medlarz, County Engineer, presented bid award recommendations for South Coastal WRF Treatment Process Upgrade No. 3 and Rehoboth Beach WTP Capital Improvement Program, Phase 2: General Construction, Project C19-11 and Electrical Construction, Project C19-17. These projects were designed as separate prime contractor bids for the electrical work and the general/structural work items. This approach provided cost saving opportunities for construction contract implementation as well as savings in contract administration and inspection services. After consultation, both the Finance Director and the County Engineer recommend award of the General Construction, Project C19-11 to M. F. Ronca & Sons, Inc. of Bethlehem, Pennsylvania, in the amount of \$39,526,400.00 including allowances and award of the Electrical Construction, Project C19-17 to BW Electric, Inc. of Harrington, Delaware, in the amount of \$22,178,674.00 excluding allowances. In addition, they recommend award of the unit price contingency schedule for each project “as bid” with zero starting quantities to be invoiced as any of the associated construction contingencies arise. This approach allows for only the necessary project components to be bonded, reducing the general condition costs.

M 612 19 SCRWF Capital Improvement Program Phase 2/ General Construction/ Bid Award

A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Contract C19-11, South Coastal Wastewater Treatment Plant, Capital Improvement Program, Phase 2 – General Construction, be awarded to M.F. Ronca & Sons, Inc. for their total bid of \$39,526,400.00 and hereby incorporated are the unit price contingency bid schedules (included in Council and public packets for this meeting).

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Wilson, Yea; Mr. Burton, Yea; Mr. Vincent, Yea

M 613 19 SCRWF Capital Improvement Program/ Phase 2/ Electrical Construction/ Bid Award

A Motion was made by Mr. Burton, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Contract C19-17, South Coastal Wastewater Treatment Plant, Capital Improvement Program, Phase 2 – General Electric, be awarded to BW Electric, Inc. in the amount of \$22,178,674.00 and hereby incorporated are the unit price contingency bid schedules (included in Council and public packets for this meeting).

Motion Adopted: 5 Yeas.

**M 613 19
(continued)**

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea

**DE Coastal
Business
Park/
Phase 1**

Hans Medlarz, County Engineer, presented Final Balancing Change Order No. 3 and a request to grant Substantial Completion for the Delaware Coastal Business Park Phase I Construction, Project C19-15.

**M 614 19
Delaware
Business
Park/
Phase 1/
Balancing
C/O and
Substantial
Completion**

A Motion was made by Mr. Burton, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 3 for Contract C19-15, Delaware Coastal Business Park, Phase I, be approved, which increases the contract amount by \$53,667.19, for a new contract total of \$1,706,444.94, and that Substantial Completion be granted effective October 17, 2019, and any held retainage be released in accordance with the contract documents.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea

Mr. Moore referenced the two Conditional Uses (Conditional Use No. 2176 and Conditional Use No. 2186) that will be reported on in regard to public comments received.

**Report on
Public
Comments
and Close
Record/
CU 2176**

Jamie Whitehouse, Planning and Zoning Manager, reported on Conditional Use No. 2176 filed on behalf of KH Sussex, LLC. At the meeting of the Council on September 17, 2019, the record was left open for Council to ask questions of staff and agencies. At the December 10, 2019 Council meeting, the responses were reported to Council. The 5-day public comment period began when the comments were reported in open session to Council on that date. The record closed for public comments at the end of business on December 16, 2019. Mr. Whitehouse stated that he has copies of the comments received and those comments were distributed to the Council. Mr. Vincent noted that the record is closed and the matter will be placed on a future agenda for action on the application.

**Report on
Public
Comments
and Close
Record/
CU 2186**

Jamie Whitehouse, Planning and Zoning Manager, reported on Conditional Use No. 2186 filed on behalf of Mountaire Farms of Delaware, Inc. At the meeting of November 5th, the Council left the record open for Council to ask questions of staff and agencies. Council gave agencies until the close of business on December 9, 2019 to provide responses to the questions. The responses were reported to Council at their meeting on December 10, 2019. The public had 5 days to provide written responses to the responses from the agencies. During the December 10, 2019 Council meeting, an enclosure to the December 4, 2019 DNREC letter was inadvertently not distributed to the public. As a result, the time period for comments is being extended until the close of business on December 26, 2019. (Both the DNREC letter

(continued) and enclosure were included in the Council and public packets for this meeting.) Responses received from the public will be reported at a future meeting.

Old Business/ CU 2185 Under Old Business, Council considered Conditional Use No. 2185 filed on behalf of Vincent Kinack. The Council held a Public Hearing on this application on September 24, 2019 at which time action was deferred for the Planning and Zoning Commission's recommendation and due to the fact that no one was present on behalf of the application. On October 10, 2019, the Commission recommended approval of the application.

M 615 19 Adopt Proposed Ordinance/ CU 2185 A Motion was made by Mr. Burton, seconded by Mr. Wilson to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.4516 ACRES, MORE OR LESS" (Conditional Use No. 2185) filed on behalf of Vincent Kinack.

Denied

Motion Denied: 5 Nays.

Vote by Roll Call: Mr. Hudson, Nay; Mr. Rieley, Nay;
Mr. Wilson, Nay; Mr. Burton, Nay;
Mr. Vincent, Nay

(This application was denied due to the lack of a record; no one was present on behalf of the application at the County Council's Public Hearing.)

Old Business/ CU 2190 Under Old Business, the Council considered Conditional Use No. 2190 filed on behalf of Steven and Helene Falcone. The Council held a Public Hearing on this application on October 29, 2019 at which time action was deferred and the record was left open for a new site plan. Jamie Whitehouse, Planning and Zoning Manager, reported that a new site plan has been submitted and was included in Council packets for this meeting. Mr. Whitehouse also reported that the Planning and Zoning Commission recommended denial of this application on October 10, 2019.

Mr. Burton expressed concern that, if Council approves this application, the Applicant could still submit an application to the Board of Adjustment for a variance. Mr. Moore stated that he would have to look into whether or not the Council can make it a condition that an applicant cannot go the Board of Adjustment for a variance. Additionally, Mr. Moore stated that since the Commission recommended denial, no conditions have been prepared for the Council to consider.

M 616 19 Defer Action on CU 2190

A Motion was made by Mr. Burton, seconded by Mr. Rieley, to defer action for further consideration on Conditional Use No. 2190 filed on behalf of Steven and Helene Falcone.

**M 616 19
(continued)**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Old
Business/
CU 2192**

Under Old Business, the Council considered Conditional Use No. 2192 filed on behalf of Thomas and Judy Munce (Napoleon Hernandez). The Planning and Zoning Commission held a Public Hearing on this application on September 26, 2019 at which time the Applicant was not present. Due to the lack of representation, and therefore, the lack of a record at the Public Hearing, the Planning and Zoning Commission recommended denial. The Council held a Public Hearing on this application on October 29, 2019 at which time action was deferred and the public record was closed with the exception of receiving the record and recommendation of the Planning and Zoning Commission. (It was noted that a recommendation from the Commission would be received only if the Applicant is able to reschedule their Public Hearing before the Planning and Zoning Commission.) Mr. Whitehouse noted that a request for re-hearing was not submitted within the required time period.

**M 617 19
Adopt
Proposed
Ordinance/
CU 2192**

A Motion was made by Mr. Burton, seconded by Mr. Rieley, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 1979 TO ALLOW FOR NIGHTCLUB TYPE ACTIVITIES AND AN ELECTRONIC MESSAGE CENTER SIGN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.033 ACRES, MORE OR LESS" (Conditional Use No. 2192) filed on behalf of Thomas and Judy Munce (Napoleon Hernandez).

Denied

Motion Denied: 5 Nays.

**Vote by Roll Call: Mr. Hudson, Nay; Mr. Rieley, Nay;
Mr. Wilson, Nay; Mr. Burton, Nay;
Mr. Vincent, Nay**

(This application was denied due to the lack of a record before the Planning and Zoning Commission; no one was present on behalf of the application at the Commission's Hearing. Therefore, Council could not receive the record and recommendation of the Commission.)

**Old
Business/
CZ 1895
CU 2195**

Under Old Business, the Council considered Change of Zone No. 1895 and Conditional Use No. 2195 filed on behalf of Gulfstream Development, LLC (Kent Apartments). At their meeting of November 14, 2019, the Planning and Zoning Commission recommended that both applications be approved, with the following findings and conditions attached to the Conditional Use:

**Old
Business/
CZ 1895
CU 2195
(continued)**

The Commission recommended approval of Change of Zone No. 1895 for the following reasons:

- 1. The project meets the purpose of the Zoning Code in that it promotes the orderly growth of the County.**
- 2. The proposed rezoning is consistent with other zonings and uses in the area; this includes a HR-1 RPC which is adjacent to the site. The property to the west and south is currently zoned GR and there is B-1 zoning in the area.**
- 3. The rezoning is basically infill to make this parcel consistent with the GR and HR zoning that surrounds it.**
- 4. The rezoning will not have a significant impact upon area traffic or roadways. DelDOT has stated that the development on this site will generate less than 50 vehicle trips per hour and less than 500 trips per day. DelDOT has stated that the impact of the proposed development of the property will be negligible.**
- 5. The rezoning will not adversely impact the neighboring properties, community or public facilities in the area.**
- 6. The site is served by central sewer provided by Sussex County and by central water.**
- 7. The rezoning is consistent with the Sussex County Comprehensive Development Plan. The site is in the Coastal Area. According to the Plan, medium and higher densities such as those permitted in the GR District are appropriate in the Coastal Area. According to the Plan, in certain circumstances where the site will be served by central water and sewer, where it is near sufficient commercial uses and employment centers, where it is in keeping with the character of the area and other similar factors, the site meets the Plan's considerations for rezoning to GR in the Coastal Area under the Comprehensive Plan.**

The Commission recommended approval of Conditional Use No. 2195 for the following reasons and with the following conditions:

- 1. The application seeks the approval of 45 multi-family structures with three buildings on approximately 3.93 acres.**
- 2. The property is in an area where a variety of development has occurred. Lands to the north of this property are zoned HR-1 RPC with a multi-family residential development. Lands to the west and south are developed under GR zoning and there is a nearby B-1 zoning and other lands with commercial uses. This property is basically an infill development and it is consistent with these nearby uses.**
- 3. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. This type of development is appropriate in this area according to the plan which states that a range of housing types are acceptable here including medium and high density with a site near commercial uses is served by central water and sewer where the key use is in keeping with the character of the area and other similar factors. These types of considerations exist with regard to this site.**
- 4. The proposed development will not have an adverse impact on the**

**Old
Business/
CZ 1895
CU 2195
(continued)**

- neighboring properties or communities.
5. The project will not have an adverse impact on traffic or roadways. DelDOT has stated it will generate less than 50 vehicle trips per hour and less than 500 trips per day, leading that agency to conclude that the traffic impact will be negligible.
 6. The project is located in an area of opportunity as defined by the Delaware State Housing Opportunity Maps. The Delaware State Housing Authority has strongly recommended this application.
 7. The development will be served by central sewer provided by Sussex County.
 8. This application is essentially an infill development that is consistent with adjacent residential development in the area.
 9. The development will be served by central water.
 10. This recommendation is subject to the following conditions:
 - a. A maximum number of residential units shall be 45.
 - b. The Applicant or its successor, as landlord shall be responsible for perpetual maintenance of the development roadway, buffers, stormwater management facilities, erosion and sediment control facilities, and other common areas.
 - c. All entrance intersections, roadways, and multi-modal improvements shall be completed by the Developer in accordance with DelDOT's requirements.
 - d. The project shall be served by County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any off-site upgrades necessary to provide service to the project.
 - e. The project shall be served by central water to provide drinking water and fire protection.
 - f. There shall be vegetated or forested buffer at least ten feet in width.
 - g. The Applicant shall submit as part of the final plan a landscape plan showing the proposed tree and shrub landscape design including the buffer areas.
 - h. Construction activities including site work and deliveries shall occur only between 7:30 a.m. and 7:00 p.m. Monday to Friday and between 8:00 a.m. and 5:00 p.m. on Saturdays. There shall be no construction activities on the site on Sunday.
 - i. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.
 - j. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - k. All street lights shall be shielded and downward screened so they do not shine on neighboring properties or roadways.
 - l. The interior street designs shall meet or exceed Sussex County street design requirements.
 - m. If required by the local school district, a school bus stop shall be provided. The location of the bus stop shall be shown on the Final

- Old Business/
CZ 1895
CU 2195
(continued)**
- Site Plan.**
- n. Recreational amenities including the outdoor swimming pool and bathhouse shall be completed simultaneously with the issuance of the Certificate of Occupancy for the first multi-family dwelling.**
 - o. The Final Site Plan shall be subject to the review and approval by the Sussex County Planning and Zoning Commission.**

The County Council held a consolidated Public Hearing on both applications on December 10, 2019, at which time action was deferred.

Mr. Hudson commented on the proposed density of the project and stated that he is recommending that the number of multi-family units be limited to 16. Mr. Hudson also asked that the conditions include a requirement that the Applicant clean-out the ditch and maintain that ditch to insure sufficient water flow from the property and the adjacent property.

**M 618 19
Adopt
Ordinance
No. 2694/
CZ 1895**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt Ordinance No. 2694 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.93 ACRES, MORE OR LESS”(Change of Zone No. 1895) filed on behalf of Gulfstream Development, LLC (Kent Apartments).

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 619 19
Amend
Finding/
CU 2195**

A Motion was made by Mr. Hudson, seconded by Mr. Burton, to amend the Planning and Zoning Commission’s Finding No. 1 (for Conditional Use No. 2195) to read as follows: “The application seeks the approval of 45 multi-family structures with three buildings on approximately 3.93 acres, but is being amended as set forth below (in the conditions), which is “16 units on the entire property”.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 620 19
Amend
Finding/
CU 2195**

A Motion was made by Mr. Hudson, seconded by Mr. Burton, to amend the Planning and Zoning Commission’s Finding No. 4 (for Conditional Use No. 2195) to read as follows: “The proposed development will not have an adverse impact on the neighboring properties or communities with the

M 620 19
(continued) **conditions attached.”**

Motion Adopted: **5 Yeas.**

Vote by Roll Call: **Mr. Hudson, Yea; Mr. Rieley, Yea;**
 Mr. Wilson, Yea; Mr. Burton, Yea;
 Mr. Vincent, Yea

M 621 19 **A Motion was made by Mr. Hudson, seconded by Mr. Burton, to strike the**
Amend **Planning and Zoning Commission’s Finding No. 5 (for Conditional Use No.**
Finding/ **2195).**
CU 2195

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

Vote by Roll Call: **Mr. Hudson, Yea; Mr. Rieley, Nay;**
 Mr. Wilson, Yea; Mr. Burton, Yea;
 Mr. Vincent, Yea

M 622 19 **A Motion was made by Mr. Hudson, seconded by Mr. Burton, that**
Amend **Condition No. 10a (recommended by the Planning and Zoning Commission**
Condition/ **for Conditional Use No. 2195) be amended as follows: “A maximum**
CU 2195 **number of residential units shall be 16.”**

Motion Adopted: **5 Yeas.**

Vote by Roll Call: **Mr. Hudson, Yea; Mr. Rieley, Yea;**
 Mr. Wilson, Yea; Mr. Burton, Yea;
 Mr. Vincent, Yea

M 623 19 **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that**
Amend **Condition No. 10b (recommended by the Planning and Zoning Commission**
Condition/ **for Conditional Use No. 2195) be amended to read as follows: “The**
CU 2195 **Applicant or its successor, as landlord shall be responsible for perpetual**
 maintenance of the development roadway, buffers, stormwater
 management, facilities, erosion and sediment control facilities, and other
 common areas. The ditch on the property shall be cleaned and maintained
 and not be filled in. If it is relocated, it must be with the approval of the
 Sussex County Soil Conservation District and maintained pursuant to their
 requirements.”

Motion Adopted: **5 Yeas.**

Vote by Roll Call: **Mr. Hudson, Yea; Mr. Rieley, Yea;**
 Mr. Wilson, Yea; Mr. Burton, Yea;
 Mr. Vincent, Yea

M 624 19 **A Motion was made by Mr. Burton, seconded by Mr. Rieley, to Adopt**
Adopt **Ordinance No. 2695 entitled “AN ORDINANCE TO GRANT A**
Ordinance **CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL**

**M 624 19
Adopt
Ordinance
No. 2695/
CU 2195**

DISTRICT FOR MULTI-FAMILY (45 APARTMENT UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.93 ACRES, MORE OR LESS” (Conditional Use No. 2195) filed on behalf of Gulfstream Development, LLC (Kent Apartments), with the Findings and Conditions, as amended:

- 1. The application seeks the approval of 45 multi-family structures with three buildings on approximately 3.93 acres, but is being amended as set forth below, which is “16 units on the entire property”.**
- 2. The property is in an area where a variety of development has occurred. Lands to the north of this property are zoned HR-1 RPC with a multi-family residential development. Lands to the west and south are developed under GR zoning and there is a nearby B-1 zoning and other lands with commercial uses. This property is basically an infill development and it is consistent with these nearby uses.**
- 3. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. This type of development is appropriate in this area according to the plan which states that a range of housing types are acceptable here including medium and high density with a site near commercial uses is served by central water and sewer where the key use is in keeping with the character of the area and other similar factors. These types of considerations exist with regard to this site.**
- 4. The proposed development will not have an adverse impact on the neighboring properties or communities with the conditions attached.**
- 5. The project is located in an area of opportunity as defined by the Delaware State Housing Opportunity Maps. The Delaware State Housing Authority has strongly recommended this application.**
- 6. The development will be served by central sewer provided by Sussex County.**
- 7. This application is essentially an infill development that is consistent with adjacent residential development in the area.**
- 8. The development will be served by central water.**
- 9. This recommendation is subject to the following conditions.**
 - a. A maximum number of residential units shall be 16.**
 - b. The Applicant or its successor, as landlord shall be responsible for perpetual maintenance of the development roadway, buffers, stormwater management, facilities, erosion and sediment control facilities, and other common areas. The ditch on the property shall be cleaned and maintained and not be filled in. If it is relocated, it must be with the approval of the Sussex County Soil Conservation District and maintained pursuant to their requirements.**
 - c. All entrance intersections, roadways, and multi-modal improvements shall be completed by the Developer in accordance with DelDOT’s requirements.**
 - d. The project shall be served by County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any off-site upgrades necessary to provide**

M 624 19
Adopt
Ordinance
No. 2695/
CU 2195
(continued)

- service to the project.
- e. The project shall be served by central water to provide drinking water and fire protection.
 - f. There shall be vegetated or forested buffer at least ten feet in width.
 - g. The Applicant shall submit as part of the final plan a landscape plan showing the proposed tree and shrub landscape design including the buffer areas.
 - h. Construction activities including site work and deliveries shall occur only between 7:30 a.m. and 7:00 p.m. Monday to Friday and between 8:00 a.m. and 5:00 p.m. on Saturdays. There shall be no construction activities on the site on Sunday.
 - i. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.
 - j. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - k. All street lights shall be shielded and downward screened so they do not shine on neighboring properties or roadways.
 - l. The interior street designs shall meet or exceed Sussex County street design requirements.
 - m. If required by the local school district, a school bus stop shall be provided. The location of the bus stop shall be shown on the Final Site Plan.
 - n. Recreational amenities including the outdoor swimming pool and bathhouse shall be completed simultaneously with the issuance of the Certificate of Occupancy for the first multi-family dwelling.
 - o. The Final Site Plan shall be subject to the review and approval by the Sussex County Planning and Zoning Commission.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea

Grant
Requests

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

M 625 19
Council-
manic
Grant

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to give \$500.00 from Mr. Vincent's Councilmanic Grant Account to the City of Seaford for the Police Department's Citizen's Police Academy.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea

M 626 19 Councilmanic Grant **A Motion was made by Mr. Wilson, seconded by Mr. Rieley, to give \$1,800.00 (\$600.00 each from Mr. Wilson's, Mr. Rieley's and Mr. Vincent's Councilmanic Grant Accounts) to Grace-N-Mercy Ministries for their Community Dinner.**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

M 627 19 Go Into Executive Session **At 11:39 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Burton, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to pending litigation and land acquisition.**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

Executive Session **At 11:45 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to pending litigation and land acquisition. The Executive Session concluded at 12:18 p.m.**

M 628 19 Reconvene Regular Session **At 12:21 p.m., a Motion was made by Mr. Burton, seconded by Mr. Hudson, to come out of Executive Session and to reconvene the Regular Session.**

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Absent; Mr. Burton, Yea;
Mr. Vincent, Yea**

M 629 19 Authorize Settlement Agreement/ Blessing **A Motion was made by Mr. Burton, seconded by Mr. Rieley, that the President on behalf of Council be authorized to execute a stipulation of settlement regarding Conditional Use No. 2071 and to settle a lawsuit filed by Blessing on April 4, 2018, and filed by the County on May 18, 2018, more fully known as Civil Action No. 2018-0250-SG and Civil Action No. 2019-0354-SG. As part of this settlement, it is acknowledged by the parties that the pre-compost pile on the slab of concrete has been removed in its entirety. Further, this stipulation shall dismiss both lawsuits referenced herein, and reinstates Conditional Use No. 2071, as amended herein as follows:**

- 1. Within 5 business days of the execution of this Agreement, each of the Lawsuits shall be dismissed with prejudice.**

**M 629 19
Authorize
Settlement
Agreement/
Blessing
(continued)**

2. The Permit is hereby reinstated as modified herein and the Commission's vote on February 22, 2018 is hereby declared null and void and of no effect.
3. There is modification of permit conditions as follows:
 - A. The Applicant shall comply with all requirements established by DNREC and any other regulatory agency having jurisdiction over this use. Failure to comply with DNREC or other agency requirements shall result in the termination of this Conditional Use.
 - B. Until the new facility is constructed and ready for operation, no new pre-compost storage, blending or wind-rowing activities will be conducted on any place onsite except on the concrete pad. This condition excludes any pre-compost material stored on the polyethylene-lined bunkers already onsite. Materials may be loaded for shipping from either the pad or the existing bunkers in accordance with DNREC regulations and the ASO. Screening of finished composted materials, as well as wood and yard waste, may take place in designated areas other than the concrete pad.
 - C. Blessing shall comply with all applicable DNREC and Sussex Conservation District requirements for the site. Failure to comply with any of these requirements will result in the termination of the use.
 - D. Material processing hours, including the use of heavy equipment, will be limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday.
 - E. Material acceptance hours will be limited to 7:00 a.m. - 6:00 p.m., Monday through Saturday.
 - F. Blessing shall provide for a landscaped buffer of at least 25 feet around the entire property. The existing berm on the property, as shown on the Concept Plan attached, shall be maintained in the same or approximately the same location. A landscape plan showing the landscaping within the proposed buffer shall be shown on the Final Site Plan.
 - G. Following completion of construction of the new facility, all composting operations including pre-compost staging, wind-rowing, blending, stockpiling and actual composting operations shall be conducted under roof on a concrete floor within the building(s) designated for said purpose. No pre-compost storage or composting operations shall be conducted outside the facility building(s). Composting does not include stockpiling and/or shredding of wood, leaf, or yard waste, stockpiling of sand or lime, and other unregulated materials that may be stored/utilized onsite.
 - H. A water truck shall be available to control dust within the site.
 - I. Blessing is specifically permitted to receive waste streams from poultry operations, including but not limited to: hatchery waste, poultry processing wastes, and any other waste streams for which Blessing facility is permitted by DNREC under the biosolids program, except for waste streams from municipal sanitary waste

**M 629 19
Authorize
Settlement
Agreement/
Blessing
(continued)**

- treatment facilities and sewage from onsite wastewater disposal systems (i.e. residential septic systems).
- J. Blessing may bag and blend materials properly accepted and composted at the site pursuant to this approval.**
 - K. The application of compost to any agricultural land shall comply with applicable DNREC regulations. The application of compost shall be made in a manner that minimizes odors, including incorporation and other best management practices as appropriate.**
 - L. A Preliminary Conceptual Site Plan has been attached and in conjunction with this Settlement Agreement, a Preliminary Site Plan based upon the Conceptual Site Plan shall forthwith be submitted to the Planning and Zoning Office for review and approval as part of the Preliminary Site Plan process. A Final Site Plan including all buildings, buffers, site improvements and a landscaping plan (with types, heights, and/or diameter of plantings shown and signed by a licensed Landscape Architect or Certified Nursery Professional) and stormwater management facilities shall be subject to the review and approval of the Planning and Zoning Commission. The Final Site Plan shall comply with Sections 115-220 and 115-221 of the Sussex County Zoning Code. The Final Site Plan may include phasing whereby different areas may be submitted for Final Site Plan approval separately. If the Site Plan is phased, a Master Plan shall be submitted. The Final Site Plan with all applicable permitting shall be completed and approved by County Council and its agencies no later than three (3) years from the date of this Settlement Agreement unless extensions are granted by County Council.**
 - M. Failure to comply with any condition contained herein shall invalidate this Conditional Use.**
 - N. Upon execution of this Settlement Agreement, Applicant shall begin processing the southernmost bunker on the westerly side of the site through windrowing or other composting on the concrete pad or removal of the material from the site or any combination thereof and diligently pursue such operations in accordance with DNREC regulations.**
 - O. Notwithstanding any conditions pursuant to Ordinance 2514, any activities and operations permitted by the underlying agricultural zoning shall be exempt from the Ordinance and CU 2071.**

Motion Adopted: 4 Yeas, 1 Absent.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Absent; Mr. Burton, Yea;
Mr. Vincent, Yea**

Mr. Burton thanked Mr. Moore for his efforts which have resulted in the finalization of the Settlement Agreement with Blessing.

M 630 19 **At 12:30 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson,**
Recess **to recess until 1:30 p.m.**

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
 Mr. Wilson, Absent; Mr. Burton, Yea;
 Mr. Vincent, Yea

M 631 19 **At 1:35 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Wilson, to**
Reconvene **reconvene at 1:35 p.m.**

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
 Mr. Wilson, Yea; Mr. Burton, Yea;
 Mr. Vincent, Yea

Rules **Mr. Moore read the rules of procedure for Public Hearings.**

Public **A Public Hearing was held on the Proposed Ordinance entitled “AN**
Hearing/ **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN**
CU 2196 **AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR**
 AMENDMENTS TO CONDITIONS OF APPROVAL FOR
 CONDITIONAL USE NO. 2127 (ORDINANCE NO. 2600) TO BE
 LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN
 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 25.60
 ACRES, MORE OR LESS” (Conditional Use No. 2196) filed on behalf of
 Wine Worx, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on November 14, 2019 at which time the Commission recommended approval for the following reasons:

- 1. As part of Conditional Use No. 2127, the Commission recommended six conditions of approval that were all reasonable given the proposed use and because no parties appeared in opposition to the application.**
- 2. County Council substantially revised the recommended conditions as part of Ordinance No. 2600.**
- 3. The conditions included on Ordinance No. 2600 appear difficult to enforce.**
- 4. Where the conditions imposed by Ordinance No. 2600 appear to have been drafted to protect the neighboring property owners, all of the property owners have signed a petition supporting conditions nearly identical to the Planning and Zoning Commission’s original recommended conditions, not the more restrictive conditions imposed by County Council.**
- 5. No parties appeared in opposition to this request.**
- 6. For these reasons, the Commission recommended that the conditions of**

**Public
Hearing/
CU 2196
(continued)**

approval for Conditional Use No. 2196 and Conditional Use No. 2127 revert back to what the Planning and Zoning Commission originally recommended in its decision of May 24, 2018 for this site as part of Conditional Use No. 2127.

(See the minutes of the Planning and Zoning Commission dated November 14, 2019.)

Janelle Cornwell, Planning and Zoning Director, presented the application.

The Council found that David Hutt, Attorney, was present with Adrian Mobilia, one of the principals of Wine Worx, LLC. Mr. Hutt referenced the conditions imposed by Council in September 2018 on the approval of Conditional Use No. 2127 and stated that this application is to seek amendments to those (10) conditions which are as follows:

- A. Events shall be strictly limited to the front portion of the parcel commencing at Blackwater Road (County Road 384) and running approximately 1228.94 feet. No events shall be permitted in the back portion of the parcel.**
- B. Concert type events for which there is charged admission shall be limited to Fridays, Saturdays and Sundays and shall end no later than 10:30 p.m. on Fridays and Saturdays and 6:00 p.m. on Sundays.**
- C. Food and beverage service and music or similar entertainment is permitted in conjunction with permissible agritourism activities and in compliance with the Sussex County Code.**
- D. Other events such as weddings, showers, parties, and benefits may be conducted on the premises and shall end no later than 9:00 p.m. except on Fridays and Saturdays when they must end by 10:30 p.m., and Sundays when they must end by 6:00 p.m.**
- E. Certain agritourism activities such as “barn parties and farm festivals” as set forth in 9 Del. C. §306(a) are permitted.**
- F. All activities on the premises shall comply with Fire Marshal, parking capacity and general permitting requirements.**
- G. Applicant shall be required to obtain a Fire Marshal rating for the building in which the events are held. Applicant shall comply with the Fire Marshal’s determination of the maximum number of persons allowed on the premises at any given time, but, in no event shall there be more than 200 people at any event.**
- H. Parking shall be in compliance with the Sussex County Code. All parking areas shall be generally shown on the Final Site Plan. No parking shall be permitted on any nearby County roads.**
- I. All entrance locations shall be subject to the review and approval of DelDOT.**
- J. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Mr. Hutt stated that Salted Vines Vineyard and Winery (Vineyard) is experiencing growth; that some of the conditions imposed by Council have

**Public
Hearing/
CU 2196
(continued)**

created multiple questions, issues and concerns; that allowing this business to operate efficiently and to grow would require the refinement of some of the conditions; that some of the conditions need to be made clear for the Applicant, the Planning and Zoning Office and the public; that the difference between certain types of events and activities needs to be clarified as well as what constitutes an event and other activities; and that some of the conditions would be difficult for the Planning and Zoning Department to enforce. Mr. Hutt reviewed several examples of issues and questions that have arisen, i.e. limiting events to the first 1,284 feet of the site and limiting the number of people attending an event. Mr. Hutt stated that some specific questions that have come up is whether or not a hay ride can occur on the back portion of the property and whether or not a tent can be erected on the back portion of the property. Mr. Hutt stated that the eventual plan is for the Vineyard to extend into the back portion of the property for educational tours and tastings. Mr. Hutt stated that the time limits established by the Council's conditions limits the business' opportunity to have an evening wedding on a Sunday. Mr. Hutt also referenced the condition that restated the law regarding agritourism activities and commented on interaction between the Delaware Code, the farm winery license, and the Conditional Use No. 2127. Mr. Hutt outlined a history of the approval process for Conditional Use No. 2127. It was noted that no one appeared in opposition during the public hearings on either of the applications; that there have been no objections from any neighbors regarding the use of the property; and that a petition was submitted with signatures of the Applicant's neighbors in agreement to the modification of the conditions. It was noted that the Applicant has been in compliance with all the various agency regulations. Mr. Hutt noted that there are some changes being sought to the site plan for the Vineyard and he reviewed those proposed changes and stated that, with the proposed changes, the Applicant could potentially use the entire property including to construct a home for the Applicants on the back portion of the property. Mr. Hutt stated that the Applicant asks that the Council adopt the Planning and Zoning Commission's recommendation; and that the original six (6) conditions (recommended by the Commission) for Conditional Use No. 2127 be adopted and inserted in place of those conditions found in Ordinance No. 2600.

There were no public comments.

The Public Hearing and public record were closed.

Ms. Cornwell read the six (6) conditions recommended by the Planning and Zoning Commission, as follows:

- A. All events shall end no later than 10:30 p.m. and clean up after 10:30 p.m.
- B. Food and beverage service and music or similar entertainment is permitted.
- C. As stated by the Applicant, there shall be no more than 200 people at

**Public
Hearing/
CU 2196
(continued)**

any event.

- D. All parking areas shall be generally shown on the Final Site Plan. No parking shall be permitted on any nearby County roads.**
- E. All entrance locations shall be subject to the review and approval of DelDOT.**
- F. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

A Motion was made by Mr. Rieley, seconded by Mr. Wilson, to strike Condition 8C.

Motion Adopted: 3 Yeas, 2 Nays.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Nay;
Mr. Vincent, Nay**

**M 632 19
Adopt
Ordinance
No. 2696/
CU 2196**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt Ordinance No. 2696 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AMENDMENTS TO CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 2127 (ORDINANCE NO. 2600) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 25.60 ACRES, MORE OR LESS" (Conditional Use No. 2196) filed on behalf of Wine Worx, LLC, with the following conditions:

- A. All events shall end no later than 10:30 p.m. and clean up after 10:30 p.m.**
- B. Food and beverage service and music or similar entertainment is permitted.**
- C. All parking areas shall be generally shown on the Final Site Plan. No parking shall be permitted on any nearby County roads.**
- D. All entrance locations shall be subject to the review and approval of DelDOT.**
- E. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CZ 1896
CU 2197**

A combined Public Hearing was held on the Proposed Ordinances entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY

**Public
Hearing/
CZ 1896
CU 2197
(continued)**

RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 13.33 ACRES, MORE OR LESS” (Change of Zone No. 1896) and “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (62 DUPLEX UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 13.33 ACRES, MORE OR LESS” (Conditional Use No. 2197) filed on behalf of Fenwick Commons, LLC (Tax I.D. No. 533-19.00-52.00) (911 Address: None Available).

The Planning and Zoning Commission held a combined Public Hearing on these applications on November 14, 2019 at which time action was deferred. On December 12, 2019, the Commission recommended approval of the Change of Zone and recommended approval of the Conditional Use with conditions.

(See the minutes of the Planning and Zoning Commission dated November 14 and December 12, 2019.)

Janelle Cornwell, Planning and Zoning Director, presented the applications.

The Council found that Gene Bayard, Attorney, was present with Ken Christenbury of Axiom Engineering on behalf of the Applicant. Mr. Bayard stated that similar applications (Conditional Use No. 2098 and Change of Zone No. 1827) were previously recommended for approval by the Planning and Zoning Commission in November 2017; that these new applications were also recommended for approval with conditions; that they ask that the record of all of the other public hearings be made a part of this record; that what the Commission recommended on December 12, 2019 and in 2017 was construction of 52 duplex type residential structures on the 13.33 acre property with a density of approximately 3.9 units to the acre; that the project has 41 percent open space; that the project has tree preservation of 65% of the existing trees on the property; that a perimeter fence, parking and access for the Hudson Family Cemetery on the site is proposed; that a landscaped buffer will be provided along Route 54; that in January 2018, Council denied the applications (CU 2098 and CZ 1827) without articulating any particular reasons for rejecting the recommendation of the Commission and ignored the zoning classifications in the immediate area; that one articulate reason did come from Councilman George Cole – that the Environmentally Sensitive Developing District Overlay Zone should have a western demarcation or boundary line and that this property was it, and that the property should be limited to AR density of not more than 2 units per acre; that Councilman Cole’s Motion to deny carried with a vote of 3-2; that since that time, two things have changed: the project immediately to the east of this property (Bayside – Phase 7) is under construction with 48 multi-family units (density of 4.86 units per acre); that the second change is that two out-parcels north of this

**Public
Hearing/
CZ 1896
CU 2197
(continued)**

property are planned for commercial development – one is already zoned B-1; that, additionally, with certification by the Governor of the County’s Comprehensive Plan Update, the Environmentally Sensitive Developing District Overlay Zone was eliminated and replaced by the new Coastal Area classification; that the subject property is within the Coastal Area and that classification makes clear that where central sewer and water are available, a range of housing types should be permitted and that medium and higher density development is appropriate in certain locations; that DelDOT has issued a letter of no objection; and that the Applicant is requesting that the Conditional Use and Change of Zone with the same density as previously proposed be approved.

There were no public comments in support of the application.

Christopher Magee spoke in opposition to the applications. He stated that there is no forest land; that it is only scrub-brush; that there is someone currently taking care of the cemetery; that water is a problem with the density they are proposing and that water goes into a pond that then goes into a tax ditch; that in the past, there has been flooding in the area including washing a road out; that adding water to the ditch will increase flooding; and that the Council would be setting a precedent by changing density.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 633 19
Defer
Action on
CZ 1896**

A Motion was made by Mr. Rieley, seconded by Mr. Burton, to defer action on Change of Zone No. 1896 filed on behalf of Fenwick Commons, LLC.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**M 634 19
Defer
Action on
CU 2197**

A Motion was made by Mr. Rieley, seconded Mr. Wilson, to defer action on Conditional Use No. 2197 filed on behalf of Fenwick Commons, LLC.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Wilson, Yea; Mr. Burton, Yea;
Mr. Vincent, Yea**

**Public
Hearing/
CZ 1897**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A

**Public
Hearing/
CZ 1897
(continued)**

CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.97 ACRES, MORE OR LESS” (Change of Zone No. 1897) filed on behalf of Preston Dyer (Tax I.D. No. 334-4.00-37.01) (911 Address: 28855 Lewes Georgetown Highway (Route 9), Lewes).

The Planning and Zoning Commission held a Public Hearing on this application on November 14, 2019 at which time action was deferred. On December 12, 2019, the Commission recommended approval.

(See the minutes of the Planning and Zoning Commission dated November 14 and December 12, 2019.)

Janelle Cornwell, Director of Planning and Zoning, presented the application.

The Council found that Preston Dyer, Managing Member of Capstone Office, LLC, the Developer of the project. Also present were Joe Reed and Jake Booth, members of Capstone Office, LLC and Capstone Homes, along with a representative of Pennoni. Mr. Dyer stated that the project fronts on Route 9; that the intended use of the property is for a professional office for Capstone Homes; that there would be no outside sales or storage; that the existing historic home on the property would serve as an office; and that a new structure would be added to the front portion of the property and would be utilized by Capstone Homes for offices of a professional nature, sales center, and a design and model center. Mr. Dyer noted the other commercially zoned properties and uses in the area and stated that the proposed Change of Zone will not diminish or impair property values in the area, stating that the C-2 zoning is consistent with the existing commercial uses. They reviewed the application and noted that a site plan was provided. They discussed the proposed use of the property, the layout of the site; stormwater management; and the property’s location near Rails and Trails. They also discussed the application’s compliance with the Zoning Ordinance.

There were no public comments.

The Public Hearing and public record were closed.

**M 635 19
Adopt
Ordinance
No. 2697/
CZ 1897**

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to Adopt Ordinance No. 2697 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.97 ACRES, MORE OR LESS” (Change of Zone No. 1897) filed on behalf of Preston Dyer.

Motion Adopted: 5 Yeas.

**M 635 19
(continued)**

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
 Mr. Wilson, Yea; Mr. Burton, Yea;
 Mr. Vincent, Yea**

**M 636 19
Adjourn**

**A Motion was made by Mr. Burton, seconded by Mr. Rieley, to adjourn at
3:00 p.m.**

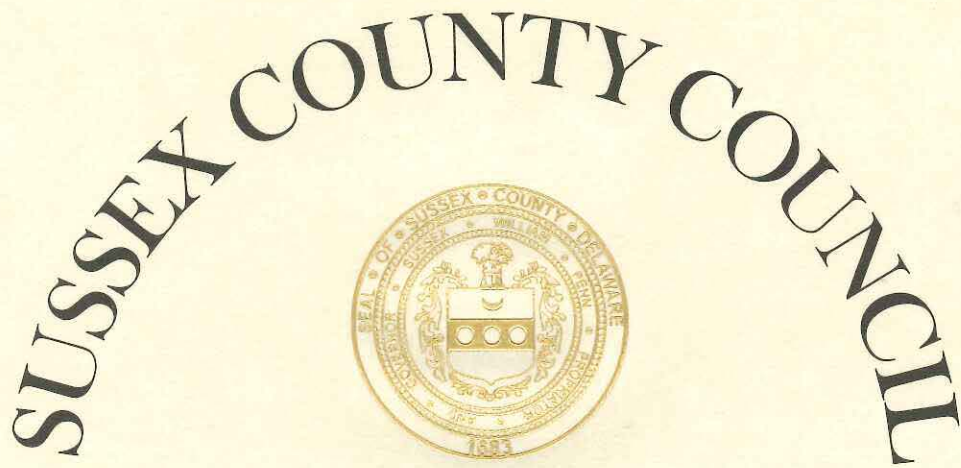
Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;
 Mr. Wilson, Yea; Mr. Burton, Yea;
 Mr. Vincent, Yea**

Respectfully submitted,

**Robin A. Griffith
Clerk of the Council**

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



SUSSEX COUNTY COUNCIL

TRIBUTE

*Be it hereby known to all that
the Sussex County Council commends*

ROB DAVIS

Engineering – Utility Planning

*for devotion, loyalty, and excellence
in serving Sussex County from
February 28, 1988 – December 31, 2019*

31 YEARS – 10 MONTHS

*The Sussex County Council extends its thanks
and congratulations and directs this Tribute
to be presented to Rob Davis with wishes of
happiness and good health.*



Michael H. Vincent
Council President

GINA A. JENNINGS, MBA, MPA
FINANCE DIRECTOR

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



Sussex County
DELAWARE
sussexcountype.gov

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson Jr.

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

RE: **PRIVATE ACTIVITY BOND REASSIGNMENT**

DATE: January 3, 2020

We have received correspondence from the State Department of Finance requesting that any unused portion of the County's annual Private Activity Bond Volume Cap be reassigned to the State. The State plans to request the Federal government to carry the unused portion for an additional three years to be used by the State Housing for qualified mortgage bonds. The annual allotment of Private Activity Bond allocations expires annually from the federal government, but can be carried forward up to three years for certain purposes if requested by the State issuer.

Private Activity Bonds (PABs) are tax-exempt bonds issued by public entities to provide low-cost financing for private projects that serve a public purpose. Federal tax law imposes several restrictions and requirements on the issuance of PABs. These bonds are for private entities. Qualified purposes include exempt facilities, such as non-government owned airports, docks, water and sewer facilities, and solid waste facilities; qualified mortgage programs; and small issue manufacturing facilities. The IRS requires state and local governments to serve as conduits for these tax-exempt bonds to ensure they are properly regulated. I have attached an IRS publication that can be reviewed to give more information about PABs.

Typically, every year, we reassign our unused portion to the State. Last year's Executive Order is attached showing each County's allocation returned back to the State. At the January 7, 2020 Council meeting, I will recommend that the County Council reassign the County's 2019 unused Private Activity Bond volume cap of \$31,765,000 to the State. In return, the State will assign a new 2020 allocation; the allocation is estimated to be approximately \$32,175,000, which represents 10 percent of the State's total allocation.

Please let me know if you have any questions.

pc: Mr. Todd F. Lawson

Attachments

STATE OF DELAWARE



EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER TWENTY-NINE**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: (1) ALLOCATION AND SUB-ALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2019 AND (2) REALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2018

WHEREAS, the Internal Revenue Service issued Revenue Procedure 2018-57, which provides the State of Delaware (the "State") with \$316,745,000 in private activity bond volume cap ("Volume Cap") for calendar year 2019, and pursuant to 29 DEL. C. §8791A(b), the State's 2019 Volume Cap is to be allocated among the various State and local government issuers; and

WHEREAS, the Internal Revenue Service previously issued Revenue Procedure 2017-58, which provided the State with \$311,375,000 in Volume Cap for calendar year 2018, and pursuant to 29 DEL. C. §8791A(a) and as memorialized in Executive Order 17 dated February 2, 2018 ("Executive Order 17"), the Governor set forth the initial allocation among the various State and local government issuers; and

WHEREAS, subsequent to the publication of Revenue Procedure 2017-58 and Executive Order 17, the Internal Revenue Service issued on March 5, 2018 its Internal Revenue Bulletin No. 2018-10 ("Bulletin No. 2018-10"), which modified certain adjustments set forth in Revenue Procedure 2017-58, including, but not limited to, the initial 2018 Volume Cap ceiling for Delaware, such amount being reduced from \$311,375,000 to \$310,710,000; and

WHEREAS, pursuant to 29 DEL. C. §8791A(b), the State's allocation of 2019 Volume Cap in the amount of \$158,370,000 is to be sub-allocated by the Governor between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

WHEREAS, pursuant to 29 DEL. C. §8791A(d), the Governor has the right, by Executive Order, to modify the allocations made under 29 DEL. C. §8791A(a) and (b) provided that no such modification shall cause any obligation issued prior to the date of such modification to lose its qualification for tax-exempt treatment under the Internal Revenue Code of 1986, as amended; and

WHEREAS, the allocation of Volume Cap for 2018 in Executive Order Number 17 is subject to modification by further Executive Order, and the Governor hereby modifies the initial

allocation of the 2018 Volume Cap as set forth in 29 DEL. C. § 8791A(a) and (b) to various State and local government issuers on a pro-rata basis to reflect the modified maximum amount of available 2018 Volume Cap to the State as set forth in Bulletin No. 2018-10 as follows:

	<u>Initial 2018 Volume Cap</u>	<u>Modified 2018 Volume Cap per Bulletin No. 2018-10</u>
Delaware State Housing Authority	\$77,842,500	\$77,677,500
DE Economic Development Authority	77,842,500	77,677,500
New Castle County	54,490,000	54,375,000
Kent County	31,140,000	31,070,000
Sussex County	31,140,000	31,070,000
City of Wilmington	38,920,000	38,840,000; and

WHEREAS, pursuant to Executive Order Number 17, as modified by this Executive Order, \$155,355,000 of 2018 Volume Cap has been allocated to the State of Delaware and further sub-allocated between the Delaware Economic Development Authority \$77,677,500 and the Delaware State Housing Authority \$77,677,500; and

WHEREAS, pursuant to Executive Order Number 17, as modified by this Executive Order, \$155,355,000 of 2018 Volume Cap has been allocated to local government issuers as described in 29 DEL. C. §8791A(a) and (b), and is hereby reassigned as follows:

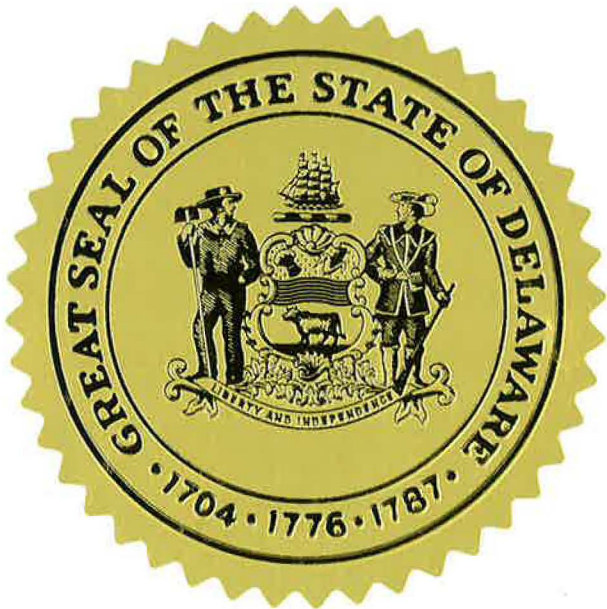
- New Castle has reassigned \$54,375,000 of its unused Volume Cap for 2018 to the State of Delaware,
- Kent County has reassigned \$31,070,000 of its unused Volume Cap for 2018 to the State of Delaware,
- Sussex County has reassigned \$31,070,000 of its unused Volume Cap for 2018 to the State of Delaware,
- The City of Wilmington has reassigned \$38,840,000 of its unused Volume Cap for 2018 to the State of Delaware; and

WHEREAS, the Secretary of Finance recommends: (i) that \$158,370,000 of the State's 2019 Volume Cap be sub-allocated between the Delaware State Housing Authority \$79,185,000 and the Delaware Economic Development Authority \$79,185,000; (ii) that the \$77,677,500 of unused 2018 Volume Cap previously sub-allocated to the Delaware Economic Development Authority be reallocated to the Delaware State Housing Authority for carry forward for use in future years; and (iii) that the \$155,355,000 of unused 2018 Volume Cap reassigned to the State of Delaware by local issuers be reallocated to the Delaware State Housing Authority for carry forward use; and

WHEREAS, the Chairperson of the Delaware Economic Development Authority and the Housing Director of the Delaware State Housing Authority concur in the recommendation of the Secretary of Finance.

NOW, THEREFORE, I, JOHN C. CARNEY, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby **DECLARE** and **ORDER** that:

1. \$158,370,000 of the 2019 Volume Cap is hereby sub-allocated as follows: \$79,185,000 to the Delaware State Housing Authority and \$79,185,000 to the Delaware Economic Development Authority.
2. \$158,375,000 of the 2019 Volume Cap is hereby allocated to the various local government issuers as follows:
 - \$55,285,000 of the 2019 Volume Cap is hereby allocated to New Castle County, Delaware;
 - \$39,560,000 of the 2019 Volume Cap is hereby allocated to the City of Wilmington, Delaware;
 - \$31,765,000 of the 2019 Volume Cap is hereby allocated to Kent County, Delaware; and
 - \$31,765,000 of the 2019 Volume Cap is hereby allocated to Sussex County, Delaware.
3. \$155,355,000 of unallocated 2018 Volume Cap that has been reassigned by New Castle County, Kent County, Sussex County and the City of Wilmington to the State of Delaware is hereby re-allocated to the Delaware State Housing Authority for carry forward use. In addition, the \$77,677,500 of 2018 Volume Cap previously sub-allocated to the Delaware Economic Development Authority under Executive Order Number 17, as modified by this Executive Order, is hereby re-allocated to the Delaware State Housing Authority for carry forward use. Furthermore, the \$77,677,500 of unused 2018 Volume Cap previously sub-allocated to the Delaware State Housing Authority under Executive Order Number 17, as modified by this Executive Order, is to be carried forward by Delaware State Housing Authority for a total carry forward amount of \$310,710,000 for Delaware State Housing Authority.
4. The aforesaid allocations and sub-allocations have been made with due regard to actions taken by other persons in reliance upon previous allocations and sub-allocations to bond issuers.



APPROVED this 8th day of February, 2019



John C. Carney
Governor

ATTEST:



Secretary of State



Tax Exempt & Government Entities

**OFFICE OF
TAX EXEMPT BONDS**



Publication 4078
Tax-Exempt
Private Activity Bonds



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INTRODUCTION

The Office of Tax Exempt Bonds (“TEB”), of the Internal Revenue Service (“IRS”), Tax Exempt and Government Entities division, offers specialized information and services to the municipal finance community.

This IRS Publication 4078, *Tax-Exempt Private Activity Bonds* (the “Publication”), provides to state and local governments that issue tax-exempt bonds and to borrowers or other users of bond proceeds (funds derived from the sale of bonds) an overview of the general federal tax law rules that apply to municipal financing arrangements commonly known as “qualified private activity bonds.” Certain exceptions or additional requirements to these rules, which are beyond the scope of this Publication, may apply to particular financing arrangements. This Publication is intended to help issuers meet applicable federal tax law requirements to ensure that interest earned by bondholders is exempt from taxation under Section 103 of the Internal Revenue Code (the “Code”).

This Publication is an overview of the rules; it is not official guidance that taxpayers may rely upon for planning purposes. This Publication refers to various Code sections, income tax regulations (the “Regulations”), revenue procedures and other official guidance relating to the topics discussed. Please refer to the official guidance for the rules that apply to qualified private activity bonds. Unless otherwise indicated, references in this Publication to section numbers are references to sections of the Code.

This Publication is only one of TEB’s many outreach efforts. For publications regarding the general rules applicable to governmental bonds or qualified 501(c)(3) bonds, see IRS [Publication 4079, Tax-Exempt Governmental Bonds](#), and IRS [Publication 4077, Tax-Exempt Bonds for 501\(c\)\(3\) Charitable Organizations](#), respectively. For an overview of the responsibilities of an issuer of tax-exempt bonds in a conduit financing arrangement, see IRS [Publication 5005, Your Responsibilities as a Conduit Issuer of Tax Exempt Bonds](#). TEB also provides detailed information on specific provisions of the tax law through other IRS publications and through outreach efforts as noted on the TEB website at www.irs.gov/Tax-Exempt-Bonds. See also [TEB INFORMATION AND SERVICES](#), at the end of this Publication.

BACKGROUND

State and local governments receive direct and indirect tax benefits under the Code that lower borrowing costs on their valid debt obligations. Because interest paid to bondholders on these obligations is not includable in their gross income for federal income tax purposes, bondholders are willing to accept a lower interest rate than they would accept if the interest was taxable. These benefits apply to many different types of municipal debt financing arrangements including bonds, notes, loans, lease purchase contracts, lines of credit and commercial paper (collectively referred to as “bonds” in this Publication).

To receive these benefits, issuers must ensure that the requirements under the Code are met, generally for as long as the bonds remain outstanding. These requirements include, but are not limited to, information filing and other requirements related to issuance, the proper and timely use of bond proceeds and bond-financed property, and limitations on how bond proceeds may be invested. Special additional rules apply to bonds that are private activity bonds for those bonds to be tax-exempt qualified private activity bonds. This Publication describes rules that apply generally to all qualified private activity bonds. Requirements applicable to particular types

of qualified private activity bonds are beyond the scope of this Publication. For information about these unique requirements, visit [TEB's website](#). For information specific to the use requirements for qualified 501(c)(3) bonds, see IRS [Publication 4077, Tax-Exempt Bonds for 501\(c\)\(3\) Charitable Organizations](#).

This Publication also addresses practices and steps an issuer and others using bond proceeds can take to protect the tax-exempt status of qualified private activity bonds. For example, because the requirements and limitations generally apply at the time the bonds are issued and throughout the term of the bonds, this Publication encourages issuers and beneficiaries of tax-exempt bonds to create procedures for monitoring compliance throughout the life of the bonds. For more information, see the discussion below in the section titled POST-ISSUANCE COMPLIANCE MONITORING.

TAX-EXEMPT PRIVATE ACTIVITY BONDS

Interest on a private activity bond is taxable unless the bond is a qualified private activity bond and meets various other requirements, some of which apply to governmental bonds as well. In this section, we briefly discuss the tests for determining whether a bond is a private activity bond. This section also describes:

- rules an issuer must meet for interest on a private activity bond to be excluded from federal income tax, by describing rules that apply at issuance (including elections that need to be made when the bonds are issued) and rules that apply both at issuance and throughout the life of the bonds;
- rules that apply when modifications are made to bond terms;
- recordkeeping requirements; and
- rules that prevent certain bondholders from excluding interest even if all the other requirements for tax exemption are met.

When applicable, these discussions include any special remedial action provision that applies to the particular requirement. If a deliberate action that results in a violation of any of the federal tax requirements cannot be corrected under these special remedial action provisions, issuers may be able to enter into a closing agreement under the TEB Voluntary Closing Agreement Program (“TEB VCAP”) described in [Notice 2008-31, 2008-11 I.R.B. 592](#) (see WHAT TO DO UPON DISCOVERING A VIOLATION — TEB VOLUNTARY CLOSING AGREEMENT PROGRAM at the end of this Publication).

Testing for Private Activity Bonds

A state or local bond will be a private activity bond if, as of the issue date of the bonds or at any time while the bonds are outstanding, the bond issue exceeds the limits set forth in either of the private activity bond tests:

- the private business tests of Section 141(b) of the Code, which consist of the private use test and private security and payment test, or
- the private loan financing test of Section 141(c) of the Code.

For a further description of the private business tests under Section 141(b) and the private loan test under Section 141(c), see IRS [Publication 4079, Tax-Exempt Governmental Bonds](#).

Requirements Related to Issuance

Some Private Activity Bonds Need to Obtain Volume Cap under Section 146. The Code limits the amount of private activity bonds that may be issued. The volume cap limit of Section 146 restricts the amount of certain qualified private activity bonds that all issuers within a state may issue during a calendar year. Generally, a state allocates that limit or volume cap among issuers in the state. Within certain restrictions, state law determines how those allocations are made. If, during a given year, an issuing authority issues more qualified private activity bonds than its allocable volume cap, the tax-exempt status of those excess bonds is jeopardized. Not all private activity bonds are subject to the volume cap limitation. The chart below describes which qualified private activity bonds are subject to volume cap under Section 146. Certain other types of bonds are subject to volume limits under other Code provisions.

Volume Cap Under Section 146	
Type of Private Activity Bonds	Subject to Volume Cap?
Private activity bonds financing exempt facilities (§142):	
• airports	No
• docks and wharves	No
• mass commuting facilities	Yes
• facilities for the furnishing of water	Yes
• sewage facilities	Yes
• governmentally owned solid waste disposal facilities	No
• privately owned solid waste disposal facilities	Yes
• qualified residential rental projects	Yes
• facilities for the local furnishing of electric energy or gas	Yes
• local district heating or cooling facilities	Yes
• qualified hazardous waste facilities	Yes
• governmentally owned high-speed intercity rail facilities	No
• privately owned high-speed intercity rail facilities	Yes ¹
• environmental enhancements of hydro-electric generating facilities	No
• qualified public educational facilities	No
• qualified green building and sustainable design projects	No
• qualified highway or surface freight transfer facilities	No
• qualified enterprise zone facilities	Yes
• new empowerment zone facilities	No
Qualified mortgage bonds (§143)	Yes ²
Qualified small issue bonds (§144(a))	Yes
Qualified student loan bonds (§144(b))	Yes
Qualified redevelopment bonds (§144(c))	Yes
Qualified veterans' mortgage revenue bonds	No
Qualified 501(c)(3) bonds	No
Current refunding bonds ³ that do not exceed the outstanding amount of the refunded bonds	No ⁴
Current refunding bonds in excess of the outstanding amount of the refunded bonds	Yes

¹ Volume cap required for only 25 percent of the bonds.

² The amount of volume cap allocated to an issuer is reduced when it establishes a mortgage credit certificate program under Section 25 of the Code.

³ See the subsection below, "Rules that Apply at Issuance and Throughout the Life of the Bonds - Limitations on Refunding Private Activity Bonds" for a definition of "current refunding."

⁴ Maturity limitations apply for refundings of qualified mortgage revenue bonds and qualified student loan bonds. Private activity bonds other than qualified 501(c)(3) bonds may not be advance refunded.

Carryforward of Unused Section 146 Volume Cap. Subject to state law requirements, an issuer may elect to carry forward any unused volume cap allocation it received in a calendar year for three calendar years. This election may be made for each of the qualified private activity bond purposes subject to volume cap except for the purpose of issuing qualified small issue bonds. This election is made by filing IRS [Form 8328, Carryforward Election of Unused Private Activity Bond Volume Cap](#), by the earlier of (1) February 15th following the year in which the unused amount arises, or (2) the date of issue of bonds pursuant to the carryforward election. Once Form 8328 is filed, the issuer may not revoke the carryforward election or amend the carryforward amounts shown on the form.

Private Activity Bonds Need To Meet the Public Approval Requirements. Section 147(f) of the Code generally provides that, prior to issuance, qualified private activity bonds must be approved by (1) the governmental entity issuing the bonds or on behalf of which the bonds were issued and (2) each governmental entity having jurisdiction over the area in which the bond-financed facility is to be located (although for bonds financing certain airport and high-speed intercity rail facilities, only the entity issuing the bonds must approve them). However, if more than one governmental unit within a State has jurisdiction over the entire area within such State in which such facility is located, only one such unit need approve such issue. Current refunding bonds that meet certain maturity and principal amount limits are exempted from the public approval requirement (see below, Requirements that Apply at Issuance and Throughout the Life of the Bonds - Limitations on Refunding Private Activity Bonds, for the definition of current refunding bonds).

Approval may be accomplished by either voter referendum or by an applicable elected representative of the governmental entity approving the issue after a public hearing following reasonable notice to the public. Section 147(f) of the Code and section 5f.103-2 of the Regulations define the specific rules for this requirement.

Special Remedial Action for Failure To Meet Public Approval Requirements. If an issuer fails to comply with the public approval requirements, the issuer may be able to cure the defect. Section 1.147-2 of the Regulations provides that issuers may use the remedial action rules under section 1.142-2 of the Regulations (available to correct nonqualified uses of proceeds) to cure noncompliance with the public approval requirement (see Requirements that Apply at Issuance and Throughout the Life of the Bonds – Proceeds Must be Used for Qualified Purposes – Special Remedial Actions for Nonqualified Use).

Issuers Must File Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues. Issuers of qualified private activity bonds must comply with certain information filing requirements under Section 149(e) of the Code by filing IRS Form 8038. This form can be downloaded from TEB's website at [TEB Forms and Publications](#). Issuers must file the Form 8038 by the 15th day of the second calendar month following the quarter in which the bonds were issued. For example, the due date of the return for bonds issued on February 1 is May 15. Issuers must file Form 8038 at the following address: Internal Revenue Service Center, Ogden UT 84201.

An issuer may request an extension of time to file Form 8038 if the failure to file the return on time was not due to willful neglect. To request an extension, the issuer must follow the procedures outlined in [Revenue Procedure 2002-48, 2002-37 I.R.B. 531](#). These procedures generally require that the issuer: (1) attach a letter to the Form 8038 briefly explaining when the return was required to be filed, why the return was not timely submitted, and whether or not the bond

issue is under examination; (2) enter on top of the letter “Request for Relief under section 3 of Rev. Proc. 2002-48”; and (3) file this letter and the return at the Internal Revenue Service Center, Ogden UT 84201.

Private Activity Bonds Must Be in Registered Form. Section 149(a) of the Code generally provides that any tax-exempt bond, including a qualified private activity bond, must be issued “in registered form” unless the obligation (1) is of a type not offered to the public or (2) has, at the date of issue, a maturity date of not more than one year. The Regulations describe what it means to be in “registered form.” Section 5f.103-1(c)(1) of the Regulations provides that an obligation issued after January 20, 1987, pursuant to a binding contract entered into after January 20, 1987, is in registered form if:

- the obligation is registered as to both principal and any stated interest with the issuer (or its agent) and that the transfer of the obligation to a new holder may be effected only by surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder; or
- the right to the principal of, and stated interest on, the obligation may be transferred only through a book-entry system maintained by the issuer (or its agent); or
- the obligation is registered as to both principal and any stated interest with the issuer (or its agent) and may be transferred through both methods described above.

Only a Limited Amount of Private Activity Bond Proceeds May Be Used To Pay Issuance Costs. The Code limits the amount of proceeds that may be used to finance issuance costs. Under Section 147(g) of the Code, a private activity bond is not a qualified bond if the issuance costs financed by the issue (of which such bond is a part) exceed 2 percent of the proceeds of the issue. In the case of an issue of qualified mortgage revenue bonds or qualified veterans’ mortgage revenue bonds, where the proceeds of the issue do not exceed \$20 million, the issuance costs limitation is 3.5 percent of the proceeds of the issue. Issuers and borrowers of bond proceeds may finance issuance costs with funds other than the proceeds of the bond issue.

Under the Regulations, “issuance costs” means costs incurred in connection with, and allocable to, the issuance of an issue. For example, “issuance costs” include the following costs, but only to the extent incurred in connection with, and allocable to, the borrowing:

- underwriters’ spread
- counsel fees
- financial advisory fees
- fees paid to an organization to evaluate the credit quality of an issue
- trustee fees
- paying agent fees
- bond registrar, certification, and authentication fees
- accounting fees
- printing costs for bonds and offering documents
- public approval process costs
- engineering and feasibility study costs
- guarantee fees other than for “qualified guarantees”
- costs similar to those above

Issuers Must Make Certain Elections at Issuance. When an issuer considers actions it must take when it issues bonds, it should consider whether it wants to make any elections. Various provisions of the Code and Regulations require that the issuer make certain elections in writing and retain elections as part of the bond documents. Many elections have to be made on or before the issue date of the bonds. Some elections may be made by either the issuer or a conduit borrower. Others must be made by the actual issuer of the bonds. The IRS frequently observes that issuers make the written elections in the arbitrage certificate prepared pursuant to section 1.148-2 of the Regulations. Once made, elections cannot be revoked without the IRS's permission.

Examples of elections include:

- waiving the right to treat a purpose investment as a program investment
- waiving the right to invest in higher yielding investments during any temporary period
- the issuer of a pooled financing issue electing to apply rebate spending exceptions separately to each conduit loan
- applying actual facts rather than reasonable expectations for certain provisions under the two-year spending exception from rebate
- excluding the earnings on a reasonably required reserve fund from available construction proceeds under the two-year spending exception from rebate
- treating a portion of an issue as a separate construction issue under the two-year spending exception from rebate
- electing to pay one and one-half percent penalty in lieu of arbitrage rebate
- electing to treat portions of a bond issue as separate issues

Requirements that Apply at Issuance and Throughout the Life of the Bonds

Proceeds Must Be Used for Qualified Purposes. Private activity bonds are used for a qualified purpose if 95 percent or more of the net bond proceeds are to be used for one or more defined qualified purposes. The qualified purposes are described in Sections 142 through 145 and 1394 of the Code. For purposes of the 95 percent requirement, issuance costs financed with bond proceeds are generally treated as not being used for a qualified purpose. For a description of issuance costs, see Requirements Related to Issuance – Only a Limited Amount of Private Activity Bond Proceeds May Be Used to Pay Issuance Costs, above. Qualified purposes and the relevant Code section are:

- Section 142 – exempt facilities such as:
 - airports
 - docks and wharves
 - mass commuting facilities
 - facilities for the furnishing of water
 - sewage facilities
 - solid waste disposal facilities
 - qualified residential rental projects
 - facilities for the furnishing of local electric energy or gas
 - local district heating or cooling facilities
 - qualified hazardous waste facilities
 - high-speed intercity rail facilities
 - environmental enhancements of hydro-electric generating facilities
 - qualified public educational facilities
 - qualified green building and sustainable design projects
 - qualified highway or surface freight transfer facilities
- Section 143 – qualified mortgages and qualified veterans' mortgages
- Section 144 – qualified small issue manufacturing facilities, qualified small issue farm property, qualified student loans, and qualified redevelopment projects
- Section 1394 – qualified enterprise zone and empowerment zone facilities
- Section 145 – qualified 501(c)(3) bonds. (The special rules generally applicable to qualified private activity bonds financing 501(c)(3) exempt purposes are covered in IRS [Publication 4077, Tax-Exempt Bonds for 501\(c\)\(3\) Charitable Organizations](#). Publication 4077 can be downloaded from the [TEB website](#))

A qualified private activity bond issue can lose its tax-exempt status as of the date of issuance if, subsequent to the issue date, sufficient nonqualified use occurs to cause the issue to fail the applicable use requirements. Hence, the issue becomes a taxable private activity bond issue. Generally, nonqualified use occurs when the issuer or other entity controlling expenditure or use of the proceeds or financed property takes an action that results in insufficient bond proceeds being allocated to the qualified purpose for which the bonds were issued. However, with respect to unspent proceeds, a failure to properly use those proceeds may occur as early as the date on which the issuer or other entity controlling expenditure of the proceeds reasonably expects that the bond proceeds will not be expended on the qualified purpose for which the bonds were issued.

Special Remedial Actions for Nonqualified Use. The Regulations provide that an issuer that fails to use proceeds for a qualified purpose may, in certain cases, cure that failure using one of the prescribed remedial actions. Generally, such remedial actions consist of the redemption or

defeasance of bonds. Additionally, if bond-financed personal property is disposed of exclusively for cash, remedial action may include the alternative use of the disposition proceeds to acquire replacement property within six months of the disposition date. Other remedial actions may be available to the issuer of qualified 501(c)(3) bonds.

The following Regulations provide remedial actions available for certain qualified private activity bonds.

- Section 1.142-2 – exempt facility bonds
- Section 1.144-2 – qualified small issue bonds and qualified redevelopment bonds
- Section 1.145-2 – qualified 501(c)(3) bonds
- Section 1.1394-1(m)(4) – qualified enterprise zone facility bonds, qualified empowerment zone facility bonds and District of Columbia enterprise zone facility bonds

These Regulations can be accessed through the IRS website under [Tax Code, Regulations and Official Guidance](#).

Proceeds May Not Be Used To Acquire Land or Other Existing Property. The Code prohibits the use of proceeds of certain types of qualified private activity bonds for certain expenditures, even if those expenditures are associated with a qualified purpose. Under Section 147(c) of the Code, a private activity bond is not a qualified bond if (1) 25 percent or more of the net proceeds of the bond issue are to be used (directly or indirectly) for the acquisition of land (or an interest therein), or (2) any portion of the proceeds of such issue is to be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes.

However, certain exceptions to this rule are available for first-time farmers (up to a specified inflation-adjusted amount), and for land acquired for certain environmental purposes in connection with an airport, mass commuting facility, high-speed intercity rail facility, dock, or wharf. Also, the restriction on land financing does not apply to any qualified mortgage bond, qualified veterans' mortgage bond, qualified student loan bond, qualified 501(c)(3) bond, or any exempt facility bond financing qualified public education facilities.

In addition to the restriction on financing land, generally, a qualified private activity bond will not be tax-exempt if any amount of the net proceeds is used for the acquisition of existing property unless the purpose of the acquisition is the first such use of that property. This rule does not apply to qualified mortgage revenue bonds, qualified veterans' mortgage revenue bonds or qualified 501(c)(3) bonds. Additionally, Section 147(d)(2) of the Code provides an exception to this prohibition when certain rehabilitation expenditures are made.

Also, under Section 147(e) of the Code, no proceeds of private activity bonds may be used to finance any:

- airplane (other than aircraft equipped for, and exclusively dedicated to providing, acute care emergency medical services)
- skybox or other private luxury box
- health club facility (under an exception, qualified 501(c)(3) bonds may finance health club facilities)
- facility primarily used for gambling
- store the principal business of which is the sale of alcoholic beverages for consumption off premises

Special Remedial Action Rule. An issuer may be able to cure a prohibited expenditure that does not meet the exceptions noted above. Section 1.147-2 of the Regulations provides that issuers may use the remedial action rules under section 1.142-2 of the Regulations to cure noncompliance for rehabilitation expenditures, acquiring property for environmental purposes, and certain prohibited financings. See Requirements That Apply at Issuance and Throughout the Life of the Bonds – Proceeds Must be Used for Qualified Purposes – Special Remedial Actions for Nonqualified Use, above.

Proceeds Must Be Timely Allocated to Expenditures. Issuers and conduit borrowers are required to follow the rules for allocating bond proceeds. The issuer or other entity controlling expenditure of the proceeds of a qualified private activity bond issue must allocate those proceeds among the various project expenditures in a manner demonstrating compliance with the qualified use requirements. These allocations must generally be consistent with allocations made for determining compliance with the arbitrage yield restriction and rebate requirements, as well as other federal tax filings. See Proceeds Are Subject to Investment Restrictions: the Arbitrage Yield Restriction and Arbitrage Rebate Requirements, below, for an overview of those rules.

An issuer must account for the allocation of proceeds to an expenditure not later than 18 months after the later of the date the expenditure is paid or the date the project, if any, financed by the issue is placed in service. This allocation must be made in any event by the date 60 days after the fifth anniversary of the issue date or the date 60 days after the retirement of the issue, if earlier.

Proceeds Are Subject to Investment Restrictions: the Arbitrage Yield Restriction and Arbitrage Rebate Requirements. Issuers of tax-exempt bonds, including qualified private activity bonds, are generally subject to investment, or arbitrage, limitations under Section 148 of the Code. Failure to comply with those arbitrage limitations will result in the bonds being arbitrage bonds and interest on the bonds being taxable.

In general, arbitrage is earned when the gross proceeds of an issue are used to acquire investments that earn a yield that is materially higher than the yield on the bonds of the issue. Earning arbitrage is permitted in certain circumstances, including those where arbitrage may be earned but must be paid, or rebated, to the U.S. Department of the Treasury. In some cases, an issuer may be able to reduce the yield on an investment for arbitrage purposes and thereby avoid an arbitrage violation by making a yield reduction payment to the U.S. Department of the Treasury. See Where and When To File Arbitrage Rebate and Yield Reduction Payments, below, for information on how to make yield reduction payments.

An issuer must comply with two general sets of arbitrage rules: (1) the yield restriction requirements of Section 148(a) and (2) the rebate requirements of Section 148(f). An issuer may meet the rules of one of these regimes, but still have arbitrage bonds because it failed the other. Even though interconnected, both sets of rules have their own distinct requirements. The following is an overview of the basic requirements of these two general rules. Additional requirements or exceptions, beyond the scope of this Publication, may apply in certain instances.

An issuer's reasonable expectations on the issue date regarding the amount and use of gross proceeds of the issue are used to determine whether an issue consists of arbitrage bonds. In addition, if an issuer or any person acting on behalf of the issuer takes a deliberate, intentional action to earn arbitrage after the issue date, that action will cause the bonds of an issue to be arbitrage bonds if that action, had it been reasonably expected on the issue date, would have caused the bonds to be arbitrage bonds. Intent to violate the requirements of Section 148 of the Code is not necessary for an action to be intentional.

Yield Restriction Requirements. The yield restriction rules of Section 148(a) of the Code generally provide that the direct or indirect investment of the gross proceeds of bonds in investments earning a yield materially higher than the yield of the bond issue causes the bonds to become arbitrage bonds. The chart below describes when the yield on particular investments will be “materially higher” (the chart shows the permitted yield spread between the yield on the bond issue and the yield on the particular investment; any spread beyond that stated is materially higher):

Applicable "Materially Higher" Limits	
Type of Investments	Materially Higher When Spread Exceeds
general rule (when other rules below don't apply)	1/8 of one percentage point
investments in a refunding escrow	1/1000 of one percentage point
investments allocable to replacement proceeds	1/1000 of one percentage point
program investments (other than qualified mortgage loans or qualified student loans)	1.5 percentage points
student loans	2 percentage points
mortgage loans	1.125 percentage points, calculated as required under Section 143(g) of the Code
investments in tax-exempt bonds	generally, no yield limitation (but for qualified 501(c)(3) bonds, tax exempt bond investments must not be subject to the alternate minimum income tax)

Certain exceptions are available under the yield restriction rules. The investment of proceeds in materially higher yielding investments does not cause the bonds of an issue to be arbitrage bonds in the following three instances: (1) during a temporary period (e.g., three-year temporary period for capital projects and 13 months for restricted working capital expenditures); (2) as part of a reasonably required reserve or replacement fund; and (3) as part of a minor portion (an amount not exceeding the lesser of 5 percent of the sale proceeds of the issue or \$100,000). Whether or not the arbitrage yield restrictions rules apply, issuer should consider whether the rebate requirements apply.

Rebate Requirements. The rebate requirements of Section 148(f) of the Code generally provide that, unless certain earnings on “nonpurpose investments” allocable to the gross proceeds of an issue are rebated to the U.S. Department of the Treasury, the bonds in the issue will be arbitrage bonds. Generally, nonpurpose investments are investment securities such as Treasury bonds, bank deposits or guaranteed investment contracts, etc., and do not include “purpose investments.” A purpose investment is an investment that the issuer acquires to carry out the governmental purpose of an issue. Examples of purpose investments include the payment obligations created when an issuer loans proceeds of a qualified 501(c)(3) bond to a 501(c)(3) hospital or leases a manufacturing facility financed with proceeds of a qualified small issue bond to a private corporation.

The arbitrage that must be rebated is based on the excess (if any) of the amount actually earned on nonpurpose investments over the amount that would have been earned if those investments had a yield equal to the yield on the issue, plus any income attributable to such excess. Under section 1.148-3(b) of the Regulations, the future values (as of the computation date) of all earnings received and payments actually or constructively made with respect to nonpurpose

investments are included in determining the amount of rebate due. See [Where and When To File Arbitrage Rebate and Yield Reduction Payments](#), below, for information on how to make rebate payments.

There are, however, spending exceptions to the general rebate requirements applicable to qualified private activity bonds. Whether these exceptions apply depends on the timing of expenditure of required amounts of proceeds, as follows:

Spending Exceptions	
Spending Period	Spending Exception
Six months	Section 1.148-7(c) of the Regulations provides an exception to rebate if the gross proceeds of the bond issue are allocated to expenditures for governmental or qualified purposes that are incurred within six months after the date of issuance.
18 months	Section 1.148-7(d) of the Regulations provides an exception to rebate if the gross proceeds of the bond issue are allocated to expenditures for governmental or qualified purposes which are incurred within the following schedule: (1) at least 15 percent within six months after the date of issuance; (2) at least 60 percent within 12 months after the date of issuance; and (3) 100 percent within 18 months after the date of issuance.
Two years	Section 1.148-7(e) of the Regulations provides an exception to rebate <u>for construction issues financing property to be owned by a governmental entity or 501(c)(3) organization</u> when certain available construction proceeds are allocated to expenditures within the following schedule: (1) at least 10 percent within six months after the date of issuance; (2) at least 45 percent within 12 months after the date of issuance; (3) at least 75 percent within 18 months after the date of issuance; and (4) 100 percent within 24 months after the date of issuance.
<i>Note: Issuers may still owe rebate on amounts earned on nonpurpose investments allocable to proceeds not covered by one of the spending exceptions, which may include earnings in a reasonably required reserve or replacement fund.</i>	

[Where and When To File Arbitrage Rebate and Yield Reduction Payments](#). Issuers of tax-exempt bonds file IRS [Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate](#), to make the following types of payments:

- yield reduction payments
- arbitrage rebate payments
- payments of a penalty in lieu of rebate
- payment in connection with the termination of the election to pay a penalty in lieu of arbitrage rebate
- payment of the penalty for failure to pay arbitrage rebate on time

A yield reduction payment and/or arbitrage rebate installment payment is required to be paid no later than 60 days after the “computation date” to which the payment relates. An issuer of a fixed yield issue may treat any date as a computation date. An issuer of a variable yield issue may treat the last day of any bond year ending on or before the latest date for making the first rebate payment (generally not later than five years after the issue date) as a computation date. Thereafter, the issuer must consistently treat either the end of each bond year or the end of each fifth bond year as a computation date. Generally, a “bond year” is a one-year period that ends

on the date that the issuer selects. If the issuer does not make a timely selection, the bond years for the issue end on each anniversary of the issue date and on the final maturity date.

Recovering an Overpayment of Rebate. If an issuer pays more than the required rebate, it may ask to recover the overpayment. In general, a request for recovery of overpayment of arbitrage rebate may be made when the issuer can establish that an overpayment occurred. An overpayment is the excess of the amount paid to the U.S. Department of the Treasury for an issue over the sum of the rebate amount for the issue as of the most recent computation date and all amounts that are otherwise required to be paid under Section 148 as of the date the recovery is requested. The request can be made with the IRS by completing and filing IRS [*Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*](#). An issuer must file a Form 8038-R no later than the date that is two years after the final computation date for the issue. For more information, see [*Revenue Procedure 2008-37, 2008-29 I.R.B. 137*](#).

Special Remedial Action for Failure To Timely Pay Arbitrage Rebate. An issuer that fails to timely pay arbitrage rebate will be excused from having its bonds be arbitrage bonds if the failure is not due to willful neglect and the issuer submits a Form 8038-T with a payment of the rebate amount owed, plus penalty and interest. The penalty may be waived under certain circumstances. For more information, see section 1.148-3(i)(3) of the Regulations and [*Revenue Procedure 2005-40, 2005-28 I.R.B. 83*](#).

Private Activity Bonds Are Subject to Maturity Limitations. Section 147(b) of the Code places limits on the maturity of qualified private activity bonds. A private activity bond is not a qualified bond (and therefore will not be tax exempt) if the average maturity of the bond issue exceeds 120 percent of the average reasonably expected economic life of the facilities being financed with such issue. This requirement does not apply to qualified mortgage bonds, qualified veterans' mortgage bonds or qualified student loan bonds. Working capital expenditures are ignored when determining the economic life of facilities.

Private Activity Bonds May Not Be Federally Guaranteed. Section 149(b) of the Code provides that any tax-exempt bond, including a qualified private activity bond, will not be treated as tax exempt if the payment of principal or interest is directly or indirectly guaranteed by the federal government or any agency or instrumentality of the federal government. Exceptions to this general rule include guarantees by certain quasi-governmental entities administering federal insurance programs, and federal guarantees for qualified residential rental projects, home mortgages and student loans. Additional exceptions apply to bond proceeds that are invested in U.S. Treasury securities or held in a bona fide debt service fund, a reasonably required reserve or replacement fund or a refunding escrow, and investments during a permitted initial temporary period.

A Private Activity Bond May Not Be a Hedge Bond. Section 149(g) of the Code states that hedge bonds will not be tax-exempt unless certain requirements, described below, are satisfied. A “hedge bond” is any bond that is part of a bond issue that fails **either** of the following requirements:

- The issuer must reasonably expect that 85 percent of the spendable proceeds of the issue will be used to carry out the qualified purpose within the three-year period beginning on the date the bonds are issued (“spendable proceeds” means proceeds from the sale of the issue, less the portion invested in a reasonably required reserve or replacement fund or as part of a permitted “minor portion”).
- Not more than 50 percent of the proceeds of the issue are invested in nonpurpose investments having a substantially guaranteed yield for four or more years.

Section 149(g)(3)(B) provides an exception to the general definition of a hedge bond if at least 95 percent of the net proceeds of the issue are invested in tax-exempt bonds that are not subject to the alternative minimum tax. For this purpose, amounts held either: (1) in a bona fide debt service fund or (2) for 30 days or less pending either reinvestment of the proceeds or bond redemption, are treated as invested in tax-exempt bonds not subject to the alternative minimum tax. Additionally, a refunding bond issue does not generally consist of hedge bonds if the prior issue met the requirements for tax-exempt status and issuance of the refunding bonds furthers a significant governmental purpose (e.g. realize debt service savings, but not to otherwise hedge against future increases in interest rates).

Even if an issue otherwise meets the definition of a hedge bond, it will generally still be tax-exempt if two requirements are satisfied. First, at least 95 percent of the reasonably expected legal and underwriting costs associated with issuing the bonds must be paid within 180 days after the issue date *and* the payment of such costs must not be contingent upon the disbursement of the bond proceeds. Second, on the date of issuance the issuer must reasonably expect that the spendable proceeds of the issue will be allocated to expenditures for governmental or qualified purposes within the following schedule:

- 10 percent within one year after the date of issuance;
- 30 percent within two years after the date of issuance;
- 60 percent within three years after the date of issuance; and
- 85 percent within five years after the date of issuance.

Limitations on Refunding Private Activity Bonds. Qualified private activity bonds may be currently refunded, but, with the exception of qualified 501(c)(3) bonds, cannot be advance refunded. Under section 1.150-1(d)(1) of the Regulations, a refunding bond issue is an issue the proceeds of which are used to pay principal, interest, or redemption price on another issue (a prior issue), as well as the issuance cost, accrued interest, or capitalized interest on the refunding issue, a reserve or replacement fund, or any similar costs properly allocable to that refunding issue. Current and advance refunding issues are distinguished as follows:

Types of Refundings	
Current Refunding Issue	A refunding issue that is issued not more than 90 days before the final payment of principal (e.g., the redemption date) or interest on the prior issue.
Advance Refunding Issue	A refunding issue that is issued more than 90 days before the final payment of principal (e.g., the redemption date) or interest on the prior issue.

Thus, refundings of tax-exempt governmental bonds and qualified private activity bonds are permitted as follows:

Permitted Refundings		
Type of Tax-Exempt Bond	Current Refunding	Advance Refunding
Governmental Bonds	Yes	Yes*
Qualified 501(c)(3) Bonds	Yes	Yes*
Other Qualified Private Activity Bonds	Yes	No

* Generally, bonds of this type issued after 1985 may only be advance refunded once.

Refunding bond issues generally derive their tax-exempt status from the prior issue they refund; if the prior issue was not tax-exempt, the refunding bonds generally cannot be tax-exempt.

Private Activity Bonds May Not Be Used for Abusive Tax Transactions

The IRS, including TEB, is engaged in extensive efforts to curb abusive tax shelter schemes and transactions. Information about [abusive tax-exempt bond transactions](#) is available on the TEB website.

What Happens When the Terms of a Private Activity Bond Are Modified?

If the terms of a private activity bond are sufficiently modified, the bond will be treated as reissued. When qualified private activity bonds are reissued, either actually or in a deemed reissuance, the new bonds must be re-tested as of the date of the reissuance to determine if all the various federal tax requirements are met for the “new” issue. These include the requirements that apply when bonds are issued, such as timely filing of the Form 8038. See [Requirements Related to Issuance – Issuers Must File Information Return for Tax-Exempt Private Activity Bond Issues – Form 8038](#), above.

A deemed reissuance may arise if sufficient changes are made to the terms of the bond, such as when a bondholder and issuer agree, directly or indirectly, to a significant modification of the terms of any bonds. See [Reissuance of Tax-Exempt Obligations: Some Basic Concepts](#) for examples of significant modifications. If deemed reissued, the modified bonds are deemed exchanged for the original bonds. In general, the date the issuer and bondholder enter into the agreement to modify the terms of the bonds is treated as the date of issuance of the new bonds, even if the modification is not immediately effective. At reissuance, the modified bond must meet any tax law requirements that apply upon its early retirement in connection with the reissuance, including the acceleration of any arbitrage rebate or yield reduction payment that is due. See [Proceeds Are Subject to Investment Restrictions: the Arbitrage Yield Restriction and Arbitrage Rebate Requirements: Where and When To File Arbitrage Rebate and Yield Reduction Payments](#) above. For more information on the reissuance rules, see [Reissuance of Tax-Exempt Obligations: Some Basic Concepts](#).

Issuers Must Retain Records To Show that Requirements Are Satisfied

Section 6001 of the Code and section 1.6001-1(a) of the Regulations generally provide that any person subject to income tax, or any person required to file a return of information with respect to income (e.g., the issuer filing information returns relating to its bond issues), must keep such books and records as are sufficient to establish the amount of gross income, deductions, credits or other matters required to be shown by that person in any return. Answers to [Frequently Asked Questions](#) regarding record retention requirements applicable to tax-exempt bonds are available on the TEB website.

Certain Holders May Not Exclude Interest on Qualified Private Activity Bonds from Taxable Income

Even if a private activity bond meets all other requirements for tax exemption, the Code may prohibit certain holders from excluding interest income from tax. Generally, the entity that benefits from qualified private activity bonds may not also receive an exclusion from tax for interest that it receives while holding those bonds. Specifically, Section 147(a) of the Code provides that a private activity bond is not a qualified bond (and therefore will not be tax exempt) during any period it is held by a person who is a substantial user of the facilities financed with the bond or by a person “related” to a substantial user. Generally, a substantial user of a facility includes any nonexempt person who regularly uses a part of such facility in a trade or business. See section 1.103-11(b) of the Regulations for the rules to determine whether a person is a substantial user. Section 147(a)(2) of the Code governs whether a person is treated as a “related person” to a substantial user.

The substantial user prohibition of Section 147(a) does not apply to qualified mortgage bonds, qualified veterans’ mortgage bonds, qualified student loan bonds or qualified 501(c)(3) bonds.

POST- ISSUANCE COMPLIANCE MONITORING

In this section, we discuss the importance of issuers and other parties monitoring compliance with the Code requirements and suggest steps an issuer and others may take to monitor bond issues.

Protecting Against Post-Issuance Violations

Issuers and users of bond proceeds may be concerned with how they can further protect the tax-exempt status of their qualified private activity bonds. Reliance solely on bond documents and tax certificates provided when the bonds are issued will not likely provide the assurance an issuer desires. To gain greater confidence that bonds are in compliance with federal tax laws, an issuer may adopt, or ask the entity borrowing bond proceeds or controlling the financed property to adopt, post-issuance monitoring procedures. TEB believes that issuers and other users of bond proceeds that establish and follow comprehensive written monitoring procedures to promote post-issuance compliance generally are less likely to violate the federal tax requirements related to their bonds, and are more likely to find any violations earlier, than those issuers and other users without procedures. Early discovery of a violation is a factor TEB considers in determining the appropriate resolution under its Voluntary Closing Agreement Program. For information on procedures and other options to assist issuers and other users of bond proceeds in their tax compliance responsibilities, see IRS [Publication 5005, Your Responsibilities as a Conduit Issuer of Tax-Exempt Bonds](#).

Steps to Better Monitoring

In formulating procedures, issuers and other users of bond proceeds may consider:

- Designating one or more officials to assist in post-issuance compliance;
- Designating one or more officials to assist with examinations of the bond issue;
- Providing training or other technical support to designated official(s);
- Designating time intervals within which compliance monitoring activities will be completed; and
- Timely completing remedial actions (including requests under TEB VCAP) to correct or otherwise resolve identified noncompliance.

The chart below identifies particular areas for compliance monitoring procedures.

Compliance Procedures		
Type of Procedures	Description of Procedures for Post-Closing Matters	Where Responsibility is Discussed in this Publication
Information Return Filing	Procedures to ensure timely filing of information returns, including procedures concerning amended and late filed returns	TAX-EXEMPT PRIVATE ACTIVITY BONDS – Requirements Related to Issuance – Issuers Must File Form 8038, <i>Information Return for Tax-Exempt Private Activity Bond Issues</i>
Change in Use of Proceeds or Bond-Financed Property	Procedures to timely identify and remediate deliberate actions	TAX-EXEMPT PRIVATE ACTIVITY BONDS – Requirements That Apply at Issuance and Throughout the Life of the Bonds – Proceeds Must Be Used for Qualified Purposes
Reissuance	Procedures to satisfy applicable tax requirements when a modification in terms results in a reissuance for federal income tax purposes	TAX-EXEMPT PRIVATE ACTIVITY BONDS – What Happens When the Terms of a Private Activity Bond Are Modified?
Elections	Procedures for timely federal income tax elections	TAX-EXEMPT PRIVATE ACTIVITY BONDS – Requirements Related to Issuance – Issuers Must Make Certain Elections at Issuance
Allocation of Proceeds	Procedures for the timely expenditure and accounting for use and investment of bond proceeds	TAX-EXEMPT PRIVATE ACTIVITY BONDS – Requirements That Apply at Issuance and Throughout the Life of the Bonds – Proceeds Must Be Timely Allocated to Expenditures
Arbitrage Compliance	Procedures for the timely computation and payment of arbitrage rebate and yield reduction payments	TAX-EXEMPT PRIVATE ACTIVITY BONDS – Requirements That Apply at Issuance and Throughout the Life of the Bonds – Proceeds Are Subject to Investment Restrictions: the Arbitrage Yield Restriction and Arbitrage Rebate Requirements
Record Retention	Procedures for the maintenance of records	TAX-EXEMPT PRIVATE ACTIVITY BONDS – Issuers Must Retain Records To Show that Requirements Are Satisfied
IRS Contacts	Procedures concerning contacts from the IRS	POST-ISSUANCE COMPLIANCE MONITORING – Steps to Better Monitoring

Additional information on [Post-Issuance Compliance](#) is available on the TEB website.

WHAT TO DO UPON DISCOVERING A VIOLATION — TEB VOLUNTARY CLOSING AGREEMENT PROGRAM

TEB is committed to resolving federal tax violations with the issuer. To that end, TEB created the TEB Voluntary Closing Agreement Program. This program, which the Compliance and Program Management (“CPM”) function of TEB administers, provides remedies for issuers of tax-exempt bonds, tax credit bonds, and direct pay bonds that voluntarily come forward to resolve a violation of the Code that cannot be corrected under self-correction programs described in the Regulations or other published guidance. [Notice 2008-31, 2008-11 I.R.B 592](#), provides information and general guidance about TEB VCAP. [IRM section 4.81.6](#) provides general procedures under which TEB will enter into closing agreements. Closing agreement terms and amounts may vary according to the degree of the violation as well as the facts and circumstances surrounding it.

Issuers must use IRS [Form 14429, Tax Exempt Bonds Voluntary Closing Agreement Program Request](#), to submit a request and provide the required information. See [I.R.M. section 7.2.3.2.1](#) with respect to completing the March 2013 version of the form. To encourage issuers and other parties to voluntarily come forward to resolve problems, TEB VCAP also permits an issuer or its representative to initiate preliminary discussions of a closing agreement anonymously. While the IRS generally enters into closing agreements with the issuer of the bonds, in certain cases other parties to the bond transaction (including an entity borrowing the bond proceeds) may also participate in the negotiations and jointly execute the agreement.

For more information about this program, including requirements for submitting a request, case processing procedures, and resolutions standards, see [IRM section 7.2.3](#). Additional educational resources on [Voluntary Compliance](#) (including TEB VCAP administrative procedures and resolution standards) are available on the TEB website.

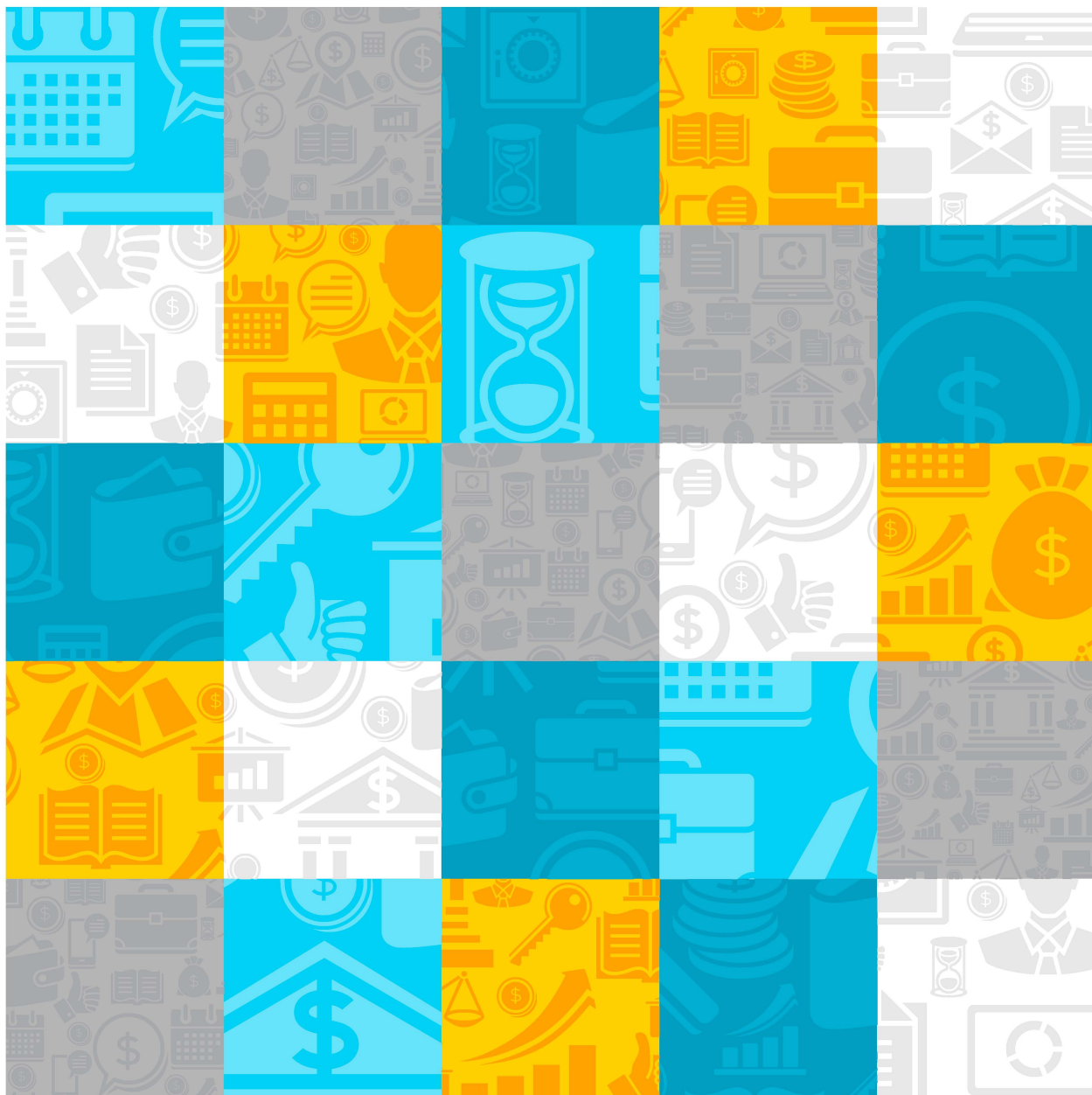
TEB INFORMATION AND SERVICES

TEB offers information and services through its education and outreach programs. You can learn about these programs through the [TEB website](#).

TEB has reading materials about the tax laws applicable to municipal financing arrangements, including revenue rulings, revenue procedures, notices and announcements, available on the TEB website under [Published Guidance](#).

Tax forms, instructions, and publications are also available at the TEB website under [Tax-Exempt Bonds Forms and Publications](#).

For personal assistance, you can call our Customer Account Services toll-free at (877) 829-5500, Monday through Friday, 8:00 a.m. – 5:00 p.m., your local time.



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DELAWARE COASTAL AIRPORT ADVISORY COMMITTEE

2020 Committee Appointments

One County Council Member	Doug Hudson
One representative of the Fixed Base Operator	Garrett Dernoga
One non-commercial Airport tenant	Larry Kelley
One commercial Airport tenant	Jeff Reed
Two Airport-based aircraft owners	Rick Garner
	Gus Croll
One Industrial Business/Business Park tenant representative	Mark Ryan
One tourism industry representative	Scott Thomas
One representative at large	Ray Hopkins



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ORDINANCE No. ____

AN ORDINANCE TO RESTATE AND CLARIFY THE CODE OF SUSSEX COUNTY, CHAPTER 110, ARTICLE XIII, SECTION 110-88, SUBSECTION D RELATING TO THE ESTABLISHMENT OF ANNUAL SERVICE CHARGES; DETERMINATION OF AMOUNT OF CHARGE.

WHEREAS, On, July 23, 2019, “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 110, ARTICLE XIII, SECTION 110-88, SUBSECTIONS D AND H THEREOF, RELATING TO THE ESTABLISHMENT OF ANNUAL SERVICE CHARGES; DETERMINATION OF AMOUNT OF CHARGE” was introduced by County Council; and

WHEREAS, although correctly introduced and adopted, the version actually introduced and adopted by County Council as Ordinance # 2677 on August 20, 2019 was not the same version linked to the County’s website; and

WHEREAS, the only difference between the two versions is found in the table within Section 110-88D regarding hospitals which should have correctly stated “1.0 EDU per overnight bed capacity and treatment room”; and

WHEREAS, the foregoing phrase was not included in the version of Ordinance #2677 depicted on the County website; and

WHEREAS, it is the desire of the County Engineering Department and legal staff to address this miscommunication through the public hearing process so that it is restated that the ordinance introduced and ultimately adopted included “1.0 EDU per overnight bed capacity and treatment room” for hospitals; and

WHEREAS, this restatement, like the amendments set forth in Ordinance # 2677 remain at the recommendation of the Sussex County Engineer, after evaluating the need to update these provisions of Section 110-88 of the Code of Sussex based upon the current application of that section of the Sussex County Code.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Code of Sussex County, Chapter 110, Article XIII, Section 110-88, Subsection D, “Establishment of Annual Service Charges; Determination of

Amount of Charge”, is hereby amended by adding “capacity and treatment room” to the Table regarding “Hospitals” as follows:

§110-88 Establishment of Annual Service Charges; Determination of Amount of Charge.

...

D. One equivalent dwelling unit (EDU) shall be equal to 250 GPD in discharge and determined as enumerated below:

Type of Establishment	Number of EDUs
Dwelling detached or attached or apartment with one kitchen and one or more baths and two or more bedrooms separate from kitchen	1.0
Any manufactured home (with a Motor Vehicle title) with one kitchen and one or more baths	1.0
Apartment, condo or rental vacation cottage having either a single combined living space with an integrated kitchen or a maximum of one bedroom and having one bath	0.75
Motel or hotel room without kitchen and with bath	1/3 per room
Retail store(s) building(s) 0.83 GPD/SF	1.0/3,000 square feet
	1.0 minimum per building
Laundromat, 250 GPD/washer	6.0 minimum
Office units, 0.25 GPD/square foot	1.0/1,000 square feet
Car wash	
Self-service	1.0 per stall
Self-service and recycling water	0.2 per stall
Semi-automatic (mechanical without conveyor)	5.0 per stall
Semi-automatic (mechanical without conveyor) conserving and recycling water	1.2 per stall
Automatic with conveyor	33.0 per lane
Automatic with conveyor conserving and recycling water	13.6 per lane
Emergency Centers & Special Treatment Centers	1.0 EDU per treatment room or treatment bay

Hospitals	1.0 EDU per overnight bed <i>capacity and treatment room</i>
Nursing Homes, Assisted Living, Rehabilitation, & Detox Facilities and Halfway Houses	0.33 EDU per bed

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Section 2. Because this Ordinance merely clarifies and restates the contents of Ordinance #2677 adopted on August 20, 2019, its effective date shall relate back to the August 20, 2019 adoption date of Ordinance #2677.



SUSSEX COUNTY EMERGENCY MEDICAL SERVICES

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Robert A. Stuart
Director

To: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson, Jr.

From: Robert Mauch, Manager of Quality & Standards

Subject: CAAS Accreditation Status

Date: January 7, 2020

Many years ago, Sussex County EMS (SCEMS) had the vision of becoming an accredited EMS organization. There was one thing that stood in the way. We don't have ambulances, and the premier agency that offers accreditation would not allow SCEMS to apply. That has changed and nearly two years ago, Sussex County EMS, with the approval and support of the Sussex County Council and county administration, officially embarked on the journey to join the small number of EMS agencies that have achieved the recognition afforded by the Commission on the Accreditation of Ambulance Services (CAAS). Unlike conducting an organizational review or audit where opportunities for improvement are identified, the CAAS accreditation process requires that an organization demonstrate and prove compliance with the comprehensive list of standards prior to submitting the accreditation application. There are nearly 120 individual standards that cover all aspects of an agency's delivery of service. These areas include the organizational structure and purpose of the agency, how an agency interacts with outside organizations, financial management, human resources, clinical standards, and safety to name just a few of the main categories.

Following the submission of the "paper" application, SCEMS hosted two site evaluators for an in-depth two-day evaluation of our department. Essentially, they were here to see firsthand that the processes described in the application were being utilized in our daily practice. At the conclusion of their visit, the two gentlemen spoke very highly of SCEMS. They commented how nice and polite our people are. They said that they felt welcome and how enjoyable it was to talk with the SCEMS paramedics. They added that this is not a reception that they often receive. SCEMS was then congratulated for achieving a perfect score on the site evaluation.

On December 23, 2019, Sussex County EMS was notified that we are now part of the nearly 200 EMS agencies that have achieved this level of recognition in the United States, Canada, and the West Indies. With an estimated 21,000 EMS agencies in the US alone, SCEMS is now among the 1% that have met the highest standards developed by the EMS industry leaders and have successfully proven this to the satisfaction of the CAAS Panel of Commissioners.

We would like to thank the council, county administration, county legal team, and other departments such as the EOC, Human Resources, and Finance that were vital to our application and ultimate approval.

**Caring People,
Quality Service**



Todd F. Lawson
Administrator



ORDINANCE NO. ____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$1,701,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE EXTENSION OF SANITARY SEWER SERVICES TO WOLFE RUNNE 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 extension of sanitary sewer services to Wolfe Runne (the "Project");

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

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

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

Section 1. Amount and Purpose of the Bonds. Acting pursuant to Title 9, Delaware Code, Chapters 65 and 67, Sussex County shall issue its negotiable general obligations in the maximum aggregate principal amount not to exceed \$1,701,000 (the "Bonds") to finance or reimburse the County for all or a portion of the costs of the Project.

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

Section 2. Security for the Bonds. The principal, interest and premium, if any, on the Bonds may be paid by ad valorem taxes on all real property subject to taxation by the County without limitation as to rate or amount, except as limited by Title 9, Delaware Code

Section 8002 (c). Pursuant to Title 9, Delaware Code, Section 6706, the full faith and credit of the County is pledged to such payment. The Bonds shall contain a recital that they are issued pursuant to Title 9, Delaware Code, Chapter 67, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. While the Bonds are backed by the County's full faith and credit, it is expected that the debt service will be paid from revenues generated by the Project.

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 forty (40) years from the date of issue of the Bonds, and shall be subject to redemption, as the County Administrator shall determine.

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

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

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

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

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

SYNOPSIS: This Ordinance provides for the issuance of up to \$1,701,000 of Sussex County General Obligation Bonds in order to finance or reimburse the County for all or a portion of the costs of the extension of sanitary sewer services to Wolfe Runne (the "Project").

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

Robin A. Griffith
Clerk of the Sussex County Council

(Wolfe Runne USDA RUS Ordinance)

ORDINANCE NO. ____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$1,526,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE EXTENSION OF SANITARY SEWER SERVICES TO MALLARD CREEK AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH

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

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

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

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

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

Section 1. Amount and Purpose of the Bonds. Acting pursuant to Title 9, Delaware Code, Chapters 65 and 67, Sussex County shall issue its negotiable general obligations in the maximum aggregate principal amount not to exceed \$1,526,000 (the "Bonds") to finance or reimburse the County for all or a portion of the costs of the Project.

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

Section 2. Security for the Bonds. The principal, interest and premium, if any, on the Bonds may be paid by ad valorem taxes on all real property subject to taxation by the County without limitation as to rate or amount, except as limited by Title 9, Delaware Code

Section 8002 (c). Pursuant to Title 9, Delaware Code, Section 6706, the full faith and credit of the County is pledged to such payment. The Bonds shall contain a recital that they are issued pursuant to Title 9, Delaware Code, Chapter 67, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. While the Bonds are backed by the County's full faith and credit, it is expected that the debt service will be paid from revenues generated by the Project.

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 forty (40) years from the date of issue of the Bonds, and shall be subject to redemption, as the County Administrator shall determine.

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

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

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

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

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

SYNOPSIS: This Ordinance provides for the issuance of up to \$1,526,000 of Sussex County General Obligation Bonds in order to finance or reimburse the County for all or a portion of the costs of the extension of sanitary sewer services to Mallard Creek (the "Project").

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

Robin A. Griffith
Clerk of the Sussex County Council

(Mallard Creek USDA RUS Ordinance)

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson, Jr.

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

RE: ***Western Sussex Transmission Facilities:
Contract 3: RT-13 Alt. & Herring Run Road Force Mains, Project 19-27
A. Recommendation to Award***

DATE: January 7, 2019

The Town of Bridgeville for the time being owns and operates a sanitary sewer system for the Bridgeville/Greenwood service area. In February 2017, the municipal councils of Bridgeville and Greenwood requested investigation of an alternate County Sewer District based scenario. Upon review of the findings, both municipal Councils requested formation of a County sewer district pursuant to Title 9 Del. Code § 6501, and on August 22, 2017, County Council adopted a resolution establishing the Western Sussex Area of the Unified Sewer District.

On December 5, 2017, Council approved the GMB, Inc. base for engineering planning, design and construction phase services in conjunction with transmission facilities to convey wastewater from the Towns of Bridgeville & Greenwood to Seaford for treatment & disposal.

The project has three (3) components; transmission, treatment plant demolition and Bridgeville Branch restoration. The construction of the transmission project was further broken down in the following four (4) contracts based on schedule requirements:

- Contract No.1 to A-Del Construction Co, Inc. in the amount of \$3,224,820.00, for the force main work in the RT-13 right-of-way. Awarded by Council on May 14, 2019.
- Contract No.2 to Pact One LLC in the amount of \$2,063,255.00, for the gravity sewer upgrades. Awarded by Council on May 14, 2019.
- Contract No.3 to A-Del Construction Co, Inc. in the amount of \$2,980,602.00, for the force main work in the RT-13 Alternate and Herring Road right-of-ways. Not yet awarded.



- Contract No.4 to Zack's Excavating, Inc. in the amount of \$3,236,939.00., for gravity sewer equalization chambers and two (2) pump stations. Awarded by Council on November 12, 2019.

On November 13, 2019, bids for contract no.3, were publicly advertised, forwarded directly to contractors and made available on the County website. Two (2) plan holders attended the pre-bid meeting and on December 13, 2019, four (4) bids were received. A-Del Construction Co., Inc. submitted the low base bid in the amount of \$2,980,602.00. The Engineering Department and GMB recommend awarding the project to A-Del Construction Co., Inc. in the amount of \$2,980,602.00 contingent upon SRF concurrence.

■ ■ ■ ■

ARCHITECTS
ENGINEERS

400 HIGH STREET
SEAFORD, DE 19973
PH: 302.628.1421
FAX: 302.628.8350

SALISBURY
BALTIMORE
SEAFORD

www.gmbnet.com

■ ■ ■ ■

JAMES H. WILLEY, JR., PE
PETER A. BOZICK, JR., PE
JUDY A. SCHWARTZ, PE
CHARLES M. O'DONNELL, III, PE
W. BRICE FOXWELL, PE
A. REGGIE MARINER, JR., PE
JAMES C. HOAGESON, PE
STEPHEN L. MARSH, PE
DAVID A. VANDERBEEK, PE
ROLAND E. HOLLAND, PE
JASON M. LYTLE, PE
CHRIS B. DERBYSHIRE, PE
W. MARK GARDOCKY, PE
MORGAN H. HELFRICH, AIA
KATHERINE J. MCALLISTER, PE

JOHN E. BURNSWORTH, PE
MICHAEL G. KOBIN, PE
VINCENT A. LUCIANI, PE
ANDREW J. LYONS, JR., PE
W. NICHOLAS LLOYD
AUTUMN J. WILLIS

December 17, 2019

Sussex County Engineering Dept.
2 The Circle
Georgetown, DE 19958

Attn: Hans Medlarz, P.E.
County Engineer

Re: Western Sussex Transmission Facilities: Pump Stations
Sussex County Project 19-27: Contract 3
Sussex County, Delaware
GMB File No. R170219

Dear Mr. Medlarz:

Bids for the referenced project were opened at the County Council Chambers at 11:00 a.m. on Friday, December 13, 2019. A copy of the Bid Opening Summary, Detailed Bid Tabulation, and copies of the four (4) bids received are enclosed for your files.

The lowest responsible total base bid was received from A-Del Construction Co, Inc. in the amount of \$2,649,002.00. Alternate Bid Schedule D in the amount of \$331,600.00 would add force main, ARV manholes, service connections and access gates in the area of Heritage Shores and Passwaters farms to connect the end of Contract 1 limits to Heritage Shores Pump Station.

GMB recommends an award to A-Del Construction Co, Inc., in the amount of \$2,980,602.00, which includes the Total Base Bid (Schedules A + B + C), and Schedule D: Alternate Bid Items, contingent upon the concurrence of DNREC.

If you have any questions, please do not hesitate to contact me at 302.628.1421. Thank you.

Sincerely,



Judy A. Schwartz, P.E.
Sr. Vice President/Project Director

JAS/slh

Enclosures:

Bid Results Summary
Bid Tabulation
Bids Received (4)

Western Sussex Transmission Facilities: Contract 3: Herring Run & Heritage Shores Force Main														
					Engineer's Estimate		A-Del Construction		Teal Construction		JJID		Pact Construction	
NO.	ITEM	SIZE OR DEPTH	UNIT	QUANTITY	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
Schedule A: Force Main Installation							Schedule A: Force Main Installation		Schedule A: Force Main Installation		Schedule A: Force Main Installation		Schedule A: Force Main Installation	
A-1	Mobilization	-	LS	1	\$ 159,000.00	\$ 159,000.00	\$ 110,000.00	\$ 110,000.00	\$ 93,565.00	\$ 93,565.00	\$ 160,000.00	\$ 160,000.00	\$ 35,000.00	\$ 35,000.00
A-2	Furnish and Install C900 PVC Force Main	10”	LF	9,720	\$ 125.00	\$ 1,215,000.00	\$ 106.00	\$ 1,030,320.00	\$ 101.00	\$ 981,720.00	\$ 130.00	\$ 1,263,600.00	\$ 185.00	\$ 1,798,200.00
A-3	Furnish and Install C900 PVC Force Main	8”	LF	3,480	\$ 100.00	\$ 348,000.00	\$ 77.00	\$ 267,960.00	\$ 72.00	\$ 250,560.00	\$ 80.00	\$ 278,400.00	\$ 175.00	\$ 609,000.00
A-4	Furnish and Install C900 PVC Force Main	12”	LF	1,036	\$ 135.00	\$ 139,860.00	\$ 114.00	\$ 118,104.00	\$ 94.00	\$ 97,384.00	\$ 200.00	\$ 207,200.00	\$ 195.00	\$ 202,020.00
A-5	Furnish and Install C900 PVC Force Main	16”	LF	17	\$ 150.00	\$ 2,550.00	\$ 340.00	\$ 5,780.00	\$ 292.00	\$ 4,964.00	\$ 500.00	\$ 8,500.00	\$ 225.00	\$ 3,825.00
A-6	Furnish and Install C900 PVC Force Main in Steel Casing Pipe (Open Cut)	10” in 16”	LF	60	\$ 475.00	\$ 28,500.00	\$ 420.00	\$ 25,200.00	\$ 557.00	\$ 33,420.00	\$ 2,000.00	\$ 120,000.00	\$ 600.00	\$ 36,000.00
A-7	Furnish and Install C900 PVC Force Main in Steel Casing Pipe (Jack & Bore)	10” in 16”	LF	70	\$ 1,200.00	\$ 84,000.00	\$ 930.00	\$ 65,100.00	\$ 686.00	\$ 48,020.00	\$ 1,800.00	\$ 126,000.00	\$ 1,000.00	\$ 70,000.00
A-8	Furnish and Install Directionally Drilled HDPE DR-11 DIPS Force Main	8”	LF	285	\$ 200.00	\$ 57,000.00	\$ 210.00	\$ 59,850.00	\$ 207.00	\$ 58,995.00	\$ 280.00	\$ 79,800.00	\$ 225.00	\$ 64,125.00
A-9	Furnish and Install Resilient Gate Valve	8”	EA	3	\$ 4,000.00	\$ 12,000.00	\$ 5,800.00	\$ 17,400.00	\$ 2,620.00	\$ 7,860.00	\$ 4,000.00	\$ 12,000.00	\$ 1,600.00	\$ 4,800.00
A-10	Furnish and Install Resilient Gate Valve	10”	EA	1	\$ 5,000.00	\$ 5,000.00	\$ 6,000.00	\$ 6,000.00	\$ 4,000.00	\$ 4,000.00	\$ 5,000.00	\$ 5,000.00	\$ 2,000.00	\$ 2,000.00
A-11	Furnish and Install SDR-35 Gravity Sewer	15”	LF	54	\$ 150.00	\$ 8,100.00	\$ 520.00	\$ 28,080.00	\$ 1,100.00	\$ 59,400.00	\$ 500.00	\$ 27,000.00	\$ 300.00	\$ 16,200.00
A-12	Furnish and Install Force Main Discharge Manhole	-	LS	1	\$ 39,000.00	\$ 39,000.00	\$ 40,000.00	\$ 40,000.00	\$ 28,500.00	\$ 28,500.00	\$ 110,000.00	\$ 110,000.00	\$ 8,000.00	\$ 8,000.00
A-13	Furnish and Install Combination Air/Vacuum Valves and Manholes	-	EA	5	\$ 15,500.00	\$ 77,500.00	\$ 14,500.00	\$ 72,500.00	\$ 16,600.00	\$ 83,000.00	\$ 27,000.00	\$ 135,000.00	\$ 6,500.00	\$ 32,500.00
A-14	Furnish and Install Tapped Tee and 2" Corporation Stop	-	EA	1	\$ 500.00	\$ 500.00	\$ 2,600.00	\$ 2,600.00	\$ 2,700.00	\$ 2,700.00	\$ 5,420.00	\$ 5,420.00	\$ 2,500.00	\$ 2,500.00
A-15	Private Property Transitions	-	LS	1	\$ 20,000.00	\$ 20,000.00	\$ 38,000.00	\$ 38,000.00	\$ 90,000.00	\$ 90,000.00	\$ 120,000.00	\$ 120,000.00	\$ 97,000.00	\$ 97,000.00
Subtotal Schedule A: Force Main Installation							\$ 2,196,010.00		\$ 1,886,894.00		\$ 1,844,088.00		\$ 2,657,920.00	
Schedule B: Pavement Restoration							Schedule B: Pavement Restoration		Schedule B: Pavement Restoration		Schedule B: Pavement Restoration		Schedule B: Pavement Restoration	
B-1	Temporary Paving – 8” GABC and 2” Type C Superpave	10”	SY	1,762	\$ 50.00	\$ 88,100.00	\$ 49.00	\$ 86,338.00	\$ 82.00	\$ 144,484.00	\$ 40.00	\$ 70,480.00	\$ 40.00	\$ 70,480.00
B-2	Permanent Pavement Restoration - Type C Superpave Surface Course, incl Full Width Mill & Overlay of Shoulder and Entrances	2”	SY	6,240	\$ 20.00	\$ 124,800.00	\$ 18.00	\$ 112,320.00	\$ 42.00	\$ 262,080.00	\$ 20.00	\$ 124,800.00	\$ 15.00	\$ 93,600.00
B-3	Permanent Pavement Restoration - BCBC Course within Shoulder and Entrances	12”	SY	2,360	\$ 60.00	\$ 141,600.00	\$ 80.00	\$ 188,800.00	\$ 230.00	\$ 542,800.00	\$ 80.00	\$ 188,800.00	\$ 100.00	\$ 236,000.00
B-4	Permanent Paving – PCC Pavement Patch	8”	SY	45	\$ 500.00	\$ 22,500.00	\$ 165.00	\$ 7,425.00	\$ 950.00	\$ 42,750.00	\$ 230.00	\$ 10,350.00	\$ 500.00	\$ 22,500.00
B-5	Removal & Replacement of Concrete Curb at Entrances	-	LF	20	\$ 100.00	\$ 2,000.00	\$ 100.00	\$ 2,000.00	\$ 148.00	\$ 2,960.00	\$ 150.00	\$ 3,000.00	\$ 100.00	\$ 2,000.00
Subtotal Schedule B: Pavement Restoration							\$ 379,000.00		\$ 396,883.00		\$ 995,074.00		\$ 397,430.00	
Schedule C: Contingent Items							Schedule C: Contingent Items		Schedule C: Contingent Items		Schedule C: Contingent Items		Schedule C: Contingent Items	
C-1	Contingent Unclassified Excavation	-	CY	500	\$ 50.00	\$ 25,000.00	\$ 54.00	\$ 27,000.00	\$ 15.00	\$ 7,500.00	\$ 25.00	\$ 12,500.00	\$ 50.00	\$ 25,000.00
C-2	Contingent Borrow Material, Borrow Type “C” (Backfill)	-	CY	5000	\$ 50.00	\$ 250,000.00	\$ 37.00	\$ 185,000.00	\$ 25.00	\$ 125,000.00	\$ 15.00	\$ 75,000.00	\$ 20.00	\$ 100,000.00
C-3	Contingent Aggregate Material, Graded Aggregate Type “B” (Crusher Run)	-	TN	275	\$ 50.00	\$ 13,750.00	\$ 66.00	\$ 18,150.00	\$ 30.00	\$ 8,250.00	\$ 60.00	\$ 16,500.00	\$ 40.00	\$ 11,000.00
C-4	Contingent Porous Fill Material, Coarse Aggregate No. 57 Stone	-	TN	275	\$ 60.00	\$ 16,500.00	\$ 73.00	\$ 20,075.00	\$ 42.00	\$ 11,550.00	\$ 60.00	\$ 16,500.00	\$ 40.00	\$ 11,000.00
C-5	Contractor Down Time (Main Line Crew)	-	HR	50	\$ 1,000.00	\$ 50,000.00	\$ 950.00	\$ 47,500.00	\$ 910.00	\$ 45,500.00	\$ 625.00	\$ 31,250.00	\$ 1,200.00	\$ 60,000.00

Western Sussex Transmission Facilities: Contract 3: Herring Run & Heritage Shores Force Main														
					Engineer's Estimate		A-Del Construction		Teal Construction		JJID		Pact Construction	
NO.	ITEM	SIZE OR DEPTH	UNIT	QUANTITY	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
C-6	Furnish and Place 4,000 psi Concrete	-	CY	30	\$ 600.00	\$ 18,000.00	\$ 750.00	\$ 22,500.00	\$ 225.00	\$ 6,750.00	\$ 180.00	\$ 5,400.00	\$ 400.00	\$ 12,000.00
C-7	Contingent Miscellaneous Hot Mix Asphalt – Type C Superpave Surface Course	-	TN	100	\$ 150.00	\$ 15,000.00	\$ 100.00	\$ 10,000.00	\$ 190.00	\$ 19,000.00	\$ 125.00	\$ 12,500.00	\$ 200.00	\$ 20,000.00
C-8	Contingent Miscellaneous Hot Mix Asphalt – BCBC	-	TN	100	\$ 150.00	\$ 15,000.00	\$ 125.00	\$ 12,500.00	\$ 190.00	\$ 19,000.00	\$ 120.00	\$ 12,000.00	\$ 200.00	\$ 20,000.00
C-9	Replacement of Existing Storm Drain Pipes	-	LF	150	\$ 120.00	\$ 18,000.00	\$ 135.00	\$ 20,250.00	\$ 102.00	\$ 15,300.00	\$ 150.00	\$ 22,500.00	\$ 200.00	\$ 30,000.00
C-10	Install Stabilization Matting	-	SF	1,500	\$ 3.00	\$ 4,500.00	\$ 1.50	\$ 2,250.00	\$ 5.00	\$ 7,500.00	\$ 5.00	\$ 7,500.00	\$ 20.00	\$ 30,000.00
Subtotal Schedule C: Contingent Items						\$ 425,750.00	\$ 365,225.00		\$ 265,350.00		\$ 211,650.00		\$ 319,000.00	
Total: (Schedules A + B + C)						\$ 3,000,760.00	\$ 2,649,002.00		\$ 3,104,512.00		\$ 3,267,000.00		\$ 3,724,750.00	
Schedule D: Alternate Bid Items							Schedule D: Alternate Bid Items		Schedule D: Alternate Bid Items		Schedule D: Alternate Bid Items		Schedule D: Alternate Bid Items	
D-1	ADD - Furnish and Install C900 PVC Force Main	10"	LF	3,560	\$ 110.00	\$ 391,600.00	\$ 80.00	\$ 284,800.00	\$ 75.00	\$ 267,000.00	\$ 125.00	\$ 445,000.00	\$ 210.00	\$ 747,600.00
D-2	ADD - Install Combination Air/Vacuum Valves and Manholes	-	EA	2	\$ 15,500.00	\$ 31,000.00	\$ 14,500.00	\$ 29,000.00	\$ 17,100.00	\$ 34,200.00	\$ 27,000.00	\$ 54,000.00	\$ 7,500.00	\$ 15,000.00
D-3	ADD - Furnish and Install 2” Service Saddle Tap and Corporation Stop	-	EA	3	\$ 500.00	\$ 1,500.00	\$ 2,600.00	\$ 7,800.00	\$ 2,700.00	\$ 8,100.00	\$ 5,000.00	\$ 15,000.00	\$ 2,500.00	\$ 7,500.00
D-4	ADD - Furnish and Install 12’ Fence Gate	-	EA	4	\$ 500.00	\$ 2,000.00	\$ 2,500.00	\$ 10,000.00	\$ 6,720.00	\$ 26,880.00	\$ 5,000.00	\$ 20,000.00	\$ 4,000.00	\$ 16,000.00
Subtotal Schedule D: Alternate Bid Items						\$ 426,100.00	\$ 331,600.00		\$ 336,180.00		\$ 534,000.00		\$ 786,100.00	

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
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Sussex County

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HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson, Jr.

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

RE: ***Western Sussex District Area Expansion
A. Supplemental DNREC Funding Request***

DATE: January 7, 2020

In February 2017, the Commissioners of Bridgeville and Greenwood requested investigation of a possible County Sewer District based wastewater approach. An alternate scenario for a Western Sussex County Sewer District connecting to the City of Seaford was evaluated and based on a more favorable cost scenario both municipal Councils requested formation of a County sewer district pursuant to Title 9 Del. Code § 6501. On August 22, 2017, County Council adopted a resolution establishing the Western Sussex Area of the Unified Sewer District.

Following the district creation, the Engineering and Finance Departments submitted the project to DNREC for funding consideration under the Clean Water State Revolving Fund. In April of 2018 the State's Water Infrastructure Advisory Council considered the application and recommended approval based on the attached narrative. The proposed loan forgiveness brought the annual total payment per EDU to \$605 which represents 1.5% of the weighted median household income of the area. The DNREC Secretary concurred with the recommendation and on August 14, the County received the attached DNREC obligation documentations with an offer of \$16,634,748 in funding.

The project has three (3) components; transmission system expansion, treatment plant demolition and Bridgeville Branch restoration. The construction of the transmission system project was further broken down in four (4) contracts based on schedule requirements. These contract as well as the professional services contract with GMB, Inc. have been awarded by Council within the original budget. The Finance and Engineering Departments analyzed the funding need for the remaining two components i.e. the plant demolition and the stream restoration of the Bridgeville Branch. As per the attached summary a shortfall of \$594,826.00 is expected mostly due to cost overruns associated with hot mix restoration in State maintained right-of-way. Therefore, the departments request Council's authorization to submit a supplemental funding request for the Western Sussex District Area Expansion Project in the amount of \$600,000.00 with the total loan repayment per residential account not to exceed the 1.5% threshold of the weighted median household income.





STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
OFFICE OF THE SECRETARY
ENTERPRISE BUSINESS PARK
97 COMMERCE WAY, SUITE 106
DOVER, DELAWARE 19904

ENVIRONMENTAL FINANCE

TELEPHONE: (302) 739-9941
FAX: (302) 739-2137

August 14, 2018

Todd F. Lawson
Sussex County Administrator
Sussex County Administrative Office
Building 1st Floor
2 The Circle, PO Box 589
Georgetown, DE 19947

RE: Delaware Water Pollution Control Revolving Fund Supplemental Binding Commitment Offer
Western Sussex Regional Sanitary Sewer District Project

Dear Mr. Lawson:

On behalf of the Delaware Water Pollution Control Revolving Fund (Fund), the Delaware Department of Natural Resources and Environmental Control (Department) is pleased to advise you that a Loan (Loan) has been authorized from the Fund to Sussex County Council (County) in the amount of **\$16,634,748** for a term of **thirty (30) years**. The Loan will be used to finance the transfer of the sewer flows from Bridgeville and Greenwood to the existing City of Seaford sewer system and wastewater treatment facility. The wastewater will be transferred utilizing existing and proposed infrastructure to be owned and maintained by Sussex County. This sewer system will serve what will be known as the Western Sussex Sewer District.

The County will provide further assurance that the Western Sussex Sewer District will reserve capacity for future growth and/or annexation by Bridgeville and Greenwood consistent with their respective comprehensive plans. Notwithstanding any expansion requirements outlined in Delaware Code or County Code, Sussex County has also agreed to a condition in the associated SRF Financing Agreement to set aside no less than 200 EDUs in the Western Sussex transmission system for underserved communities on a first-come, first-serve basis.

The loan interest rate shall be **2.529%** for a term of 30 years. Interest only will be payable during construction in semi-annual installments. Upon project completion, **up to \$3,200,000 of principle forgiveness** will be applied, and principal and interest payments shall be paid semi-annually in an amount sufficient to amortize the outstanding principal balance over the 30-year term.

It is understood that a General Obligation Pledge of the County will secure the Loan. All legal costs, incurred by the Fund, associated with loan closing shall be borne by the County and will become a part of loan proceeds.

Delaware's Good Nature Depends on You!

Mr. Todd F. Lawson
August 14, 2018
WPCRF Binding Commitment Letter
Sussex County Council – Western Sussex Sewer District
Page | 2

The Fund reserves the right to withdraw or alter the terms of this commitment if, between the date of the County's loan application and the date of the closing, the County incurs any debt or its financial condition changes in any way deemed material by the Fund at its sole discretion. Loan closing and the disbursement of funds shall remain subject to the satisfaction of any conditions established by the Fund.

The County shall comply in all respects with all applicable Fund requirements and reporting, federal laws, regulations and other requirements related to or arising out of, or in connection with funding by the Fund. The County shall also comply in all respects with the Federal Single Audit Act and OMB Circular A-133, 2 CFR 200 Subpart F, as a sub-recipient of Federal funds. The Catalog of Federal Domestic Assistance (CFDA) number for the Fund is 66.458. Where noncompliance of such requirements is determined by the Fund or the Department, the issue shall be referred to the proper federal authority and/or agency for consultation and/or enforcement action.

If you have any questions concerning the foregoing, please contact this office at (302) 739-9941. If you concur with the terms and conditions stated above, please acknowledge your acceptance by signing below and returning the original to this office no later than September 30, 2018.

If Loan closing shall not have occurred within 120 days of receipt of this letter, the Fund reserves the right to discontinue processing the County's application.

Sincerely,
FOR THE DELAWARE WATER POLLUTION CONTROL
REVOLVING FUND



Carla M. Cassell-Carter
Acting Chief of Administration
Office of the Secretary
Environmental Finance

The foregoing terms and conditions are hereby acknowledged and accepted this 20 day of August, 2018.

By: 

Todd F. Lawson
Sussex County Administrator

(SEAL OF THE COUNTY)

cc: Robert Zimmerman, DNREC
Greg Pope, DNREC
Keith Kooker, DNREC
Hans Medlarz, Sussex County
Gina Jennings, Sussex County

<p style="text-align: center;">Sussex County Council WPCRF Funding Request Western Sussex Sewer District</p>

Project Description

The Town of Bridgeville still owns and operates a sanitary sewer system for the Bridgeville/Greenwood service area. In February 2017, the municipal councils of Bridgeville and Greenwood requested investigation of an alternate County Sewer District based scenario. Sussex County Engineering Department, in conjunction with the respective municipal engineering consultants, developed said alternate scenario for a Western Sussex County Sewer District connecting to the City of Seaford. Both municipal Councils requested formation of a County sewer district pursuant to Title 9 Del. Code § 6501 and on August 22, 2017, the County Council adopted a resolution establishing the Western Sussex Area of the Unified Sewer District.

The City of Seaford's Council has agreed in principle to the outlined arrangement including a full buy-in for the existing municipal systems as they exist today, including any remaining legacy obligations conditioned upon the nutrient load allocation transfer under the Chesapeake TMDL. The City and the County in a joint effort have initiated the load transfer request, and it is supported by the State and EPA.

The Engineering Department is now working with the City on an updated agreement between Sussex County and the City of Seaford on behalf of the Blades as well as the Western Sussex Sewer District Areas, allowing for capacity set-asides and additional capacity purchases/sales based on need.

Upon the request of the Town of Bridgeville Sussex County is now providing interim operational assistance for the treatment plant on a reimbursement basis until all municipal sewer related assets, liabilities, and legacy obligations can be transferred after discontinuation of the point discharge into the Bridgeville Branch.

This will take the aging Bridgeville Treatment off-line and send the flows from Greenwood and Bridgeville to the City of Seaford where the effluent can be treated to a higher level and disposed in the Nanticoke. Though still disposed of in the river, the discharge point will be further downstream lessening the environmental impact to the more sensitive upstream portion of the river.

Project Conditions

- A growth assumption of 2.3% system wide will allow Sussex County to accommodate the anticipated straight-line growth in the Western Sussex Sewer District area and any district expansions consistent with the anticipated zoning classifications outlined in the respective municipal comprehensive plans.
- Notwithstanding any expansion requirements outlined in the Delaware or County codes, Sussex County agrees to a condition in the SRF Financing Agreement

setting aside no less than 200 EDUs in the Western Sussex transmission system on a first come first serve basis for underserved communities.

- The City of Seaford wastewater treatment facility has sufficient capacity to handle the proposed sewer district and the expected growth outlined above.

Project Details

- Modifications will be made to the Bridgeville WWTP and Heritage Shores Pump Station (HSPS) to reverse the flow direction through existing force main to convey flow from the existing Bridgeville WWTP to the HSPS site.
- A transmission main will be constructed to provide conveyance of wastewater flow from the HSPS to a new pump station, south of the HSPS, which is located at the northerly extent of the City of Seaford City limits and planned future sanitary sewer district.
- The new pump station to be constructed will be known as Pump Station 16 (PS16) and it will be located on the Dolby Farm property. A transmission main will be constructed to provide conveyance of the wastewater from PS 16 to an existing City of Seaford pump station known as the North Ross Pump Station (NRPS).
- Modifications will be made to the NRPS, and an additional force main will be installed adjacent to the existing force main conveying flow in a southerly direction to the City of Seaford's sanitary sewer collection system.
- The existing gravity sewers in the City's collection system that convey flow to the Seaford WWTF, will be upsized as needed at various locations.

Environmental Review

After a review of the Environmental Information Document; it was established that a Public Notification of the Finding of No Significant Impact (FONSI) would be necessary. The legal notice was published on April 18, 2018. After a 30 day comment period, the FONSI will be processed upon completion of the environmental cross-cutter coordination.

Project Schedule

Construction Start: July 2019

Construction Complete: November 2020

Project Budget

a. Administration	<u>\$80,000</u>
i. Land, Right of Way	\$54,000
ii. Legal	\$26,000
b. Engineering	<u>\$1,568,178</u>
i. Basic	\$1,568,178
c. Construction	<u>\$10,049,490</u>
i. Construction	\$3,051,350

d. Other	<u>\$30,000</u>
e. Contingencies	<u>\$1,340,786</u>
Total	<u>\$13,068,454</u>

Project Funding

Project Budget	\$13,068,454
Bridgeville Debt Refinanced (Balance as of 4-11-2018)	\$3,566,294
Total CWSRF Loan Amount	\$16,634,748
Principle Forgiveness	\$3,200,000
Loan Amount at Project Completion	<u>\$13,434,747.84</u>

Affordability Summary - User Rates

The annual cost for wastewater service is estimated at \$605 per Equivalent Dwelling Unit (EDU). This represents 1.50% of Median Household Income (MHI). When the utility provides only wastewater service the affordability standard is 1.5% of MHI. The funding for this project is heavily subsidized in the form of principle forgiveness in the amount of \$3,200,000 and a 30-year term in order to lower the cost per household.

Affordability Analysis

Project Budget	\$13,068,454
Bridgeville Debt Refinanced (Balance as of 4-11-2018)	\$3,566,293
Total CWSRF Loan Amount	<u>\$16,634,747</u>
Principle Forgiveness at Project Completion	\$3,200,000
Loan Amount at Project Completion	<u>\$13,434,747</u>

Wastewater

Interest Rate	2.529%
Loan Terms Years	30
Annual Debt Service for Proposed Project	\$641,680
Total Facility Cost	<u>\$641,680</u>
Residential Share at 81%	<u>\$519,761</u>

Estimated Wastewater EDUs @ Project Completion	1715
Total Debt Service Per EDU	\$303
O,M & R Cost, New Facility, Include in Service Charge	\$558,063
Estimated Service Charge Per EDU @ Project Completion	\$302
Total Estimated Annual Charge Per EDU	\$605
Weighted Median Household Income	\$40,432
% of MHI	1.50%

Terms

The funding is to be secured by a General Obligation Bond secured by the full faith and credit and taxing power of the County. The Interest Rate will be 2.529% for a term of 30 years. Interest only will be payable during construction in semi-annual installments. Upon project completion, up to \$3,200,000 of principle forgiveness will be applied and principal and interest payments shall be paid semi-annually in an amount sufficient to amortize the outstanding principal balance over the 30-year term.

Recommendation

Environmental Finance recommends Council approval and recommendation of a binding commitment to Sussex County Council for a 30-year loan of \$16,634,748 at 2.529% interest from the Water Pollution Control Revolving Fund. Interest only will be payable during construction in semi-annual installments. Upon project completion, up to \$3,200,000 in principal forgiveness of the outstanding balance will be applied. The remaining balance shall be paid semi-annually in an amount sufficient to amortize the outstanding principal balance over the 30-year term.

Should the County sell any of the assets previously owned by Bridgeville, the proceeds will be used to pay down the loan principal. The County has provided assurances that the Western Sussex Sewer District will reserve capacity for future growth and/or annexation by Bridgeville and Greenwood consistent with their respective comprehensive plans. Notwithstanding any expansion requirements outlined in Delaware Code or County Code, Sussex County has also agreed to a condition in the associated SRF Financing Agreement to set aside no less than 200 EDUs in the Western Sussex transmission system for underserved communities on a first-come, first-serve basis.

General Information

County Government

The County Government was established in 1970, replacing the Levy Court Commission with a Council-Administrator form of government. The Government is composed of a legislative body - the County Council, and an administrative body that includes operating departments and offices, which are administered by officials elected at-large.

The County Council, which has legislative power, consists of five members representing each of the County's respective districts. The members are elected to four year staggered terms. The County Administrator is appointed by the County Council and is responsible for the entire range of executive, administrative and fiscal duties performed by all County departments.

County Departments and Services

The County provides a variety of services including sewerage collection and treatment, drinking water, paramedic services, planning and zoning and the operation of libraries. The Department of Engineering administers and operates the County's sanitary sewer districts.

County sewer and water districts compose a large portion of County expenditures. The County's growing sewage collection and treatment facilities handle over 65,000 Equivalent dwelling units (EDUs) and is rapidly expanding to meet environmental needs. Each sewer district is treated as a separate fund. County sewer and water districts are self-supporting; financed and operated as enterprise funds in a manner similar to private business.

The County obtains sewer revenue through sewer service charges per EDU, front foot assessment charges, and connection fees. Commercial users are billed a minimum charge equal to the fixed rate charged to residential users based upon the Equivalent Dwelling Units allocated to each commercial user

Financial Reporting

The County operates on a fiscal year from July 1, to June 30. Financial reports of revenues, expenditures and financial status are provided to all levels of management on a monthly basis. The County's audited financial statements are audited annually by a certified public accountant. Recent financial statements were audited by BDO USA, LLP of Wilmington Delaware, Certified Public Accountants.

Budget Process

The County's financial plans are embodied in the annual operating budget. This budget reflects the projections of revenues and expenditures, the present level of government services and the distribution of costs to the various segments of the community through the collection of taxes and fees.

The County Council has governing authority for establishing programs and fiscal policies, approving the Annual Operating Budget and setting the tax rates and fees for services. The County Administrator is responsible for proposing programs and recommending funding levels to the County Council, and for implementing service programs in accordance with established goals and objectives.

Basis of Accounting

The County's proprietary funds, which include the water and sewer districts, are accounted for using the accrual basis of accounting. The revenues of such funds are recognized when earned and the expenses of such funds are recognized when incurred.

Proprietary Funds

The Water and Sewer Districts are enterprise funds ("proprietary funds") financed and operated in a manner similar to a private business enterprise, for which the intent is that the costs (expenses, including depreciation) of providing services on a continuing basis be financed or recovered primarily through user charges.

County Indebtedness

State of Delaware Statutes limits the amount of general obligation debt that the County can issue to twelve percent of its assessed valuation. Based on the information derived from the County's annual audited reports this bond will not put the County in violation of its legal debt margin.

Legal debt margin calculation for fiscal year 2016

Assessed value	\$3,363,054,252
Debt limit (12% of assessed value)	\$403,566,510
Total net debt applicable to limit	\$152,442,753
Legal debt margin	\$251,123,757

Financial Highlights

Government-wide Financial Statements: As of June 30, 2016, total government net position was \$496.8 million. Of this amount, \$75.2 million was unrestricted and may be used for ongoing obligations to citizens and creditors.

The County's total net position increased by \$21.7 million during the year. The governmental activities' portion of the increase was \$10.0 million. The increase in the investment in governmental capital assets, net of related debt, was \$.3 million; governmental restricted funds increased \$11.8 million; and increase in net position for the business-type activities was \$11.7 million. This increase is due to growth-related capital costs from sewer districts being built, as well as a decrease in the debt that funded those projects. The \$10.0 million increase in governmental activities' net position is a reflection of the growth of positive movement in County revenue. Operating expense budgets have remained at consistent levels, but revenues have increased. The County experienced these increases despite the recording of \$6.5 million of net pension liability as required by the implementation of GASB 68 in 2015.

The County has no outstanding General Fund bonded debt.

In fiscal year 2010, Moody's Investors Service has raised its rating for Sussex County from Aa2 to Aa1. Moody's report on the County states, "This rating upgrade was due to the County's substantially improved and healthy financial position, maintained by prudent fiscal management that resulted in materially greater financial flexibility and stronger reserve levels". This reinforces our fiscal policies of conservative balanced budgeting and our commitment to maintaining healthy reserve levels. The County continues to sustain this rating.

Fund Financial Statements:

As of June 30, 2016, the County's governmental funds reported an ending fund balance of \$112.1 million. This is an increase of \$11.7 million from the preceding year. Approximately \$40.6 million was unassigned, or available, for use to meet the County's current and future needs.

Financial Operations**SUSSEX COUNTY'S SCHEDULE OF NET
POSITION**

As of June 30, 2016 and 2015

	2016	2015
Current and Other Assets	\$234,608,370	\$222,441,936
Capital Assets	\$457,156,325	\$449,335,882
Deferred Outflows	\$8,899,318	\$3,958,011
Total Assets	\$700,664,013	\$675,735,829
Current and Other Liabilities	\$38,464,896	\$29,805,775
Long Term Liabilities Outstanding	\$165,398,624	\$170,797,361
Total Liabilities	\$203,863,520	\$200,603,136
Net Position:		
Investment in Capital Assets	\$298,527,586	\$285,449,707
Restricted	\$123,026,852	\$89,288,012
Unrestricted	\$75,246,055	\$100,394,974
Total Net Position	\$496,800,493	\$475,132,693
Revenues:		
Program Revenue	\$68,315,112	\$58,460,117
General Revenue	\$41,792,134	\$39,200,917
Total Revenue	\$110,107,246	\$97,661,034
Expenses:		
Primary Government	\$53,412,580	\$52,705,068
Business Activities	\$35,026,866	\$34,044,242
Total Expenses	\$88,439,446	\$86,749,310
Increase in Net Position	\$21,667,800	\$10,911,724
Net Position Beginning	\$475,132,693	\$464,220,969
Net Position Ending	\$496,800,493	\$475,132,693

Source: Audited Financial Statements 2016.

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Western Sussex Summary

1/2/2020

	Budgeted	Spent to Date	Obligated Funds	Available Funding
Legal and Admin	\$56,000.00	\$7,424.79	\$25,000.00	\$23,575.21
Land and ROW	\$55,650.00	\$55,650.00		\$0.00
Engineering	\$1,568,178.00	\$781,774.50	\$716,307.53	\$70,095.97
Construction Contracts 1, 2 & 4	\$10,049,490.00	\$2,715,411.76	\$5,872,403.84	\$1,461,674.40
Contingencies	\$1,408,141.00		\$75,000.00	\$1,333,141.00
Bridgeville Outstanding Debt	\$3,497,289.00		\$2,900,000.00	\$597,289.00
Green Project	\$0.00	\$0.00	\$250,000.00	(\$250,000.00)
Contract 3 Award			\$2,980,602.00	(\$2,980,602.00)
Contract 5 & 6			\$850,000.00	(\$850,000.00)
Totals	\$16,634,748.00	\$3,560,261.05	\$13,669,313.37	(\$594,826.42)

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
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Sussex County

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sussexcountye.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson, Jr.

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

RE: ***Building Demolition and Site Restoration, Project C20-03***
A. *Balancing Change Order & Substantial Completion*

DATE: January 7, 2020

The new Medic 110/EMS 200 Station was programmed north of Seaford to replace the current location in Blades as a capital project in the five (5) year planning period. In June of 2018 Council approved the purchase of the new site formerly known as "Old Pet Emporium". After a publicly advertised request for proposal process, Council awarded on July 17, 2018 the EMS Department's - Architectural Consulting Services base contract to George, Miles and Buhr, Inc. for a five (5) year term. The first two task orders covered the North Seaford Medic Station 110 with a budget up to \$150,000. The intent was to match the Rehoboth/Lewes station design. However, the State's fire prevention code had changed since then, requiring now a fire suppression sprinkler system in the building.

Specifications for the work were advertised to the public and on July 15, 2019, four (4) bids were received. A review of the bids showed the station cost was significantly higher than the most recent station built, with cost drivers being the on-site fire suppression system and DelDOT entrance/site improvements. On August 20, 2019, Council rejected all bids and authorized the Engineering Department to rebid the work with a modified scope.

Procurement of a standalone demolition contract was identified as a cost saving measure. Bidding documents for demolition were publicly advertised on August 30, 2019 for the "Old Pet Emporium" site, and for potential added value included a second County need: demolition of the "Old Beulah Church" at 24411 Hollyville Road, Millsboro.

Council awarded the demolition contract to Swain Excavating, Inc. on October 8, 2019, in the lowest bid amount of \$59,948.75. The award authorized both the Base Bid and Add/Alternate No. 1 for demolition of the "Old Pet Emporium" and "Old Beulah Church," respectively.

A Notice to Proceed was issued on November 18, 2019 for the 75 consecutive calendar day agreement. Work commenced promptly thereafter. During prosecution of the work it was identified that asbestos remediation and reporting was necessary at the "Old Beulah Church." The Contractor produced a change proposal in the amount of \$2,200 to complete the necessary work.

Change Order No. 1, attached, provides for final balancing and additional costs associated with the asbestos remediation and reporting noted, at an amount of \$2,200.00. The Engineering Department recommends approval of final balancing Change Order No. 1, along with a notice of substantial completion.



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



**SUSSEX COUNTY
CHANGE ORDER REQUEST**

A. ADMINISTRATIVE:

1. Project Name: **BUILDING DEMOLITION AND SITE RESTORATION**
2. Sussex County Project No. C20-03
3. Change Order No. 1
4. Date Change Order Initiated - 11/15/2019
5.
 - a. Original Contract Sum \$59,948.75
 - b. Net Change by Previous Change Orders \$ 0
 - c. Contract Sum Prior to Change Order \$59,948.75
 - d. Requested Change \$2,200.00
 - e. Net Change (No. of days) 0
 - f. New Contract Amount \$62,148.75
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:

Remove and properly dispose of asbestos materials discovered at the ADD / ALT No. 1 demolition site referred to as "Old Beulah Church," and complete all associated DNREC reporting.

D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?

Yes X No

E. APPROVALS

1. Swain Excavation Inc., Contractor

C. Lee Chaney 12-27-19
Signature Date
Chester Lee Chaney
Representative's Name in Block Letters

2. Sussex County Engineer

[Signature] 12/27/19
Signature Date

3. Sussex County Council President

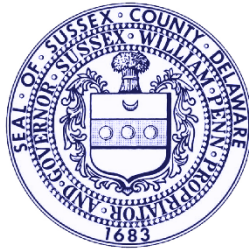
Signature Date

12/26/2019

Contract Amount Prior to Change Order # 1	\$59,948.75	
Sum of All Overage / Underruns		\$0.00
Change Order # 1 / Balancing Amount	\$2,200.00	
Final Contract Price		\$62,148.75

ENGINEERING DEPARTMENT

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Sussex County

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HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
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The Honorable John L. Rieley
The Honorable Samuel R. Wilson, Jr.

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

RE: ***Belt Press Procurement, Project M20-15***
A. Recommendation to Award

DATE: January 7, 2020

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

- a. Effluent Forcemain Relocation/Replacement; Construction completed awaiting revision to interjurisdictional agreement with the Town of Selbyville.
- b. Influent Forcemain Consolidation; In house consolidation design completed and on October 22, 2019 Council awarded the materials purchase project. The installation to be accomplished under the General Labor & Equipment Contract will begin in January 2020.
- c. Drainage Network Rerouting;
The design completed but construction responsibility not yet assigned. Possible completion under the General Labor & Equipment Contract or via change order under M.F. Ronca' & Sons' general construction contract.
- d. General Construction, Project C19-11; awarded by Council to M.F. Ronca & Sons, Inc. on December 17, 2019.
- e. Electrical Construction, Project C19-17; awarded by Council to BW Electric, Inc. on December 17, 2019.
- f. DP&L and other direct 3rd party expenses; in negotiations with utility.

In addition to the items above a mobile belt filter press will be required to accomplish the biosolids dewatering system upgrades at the South Coastal Facility. This press will also be



used at the Wolfe Neck and Piney Neck Facilities in the future as well as our at our Biosolids partners on an as needed basis.

The Engineering Department prepared a competitive sealed proposal to obtain pricing for a trailer mounted, mobile belt press at various stages of useful life. In order to provide the best value for the County the request was structured in the following three (3) alternatives:

- Alternative 1 - “fully refurbished”
- Alternative 2 – “new”
- Alternative 3 – “like new”

Invitations were advertised in the newspaper, viewable on the Sussex County website, and directly sent to applicable suppliers. On December 16, 2019, four (4) bids for the Belt Filter Press project were received.

The Sussex County Engineering Department reviewed the bids based on the best value evaluation factors identified in the contract documents, including price, delivery schedule and proximity of a service provider. The Department recommends award of the highest scoring offer for Alternate Bid 1, as per the attached documentation, to Kershner Environmental Technologies in the amount of \$295,000.00 contingent upon on-site confirmation of “fully refurbished” condition.

Alfa Laval

		Bid Point Value	Delivery Schedule Value	Proximity of Service Provider Value	Total Point Value
Alt. Bid 1-Refurbished					
No Bid					
Alt. Bid 2 - New					
\$597,000.00		70.05	3.17	2.79	76.02
Alt. Bid 3 - Like New					
No Bid					
Delivery Schedule (in days)	189				
Proximity of Service Provider (mi.)	231				

Charter Machine Co

		Bid Point Value	Delivery Schedule Value	Proximity of Service Provider Value	Total Point Value
Alt. Bid 1-Refurbished					
No Bid					
Alt. Bid 2 - New					
\$525,000.00		79.66	10.00	3.34	93.00
Alt. Bid 3 - Like New					
\$450,000.00		85.00	10.00	5.00	100.00
Delivery Schedule (in days)	60				
Proximity of Service Provider (mi.)	193				

Kershner Environmental Technologies

		Bid Point Value	Delivery Schedule Value	Proximity of Service Provider	Total Point Value
Alt. Bid 1-Refurbished	\$295,000.00	85.00	10.00	5.00	100.00
Alt. Bid 2 - New	No Bid				
Alt. Bid 3 - Like New	No Bid				
Delivery Schedule (in days)	30				
Proximity of Service Provider (mi.)	129				

MSD Environmental Services

		Bid Point Value	Delivery Schedule Value	Proximity of Service Provider	Total Point Value
Alt. Bid 1-Refurbished	No Bid				
Alt. Bid 2 - New	\$492,000.00	85.00	6.67	1.06	92.73
Alt. Bid 3 - Like New	No Bid				
Delivery Schedule (in days)	90				
Proximity of Service Provider (mi.)	606				

Final Values

	Alfa Laval	Charter Machine Co.	Kershner Environmental Technologies	MSD Environmental Services
Alt. Bid 1-Refurbished			100.00	
Alt. Bid 2-New	76.02	93.00		92.73
Alt. Bid 3-Like New		100.00		

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Sussex County
DELAWARE
sussexcountysde.gov

Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson, Jr.

From: Janelle Cornwell, AICP, Planning & Zoning Director

CC: Todd Lawson, County Administrator
Everett Moore, County Attorney

Date: January 2, 2020

RE: Public Comments to Agency Responses to Council Questions for CU 2186 Mountaire Farms of Delaware Inc.

At the meeting of November 5, 2019, County Council left the record open for Council to ask questions of staff and agencies. Council gave agencies until the close of business on December 9, 2019 to provide responses to the questions. The responses were to be reported to Council at their meeting on December 10, 2019. The public had 5 days to provide written responses to the responses from the agencies. During the December 10, 2019 Council meeting, an enclosure to the December 4, 2019 DNREC letter was inadvertently not distributed to the public. At the December 17, 2019 Council meeting, the time period for comments was extended to December 26, 2019. Responses received from the public are attached.



COUNTY ADMINISTRATIVE OFFICES
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GEORGETOWN, DELAWARE

Points About New (Dec.) DNREC Info & Email about Mountaire CU 2186
Dec. 26, 2019 Comments from Keith Steck, Vice President
Delaware Coalition for Open Government (DelCOG)

The supplemental information provided to the public at Council sessions on Dec. 10th and 17th was eye-opening and disconcerting. Of particular interest and concern in DNREC's December 4th is the revelation that although DNREC issued a sludge permit almost 30 years ago, there's no evidence that the County ever authorized this through the conditional use process. Relatedly, this situation raises concerns about the validity of any sludge application on the three parcels listed in the application. (Equally eye-opening and of concern was getting public access to the DNREC letter dated December 4 and the "email string" referenced in that letter was frustrating experience in and of itself and is not discussed here but was detailed in my December 12 email message to County officials, including Todd Lawson and Ms. Cornwell.)

DNREC Sludge Permit But No Sussex Conditional Use Approval

DNREC's DEC. 14 letter to the Planning and Zoning Department references an "email string" about DNREC having issued Mountaire a sludge permit almost 30 years ago at sites covered by the company's pending CU application 2186. That email string written a year ago reveals the County never approved a Conditional Use to Mountaire or predecessor to apply sludge to the site. However, these emails— and the facts within—were not provided to the public at the time the DNREC letter was disclosed and were only made available after members of the community, including the Delaware Coalition for Open Government, requested the emails.

These emails were written approximately a year ago and clearly indicate the County had never approved a Conditional Use to Mountaire to apply sludge to the site now at the center of the CU application pending before County Council. These emails indicate

P&Z and DNREC staff made a serious effort to identify whether there was ever a Sussex CU approval, but no evidence of such approval was found.

The Email Facts Were Not Included in Case Documents

Equally important, the P&Z Department never noted this lack of CU approval in its case analysis or other documents provided as part of the public records for the P&Z Commission's public hearing on Mountaire's CU application. What is not clear is to what extent this information was known within the P&Z office and whether it was intentionally ignored or conveniently forgotten when it came time to put together documentation for public discussion. Also, it is unclear whether P&Z disclosed this information to the P&Z Commission and/or County Council during their consideration of Mountaire's application. This failure to inform the public reflects a failure to communicate, a failure to document, and a failure of other internal controls.

The email string clearly indicates the P&Z Department, including its legal advisors, failed to issue a conditional use permit prior to DNREC issuing its permit. It is also another example of DNREC not ensuring it had proper County authority to issue the permit. What's not clear is why these failures occurred.

What neither the DNREC letter and P&Z documents indicate is on which of the three parcels of the proposed site was sludge applied, whether they are eligible for such application, and how much was applied under the DNRE-issued permit. First, these documents do not reference the Sussex zoning status of each of the three sites; County online records list parcel 234-28.00-1.00 as Zone AR-1 and AR-2 and parcels 234-28.00-2.00 and 234-28.00-3.00 are General Residential. Second, the documents

do not indicate whether these sites qualify for the application of sludge under County code. By my analysis, neither parcel 2.00 and 3.00 do not allow for sludge application, because there is no conditional use for sludge application in GR zones. Third, there is no indication or discussion as to which parcels received sludge in the past or how much and when.

Internal Control Failure

This problems discussed above with this CU case indicate problems with internal controls. In some instances, there does not appear to be internal controls in place while in other instances internal controls don't appear to have been followed.

The situation where a key document—the email string—was not included as part of the public record or made available to the public as part of the initial public record should never have happened. This situation indicates either a failure of internal controls regarding providing information to the public or an intentional effort not to provide the information. In either case, the impact is that not only did the public not have timely access to relevant information, it undermines public confidence in both the County P&Z Department and County Council that matters will be fully discussed and objectively considered. It begs the following questions: (1) Given this failure to disclose information happened in this case, how many other cases has this happened and the public was not provided information it should have been given? (2) What other cases handled by the P&Z Department excluded key information in summaries and not analyses provided to Council and the public?

Janelle Cornwell

From: Shelly Cohen <philliegyrl1968@gmail.com>
Sent: Monday, December 16, 2019 6:45 PM
To: Janelle Cornwell; Robin Griffith
Cc: IG Burton; Doug Hudson; Samuel R Wilson Jr; John Rieley; Michael H. Vincent
Subject: PRESS RELEASE RELATED TO MOUNTAIRE CU2186

Dear Mrs. Cornwell, Ms.Griffith and County Council members

I realize this is after hours, but I just spotted this press release on Mountaire. This should be included in your reading materials because it is pertinent for your decision on CU 2186.

Thank you for your time and service.

Shelly Cohen

Milton DE

DNREC Press Releases List [Unsubscribe](#)

to DNREC



NEWS FROM THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

CONTACT: Michael Globetti, DNREC Public Affairs, 302-739-9902

DNREC, Mountaire Farms of Delaware, Inc. enter into agreements to address violations at Mountaire's Millsboro and Selbyville poultry processing facilities

DOVER (Dec. 16, 2019) – The Department of Natural Resources and Environmental Control signed an agreement with Mountaire Farms of Delaware, Inc. Dec. 13 to resolve spray irrigation and land application permit violations cited by DNREC in a Nov. 2, 2017 Notice of Violation (NOV). DNREC first took action against Mountaire for these violations via the filing of a complaint in Delaware Superior Court against Mountaire in June 2018. The complaint was stayed by Superior Court pending resolution of a parallel action in Federal Court. To formalize ongoing and required corrective actions resulting from the September 2017 wastewater treatment plan failure, DNREC and Mountaire have finalized an agreement based on the consent decree proposed in June 2018.

The agreement includes three major components – mitigation, environmentally-beneficial offset, and an administrative penalty and costs. Mountaire is required to mitigate damage to the environment through short-term and long-term corrective measures. In the short term, Mountaire must continue the interim corrective measures required by DNREC that have been ongoing since October 2017. Mountaire must also make long-term system upgrades to the plant, including the requirement for environmental mitigation through the relocation of Mountaire's production wells within the spray fields to establish a pump and treat system.

By way of an environmentally-beneficial offset, the agreement with DNREC requires Mountaire to offer nearby residents options for an alternative water supply, meaning an option for a whole-house filtration system in addition to the public water supply and deeper well provisions of the earlier consent decree. The agreement also requires Mountaire to pay an administrative civil penalty of \$600,000 for violations of its spray and land application permits, and to reimburse the Department \$25,000 for expenses incurred during the Department's investigation. In consideration of the environmentally-beneficial offset, the Department will reduce Mountaire's penalty by 30 percent to \$420,000.

The agreement updates the consent decree by including more specificity concerning reporting requirements; adding the whole-house filtration option as an alternative water supply; requiring more specificity on tracking and reporting of mitigation efforts; and clarifying mitigation goals, including that Mountaire's pump and treat system will be maintained as a permanent part of the facility upgrade. The agreement became effective when it was executed on Friday, Dec. 13, but DNREC will request the agreement be entered by the Federal Court as a consent decree, and that, once entered, the Court will have immediate jurisdiction to oversee and enforce the agreement.

In addition to formalizing an agreement with Mountaire regarding the 2017 violations, DNREC and Mountaire also entered into a conciliatory agreement to address unresolved violations at Mountaire's Selbyville facility, as well as other violations at the Millsboro facility not directly related to the 2017 wastewater treatment facility failure. Issues addressed via the conciliatory agreement include unauthorized discharges of pollutants from live-hold areas at the Selbyville and Millsboro facilities; an unauthorized release of partially treated wastewater effluent to ground surface at the Millsboro facility due to an equipment weld failure; and temporary sludge storage lagoon issues that include synthetic liner concerns and elevated ammonia levels noted in monitoring wells surrounding the temporary sludge storage lagoon at the Millsboro facility. The conciliatory agreement requires corrective actions and mitigation measures to prevent future violations and includes administrative and stipulated penalties.

As a condition of the conciliatory agreement, Mountaire is required to pay an administrative penalty in the amount of \$230,000. Mountaire is able to offset up to \$115,000 of the assessed administrative penalty by performing a wetlands restoration and/or enhancement project on the Indian River or on Swan Creek with Department approval. Both agreements referenced above can be found on the DNREC website at http://www.dnrec.delaware.gov/Info/Pages/SecOrders_Enforcement.aspx.

-End-

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Sussex County
DELAWARE
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Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson, Jr.

From: Janelle Cornwell, AICP, Planning & Zoning Director

CC: Everett Moore, County Attorney

Date: January 2, 2020

RE: County Council Old Business Report 2 for CU 2190 Steven and Helene Falcone

County Council held a public hearing on October 29, 2019. At that public hearing Council left the record open for the submission of a new site plan. A new site plan has been submitted and is part of the packet. At the December 17, 2019 County Council meeting, the application was discussed and deferred for further consideration of the revised site plan.

The Planning and Zoning Department received an application (CU 2190 Steven and Helene Falcone) for a Conditional Use for parcels 335-5.00-212.00 and 213.00 to allow for an office to be located at 17662 Beaver Dam Rd. The Planning and Zoning Commission held a public hearing on September 26, 2019. The following are the draft minutes for the Conditional Use from the Planning and Zoning Commission meetings.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, the results from the DelDOT Service Level Evaluation request, comments from the Sussex County Engineering Department of Utility Planning Division, and a Site Plan.

That the Commission found that Ms. Colette Monaghan an Attorney with Wolfe and Associates, Mr. Steven Falcone and Mrs. Helene Falcone the Applicants were present on behalf of the application; that Ms. Monaghan stated that the Applicants are requesting a Conditional Use in the AR-1 (Agricultural Residential District) for an office for an accounting firm; that the property does consist of 0.26-acres of land; that there were two separate parcels that have been consolidated together; that there is an existing 525 square foot dwelling on the property; that there is also low-quality vegetation; that there are a lot of dilapidated buildings in the area; that there is not agricultural use in the area; that there is agricultural use about 1/3 mile down the road; that Applicant would be able to connect to the Sussex County sewer; that the water is public; that there are residents across the street; that the Applicants would replace the dead trees and shrubs with new landscaping; that the Applicant's accounting firm has four employees; that the hours of operation are 8:00 am to 5:00 pm, Monday



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through Friday and Saturday 8:00 am to 12:00 pm by appointment during tax season; that the Applicants anticipate a de minimis volume of traffic between the employees and the clients; that most of the work between the clients is done via computer; that applicants would like to display a sign with a light; that there would be no impact on nearby farm land; that there would be minimal impact on traffic; that the accounting firm is of a public character; and that there would be minimal impact to the neighboring properties.

Ms. Stevenson asked if the proposed parking is in the setbacks for the parcel; that Ms. Monaghan stated the proposed parking is within the setbacks; that Mr. Falcone stated he would like parking as close to the street as possible; that Ms. Stevenson stated would not like to see parking in the setbacks because of possible road construction in the area in the future; that Ms. Stevenson asked Ms. Cornwell how many parking spaces are required; that Ms. Cornwell stated the Site Plan showing the proposed building is likely to require variances because the proposed building does not meet setback requirements; that Chairman Wheatley stated the Commission is not considering the Site Plan at this time and this application is not for Site Plan approval; that this meeting is for a proposed Conditional Use; that Ms. Cornwell stated the proposed office would need six parking spaces; that Chairman Wheatley stated that the Code's approach is to discourage parking in the setback but the Commission has permitted parking in the front yard setback in certain situations in the past; that typically this happens when there is already parking in the setback; that the Applicant does not have that situation; that he encourages the Applicant, should they be successful with their application to explore this further; that Mr. Hopkins asked about the size of the sign and if the Applicant would want a sign it could be up to 32 square feet; Mr. Hopkins asked if the Applicant would want the sign to be lighted; that Ms. Monaghan stated the Applicant would like the sign to be lit at night time; that Mr. Robertson asked if the proposed structure would overlap the footprint of the existing dwelling; that Ms. Cornwell stated the existing dwelling is 34' x 15' and the Applicant is going to expand it to be 30.5' x 34' and they appear to show another addition in the back which would be 26' x 42'; that Mr. Robertson asked if the parking would be paved; that Mr. Falcone stated that it would stone or black top or similar; and that Chairman Wheatley stated he feels that the Commission should disregard the Site Plan concerns at this stage of the process. Mr. Robertson suggested that the Applicant could look into this further with their engineer as a separate matter.

That the Commission found that no one spoke in favor of or in opposition to the application.

At the conclusion of the public hearing, the Commission discussed this application.

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

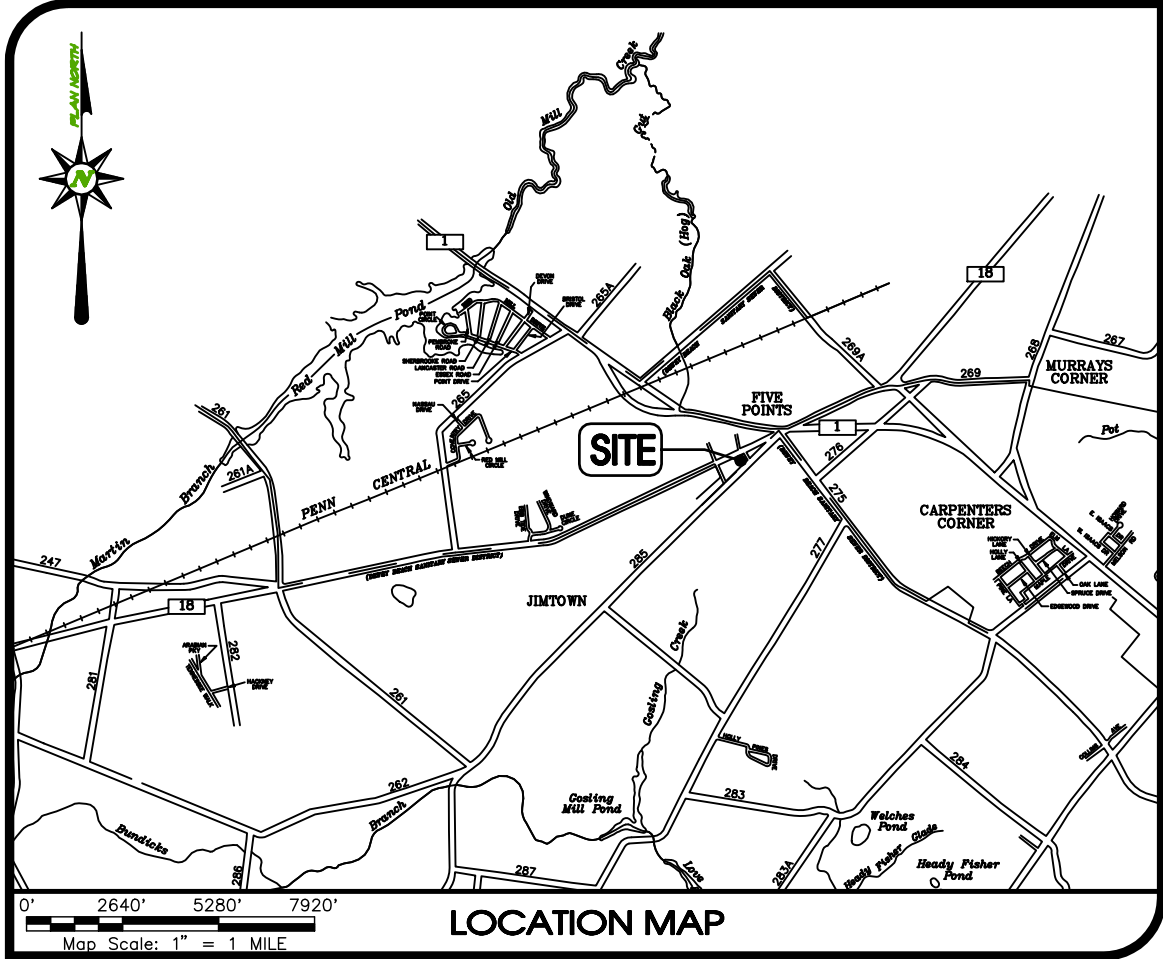
At their meeting on October 10, 2019, the Planning Commission discussed the application which has been deferred since September 26, 2019.

Ms. Stevenson moved that the Planning Commission recommend the denial of **C/U #2190** for **STEVEN AND HELENE FALCONE** for an office based upon the record made during the public hearing and for the following reasons:

1. This site is only one quarter of an acre in size, and it is located at the corner of Church Street and Beaver Dam Road.

2. While the proposed use is appropriate for this general location, the record does not indicate that the use will fit on this small parcel of land.
3. The survey that was submitted shows a building that will not fit within the proposed setbacks without at least 3 separate variances. It also shows parking within several setbacks.
4. The survey that was submitted also indicates that there is a significant boundary line discrepancy of 14 feet along the northwest boundary of the site. This further impacts the setback encroachments of the proposed building and parking.
5. While the use may be appropriate, there are just too many unanswered questions about the lot boundaries and whether the proposed use will fit on this property without a substantial re-design and/or multiple variances. Under these circumstances, it is not appropriate to approve this conditional use at this time.
6. If the applicant can resolve the boundary line dispute and design a building that fits on this property or obtain the necessary variances to construct an office building on this property, the applicant should be permitted to re-apply without having to pay another application fee.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be denied for the reasons stated in the motion. Motion carried 5-0.



PLAN LEGEND

- SUPPLEMENTAL CONTOUR (1' INTERVAL)
- INDEX CONTOUR (5' INTERVAL)
- EXISTING PAVEMENT EXTENTS
- EXISTING PAVEMENT STRIPING
- PROPOSED EDGE OF PAVEMENT
- EXISTING PROPERTY BOUNDARY
- ADJOINING PROPERTY LINE
- PROPOSED BUILDING RESTRICTION LINE
- EXISTING IRON PIPE FOUND
- EXISTING IRON ROD FOUND
- EXISTING IRON ROD FOUND

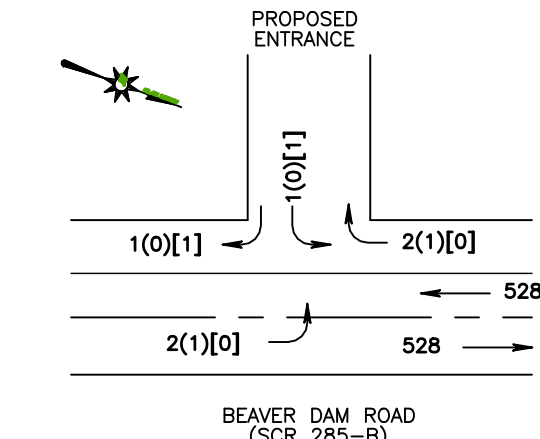
SITE DATA and ZONING SCHEDULE

TAX PARCEL No.: 334-5.00-212.00
PROPERTY ADDRESS: 17662 BEAVER DAM ROAD LEWES, DE 19958
EXISTING NUMBER OF LOTS: ONE (1)
EXISTING SITE USE: RESIDENTIAL DWELLING
PROPOSED NUMBER OF LOTS: ONE (1)
PROPOSED SITE USE: PROFESSIONAL OFFICE
EXISTING ZONING: AR-1 (AGRICULTURAL/RESIDENTIAL)
INVESTMENT LEVEL AREA: LEVEL ONE (1)

NO TRANSPORTATION IMPROVEMENT DISTRICTS (TID's) IN THE PROXIMITY OF THE PROJECT

ORDINANCE ITEM	REQUIREMENT:	PROVIDED:
MINIMUM LOT AREA	20,000 Sq. Ft.	11,387 Sq. Ft.
MINIMUM LOT WIDTH	100 Ft.	130.67 Ft.
MINIMUM LOT DEPTH	100 Ft.	120.93 Ft.
MINIMUM SETBACKS:		
FRONT	40 Ft.	40 Ft.
SIDE	15 Ft.	15 Ft.
REAR	20 Ft.	20 Ft.
MAXIMUM BUILDING HEIGHT	42 Ft./3 Stories	42 Ft./3 Stories
PARKING SPACE QTY. (485 S.F., OFFICE)	1/200 S.F., 485 S.F.=3 SPACES	3 SPACES
SEWER SERVICE	SUSSEX COUNTY	
WATER SERVICE	PRIVATE WELL	
PROPERTY OWNER/DEVELOPER		
H&S PROPERTIES, LLC		
34561 MICHELLE DRIVE		
REHOBOTH BEACH, DE 19971		
302.644.8634		

TRIP GENERATION - CHURCH STREET (SCR 285-B)
(FULL MOVEMENT)



TRAFFIC GENERATION DIAGRAM
TRIPS PER DAY (VEHICLES IN A.M.) [P.M. PEAK HOUR]

ROAD TRAFFIC DATA:

FUNCTIONAL CLASS. - SCR 285-B (CHURCH ST) - LOCAL
POSTED SPEED LIMIT - 50 MPH (UNMARKED)
ADOT = 910 TRIPS (FROM 2018 DHDOT TRAFFIC SUMMARY)
10-YR PROJECTED ADOT = 1.16 x 910 TRIPS = 1056 TRIPS
10-YR PROJECTED ADOT + SITE ADT = 1062 TRIPS
TRAFFIC PATTERN GROUP - 4 (FROM 2018 DHDOT TRAFFIC SUMMARY)
PEAK HOUR = 11.91% x 1056 = 126 TRIPS

SITE TRIPS GENERATED:

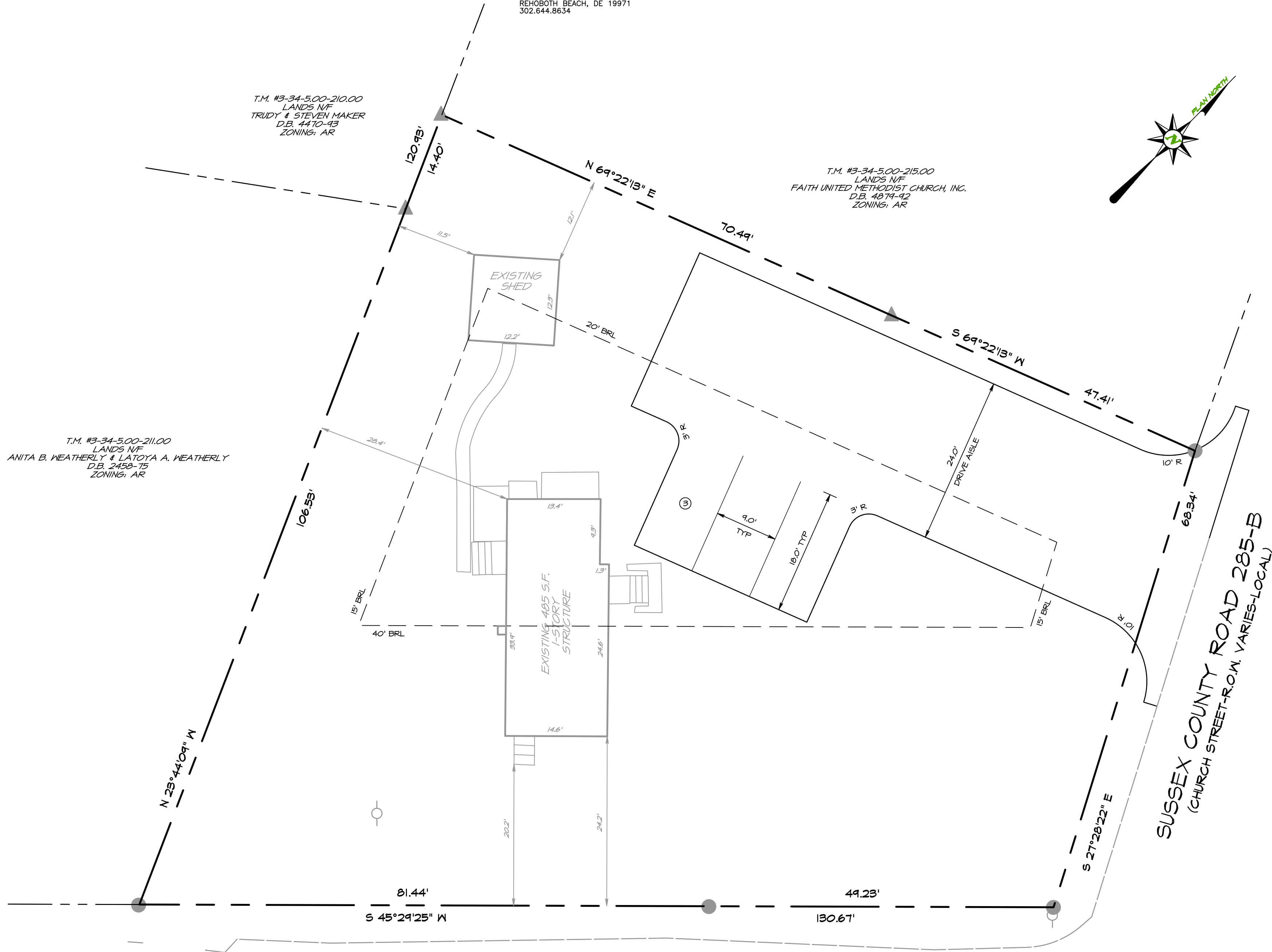
SOURCE: ITE TRIP GENERATION MANUAL 10th EDITION
GENERAL OFFICE BUILDING (710)

ONE ENTRANCE - FULL MOVEMENT
DESIGN VEHICLE: SUV-30
485 S.F. ACCOUNTANT OFFICE
WEEKDAY = 6 TRIPS
SATURDAY = 1 TRIPS
SUNDAY = 0 TRIPS

TOTAL ADT FOR SITE (WEEKDAY) = 6 TRIPS
DIRECTIONAL DISTRIBUTION:
50% TO AND FROM THE NORTH: 3 TRIPS
(1 A.M. PEAK) (1 P.M. PEAK)
50% TO AND FROM THE SOUTH: 3 TRIPS
(1 A.M. PEAK) (1 P.M. PEAK)
5.36% TRUCKS & BUSES x 6 = 1

GENERAL NOTES

- THE PROJECT SITE IS KNOWN AS LANDS OF H&S PROPERTIES, LLC, (T.P. 334-5.00-212.00), AND IS LOCATED AT 17662 BEAVER DAM ROAD, LEWES, DE 19958.
- THE PROPERTY BOUNDS, EXISTING FEATURES AND TOPOGRAPHIC INFORMATION SHOWN ON THIS PLAN IS THE RESULT OF A FIELD SURVEY PERFORMED BY FORESIGHT SERVICES VERTICAL DATUM IS NAVD83 AND HORIZONTAL DATUM IS DELAWARE STATE PLANE COORDINATE SYSTEM NAD83.
- THE PROPOSED DEVELOPMENT STREETS ARE TO BE PRIVATE AND MAINTAINED BY THE DEVELOPER/PROPERTY OWNER. THE STATE OF DELAWARE ASSUMES NO RESPONSIBILITIES FOR THE FUTURE MAINTENANCE OF THESE STREETS.
- ALL PROPOSED STORMWATER MANAGEMENT FACILITIES ARE TO BE MAINTAINED BY THE DEVELOPER/PROPERTY OWNER.
- THIS PLAN DOES NOT VERIFY TO THE LOCATION AND/OR EXISTENCE OF EASEMENTS OR RIGHT-OF-WAYS CROSSING SUBJECT PROPERTY AS NO TITLE SEARCH WAS PROVIDED.
- THE CONTRACTOR SHALL ENSURE THAT ALL NECESSARY PERMITS AND APPROVALS HAVE BEEN OBTAINED PRIOR TO COMMENCEMENT OF ANY SITE CONSTRUCTION ACTIVITIES.
- ALL CONTRACTORS WORKING ON THIS PROJECT SHALL COMPLY WITH THE REQUIREMENTS OF THE DELAWARE EROSION AND SEDIMENT CONTROL HANDBOOK (LATEST EDITION).
- CONSTRUCTION MATERIALS AND PROCEDURES SHALL FOLLOW THE DELAWARE DEPARTMENT OF TRANSPORTATION SPECIFICATIONS AND STANDARD DRAWINGS (LATEST EDITION).
- EXISTING SUBSURFACE UTILITY INFORMATION INDICATED IS BASED UPON VISUAL FIELD INSPECTION BY FORESIGHT SERVICES. SUCH INFORMATION CONCERNING THE SIZE, LOCATION, DEPTH, QUANTITY, ETC. OF SUBSURFACE UTILITIES IS APPROXIMATE IN NATURE AND HAS BEEN OBTAINED AS AN AID IN THE PROJECT DESIGN. THE INFORMATION PROVIDED IS REPRESENTATIVE OF SUBSURFACE CONDITIONS ONLY AT LOCATIONS AND DEPTHS WHERE SUCH INFORMATION WAS OBTAINED. THERE IS NO EXPRESSED OR IMPLIED AGREEMENT THAT UTILITY SIZE, LOCATION, DEPTH, QUANTITY, ETC. AS SHOWN EXISTS BETWEEN EXPLORED LOCATIONS. ACCORDINGLY, UTILITY INFORMATION SHOWN SHOULD NOT BE RELIED UPON FOR CONSTRUCTION PURPOSES. IT IS INCUMBENT UPON THE CONTRACTOR TO VERIFY THE SIZE, LOCATION, DEPTH, QUANTITY, ETC. OF ALL UTILITIES BEFORE EXCAVATION.
- BASED ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE RATE MAP (FIRM) 100029 0331 K, MAP NUMBER 10005C0331K, DATED MARCH 16, 2015, THE SUBJECT PROPERTY IS LOCATED IN A ZONE "X" UNSHADE WHICH IS AN AREA DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN.
- NO STATE OR FEDERAL JURISDICTIONAL WETLANDS EXIST ON THE SUBJECT PROPERTY.
- ALL FIRE LANES, FIRE HYDRANTS AND FIRE DEPARTMENT CONNECTIONS SHALL BE MARKED IN ACCORDANCE WITH THE DELAWARE STATE FIRE PREVENTION REGULATIONS.
- IN ACCORDANCE WITH THE DELAWARE STATE FIRE PREVENTION REGULATIONS PART V, CHAPTER 4, SECTION 4-1.1, THE DEVELOPER SHALL PROVIDE TO THE EMERGENCY DISPATCH CENTER HAVING JURISDICTION, A PLOT PLAN OF THE DEVELOPMENT SHOWING EACH BUILDING LOCATION. THE DEVELOPER SHALL ALSO ASSIGN NUMBERS TO ALL BUILDINGS IN A CONSECUTIVE MANNER AND HAVE PLACED THE ASSIGNED NUMBER IN A READILY VISIBLE LOCATION ON EACH BUILDING TO ELIMINATE CONFUSION IN THE EVENT THAT AN EMERGENCY VEHICLE IS NEEDED.
- AUTOMATIC FIRE SPRINKLERS ARE NOT PROPOSED FOR THIS STRUCTURE.
- THE BUILDING WILL BE ACCESSIBLE TO EMERGENCY APPARATUS. A MINIMUM OF 50% OF THE BUILDING WILL BE ACCESSIBLE BY EMERGENCY SERVICES PERSONNEL.
- LOCATION OF FIRE LANES, THEIR WIDTHS, AND THEIR MARKINGS, FIRE LANE SIGNS, WORDING AND 4" LINES OF DEMARCATION, AND YELLOW PAINTED CURBING ARE TO BE SHOWN ON THE PLAN WHERE APPLICABLE.
- ALL PROPOSED LANDSCAPE BUFFERS ARE TO BE MAINTAINED BY THE PROPERTY OWNER/DEVELOPER.
- THE EXISTING BUILDING TYPE IS NFPA V(000).
- THE PROPOSED SIGNAGE DEPICTED ON THE PLAN IS INDICATIVE ONLY. SEPARATE APPLICATIONS SHALL BE REQUIRED FOR ALL SIGNAGE.
- THE OFFICES SHALL BE ACCESSED FROM THE INTERIOR DRIVE AISLES ONLY. NO SECONDARY ACCESS TO SCR 285 OR SCR 285-B SHALL BE PERMITTED.



SUSSEX COUNTY ROAD 285
(BEAVER DAM ROAD-R.O.W. VARIES-MAJOR COLLECTOR)

OWNER/DEVELOPER CERTIFICATE

WE HEREBY CERTIFY THAT WE ARE THE OWNERS AND DEVELOPERS OF THE PROPERTY DESCRIBED AND SHOWN ON THIS PLAN, THAT THE PLAN WAS MADE AT OUR DIRECTION, THAT WE ACKNOWLEDGE OUR SAME TO BE OUR ACT AND DESIRE THE PLAN TO BE RECORDED AS SHOWN IN ACCORDANCE WITH ALL APPLICABLE LAWS AND REGULATIONS.

H&S PROPERTIES, LLC
34561 MICHELLE DRIVE
REHOBOTH BEACH, DE 19971
Phone: 302.644.8634

DATE

DELDOT SITE GENERAL NOTES

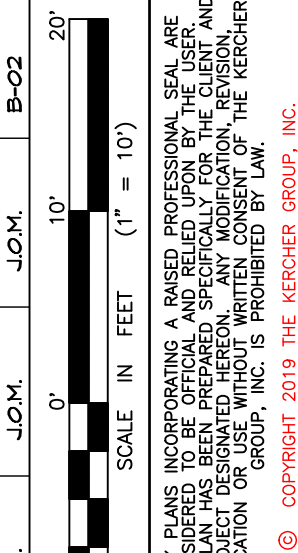
LAST REVISED: MARCH 21, 2019

- ALL ENTRANCES SHALL CONFORM TO THE DELAWARE DEPARTMENT OF TRANSPORTATION'S (DELDOT'S) CURRENT DEVELOPMENT COORDINATION MANUAL AND SHALL BE SUBJECT TO ITS APPROVAL.
- NO LANDSCAPING SHALL BE ALLOWED WITHIN THE RIGHT-OF-WAY UNLESS THE PLANS ARE COMPLIANT WITH SECTION 3.7 OF THE DEVELOPMENT COORDINATION MANUAL.
- SHRUBBERY, PLANTINGS, SIGNS AND/OR OTHER VISUAL BARRIERS THAT COULD OBSTRUCT THE SIGHT DISTANCE OF A DRIVER PREPARING TO ENTER THE ROADWAY ARE PROHIBITED WITHIN THE DEFINED DEPARTURE SIGHT TRIANGLE AREA ESTABLISHED ON THIS PLAN. IF THE ESTABLISHED DEPARTURE SIGHT TRIANGLE AREA IS OUTSIDE THE RIGHT-OF-WAY OR PROJECTS ONTO AN ADJACENT PROPERTY OWNER'S LAND, A SIGHT EASEMENT SHOULD BE ESTABLISHED AND RECORDED WITH ALL AFFECTED PROPERTY OWNERS TO MAINTAIN THE REQUIRED SIGHT DISTANCE.
- UPON COMPLETION OF THE CONSTRUCTION OF THE SIDEWALK OR SHARED-USE PATH ACROSS THIS PROJECT'S FRONTAGE AND PHYSICAL CONNECTION TO ADJACENT EXISTING FACILITIES, THE DEVELOPER, THE PROPERTY OWNERS OR BOTH ASSOCIATED WITH THIS PROJECT, SHALL BE RESPONSIBLE TO REMOVE ANY EXISTING ROAD TIE-IN CONNECTIONS LOCATED ALONG ADJACENT PROPERTIES, AND RESTORE THE AREA TO GRASS. SUCH ACTIONS SHALL BE COMPLETED AT DELDOT'S DISCRETION, AND IN CONFORMANCE WITH DELDOT'S DEVELOPMENT COORDINATION MANUAL.
- PRIVATE STREETS CONSTRUCTED WITHIN THIS SUBDIVISION SHALL BE MAINTAINED BY THE DEVELOPER, THE PROPERTY OWNERS WITHIN THIS SUBDIVISION OR BOTH (TITLE 17, §131). DELDOT ASSUMES NO RESPONSIBILITIES FOR THE FUTURE MAINTENANCE OF THESE STREETS.
- THE SIDEWALK SHALL BE THE RESPONSIBILITY OF THE DEVELOPER, THE PROPERTY OWNERS OR BOTH WITHIN THIS SUBDIVISION. THE STATE OF DELAWARE ASSUMES NO RESPONSIBILITY FOR THE FUTURE MAINTENANCE FOR THE SIDEWALK.
- LOTS WILL BE PERMITTED TO HAVE ACCESS POINTS THAT COMPLY WITH THE DEVELOPMENT COORDINATION MANUAL (DCM) SPACING REQUIREMENTS OF CHAPTER 1 AND LIMITATIONS ON NUMBER OF ACCESS POINTS ESTABLISHED IN DCM CHAPTER 7. HORSESHOE DRIVEWAYS AND SECONDARY ENTRANCES REQUIRE ADDITIONAL DELDOT REVIEW AND SEPARATE PERMITTING. RESTRICTIONS AS DESCRIBED IN THE DCM CHAPTER 7 MAY PROHIBIT SOME SECONDARY ENTRANCE REQUESTS FROM BEING GRANTED.
- TO MINIMIZE RUTTING AND EROSION OF THE ROADSIDE DUE TO ON-STREET PARKING, DRIVEWAY AND BUILDING LAYOUTS MUST BE CONFIGURED TO ALLOW FOR VEHICLES TO BE STORED IN THE DRIVEWAY BEYOND THE RIGHT-OF-WAY, WITHOUT INTERFERING WITH SIDEWALK ACCESS AND CLEARANCE.
- THE DEVELOPER SHALL BE REQUIRED TO FURNISH AND PLACE RIGHT-OF-WAY MONUMENTS IN ACCORDANCE WITH DELDOT'S DEVELOPMENT COORDINATION MANUAL.
- THE DEVELOPER SHALL BE REQUIRED TO FURNISH AND PLACE RIGHT-OF-WAY MARKERS TO PROVIDE A PERMANENT REFERENCE FOR RE-ESTABLISHING THE RIGHT-OF-WAY AND PROPERTY CORNERS ON LOCAL AND HIGH ORDER FRONTAGE ROADS. RIGHT-OF-WAY MARKERS SHALL BE SET AND/OR PLACED ALONG THE FRONTAGE ROAD RIGHT-OF-WAY AT PROPERTY CORNERS AND AT EACH CHANGE IN RIGHT-OF-WAY ALIGNMENT IN ACCORDANCE WITH SECTION 3.2.4.2 OF THE DEVELOPMENT COORDINATION MANUAL.

REVISIONS

I HEREBY CERTIFY THAT THIS PLAN HAS BEEN PREPARED UNDER MY SUPERVISION AND TO THE BEST OF MY KNOWLEDGE COMPLIES WITH THE APPLICABLE ORDINANCES OF SUSSEX COUNTY AND THE LAWS OF THE STATE OF DELAWARE.

DESIGN PROFESSIONAL DATE



ONLY HAVE SURVEYING A NEEDED INTERFERE WITH THE CONSIDERED TO BE OPTIMAL AND FIELD WORK IN THE FIELD. THE PROJECT DESIGNATED HEREON, ANY VIOLATION OF THE DESIGN OR CONSTRUCTION OF THE PROJECT, IS PROHIBITED BY LAW. © COPYRIGHT 2019 THE KERCHER GROUP, INC.

OWNER/APPLICANT: H&S PROPERTIES, LLC
34561 MICHELLE DRIVE
REHOBOTH BEACH, DE 19971
Phone: 302.644.8634

PARCEL INFORMATION: T.P.: 334-5.00-212.00
GROSS ACRES: 0.00
FEB 202, PG 82

CU #2180
SITE PLAN
LANDS OF H&S PROPERTIES, LLC
LEWES & REHOBOTH HUNDRED - SUSSEX COUNTY - DELAWARE
THE KERCHER GROUP, INC.
CONSULTING • SYSTEMS • ENGINEERING
37385 REHOBOTH AVE. UNIT 11 - REHOBOTH BEACH, DELAWARE 19971
302.854.9062 (Voice) 302.854.9064 (Fax) www.kerchergroup.com

JOB No: 19-1104ES

PLAN DATE: Nov. 11, 2019

SHEET No.:

S1

Introduced 06/11/19

Council District No. 3 – Burton

Tax I.D. No. 334-5.00-212.00 and 213.00

911 Address: 17662 Beaver Dam Road, Lewes

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.26 ACRE, MORE OR LESS

WHEREAS, on the 4th day of June 2019, a conditional use application, denominated Conditional Use No. 2190, was filed on behalf of Steven and Helene Falcone; and

WHEREAS, on the ____ day of _____ 2019, 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. 2190 be _____; and

WHEREAS, on the ____ day of _____ 2019, 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. 2190 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the northwest corner of Beaver Dam Road and Church Street, and being more particularly described in the attached legal description prepared by Wolfe & Associates, LLC, said parcel containing 0.26 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.

JANELLE M. CORNWELL, AICP
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
(302) 854-5079 F
janelle.cornwell@sussexcountype.gov



Sussex County
DELAWARE
sussexcountype.gov

Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Irwin G. Burton III, Vice President
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Samuel R. Wilson, Jr.

From: Janelle Cornwell, AICP, Planning & Zoning Director

CC: Everett Moore, County Attorney

Date: January 2, 2020

RE: County Council Old Business Report for CU 2176 KH Sussex, LLC

County Council held a public hearing on September 17, 2019. At that public hearing, Council left the record open for questions and responses from staff and agencies and for the public to provide written comments to the responses. The responses from the agencies were provided to Council December 10, 2019. At the December 17, 2019 County Council meeting, the responses from the public were provided to Council and the record was closed.

The Planning and Zoning Department received an application (CU 2176 KH Sussex, LLC) for a Conditional Use for parcels 234-11.00-56.02 (portion of), 56.03, 56.06 and 56.09 to allow for a convenience store with fueling station to be located on John J. Williams Hwy. and Angola Rd. The Planning and Zoning Commission held a public hearing on August 8, 2019. The following are the draft minutes for the Conditional Use from the Planning and Zoning Commission meetings.

Ms. Cornwell advised the Commission that submitted into the record were comments from the Sussex Conservation District, comments from the Sussex County Engineering Department of Utility Planning Division, the results from the DelDOT Traffic Impact Study ("TIS") Scoping meeting, a Site Plan, and an Exhibit Booklet. Twelve letters in support of the application were read by Ms. Cornwell into the record.

That the Commission found that Mr. Dennis Schrader, an Attorney with Morris James, LLP, Kirk Salvo, Principal owner of KH Sussex, LLC, Michel Riemann, with Becker Morgan Group, Mr. Berninger, with 7-11, and Mr. Ennis, one of the property owners were present on behalf of the application; that Mr. Schrader stated that there was a previous application for a Change in Zone for this parcel; that the Applicant had asked for C-3 (Heavy Commercial Zoning District) and that the 2019 Comprehensive Plan was pending approval at that time; that the Applicant thought they would be able to comply with the new Commercial Code and therefore, would not need a Conditional Use application; that the Planning and Zoning Commission gave a recommendation of approval for the



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

Change in Zone and the Sussex County Council denied the application; that the proposed site is a portion of four separate parcels to create the 3.51-acres; that the property is currently Zoned AR-1 (Agricultural Residential Zoning District) and is subject to a Conditional Use; that the current Conditional Use is for a marine storage and services, construction services, grass mowing, and power washing; that the proposed Conditional Use is for a convenience store with fueling stations; that the Land Use Classification per the 2019 Comprehensive Plan the land is in the Coastal Area with commercial uses deemed to be appropriate; that the parcel is located in the State Spending Strategies Level 3; that sewer would be provided by the Sussex County Unified District; that water would be provided by Tidewater Utilities; that some wetland maps are paring it to .11; that there is a Concept Plan included in the Exhibit Booklet; that the proposed Conditional Use meets the criteria; Mr. Riemann stated there is residential growth in the area and the use would provide ease for the public; that the property is approximately 3.5-acres; that the property is located at the intersection of Route 24 and Angola Road; that the current property is a subject of Conditional Uses; that Conditional Use 1881 and Conditional Use 2091 have a number of activities that are commercial in nature currently on the property; that there is a marine storage and repair, Ennis Homes Admin office for modular and stick built homes, a grass cutting business, landscaping, and power wash business on these properties; that the site as it exists today is a commercial use; that the proposed use is for a convenience store with fueling; that the proposed store would be approximately 3,500 square feet with approximately 34 parking spaces; that the proposed site would have standard fuel pumps and diesel fuel pumps; that the proposed site would have 8 fueling stations with a total of 16 pumps; that the site can accommodate the proposed use because the amount of green area surrounding the site; that they have evaluated the site and it can accommodate truck traffic; that there are two proposed accesses to the site; that the first would be a full access on Angola Road; that the access on Route 24 would be a right-turn in and a right-turn out only; that the Developer would be required by DelDOT to create a multi-use path and a bike lane along the frontage; that a Traffic Impact Study had been completed; that part of the rezoning process is a Service Level Evaluation that was submitted to DelDOT and DelDOT had indicated they would waive the Traffic Impact Study ("TIS") as part of the entrance plan application and that this can be done at a later time; that Applicant was coming back before the Planning and Zoning Commission with a proposed Conditional Use Site Plan, the Applicant has progressed the TIS process; that a copy of the completed TIS letter is included in the Exhibit Booklet; that DelDOT has completed its review and has indicated the access points that are shown are those that have been recommended; that one of the requirements placed by DelDOT as part of the TIS was to construct a concrete median on Route 24 to restrict left-turns into the entrance of the proposed site; that even though it is a right-turn in and right-turn out at that the entrance, there would be a concrete median on Route 24; that the concrete median would be an extra safety measure to ensure that motorists would not try to turn left into the proposed site; that DelDOT has planned a project for the area as part of the Hazard Elimination Program ("HEP"); that there would be additional left-turn lanes and right-turn lanes at the intersection; that the project is to start in the spring of 2021 and be completed by 2022; that the plan for the project is work together with DelDOT, thereby limiting the amount of construction needing to be undertaken at one time; that if the Conditional Use is approved, there are other agency approvals required and it could be another eight months to one year if the Conditional Use is approved; that Mr. Schrader asked Mr. Riemann if an investigation into the availability of fire protection was undertaken for the site; which Mr. Riemann replied yes, and the site does have adequate water supplies for appropriate fire protection; Mr. Schrader asked if water would be provided by Tidewater Utilities; which Mr. Reimann replied yes; that Mr. Schrader asked if the Sussex County Engineering Department had agreed to provide sewer; which Mr. Riemann replied yes and it is planned to be placed into the Sussex County Sewer District; that Mr. Kirk Salvo stated he is the Manager of Family, LLC; that they are the contract purchaser of the four parcels; that there is a

conditional lease in place with 7-11; that he would help 7-11 gain the necessary approvals, buy the site, and help develop the site; that he does have a house in Angola by the Bay; that he believes this would serve the area and the market is right for the area; that some of the neighbors are looking forward to it and are aware of the other projects in the area; that Mr. Schrader stated that the terms under the current County Code for Zoning allows for a Conditional Use to be requested; that it would provide full protection to the surrounding area with the suggested conditions; and that Mr. Mears had concerns with the right-turn lane out onto Route 24 but after reviewing the map showing the acceleration lane and the concrete median to prevent left turns, he has no issues with the Route 24 entrance to the site.

Chairman Wheatly explained to the public that, as part of the County's efforts to comply with the Comprehensive Plan and achieve inter-governmental coordination, a DelDOT representative was present for this public hearing to advise the Planning and Zoning Commission on technical matters; that sometimes there are one or two experts that attend the public hearing; that DelDOT is not present to support or oppose any particular application on the agenda; that they would invite Mr. Todd Sammons and Ms. Susanne Laws to comment, confirm, deny what had been placed into the record by the Applicant and add any thoughts that they might have; and answer any questions that the Planning and Zoning Commission might have.

That the Commission found that Mr. Todd Sammons and Ms. Susanne Laws, were present on behalf of Delaware Department of Transportation; that Mr. Sammons thanked the Planning and Zoning Commission for inviting them; that Chairman Wheatley asked if Mr. Sammons could confirm the statements made by the Applicant during the public hearing and if they would like to add any information or clarify the matters; that Mr. Sammons stated that the Traffic Impact Study ("TIS") was completed and accepted on July 26, 2019 by DelDOT; that there were two proposed access points and the TIS had addressed those two points with a right-turn in and a right-turn out onto Route 24; that there would be a full access on Angola Road; that the Applicant had worked with DelDOT regarding the concerns that the department had with traffic movements and shared with the community; that the Applicant would have to fund a portion of the project that DelDOT is conducting at the intersection; that it is beneficial when the projects align with each other, as this helps to mitigate construction; that the Applicant does have to coordinate with DelDOT to make sure that there is less impact on public traffic; that everything stated by the applicant regarding the shared use path and internal sidewalks is correct; that Chairman Wheatley asked if the taxpayers would be paying for the improvements or if the Developer would be participating in the cost of the proposed projects; which Mr. Sammons stated the Developer would have to contribute with the cost and it is stated in the TIS; that the amount has not yet been determined based on the amount of trips; that the works would take place when the Applicant goes through the entrance plan approval process; that Chairman Wheatley asked if the Developer was aware and understood that they would have a financial responsibility placed upon them; which Mr. Sammons stated the Developer is aware and it is stated in item three of the TIS letter; that Ms. Stevenson asked for clarification as to when is a road considered "failing"; which Mr. Sammons stated that with the project DelDOT is going to complete it so it would have an acceptable level of service (LOS) at the intersection along Route 24; that Ms. Stevenson asked if there is enough land and would it be effective 20-years from now with the improvements; which Mr. Sammons stated DelDOT does project it out 15 to 20 years; that Mr. Sammons stated he could follow-up and what the projection is; that DelDOT would not invest if it was a one-year, two-year or three-year fix; that this would be a long-term fix for the intersection; that Ms. Wingate asked if cross-walks would be promoted on Route 24; which Mr. Sammons stated the cross-walk would be incorporated into the project; that they are on two legs of the intersection and the improvement would accommodate the pedestrians with a light; that Ms. Wingate asked if there would be cross-walks at the

entrance of the right-turn in and right-turn out on Route 24; which Ms. Laws stated that there would be no crossing at the entrance on Route 24; that Mr. Sammons stated the pedestrians are funneled towards the intersection for safety reasons; that Mr. Robertson asked if the Developer is going to contribute to the intersection cost and would there be other Developers that would be required to contribute to some of the those costs or developments in the area and not the taxpayers; which Ms. Laws stated there are a few residential subdivision developments proposed in the area that they would also contribute based on the number of trips that they sent to the intersection; that Mr. Sammons stated any other large-scale development that is in the area would likely have an impact on the intersection, that DelDOT would likely expect them to contribute to the improvements; that if there was not any development and DelDOT was still doing the project and it would all be publicly funded; that Mr. Robertson explained for the public's benefit that there a lot of times that there are contributions made by development in the area; and that there is a large amount of funding that goes toward off-site improvements or actual road improvements made by the Developers.

That the Commission found that Mr. Robert Wagely spoke in favor to the application; that Mr. Wagley stated his sister lives in Angola Beach Estates, and he visits her a lot; and that the proposals would be convenient to residents living in the area.

Mr. Robertson stated the staff did receive several letters in support and that these are part of the record.

That the Commission found that Mr. Curt Smith spoke in opposition to the application; that Mr. Smith stated that he had concerns with the pedestrians crossings; that he does not believe the project would be completed in time; that he does not think the traffic counts are accurate; that the sight lines of the site are impaired because the property slopes toward the road; that he had concerns with the traffic; that he does not understand the turn from Angola Road into the proposed project because the traffic would have to turn into oncoming traffic; that there are other convenience stores at Peddlers Village and at the intersection of Route 1 and Route 24; that this is too close to the intersection; that this could become a hazard; and that this is not a convenience to the area.

Ms. Stevenson asked Mr. Schrader and Mr. Riemann about the turning into the site on Angola Road and if there is a deceleration lane; which Mr. Riemann stated that there is a deceleration lane; that the TIS states that there would be both a right-turn and left-turn lanes into the entrance; that Chairman Wheatley explained that DelDOT had been coordinating with the Developer for the improvements to happen at the same time and is it the Developer's intention as well; which Mr. Schrader replied yes; that Mr. Schrader stated that it should be noted that the intersection is signaled; that Mr. Hopkins asked if the road needs to be straightened; which Mr. Riemann stated the road would be straightened; that Ms. Stevenson asked if it would be the same coming in off of Route 24 and have a deceleration lane; which Mr. Riemann stated that there would be a deceleration lane that was outlined in the TIS; that Mr. Mears asked about the addition of turn lanes at the intersections and if this would help with movement through the intersection; which Mr. Riemann replied yes; that the Level of Service is worked out from the amount of time it takes to get through an intersection and the more lanes you have, the more it alleviates those movements and the faster motorists go through; that Mr. Robertson asked whether there where traffic counts undertaken and whether these were based on any standards and whether they do future counts based on the development as well; which Mr. Riemann stated that new counts are part of the TIS; that the TIS is a step-wise process; that the first step is scoping and meeting with DelDOT to determine what is going to be studied; that step two is the count submission; that they go out and get new counts and they submit them to DelDOT; that DelDOT would review

the counts to determine whether or not they are acceptable; that if the counts are acceptable, they would move onto the Preliminary TIS and DelDOT would review it; that once the Preliminary TIS is completed, they would submit the Final TIS; that Mr. Robertson asked if the counts were done recently; that Mr. Schrader asked Mr. Riemann if cameras were used now instead of hoses; which Mr. Riemann stated there are different ways to count cars and hoses are typically used as supportive measuring devices which means they are there to confirm the counts that are collected that they have obtained; that the counts are undertaken in numerous different ways; that they can use camera devices to count vehicles and that a person could be out manually counting the vehicles; that Ms. Cornwell asked if the TIS included summer and weekend counts; which Mr. Riemann stated the counts are done A.M., P.M., summer and Saturdays; that the counts that were completed were from Acadia's TIS; and that DelDOT wants the counts undertaken within one year of the TIS.

That the Commission found that Ms. Lou Terrell spoke in opposition to the application; Ms. Terrell asked about the number of lanes on Angola Road; that there is already traffic backed up on Angola Road; that Chairman Wheatley stated the extra lanes are intended to relieve the back-up of traffic; that Ms. Terrell stated there is a 400-plus home subdivision planned for the area and it is expected to create an additional 1,000 car trips per day; that would the Angola Road entrance to the proposed site be where it is currently or would it be moved further away from the intersection, and if it is to be moved how much further down the road; that Chairman Wheatley asked Mr. Riemann if the existing driveway that is there now and the relationship of where the new entrance would be; that Mr. Riemann stated he does not have an exact dimension and they are moving the entrance to the right; that Mr. Wheatley asked if the entrance would be further away from the intersection; which Mr. Riemann replied yes; that DelDOT is going to review the details of the entrance and the exact dimensions and configuration as part of the entrance plan review process; and that Mr. Schrader submitted the final TIS letter into the record.

That the Commission found that Mr. Peter Truber, Ms. Pieta Shukwit spoke in opposition to the application; that Mr. Truber stated he had concerns with potential impacts on property values; that local residents knew there were no convenient stores in this rural area when they moved here; that Chairman Wheatley asked Mr. Truber if he bought the property thinking it was a rural area and that the area was never going to change; which Mr. Truber stated he knew it would be developed but he did not think it would be commercial; that he feels there is a potential for pollution run-off into the wetlands; that he has concerns with traffic; that he feels that there would be a certain number of drivers making illegal U-turns to get back to the proposed site; that Ms. Shukwit stated she agrees with the other speakers opposing the Application; and that she had concerns with the traffic.

At the conclusion of the public hearing, the Commission discussed this application. That Mr. Mears stated if the application is recommended for approval, a condition needs to state that the completion of the building and the opening of the building is in conjunction with the intersection.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to defer action for further consideration. Motion carried 5-0.

At their meeting on August 22, 2019, the Planning Commission discussed the application which has been deferred since August 8, 2019.

Mr. Mears moved that the Commission recommend approval of Conditional Use # 2176 for KH SUSSEX, LLC for a convenience store and fueling station based upon the record made during the public hearing and for the following reasons:

1. The site is at the intersection of Angola Road and Route 24. DelDOT testified during the hearing that this intersection will be significantly improved at the same time that this site is developed. This lighted intersection is appropriate for this type of use.
2. This location serves an area that has seen significant residential growth. This Conditional Use will provide a convenient location for retail and automobile fueling for nearby residential developments as well as Route 24 traffic.
3. Most of the site is currently used for commercial purposes. A Conditional Use for boat storage, construction services, lawn mowing, and power washing exists on the property. This new Conditional Use is a reasonable extension of that prior Conditional Use on this site.
4. The site will be served by central water and Sussex County sewer.
5. The site is in the Coastal Area according to the current Sussex County Land Use Plan. This type of business serving nearby residential uses is appropriate in this area according to the Plan.
6. The proposed Conditional Use lessens the congestion on area roads by providing appropriate commercial activities at the Route 24 and Angola Road intersection so that residents and visitors to the area can meet some of their commercial needs without having to travel to Route One or the Long Neck areas.
7. The proposed Conditional Use meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
8. This recommendation is subject to the following conditions:
 - a. The Applicant shall comply with all entrance, intersection and roadway improvements required by DelDOT.
 - b. Fuel and petroleum products shall be stored and dispensed as required by all State and Federal requirements.
 - c. All security lighting shall be fully shielded so that it does not shine on neighboring properties or roadways.
 - d. Any dumpsters shall be screened from view of neighboring properties and roadways.
 - e. The Developer shall comply with all stormwater management requirements and the Final Site Plan shall contain the approval of the Sussex Conservation District.
 - f. The site may have the signage permitted in the C-3 District.
 - g. The site shall be developed in conjunction with the DelDOT improvements to the Route 24 and Angola Road intersection. The use shall not be open to the public until those intersection improvements have been substantially completed.
 - h. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Ms. Stevenson made a suggestion regarding the motion letter C; that where the motion reads all security lighting shall be screened; that the Planning and Zoning Commission state that the security lighting be fully shielded; that a screened lighting and fully shield lighting are not the same thing; and that fully shielded makes sure all the light goes down and none of it goes out in glare.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons and with the stipulations stated in the motion. Motion carried 5-0.

Introduced 03/26/19

Council District No. 4 – Hudson

Tax I.D. No. 234-11.00-56.02 (portion of), 56.03, 56.06, and 56.09

911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONVENIENCE STORE WITH FUELING STATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.51 ACRES, MORE OR LESS

WHEREAS, on the 15th day of March 2019, a conditional use application, denominated Conditional Use No. 2176, was filed on behalf of KH Sussex, LLC; and

WHEREAS, on the ____ day of _____ 2019, 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. 2176 be _____; and

WHEREAS, on the ____ day of _____ 2019, 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. 2176 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 south side of John J. Williams Highway (Route 24) approximately 954 feet west of Angola Road, also being the southwest corner of John J. Williams Highway (Route 24) and Angola Road, and being on the west side of Angola Road approximately 250 feet south of John J. Williams Highway (Route 24), and being more particularly described in the attached legal description prepared by Becker Morgan Group, LLC, said parcel containing 3.51 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 01/07/20

Council District No. 1 – Vincent

Tax I.D. No. 132-2.00-264.00

911 Address: 9329 Brickyard Road, Seaford

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (48 APARTMENTS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.05 ACRES, MORE OR LESS

WHEREAS, on the 26th day of November 2019, a conditional use application, denominated Conditional Use No. 2212, was filed on behalf of Brickyard Apartments, LLC; and

WHEREAS, on the ____ day of _____ 2020, 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. 2212 be _____; and

WHEREAS, on the ____ day of _____ 2020, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article VI, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2212 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Broad Creek Hundred, Sussex County, Delaware, and lying on the northwest side of Brickyard Road approximately 0.3 miles southeast of Sussex Highway (Route 13) and being more particularly described in the attached legal description prepared by Morgenstern DeVoesick PLLC, said parcel containing 5.05 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 01/07/20

**Council District No. 2 – Wilson
Tax I.D. No. 135-20.00-137.00
911 Address: 17471 Whitetail Lane, Georgetown**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A 15-ACRE BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 220.38 ACRES, MORE OR LESS

WHEREAS, on the 27th day of November 2019, a conditional use application, denominated Conditional Use No. 2213, was filed on behalf of Whitetail Lane, LLC; and

WHEREAS, on the ____ day of _____ 2020, 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. 2213 be _____; and

WHEREAS, on the ____ day of _____ 2020, 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. 2213 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 northeast side of Cedar Lane, and being more particularly described in the attached legal description prepared by Moore & Rutt, P.A., said parcel containing 220.38 acres, more or less.

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

To Be Introduced 01/07/20

Council District No. 1 – Vincent

Tax I.D. No. 132-2.00-264.00

911 Address: 9329 Brickyard Road, Seaford

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.093 ACRES, MORE OR LESS

WHEREAS, on the 26th day of November 2019, a zoning application, denominated Change of Zone No. 1910, was filed on behalf of Brickyard Apartments, LLC; and

WHEREAS, on the ____ day of _____ 2020, 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. 1910 be _____; and

WHEREAS, on the ____ day of _____ 2020, 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 GR General Residential District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Broad Creek Hundred, Sussex County, Delaware, and lying on the northwest side of Brickyard Road approximately 0.3 miles southeast of Sussex Highway (Route 13) and being more particularly described in the attached legal description prepared by Miller Lewis, Inc., said parcel containing 3.093 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 01/07/20

Council District No. 3 – Burton

Tax I.D. No. 334-6.00-58.00

911 Address: 16816 and 16820 Kings Highway, Lewes

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.92 ACRE, MORE OR LESS

WHEREAS, on the 27th day of November 2019, a zoning application, denominated Change of Zone No. 1912, was filed on behalf of Kyle Norwood and Katie Davidson; and

WHEREAS, on the ____ day of _____ 2020, 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. 1912 be _____; and

WHEREAS, on the ____ day of _____ 2020, 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-2 Medium 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 and Rehoboth Hundred, Sussex County, Delaware, and lying on the southwest corner of Savannah East Drive and Kings Highway, and being more particularly described in the attached legal description prepared by Hudson, Jones, Jaywork & Fisher, said parcel containing 0.92 acre, more or less.

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

To Be Introduced 01/07/20

Council District No. 5 – Rieley

Tax I.D. No. 233-5.00-70.00

911 Address: 30512 and 30540 Thorogoods Road, Dagsboro

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 3.60 ACRES, MORE OR LESS

WHEREAS, on the 11th day of December 2019, a zoning application, denominated Change of Zone No. 1913, was filed on behalf of FW & SW Thoroughgood Family Limited Partnership; and

WHEREAS, on the ____ day of _____ 2020, 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. 1913 be _____; and

WHEREAS, on the ____ day of _____ 2020, 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 HI-1 Heavy Industrial 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 Dagsboro Hundred, Sussex County, Delaware, and lying on the west side of Thorogoods Road, and being more particularly described in the attached legal description prepared by David W. Baker, Esq., P.A., said parcel containing 3.60 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.