

Sussex County Council Public/Media Packet

MEETING: January 8, 2019

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Sussex County Council

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SUSSEX COUNTY COUNCIL

AGENDA

JANUARY 8, 2019

9:30 A.M. – Swearing-In Ceremony

10:00 A.M. - Regular Meeting

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

Consent Agenda

- Wastewater Agreement No. 1076
 Sussex County Project No. 81-04
 The Residences at Rehoboth Bay (AKA Love Creek Marina)
 Angola Neck Sanitary Sewer District
- 2. Wastewater Agreement No. 925-3 Sussex County Project No. 81-04 Seabrook (AKA Deerbrook) – Phase 2 Long Neck Sanitary Sewer District



Todd Lawson, County Administrator

- 1. Planning and Zoning Commission Appointment
- 2. Administrator's Report

Gina Jennings, Finance Director

- 1. Bank Account Resolutions
- 2. 2018 Private Activity Bond Volume Cap

Edward Engdahl, Sr., EMS Education Coordinator

1. Memorandum of Understanding – Beebe Healthcare and Sussex County EMS

Hans Medlarz, County Engineer

- 1. Sussex County Maintenance Garage, Project No. 17-09
 - A. Change Order No. 3
- 2. Blades Sewer Expansion Route 13 Commercial
 - A. Davis, Bowen & Friedel EJCDC Base Agreement Amendment 3
- 3. Agreement for Wastewater Services Lewes Board of Public Works (BPW)
 - A. Amendment No. 2
- 4. Construct Parallel Taxiway D, Phase 2, Project No. 18-03
 - A. Change Order No. 1

Grant Requests

- 1. City of Seaford for the Police Department's 2019 Citizens Police Academy
- 2. Boy Scouts of America, Del-Mar-Va Council, for program expenses

Introduction of Proposed Zoning Ordinances

Council Members' Comments

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

Possible Action on Executive Session Items

1:30 p.m. Public Hearings

Change of Zone No. 1863 filed on behalf of Triumf I, LLC

"AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.51646 ACRES, MORE OR LESS" (lying on the west side of Roxana Road, approximately 1,040 feet south of Atlantic Avenue (Tax I.D. No. 134-11.00-805.01) (911 Address: None Available)

Change of Zone No. 1864 filed on behalf of Scott and Monica Shubert

"AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 9.9 ACRES, MORE OR LESS" (lying at the northwest corner of Iron Hill Road and Old Stage Road) (Tax I.D. No. 532-14.00-6.05) (911 Address: 11133 Iron Hill Road, Delmar)

<u>Change of Zone No. 1862 filed on behalf of Old Orchard Ventures, LLC, c/o Barry J. Baker</u>

"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 5.82 ACRES, MORE OR LESS" (lying at the east side of Old Orchard Road, approximately 1,370 feet south of New Road (Tax I.D. No. 335-8.00-29.00 (portion of) (911 Address: None Available)

Adjourn

Sussex County Council meetings can be monitored on the internet at www.sussexcountyde.g	<u>ov</u> .

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on December 31, 2018 at 4:20 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 listed may be considered out of sequence.

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 11, 2018, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent
George B. Cole
Robert B. Arlett
Irwin G. Burton III
Samuel R. Wilson Jr.

President
Vice President
Councilman
Councilman

Todd F. Lawson
Gina A. Jennings
J. Everett Moore Jr.

County Administrator
Finance Director
County Attorney

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

Call to

Order Mr. Vincent called the meeting to order.

M 689 18 Approve

Agenda

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

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

Recognition of High

The Council recognized the following Sussex County sports teams:

of High School Sports Teams

- ➤ Cape Henlopen High School Field Hockey Team 2018 DIAA Division I Champions
- ➤ Delmar High School Field Hockey Team 2018 DIAA Division II Champions
- Sussex Central High School Football Team 2018 DIAA Division I Champions
- ➤ Woodbridge High School Football Team 2018 DIAA Division II Champions

Recess

[The meeting was recessed briefly to allow for pictures to be taken.]

Minutes

The minutes of December 4, 2018 were approved by consent.

Correspondence

Mr. Moore reported that the following correspondence has been received:

HOUSE OF HOPE, BRIDGEVILLE, DELAWARE.

RE: Letter in appreciation of grant.

MAYOR BILL WEST, TOWN OF GEORGETOWN, GEORGETOWN, DELAWARE.

RE: Letter in appreciation of grant for the Return Day Mayor's Reception.

FOOD BANK OF DELAWARE, MILFORD, DELAWARE.

RE: Letter in appreciation of grant.

SLAM DUNK TO THE BEACH, DELAWARE SPORTS COMMISSION, DOVER, DELAWARE.

RE: Letter in appreciation of grant.

DELAWARE COMMUNITY FOUNDATION, GEORGETOWN, DELAWARE.

RE: Letter in appreciation of grant.

BOYS & GIRLS CLUBS OF DELAWARE, WILMINGTON, DELAWARE.

RE: Letter in appreciation of grant.

Public Comments

Public Comments

Rich Holtkamp spoke on behalf of SARG (Sussex Alliance for Responsible Growth) thanking and commending the Council on all of its work and acknowledging the past service of retiring Councilmembers George Cole and Rob Arlett.

Representative Tim Dukes commented on the retirement of Councilmembers George Cole and Rob Arlett, thanking them for their leadership and commitment to Sussex County and the State of Delaware.

Paul Reiger commented on advertisements for the Board of Adjustment meetings and information on the County's website in regards to the members of the Board of Adjustment.

Presentation/

A presentation was given by representatives from Sussex Community Crisis Housing Services ("Crisis House"), Delaware State Housing Authority, and Housing Alliance Delaware on a new funding source available to organizations in Delaware that are working to prevent and end homelessness (the Home4Good Program – a housing locator project). The Crisis House is seeking leverage support in the amount of \$35,000 from the Council to fulfill the obligations of their grant award under this new funding source; grant funding will allow them to develop and administer the project.

M 690 18 Approve Partnership/

A Motion was made by Mr. Arlett, seconded by Mr. Cole, that the Sussex County Council approves the partnership with Sussex Community Crisis Housing Services in an amount not to exceed \$35,000 for the development of a housing locator program.

Sussex **Community**

Motion Adopted: 5 Yeas.

Crisis Housing

Services

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

M 691 18 **Approve**

A Motion was made by Mr. Arlett, seconded by Mr. Cole, to approve the following items listed under the Consent Agenda:

Consent Agenda **Items**

Wastewater Agreement No. 843-7 1. Sussex County Project No. 81-04 Vincent Overlook – Phase 7A

2. Wastewater Agreement No. 843-8 Sussex County Project No. 81-04

Vincent Overlook – Phase 7B

West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District

West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

Administrator's Report

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

1. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for November 2018 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 191 troopers assigned to Sussex County for the month of November.

2. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Windmill Woods - Phase 3 received Substantial Completion effective December 7th.

Administrator's Report (continued)

3. Christmas and New Year's Holidays

Please note, County offices will be closed on December 24th and 25th to celebrate the Christmas holiday, and January 1st for the New Year's holiday. In addition, the Sussex County Council will not meet on December 18th. The next regularly scheduled Council meeting will be held on Tuesday, January 8th, at 10:00 a.m.

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

Purchase and Maintenance Agreements with County Business Systems/ Register of Wills Register of Wills Cindy Green presented for Council's approval a new Estate Case Management System RFP Award and Contract for the Register of Wills Office. Upon approval, the new Estate Case Management System contract agreement will be with County Business Systems, Inc. Mrs. Green reported that a new system is necessary due to the current contract ending with ACS Enterprise Solutions, LLC, now known as Conduent Enterprise Solutions, LLC. She noted that the new system will allow staff to increase work efficiency and will provide improved online research options for the legal community. The one-time fee for upgrading the system will be \$98,050 (\$70,000 for software, \$24,000 for data conversion, and \$4,050 for training); thereafter, there will be a yearly maintenance fee in the amount of \$17,900. Mrs. Green explained that there will be a subscription fee for users which will generate revenue.

M 692 18 Approve Contract with County Business A Motion was made by Mr. Arlett, seconded by Mr. Wilson, that the Sussex County Council approves the contract with County Business Systems, Inc. for the Register of Wills Estate Case Management System in the amount not to exceed \$98,050.

Business Systems/ Register

of Wills

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

Delaware Coastal Business Park/ Design Phase II Hans Medlarz, County Engineer, reported on the Delaware Coastal Business Park Project. He noted that the County assumed the original Becker Morgan Group design contract from the previous owners and thereafter, the Council approved Amendment No. 1 to change up the alignment behind Atlantis. Mr. Medlarz reported that the Engineering Department is ready for Phase II of the Project, which is for design of the Baltimore Avenue extension through Nanticoke Avenue and the overall stormwater management program for the park as well as for the expanded airport facility.

M 693 18 Amendment

A Motion was made by Mr. Arlett, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, that Scope Amendment No. 2 with Becker Morgan Group, Inc. be approved in the amount not to

M 693 18 Approve Amendment exceed \$350,000 for the Delaware Coastal Business Park Design Phase II which includes further extension for roadways and stormwater overmanagement at the Delaware Coastal Business Park.

/ Delaware

Motion Adopted: 5 Yeas. Coastal

Business

Park/Design **Vote by Roll Call:** Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Phase II Mr. Vincent, Yea

(continued)

Phase I ConMr. Medlarz presented the bid results for the Delaware Coastal Business

Park, Phase I Construction (Contract C19-15). struction

Bid Results

M 694 18

Award

Bid/

A Motion was made by Mr. Cole, seconded by Mr. Burton, based upon the recommendation of the Engineering Department, that Contract C-19-15, Delaware Coastal Business Park, Phase I Construction, be awarded to Melvin Joseph Construction for the Base Bid price of \$1,427,560.75 and the Contingent Bid amount of \$19,073.00, for a Total Bid price of \$1,446,633.75.

Delaware

Coastal **Motion Adopted:** 5 Yeas.

Business

Park / **Vote by Roll Call:** Mr. Arlett, Yea; Mr. Burton, Yea; Phase I Con-

Mr. Wilson, Yea; Mr. Cole, Yea;

struction Mr. Vincent, Yea

Chesapeake **Utilities** Corporation Customer Advance Agreement

Mr. Medlarz discussed providing natural gas service to the Delaware Coastal Business Park. He noted that the high-pressure gas company, Eastern Shore Natural Gas, requires an arrangement with the service provider, Chesapeake Utilities. If approved, these arrangements will provide a gas service tap to each leased lot in the Coastal Business Park and each existing business in the existing park.

M 695 18 Delaware Coastal **Business** Park / Chesapeake **Utilities**

A Motion was made by Mr. Cole, seconded by Mr. Burton, based upon the recommendation of the Engineering Department that the County Council approves the Customer Advance Agreement with Chesapeake Utilities Corporation to furnish natural gas service to the Delaware Coastal Business Park and the Sussex Industrial Park, in principal, subject to minor legal

modifications.

Corporation 5 Yeas. **Motion Adopted:**

Customer Advance

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea Agreement

Eastern Shore **Natural Gas** Easement

Mr. Medlarz discussed the granting of an Eastern Shore Natural Gas Easement whereby they will provide an extra line down Springfield Avenue and build a city gate for the Chesapeake Utilities Corporation. Eastern Shore Natural Gas has offered to pay \$3,660.00 for the easement, if granted.

M 696 18 **Approve Natural Gas** Utility Easement/ Eastern

A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Engineering Department, that the Sussex County Council approves the granting of a Natural Gas Utility Easement to Eastern Shore Natural Gas in exchange for payment of \$3,660.00 to construct transmission improvements serving, among others, the Delaware Coastal Business Park.

Shore

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

Gas

Mr. Arlett, Yea; Mr. Burton, Yea; **Vote by Roll Call:**

Mr. Wilson, Nay; Mr. Cole, Yea;

Mr. Vincent, Yea Change

Order/

James Farm Hans Medlarz, County Engineer, presented Change Order No. 1 to the James Farm Master Plan Implementation Phase I, Cedar Neck Road **Master Plan** Entrance Project, Project C19-02A. Change Order No. 1, in the amount of Implemen-\$269,340.00, will cover the parking lot, the sidewalks, and the tie-ins to the tation

Phase I entrance.

M 697 18 Approve Change Order/ James Farm

A Motion was made by Mr. Cole, seconded by Mr. Arlett, based upon the recommendation of the Engineering Department, that Change Order No. 1 for Contract C19-02A, James Farm Master Implementation Phase I, Cedar Neck Road Entrance, be approved which increases the Contract amount by \$269,340.00, for a new Contract total of \$366,937.50.

Cedar

Neck 5 Yeas. **Motion Adopted:**

Road

Entrance Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

The Evergreene Companies/ Admiral's Chase Infrastructure Agreement

John Ashman, Director of Utility Planning, presented a Use of Existing Infrastructure Agreement with The Evergreene Companies, LLC. The project is located in the existing Sussex County Unified Sanitary Sewer District in the West Rehoboth Area along Gills Neck Road. Under the proposed arrangement, the Admiral's Chase project will connect to the existing County owned infrastructure. In return, The Evergreene Companies, LLC will contribute \$8,463.00 for the financial catch-up contribution of the existing infrastructure to serve an additional 26 EDUs; payment will be required prior to receiving a connection for the facility.

M 698 18 Approve the Use of Existing Infrastructure

A Motion was made by Mr. Cole, seconded by Mr. Wilson, based upon the recommendation of the Engineering Department, that the Sussex County Council approves the Use of Existing Infrastructure Agreement between Sussex County and Evergreene Companies, LLC for a capacity allocation in the regional transmission system, as presented.

Agreement **Motion Adopted:** 5 Yeas. M 698 18 (continued)

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

M 699 18 Deer Action on Proposed C-4 Ordinance A Motion was made by Mr. Cole, seconded by Mr. Burton to defer action on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XID, SECTIONS 115-83.26, 115-83.27, 115-83.31 AND 115 ATTACHMENT 4, SUSSEX COUNTY TABLE IV".

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

Old Business Under Old Business, the Council considered seven (7) previously deferred zoning applications.

M 700 18 Adopt Proposed Ordinance CZ 1855 A Motion was made by Mr. Cole, seconded by Mr. Arlett, to Adopt 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-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.51 ACRES, MORE OR LESS" (Change of Zone No.

DENIED CONTAINING 3.51 ACRES, MORE OR LESS" (1855) filed on behalf of Kirk Salvo; KH Sussex, LLC.

Motion Denied: 3 Nays, 2 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Nay;

Mr. Wilson, Yea; Mr. Cole, Nay;

Mr. Vincent, Nay

M 701 18 Adopt Proposed Ordinance CU 2145 A Motion was made by Mr. Cole, seconded by Mr. Arlett, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY UNITS (2 DUPLEXES) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.169 ACRE, MORE OR LESS" (Conditional Use No. 2145) filed on behalf of 105 Seagull Drive, LLC.

DENIED

Motion Denied: 3 Nays, 2 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Nay;

Mr. Wilson, Yea; Mr. Cole, Nay;

Mr. Vincent, Nay

M 702 18 Adopt Ordinance No. 2621/ CZ 1858 A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to Adopt Ordinance No. 2621 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HR-1 – RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.8455 ACRES, MORE OR LESS" (Change of Zone No. 1858) filed on behalf of OA Oaks, LLC (Ashton Oaks), with the following conditions:

- A. The maximum number of apartment units shall not exceed 178.
- B. As offered by the Applicant, 36 of the units shall be designated as "Restricted Units" for the purpose of providing "workforce housing" subject to the following terms and conditions:
 - 1. Rent Restricted Units For a period of 30 years following the date the first building receives its certificate of occupancy, 36 of the total number of units offered for lease (the "Restricted Units"), shall be rented to tenants with gross household incomes equal to or less than 70% of the area median income for Sussex County ("Qualifying Tenants") as established by the U.S. Department of Housing and Urban Development ("HUD")and updated annually for a rental rate, adjusted for household and unit size as per HUD guidelines, no greater than 30% of gross household income.
 - 2. Vacant Units During lease-up and for a period of 2 years, the Applicant must actively seek to lease available units to Qualifying Tenants at a rate equal to or greater than the ratio of Restricted Units to market rate units. Post lease-up, any vacant units for which the Applicant is actively seeking tenants must first be offered to Qualifying Tenants if the total number of leased Restricted Units is less than the targeted amount (36). If no Qualifying Tenants are available at the time a unit becomes vacant that unit may be leased at market rates to any tenant. At all times in which the number of Restricted Units is less than 36, the next available unit(s) must be offered for lease to any known and available Qualified Tenant(s), until such time as the 36-unit target for Restricted Units is achieved.
 - 3. Qualifying Tenants Eligible tenants for the Restricted Units must:
 - a. Provide proof of citizenship.
 - b. Be of eligible income as defined in "a", above.
 - c. Be employed and live in Sussex County for at least one year preceding the date of application.
 - d. Occupy of Restricted Unit as the tenant's principal residence

during the lease period. Each eligible tenant must certify before taking occupancy that the tenant will occupy the unit as the tenant's principal residence. Any tenant who violates occupancy requirements will be subject to eviction procedures.

- e. Comply with other requirements that apply to tenants of Non-Restricted Units.
- 4. <u>Unit Integration</u> Restricted Units must be fully integrated into the community and shall not be substantially different in external or internal appearance and fit out from market-rate units. Restricted Units shall be equipped with the same basic appliances as the market rate units, such as an oven, refrigerator, dishwasher, and washer and dryer. At all times, the number of types of Restricted Units shall remain in proportion to the number of the same type of Market Rate Unit. For example, if 33% of the Market Rate Units are 3-Bedroom Units, then 33% of the Restricted Units must be 3-Bedroom Units.
- 5. <u>Restricted Unit Leases</u> The following requirements shall apply to Restricted Unit Leases:
 - a. The landlord shall determine the tenant's eligibility to rent a Restricted Unit and lease agreements shall not be signed until tenant eligibility is determined.
 - b. Lease agreements shall contain the same terms and conditions as the lease agreements with market-rate renters with the exception of the rental rates and other terms and conditions as required under these conditions.
 - c. All lease agreements of Restricted Units shall cover a period of one year. An eligible tenant already occupying a restricted unit has first option to renew the lease agreement each year, as long as the tenant maintains good standing with the landlord and continues to qualify as a Qualifying Tenant.
 - d. Tenants of Restricted Units shall provide an executed affidavit on an annual basis certifying their continuing occupancy of the unit as their principal residence. Tenants shall provide such affidavit to the landlord by the date that may be specified in their lease or that may otherwise be specified by the landlord.
 - e. In the event the tenant of a Restricted Unit fails to provide his or her landlord with an executed affidavit as provided for in the preceding paragraph within 30 days of written request for such affidavit, then the lease shall automatically terminate, become null and void and the occupant shall vacate the unit within 30 days of written notice from the landlord.
 - f. Leases of Restricted Units shall prohibit tenants from subletting or subleasing the Restricted Unit.

- 6. Examination by an Independent Certified Public Accountant The developer shall contract with an independent Delaware Certified Public Accountant that has no other relationship with the Developer/Owner/Manager of the Project to perform annual agreedupon procedures with respect to the Project, reporting upon elements of compliance with the conditions of approval for the Project related to the rental of the "Restricted Units" and the "Qualifying Tenants" in the Project. In this engagement, the Delaware Certified Public Accountant will perform agreed-upon procedures in accordance with attestation standards established by the American Institute of Certified Public Accountants. This annual agreed-upon procedures engagement shall be used to confirm that the project remains in compliance with all of Condition B of this approval, and (i) the status of each of the 36 Restricted Units; (ii) the status and duration of any vacancy of any Restricted Unit: (iii) the marketing efforts to re-let any vacant Restricted Unit to a Qualifying Tenant; (iv) the status of any list of Qualifying Tenants waiting for a Restricted Unit to come available; and (v) such other information as the Delaware Certified Public Accountant and/or Office of Planning & Zoning may deem appropriate and necessary. This information shall be submitted to both the Office of Planning & Zoning and the Community Development & Housing Office no later than March 1 of each year.
- 7. Penalties In the event that more than 142 of the units are rented at Market Rate because fewer than 36 units are leased to Qualified Tenants (the "Excess Market Rate Units"), the Applicant or owner of the project shall be required to pay to Sussex County the monthly market rent collected from any Excess Market Rate Units. Any such funds collected by Sussex County shall be used and administered for housing purposes by the Sussex County Office of Community Development and Housing.
- C. All entrances, intersections, interconnections, roadways and multimodal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.
- D. The RPC shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.
- E. The RPC shall be served by central water.
- F. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.

- G. Interior street design shall meet or exceed Sussex County's street design requirements. There shall also be sidewalks on both sides of the streets within the RPC.
- H. As offered by the Applicant, a voluntary 40-foot minimum buffer will be established from any wetlands located on the site and a 20-foot landscaped or wooded buffer shall be established along the boundary of the site adjacent to property of other ownership to the east and west. The existing vegetation in the wetlands buffer area shall not be disturbed.
- I. Recreational amenities, including the clubhouse, outdoor swimming pool and deck, playground, walking trail and enclosed dog park, shall be completed prior to issuance of a building permit for fourth multifamily building.
- J. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop area shall be shown on the Final Site Plan.
- K. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Departments.
- L. Construction activities, including sitework and deliveries, shall only occur between 7:30 am and 7:00 pm Monday through Friday, and 8:00 am through 5:00 pm on Saturdays.
- M. Space in the community clubhouse or in Unit #1 shall be permitted as an on-site management office.
- N. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- O. The Applicant or its assigns shall be responsible for the maintenance of interior drives and parking areas, buildings, buffers, stormwater management, recreational amenities and all open space.
- P. The Final Site Plan shall include a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
- Q. The building height shall be limited to 42 feet. This limitation shall not apply to pitched roofs or chimneys, vents, elevator towers or similar items.
- R. As proffered by the Applicant and as authorized by §115-125(B) of the Zoning Code, there shall be a deed restriction imposed upon, and recorded against, the 14.84-acre parcel that is the subject of this

rezoning application. This deed restriction shall be approved by the Office of Planning & Zoning and shall be recorded in the Office of the Recorder of Deeds, in and for Sussex County, within 30 days of the approval of this ordinance. It shall include the following statement:

"On the 11th day of December, 2018, the Sussex County Council rezoned this 14.84 acre parcel to an HR-1/RPC for the specific purpose of developing a 178-unit apartment development as depicted on the RPC Preliminary Site Plan submitted as part of CZ #1858. In the event the RPC is not developed and is declared null and void by Sussex County pursuant to §99-9B or §99-40A of the Sussex County Code, which are incorporated into §115-218 of the Zoning Code regarding RPCs by reference, then the permitted density of the this 14.84 acre parcel shall not exceed 2.178 units per acre, representing the density prior to the approval of CZ #1858. This restriction shall not be amended nor modified without the approval of the Sussex County Council."

S. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion Adopted: 3 Yeas, 2 Nays.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yes;

Mr. Wilson, Nay; Mr. Cole, Nay;

Mr. Vincent, Yea

M 703 18 Close Record/ CZ 1860, CU 2147,

CZ 1861

A Motion was made by Mr. Burton, seconded by Mr. Wilson, to close the record on Change of Zone No. 1860, Conditional Use No. 2147, and Change of Zone No. 1861.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

M 704 18 Adopt Proposed Ordinance CZ 1860 A Motion was made by Mr. Arlett, seconded by Mr. Burton, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 12.50 ACRES, MORE OR LESS" (Change of Zone No. 1860) filed on behalf of Nassau DE Acquisition Co., LLC.

DENIED

Motion Denied: 3 Nays, 2 Yeas.

M 704 18 (continued)

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Nay;

Mr. Wilson, Yea; Mr. Cole, Nay;

Mr. Vincent, Nay

M 705 18 Adopt Proposed Ordinance CU 2147 A Motion was made by Mr. Burton, seconded by Mr. Arlett, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 12.50

DENIED

ACRES, MORE OR LESS" (Conditional Use No. 2147) filed on behalf of Nassau DE Acquisition Co., LLC.

Motion Denied: 4 Nays, 1 Yea.

Vote by Roll Call: Mr. Arlett, Nay; Mr. Burton, Nay;

Mr. Wilson, Yea; Mr. Cole, Nay;

Mr. Vincent, Nay

M 706 18 Adopt Ordinance No. 2622/ CZ 1861 A Motion was made by Mr. Burton, seconded by Mr. Arlett, to Adopt Ordinance No. 2622 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 2.662 ACRES, MORE OR LESS" (Change of Zone No. 1861) filed on behalf of Nassau DE Acquisition Co., LLC.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

M 707 18 Adopt Ordinance No. 2623/ CZ 1859 A Motion was made by Mr. Arlett, seconded by Mr. Burton, to Adopt Ordinance No. 2623 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT — RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 60 ACRES, MORE OR LESS" (Change of Zone No. 1859) filed on behalf of Boardwalk Development, LLC, c/o Joseph Reed (Henlopen Meadows), subject to the following conditions:

A. The maximum number of dwelling units shall not exceed 201 single family units.

- B. A homeowners association shall be formed to provide for the perpetual maintenance, repair and replacement of buffers, stormwater management facilities, streets, amenities and other common areas.
- C. All entrances, intersections, interconnections, roadways and multimodal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.
- D. The RPC shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.
- E. The RPC shall be served by central water.
- F. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices. In reviewing the stormwater management design, the Applicant and the Sussex Conservation District shall also work to reduce the impacts from runoff from the property onto The Cove on Herring Creek; particularly during the site work, development, and construction phases.
- G. Interior street design shall meet or exceed Sussex County's street design requirements. There shall also be street lighting and sidewalks on one side of the streets within the RPC.
- H. All amenities shall be completed prior to the issuance of the 75th building permit.
- I. A 20-foot wide forested landscape buffer shall be established along the perimeter of the site. This may include the existing trees.
- J. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop area shall be shown on the Final Site Plan.
- K. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Departments.
- L. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- M. The Final Site Plan shall include a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
- N. As proffered by the Applicant, the community will not contain any manufactured homes.
- O. The community shall be marketed as "workforce housing" and the target market will be households living and working in Sussex County earning 80%-120% Sussex County area median income. The Developer shall complete and provide a Buyer Data Sheet, the final settlement statement, and any other necessary information to an independent CPA to generate a report evidencing that homebuyers are not spending more than 30% of their gross household income on housing costs for each home sale. This report shall be submitted to the Planning and Zoning Department on an annual basis to analyze the success of the project as workforce housing. The Developer shall work with DSHA, NCALL,

M 707 18 Adopt Ordinance No. 2622/ CZ 1859	First State and other non-profit homeownership geared agencies to market the houses. P. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
(continued)	Motion Adopted: 5 Yeas.
G. A	Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea
Grant Requests	Mrs. Jennings presented grant requests for the Council's consideration.
M 708 18 Council- manic Grant	A Motion was made by Mr. Burton, seconded by Mr. Cole, to give \$750.00 from Mr. Burton's Councilmanic Grant Account to the Historic Lewes Farmers Market Society for the Supplemental Nutrition Assistance Program.
	Motion Adopted: 5 Yeas.
	Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea
M 709 18 Council- manic	A Motion was made by Mr. Burton, seconded by Mr. Cole, to give \$750.00 from Mr. Burton's Councilmanic Grant Account to the Greater Lewes Foundation for the Lewes Community Garden.
Grant	Motion Adopted: 5 Yeas.
	Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea
M 710 18 Council- manic Grant	Mr. Burton left the meeting.
	A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$5,000.00 from Mr. Cole's Councilmanic Grant Account to the Center for the Inland Bays for the James Farm Master Plan, Phase I Implementation.
	Motion Adopted: 4 Yeas, 1 Absent.
M 711 19	Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent; Mr. Wilson, Yea; Mr. Cole, Yea; Mr. Vincent, Yea

M 711 18

Councilmanic A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$250.00 from Mr. Vincent's Councilmanic Grant Account to the Nanticoke Health Foundation for the Holiday Prescription Drug Funding Project. M 711 18

Motion Adopted: 4 Yeas, 1 Absent.

(continued)

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

M 712 18 Councilmanic A Motion was made by Mr. Arlett, seconded by Mr. Cole, to give \$1,000.00 from Mr. Arlett's Councilmanic Grant Account to the Indian River High School for the Mock Trial State Competition

manic School for the Mock Trial State Competition.
Grant

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

M 713 18 Councilmanic Grant A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to give \$2,500.00 from Mr. Arlett's Councilmanic Grant Account to Way More Laundry for the mentoring and training program.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

M 714 18 Councilmanic Grant A Motion was made by Mr. Arlett, seconded by Mr. Wilson, to give \$1,000.00 (\$500.00 each from Mr. Wilson's and Mr. Arlett's Councilmanic Grant Accounts) to Sussex Central High School (Football Boosters) for banquet expenses.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

M 715 18 Councilmanic Grant A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to give \$1,000.00 (\$500.00 each from Mr. Wilson's and Mr. Vincent's Councilmanic Grant Accounts) to Woodbridge High School Football Boosters for banquet expenses.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

M 716 18 Councilmanic Grant A Motion was made by Mr. Wilson, seconded by Mr. Arlett, to give \$750.00 (\$500.00 from Mr. Wilson's Councilmanic Grant Account and \$250.00 from Mr. Vincent's Councilmanic Grant Account) to the New Coverdale Outreach Mission for operating expenses.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

M 717 18 Councilmanic Grant A Motion was made by Mr. Cole, seconded by Mr. Arlett, to give \$2,000.00 (\$1,000.00 each from Mr. Cole's and Mr. Arlett's Councilmanic Grant Accounts) to the Indian River High School Band Boosters for parade travel expenses.

Motion Adopted: 4 Yeas, 1 Absent.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Absent;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

Introduction of Proposed Zoning Ordinances

Mr. Vincent introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM-DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.2 ACRES, MORE OR LESS" (Change of Zone No. 1874) filed on behalf of Leanna and Hung Nguyen (Tax I.D. No. 334-19.00-1.06) (911 Address: None Available).

Mr. Vincent introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM -DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.2 ACRES, MORE OR LESS" (Conditional Use No. 2164) filed on behalf of Leanna and Hung Nguyen (Tax Map No. 334-19.00-1.06) (911 Address: None Available).

The Proposed Ordinances will be advertised for Public Hearing.

Recognition of Councilmembers Cole and Arlett

The Council and members of the public recognized retiring Sussex County Council members George Cole and Rob Arlett. Both Mr. Cole (District 4) and Mr. Arlett (District 5) were recognized with proclamations, replica gavels and nameplates.

Councilman Cole

Councilman Cole served 32 years and is the longest serving elected official in County history. Mr. Cole has "the distinction of being the third member of the Cole family to serve on the Sussex County Council since council form was established in the early 1970s…".

A retirement celebration for Mr. Cole will be held in January 2019.

M 718 18 Adjourn

At 1:58 p.m., a Motion was made by Mr. Cole, seconded by Mr. Arlett, to adjourn the meeting.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Arlett, Yea; Mr. Burton, Yea;

Mr. Wilson, Yea; Mr. Cole, Yea;

Mr. Vincent, Yea

Mr. Cole hammered the gavel to close the meeting.

Respectfully submitted,

Robin A. Griffith Clerk of the Council

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

ENGINEERING DEPARTMENT

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





DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

BRAD HAWKES
DIRECTOR OF UTILITY ENGINEERING

December 06, 2018

FACT SHEET

SUSSEX COUNTY PROJECT 81-04
THE RESIDENCES AT REHOBOTH BAY (AKA LOVE CREEK MARINA)
AGREEMENT NO. 1076

DEVELOPER:

MSM II Development Co., LLC 20408 Silver Lake Drive, Unit 1 Rehoboth Beach, DE 19971

LOCATION:

Route 24 (John J. Williams Highway)

SANITARY SEWER DISTRICT:

Angola Neck Sanitary Sewer District

TYPE AND SIZE DEVELOPMENT:

Condominiums and restaurant

SYSTEM CONNECTION CHARGES:

\$1,144,800.00

SANITARY SEWER APPROVAL:

Sussex County Engineering Department Plan Approval 08/10/18

Department of Natural Resources Plan Approval 09/25/18

SANITARY SEWER CONSTRUCTION DATA:

Construction Days – 20 Construction Admin and Construction Inspection Cost – \$27,132.90 Proposed Construction Cost – \$180,886.00



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 (302) 855-7799 FAX



Sussex County

DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

BRAD HAWKES
DIRECTOR OF UTILITY ENGINEERING

January 8, 2019

FACT SHEET

SUSSEX COUNTY PROJECT 81-04 SEABROOK (AKA DEERBROOK) - PHASE 2 AGREEMENT NO. 925 - 3

DEVELOPER:

Mr. Gus Croll Alpaco V, L.L.C. P.O. Box 748 Georgetown, DE 19947

LOCATION:

1050' west of SR24 / #299 Intersection

SANITARY SEWER DISTRICT:

Long Neck Sanitary Sewer District

TYPE AND SIZE DEVELOPMENT:

120 Single Family detached subdivision, 24 lots in this phase.

SYSTEM CONNECTION CHARGES:

\$152,640.00

SANITARY SEWER APPROVAL:

Sussex County Engineering Department Plan Approval 06/16/16

Department of Natural Resources Plan Approval 01/26/17

SANITARY SEWER CONSTRUCTION DATA:

Construction Days – 30 Construction Admin and Construction Inspection Cost – \$18,147.00 Proposed Construction Cost – \$120,980.00



GINA A. JENNINGS, MBA, MPA FINANCE DIRECTOR

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





Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent The Honorable Irwin G. Burton III The Honorable Samuel R. Wilson Jr The Honorable Douglas B. Hudson The Honorable John L. Rieley

FROM: Gina A. Jennings

Finance Director/Chief Operating Officer

RE: **BANK RESOLUTIONS**

DATE: January 8, 2019

With the change in County Council leadership, the signers on our bank accounts will need to change. Payments from the County's bank accounts require one live and one facsimile signature for disbursements over \$5,000. The signers are the President and Vice President of County Council, as well as the Finance Director. To have the banks change signers, they require a formal authorization from the elected body. On Tuesday, I will ask you to approve 5 resolutions to obtain this authorization. Attached are the short titles of the resolutions that will be read into the record. These resolutions are simply a formality; nothing is changing about the way we handle the payment of funds from these accounts.

Thank you for your consideration. Please let me know if you have any questions.

GAJ/nc

Attachment

pc: Mr. Todd F. Lawson



AUTHORIZING THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL
ON DEPOSIT WITH M & T BANK BEARING THE FACSIMILE SIGNATURES OF ANY
TWO OF, PRESIDENT;, VICE PRESIDENT; OR GINA A. JENNINGS, FINANCE DIRECTOR PROVIDED
VICE PRESIDENT; OR GINA A. JENNINGS, FINANCE DIRECTOR PROVIDED
CHECK OR WITHDRAWAL IS LESS THAN OR EQUAL TO \$5,000 AND BEARING
THE SIGNATURES OF ANY TWO OF, PRESIDENT;
, VICE PRESIDENT; OR GINA A. JENNINGS,
THE SIGNATURES OF ANY TWO OF, PRESIDENT;, VICE PRESIDENT; OR GINA A. JENNINGS, FINANCE DIRECTOR; AND A SIGNATURE MAY BE A FACSIMILE PROVIDED ONE
LIVE SIGNATURE IS ON CHECK OR WITHDRAWAL GREATER THAN \$5,000
AUTHORIZING THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL
ON DEPOSIT WITH THE WILMINGTON TRUST COMPANY BEARING THE
FACSIMILE SIGNATURES OF ANY TWO OF
DDECIDENT. VICE DDECIDENT. OD CINA
FACSIMILE SIGNATURES OF ANY TWO OF, PRESIDENT;, VICE PRESIDENT; OR GINA A. JENNINGS, FINANCE DIRECTOR
JENNINGS, FINANCE DIRECTOR
A LITTLE OF THE DAY AND THE POOR BUILDING OF THE OLIGIDAY COUNTY COUNTY
AUTHORIZING THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL
ON DEPOSIT WITH THE TIDEMARK FEDERAL CREDIT UNION BEARING THE
SIGNATURES OF ANY TWO OF, PRESIDENT;
SIGNATURES OF ANY TWO OF, PRESIDENT;, VICE_PRESIDENT; OR, PRESIDENT; SIGNATURE PRESIDENT; OR, PRESIDENT; OR
FINANCE DIRECTOR; AND A SIGNATURE MAY BE A FACSIMILE PROVIDED ONE
LIVE SIGNATURE IS ON CHECK OR WITHDRAWAL
AUTHORIZING THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL
ON DEPOSIT WITH THE COMMUNITY BANK DELAWARE BEARING THE
SIGNATURES OF ANY TWO OF . PRESIDENT:
VICE PRESIDENT: OR GINA A. JENNNINGS.
SIGNATURES OF ANY TWO OF, PRESIDENT;, VICE PRESIDENT; OR GINA A. JENNNINGS, FINANCE DIRECTOR; AND A SIGNATURE MAY BE A FACSIMILE PROVIDED ONE
LIVE SIGNATURE IS ON CHECK OR WITHDRAWAL
ETTE SIGNATIONE IS ON CHECK ON WITHDRIVE
AUTHORIZING THE PAYMENT FROM FUNDS OF THE SUSSEX COUNTY COUNCIL
ON DEPOSIT WITH THE FULTON BANK BEARING THE SIGNATURES OF ANY
TWO OF, PRESIDENT;, VICE PRESIDENT; OR GINA A. JENNNINGS, FINANCE DIRECTOR; AND A SIGNATURE MAY BE A FACSIMILE
, VICE PRESIDENT; UK GINA A.
JENNNINGS, FINANCE DIRECTOR; AND A SIGNATURE MAY BE A FACSIMILE
PROVIDED ONE LIVE SIGNATURE IS ON CHECK OR WITHDRAWAL

GINA A. JENNINGS, MBA, MPA FINANCE DIRECTOR

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





Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President

The Honorable Samuel R. Wilson The Honorable Irwin G. Burton III The Honorable Douglas B. Hudson The Honorable John L. Rieley

FROM: Gina A. Jennings

Finance Director/Chief Operating Officer

RE: <u>PRIVATE ACTIVITY BOND REASSIGNMENT</u>

DATE: January 8, 2019

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. IRS requires state and local governments to serve as conduits for these tax-exempt bonds, so they will be properly regulated. Since this is a new Council, attached is an IRS publication that provides additional information regarding PABs.

Typically, every year, at this time, we reassign our unused portion to the State. Last year's Executive Order is attached showing each County's allocation returned to the State. At the January 8, 2019 Council meeting, I will recommend that the County Council reassign the County's 2018 unused Private Activity Bond volume cap of \$31,140,000 to the State. In return, the State will assign a new 2019 allocation; the allocation is estimated to be about \$31,675,000, 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

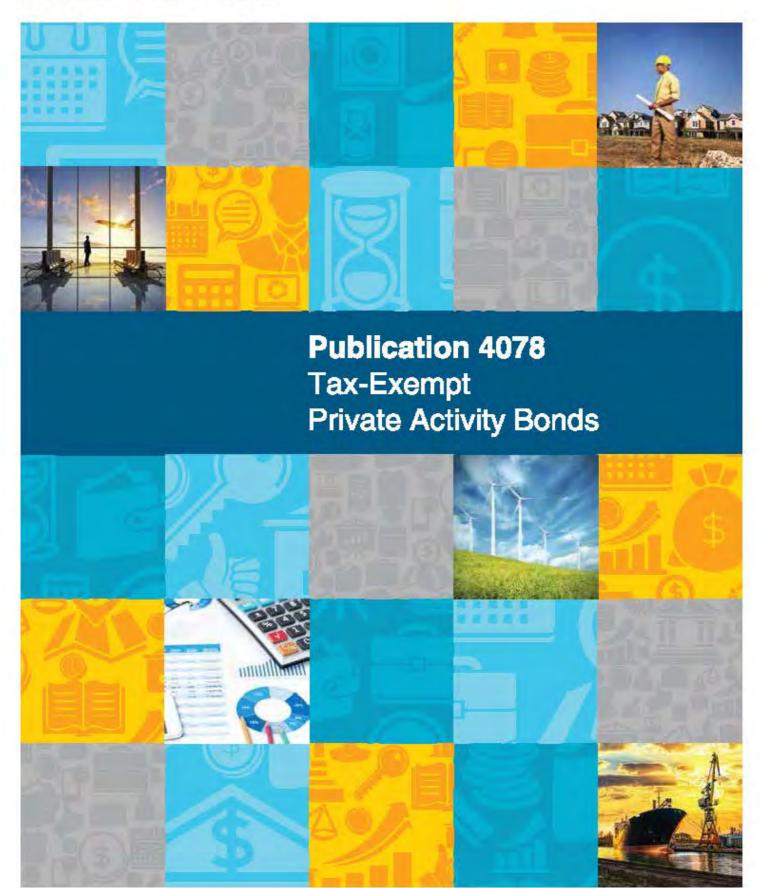


TABLE OF CONTENTS

Introduction	3
Background	3
Tax-Exempt Private Activity Bonds	4
Post-Issuance Compliance Monitoring	. 17
What to Do Upon Discovering a Violation – TEB Voluntary Closing Agreement Program	19
TFB Information and Services	19

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 <u>Publication 4079, Tax-Exempt Governmental Bonds</u>, and IRS <u>Publication 4077, Tax-Exempt Bonds for 501(c)(3) Charitable Organizations</u>, respectively. For an overview of the responsibilities of an issuer of tax-exempt bonds in a conduit financing arrangement, see IRS <u>Publication 5005, Your Responsibilities as a Conduit Issuer of Tax Exempt Bonds</u>. 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 <u>TEB's website</u>. For information specific to the use requirements for qualified 501(c)(3) bonds, see IRS <u>Publication 4077</u>, <u>Tax-Exempt Bonds for 501(c)(3)</u> 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 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 <u>Publication 4079</u>, <u>Tax-Exempt Governmental Bonds</u>.

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	No⁴
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.

<u>Carryforward of Unused Section 146 Volume Cap</u>. 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 <u>Form 8328</u>, <u>Carryforward Election of Unused Private Activity Bond Volume Cap</u>, 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 <u>Revenue Procedure 2002-48, 2002-37 I.R.B. 531</u>. 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 qualifed 501(c)(3) bonds. (The special rules generally applicable to qualified private activity bonds financing 501(c)(3) exempt purposes are covered in IRS <u>Publication 4077</u>, <u>Tax-Exempt Bonds for 501(c)(3) Charitable Organizations</u>. Publication 4077 can be downloaded from the <u>TEB website</u>)

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 <u>Tax Code</u>, <u>Regulations and</u> 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.

<u>Yield Restriction Requirements</u>. 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 mort- gage 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 <u>Where and When To File Arbitrage Rebate and Yield Reduction Payments</u>, 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.

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.

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 <u>abusive tax-exempt bond transactions</u> 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, Information Return for Tax-Exempt Private Activity Bond Issues					
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 - Pro- ceeds 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 <u>IRM section 7.2.3</u>. Additional educational resources on <u>Voluntary Compliance</u> (including TEB VCAP administrative procedures and resolution standards) are available on the TEB website.

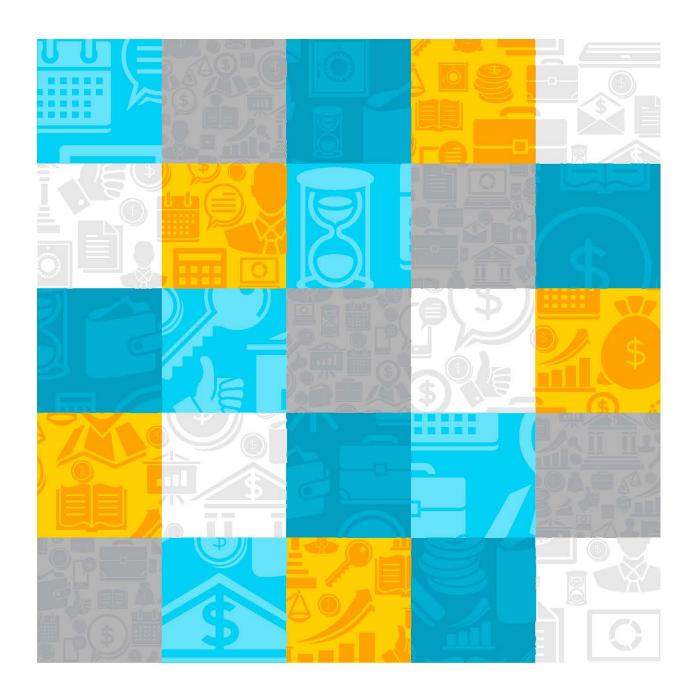
TEB INFORMATION AND SERVICES

TEB offers information and services through its education and outreach programs. You can learn about these programs through the <u>TEB website</u>.

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 <u>Tax-Exempt Bonds Forms and Publications</u>.

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.







EXECUTIVE DEPARTMENT DOVER

EXECUTIVE ORDER NUMBER SEVENTEEN

TO: HEADS OF ALL STATE DEPARTMENT AND AGENCIES

RE: (1) ALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2018 AND (2) REALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2017

WHEREAS, the Internal Revenue Service issued Revenue Procedure 2017-58, which provides the State of Delaware (the "State") with \$311,375,000 in private activity bond volume cap ("Volume Cap") for 2018, and pursuant to 29 DEL. C. §8791A(b), the State's 2018 Volume Cap is to be allocated among the various State and local government issuers; and

WHEREAS, the Governor hereby confirms 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; and

WHEREAS, pursuant to 29 Del. C. §8791A(b), the State's allocation of 2018 Volume Cap of \$155,685,000 is to be 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 2017 in Executive Order Number Three is subject to modification by further Executive Order; and

WHEREAS, also pursuant to Executive Order Number Three, \$152,655,000 of 2017 Volume Cap which had been allocated to the State of Delaware was further allocated between the Delaware Economic Development Authority (\$76,327,500) and the Delaware State Housing Authority (\$76,327,500); and

WHEREAS, pursuant to Executive Order Number Three, \$152,660,000 of 2017 Volume Cap which had been allocated to local government issuers as described in 29 Del. C. §8791A(a) and (b) is hereby reassigned as follows:

- New Castle has reassigned \$53,430,000 of its unused Volume Cap for 2017 to the State of Delaware,
- Kent County has reassigned \$30,535,000 of its unused Volume Cap for 2017 to the State of Delaware,
- Sussex County has reassigned \$30,535,000 of its unused Volume Cap for 2017 to the State of Delaware,
- The City of Wilmington has reassigned \$38,160,000 of its unused Volume Cap for 2017 to the State of Delaware; and

WHEREAS, the Secretary of Finance recommends: (i) that the State's \$155,685,000 of 2018 Volume Cap be allocated between the Delaware State Housing Authority (\$77,842,500) and the Delaware Economic Development Authority (\$77,842,500); (ii) that the \$76,327,500 of unused 2017 Volume Cap previously allocated to the Delaware Economic Development Authority be reassigned to the Delaware State Housing Authority for carry forward for use in future years; and (iii) that the \$152,660,000 of 2017 Volume Cap unused by local government issuers be reassigned to the Delaware State Housing Authority for carry forward for use in future years; and

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

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

- \$155,685,000 of the 2018 Volume Cap is hereby allocated: \$77,842,500 to the Delaware State Housing Authority and \$77,842,500 to the Delaware Economic Development Authority.
- 2. \$155,690,000 of the 2018 Volume Cap is hereby allocated to the various local government issuers as follows:
- \$54,490,000 of the 2018 Volume Cap is hereby allocated to New Castle County, Delaware;
- \$38,920,000 of the 2018 Volume Cap is hereby allocated to the City of Wilmington, Delaware:
- \$31,140,000 of the 2018 Volume Cap is hereby allocated to Kent County, Delaware; and
- \$31,140,000 of the 2018 Volume Cap is hereby allocated to Sussex County, Delaware.
- 3. The \$152,660,000 of unused 2017 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-assigned to the Delaware State Housing Authority for carry forward use. In addition, the \$76,327,500 of 2017 Volume Cap previously allocated to the Delaware Economic Development Authority under Executive Order Number Three is

hereby re-assigned to the Delaware State Housing Authority for carry forward use. Furthermore, the \$44,024,334 of unused 2017 Volume Cap previously allocated to the Delaware State Housing Authority under Executive Order Number Three is to be carried forward for a total carry forward amount of \$273,011,834.

4. The aforesaid allocations have been made with due regard to actions taken by other persons in reliance upon previous allocations to bond issuers.

THE STATE OF DELIAMAN

APPROVED this 2¹ day of February, 2018

John C. Carney Governor

ATTEST:

Secretary of State



SUSSEX COUNTY EMERGENCY MEDICAL SERVICES

22215 Dupont Blvd. • P.O. Box 589 • Georgetown, DE 19947 • 302-854-5050 • FAX 302-855-7780

Robert A. Stuart

To: Sussex County Council

From: Ed Engdahl, Education Coordinator, Sussex County EMS

cc: Director Bob Stuart, Deputy Director Jeff Cox

Date: January 4, 2019 Re: Motion to sign MOU

Mr. President and Honorable members of The Council,

Sussex County EMS has been afforded the opportunity to expand our agreement for the purposes of education with Beebe Healthcare. We have had an MOU in the past with Beebe that allowed for paramedics to work within the Emergency Department for educational purposes. Obtaining a new MOU opens other departments within the hospital to our paramedics for additional learning opportunities.

Under the new MOU, paramedics will be afforded clinical learning opportunities under physician supervision in the Operating Room and Cardiac Catheterization Lab, as well as the Emergency Room to maintain a high level of proficiency in advanced airway management and intravenous access skills.

Expanding the MOU to allow paramedic observation and education in the Catheterization Lab and Operating Rooms helps to maintain the high education and training standards of the paramedics by allowing more exposure to patients requiring specific skills in a controlled setting under the supervision of a provider who is a master in their field.

The agreement carries no cost. The potential for additional educational opportunities for the paramedics in the department is invaluable.

If it pleases The Council, be it moved that Sussex County Council approves the Memorandum of Understanding between Sussex County and Beebe Medical Center, Inc. to allow for additional educational opportunities within the hospital.

Thank you for your time and consideration,

Caring People, Quality Service



Edward A. Engdahl, Sr. AS, NRP Sussex County EMS



MEMORANDUM OF UNDERSTANDING (MOU) Between

BEEBE MEDICAL CENTER, INC., SUSSEX COUNTY/ SUSSEX COUNTY EMERGENCY MEDICAL SERVICES and DELAWARE OFFICE OF EMERGENCY MEDICAL SERVICES

This MOU, made between **Beebe Medical Center**, **Inc**. (alternatively referred to as "Beebe" or "the Hospital"), a Delaware nonprofit corporation located in Lewes, Delaware, **Sussex County**, a political subdivision of the State of Delaware, and **Sussex County Emergency Medical Services**, a department of Sussex County (alternatively referred to as "the County" or "SCEMS"), located in Georgetown, Delaware, and **Delaware Office of Emergency Medical Services**, an agency of the State of Delaware with an address of DPH Public Health Preparedness Section, 100 Sunnyside Road, Smyrna, DE 19977 ("OEMS").

WITNESSETH THAT:

WHEREAS the Hospital and SCEMS are mutually desirous of contributing to the education of Prehospital Advanced Life Support Paramedics, said Hospital, and SCEMS agree that it is to the mutual benefit of all parties as well as the community that these paramedics have opportunities for intubation of patients in the environment of quality medical care, and

WHEREAS, the County has established a program of quality improvement which will benefit from the opportunity for paramedics to participate in the care of patients in a hospital environment,

WHEREAS, the Hospital desires to provide the County's paramedics with the opportunity to participate in patient care within the hospital environment, and

WHEREAS, the parties hereto desire to enter into this MOU to set forth their mutual obligations to each other.

NOW, THEREFORE, in consideration of the premises and mutual representations, warranties and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

- 1. That this MOU shall be in effective for (3) years commencing on January 1, 2019 and terminating on December 31, 2021.
 - 2. The Hospital shall afford on-site clinical learning opportunities in the Hospital's Operating Room ("OR"), Cardiac Catheterization Lab, or Emergency Room ("ER") for SCEMS paramedics to perfect their individual skills, with an emphasis on IV, assessment and intubation, including, but not limited to intubating elective surgery patients under the guidance of the Hospital's anesthesia departments. The Hospital will afford opportunities for new paramedics, experienced paramedics needing a generalized refresher on varied topics and procedures, experienced paramedics with identified needs in a Performance Improvement Plan, paramedics with limited field opportunities and paramedics with low

success rates for intubation. The Hospital may provide, in its sole discretion, a clinical educator to oversee IV's and patient assessments in the Emergency Department for new paramedics, paramedics with limited field opportunities and paramedics with low success rates. SCEMS Field Training Officers may also assist in IV and patient assessment instruction in the Emergency Department. At a minimum, the County will require each paramedic to undergo -intubation refresher training at least once every 2 years.

- 3. With respect to the County, the terms and provisions of this MOU shall apply only to those SCEMS paramedics employed by the County. Upon request, the County shall provide the Hospital with copies of the following documents for each paramedic.
 - a. Current proof of employment
 - b. Current CPR/ACLS card
 - c. Proof of current state licensure/certification.

SCEMS shall be permitted to provide the above-referenced documentation to the Hospital by electronic transmission, i.e., email, fax, Dropbox or other form of electronic transmission.

- SCEMS paramedics who participate in this program shall receive no compensation from the Hospital.
- 5. SCEMS paramedics who participate in this program shall in no way be deemed to be employees, representatives or agents, of the Hospital under any appropriate hospital policy, law or statute. Likewise, Hospital employees who participate in this program shall in no way be deemed to be employees, or agents, of the County under any County policy, law or statute. Nothing contained in this MOU shall be construed so as to create a partnership between any of the parties hereto.
- 6. As a condition of participation in this program, all paramedics shall have a personal health insurance policy which provides coverage for accidents and sickness. This health insurance policy may be provided by the County, or such other source of that paramedic's choosing. A copy of said coverage shall be on file at the County office and provided to the Hospital upon request.
- 7. The County and the Hospital shall each secure and maintain, at their own expense, professional and general liability insurance, with such coverages and amounts, as is customary, but with limits not less than \$1 million per occurrence and \$3 million for annual aggregate. Prior to the commencement of services hereunder, the County will submit to the Hospital, and the Hospital will submit to the County, a certificate of insurance evidencing their respective insurance. The County and the Hospital will maintain this coverage at all times while this MOU is in effect. Each Party shall notify the other at least thirty (30) days in advance prior to cancellation of coverage. Each Party will also maintain, at their own expense, workers' compensation insurance with statutory limits.

- 8. SCEMS will be responsible for SCEMS paramedics' acts while providing services under the MOU and agree to indemnify and hold Anesthesia staff harmless against any claims, demands, suits, awards, or judgments asserted, made, or recovered by any and all persons for the acts, omissions or responsibilities of SCEMS paramedics.
- SCEMS paramedics in this program who were born on or after January 1, 1957, will provide proof of measles, Mumps, Tetanus, and Poliomyelitis immunity, a copy of which shall be on file at the County office and provided to the Hospital upon request.
- 10. SCEMS paramedics in this program will provide proof of Hepatitis B immunity, either through (a) completion of a Hepatitis B Vaccine immunization program, (b) current participation in an HBV immunization program wherein at least the first injection of HBV vaccine has been administered, (c) evidence of pre-existing immunity, or (d) a signed waiver of participation in the county's HBV vaccination program. A copy of said proof of immunity or signed waiver shall be on file at the County office and provided to the Hospital upon request.
- SCEMS paramedics in this program will provide evidence of current Cardiopulmonary Resuscitation ("CPR") and Advanced Cardiovascular Life Support ("ACLS") certification. A copy will be provided as noted in section 3 (a-c).
- 12. The County and Hospital shall each designate one (1) or more representatives who shall work together and mutually agree upon the locations and time periods where the clinical opportunities will occur and mutually agreed upon.

13. That the Hospital will:

- Provide emergency care to the paramedics who may become ill or injured at the Hospital but shall incur no financial liability for such care.
- Permit representatives of SCEMS to visit the Hospital for the purposes of evaluating the program, upon appropriate advance notification to the Hospital administration.
- c. Assist in the orientation of SCEMS supervisory and field training staff, as however necessary, to give them a thorough understanding of the operating procedures in the clinical areas to be used by the paramedics.
- d. Meet periodically with designated SCEMS supervisory and field training staff to discuss and evaluate the program upon request.
- Anesthesia staff will be assigned to the SCEMS paramedic. Patient's consent shall be
 obtained, and proper authorization shall be completed.

14. That the SCEMS will:

- a. Assign the SCEMS EMS Education Coordinator, or his/her designee, as the coordinator for the program, and assign an EMS Field Training Officer as appropriate to provide on-site supervision of the County paramedics participating in the program.
- b. Require that paramedics be appropriately attired per SCEMS policy, except as certain clinical activities require a specific hospital uniform, in which event the Hospital shall supply the necessary attire in accordance with its policies.
- Follow proper channels in planning paramedic clinical learning experience at the Hospital in accordance with paragraph 11 hereof.
- Meet periodically with designated personnel of the Hospital for the purpose of discussion and evaluation of the program.

15. OEMS shall:

- a. Recognize the Hospital as an approved site for participation as part of an educational program pursuant to Title 16, Chapter 98, Section 9813 (c), Del. Code Anno. of the laws of the State of Delaware.
- b. Recognize the County and SCEMS as an approved entity, and all SCEMS paramedics as students, participating as part of an educational program pursuant to Title 16, Chapter 98, Section 9813 (c), Del. Code Anno. of the laws of the State of Delaware.
- 16. SCEMS acknowledges that, in the course of the performance of its obligations hereunder, it may come into possession of confidential and/or proprietary data and information regarding patients, agents, businesses and activities and, accordingly, shall abide by all State and Federal regulations, in particular those associated with Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH). If SCEMS receives any individually identifiable health information from the Hospital ("Protected Health Information" or "PHI") or creates or receives any PHI on behalf of Covered Entity, SCEMS Paramedics will maintain the security and confidentiality of such PHI as required by the Hospital and all applicable laws and regulations.
- 17. SCEMS Paramedics will receive education on Protected Health Information (PHI) and SCEMS will report to Beebe any suspected breach of PHI (whether unsecured) without unreasonable delay and in no case later than five (5) business days after discovery of the breach. Such report shall include at least the following:

- The identity of each individual whose unsecured PHI was accessed, acquired, used, or disclosed during the breach.
- 2. A brief description of what happened.
- 3. The date of discovery of the breach.
- 4. The nature of the unsecured PHI that was involved.
- Any steps individuals whose unsecured PHI was subject of the breach should take to protect themselves from potential harm resulting for the breach.
- A brief description of what SCEMS is doing to investigate the breach, to negotiate harm to individuals whose unsecured PHI was subject to the breach, and to protect against any further breaches.
- 18. Ninety (90) days prior to the date of termination of the MOU, both parties will review the MOU and identify and agree upon any revisions for incorporation into any new MOU negotiated.
- 19. Any modifications to the MOU shall be mutually agreed upon by both parties.
- 20. This MOU may be terminated without cause by either party, provided that written notification to terminate is submitted at least thirty (30) days prior to such termination.
- 21. The relationship between Hospital and SCEMS is that of independent contractors.
- 22. All notices required to be given hereunder shall be sent by registered or certified mail, return receipt requested or by a nationally recognized overnight delivery service with all charges pre-paid to the addresses set forth in this paragraph.

To the Hospital:

To the County:

Sussex County
2 The Circle
P.O. Box 589
Georgetown, DE 19947
Attn: Robert A. Stuart, Director OR
Jeffrey B. Cox, Deputy Director of Administration

With a copy to:

J. Everett Moore, Jr., Esquire Moore & Rutt, P.A. 122 W. Market Street P.O. Box 554 Georgetown, DE 19947

To OEMS:

Delaware Office of Emergency Medical Services DPH Public Health Preparedness Section 100 Sunnyside Road Smyrna, DE 19977 Attn: Britany Huss, Paramedic Administrator

Any party shall be entitled to change the address to which notices shall be given hereunder by giving notice to the other parties in accordance with the provisions set forth herein,

- 23. Nothing contained herein is intended to waive, alter, or otherwise amend the County's immunity under the Delaware Code or otherwise, including but not limited to the County and Municipal Tort Claims Act. Additionally, nothing contained herein is intended to violate any constitutional principles of the State of Delaware or United States. To the extent that any obligations contained in this MOU are determined by court or other judicial action to waive, alter, or otherwise amend such immunity or to be constitutionally prohibited or otherwise not in accordance with the laws in effect at the time of any such claim, liability, cost or expense, the offending language shall be stricken from this MOU by such authority and considered invalid and unenforceable to the extent necessary to allow the application of such immunity to any claims, losses, damages, or suits asserted against either party or to the extent necessary to correct such violation of the law. The parties agree that any claims, liabilities, damages, costs and expenses shall be subject to the provisions of the County and Municipal Tort Claims Act, including the limitations on damages.
- 24. This MOU constitutes the entire agreement between the parties, and it supersedes any and all prior understandings or commitments concerning the subject matter hereof. The parties hereto acknowledge and agree that this MOU has been freely negotiated by all parties.

- 25. This MOU shall be governed by and construed in accordance with the laws of the State of Delaware, with venue lying in Sussex County. In the event of a dispute between the parties, each party shall be entitled to pursue any action at law or in equity in a court of competent jurisdiction in the State of Delaware.
- 26. Each party hereby waives all right to trial by jury and in a summary or other action, proceeding or counterclaims out of or in any way connected with this MOU, and any claim or injury or damages relating thereto.
- 27. Any party's waiver of any right or remedy available to it in the event of any default hereunder, or any breach by any party of the terms and conditions of this MOU, shall not constitute a waiver of any succeeding default of the same or other terms and conditions of this MOU.
- 28. If any provision of this MOU, or the application thereof, shall to any extent be held invalid, then the remainder of this MOU, or the application of such provision other than those as to which it is held invalid, shall not be affected thereby, and each provision of this MOU shall be valid and enforced to the fullest extent permitted by law.
- This MOU shall be binding upon and inure to the benefit of the parties, their respective heirs, successors and assigns.
- All pronouns and any variations thereof used in this MOU shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require.
- 31. This MOU may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures and photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY, SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, this MOU has been executed by the parties on the respective date(s) set forth below.

	Beebe Medical Center, Inc., a corporation of the State of Delaware
Date:	By:
	Jeffrey M. Fried, President & CEO, Authorized Person
	Attest:
	Sussex County, a political subdivision of the State of Delaware
Date:	By:
	Michael H. Vincent
	President of the Sussex County Council
	Attest: Robin A. Griffith Clerk of the Sussey County Council
	Robin A. Griffith
	Clerk of the Sussex County Council
	Sussex County Emergency Medical Services, a department of Sussex County
	By:
Vitness	Robert A. Stuart, Director
Date:	
Approved as to Form:	
J. Everett Moore, Jr., Esquire Sussex County Attorney	

The Delaware Office of Emergency Medical Services joins in this MOU for the purpose of verifying that all parties referred to herein, including all individual County paramedics, are recognized participants in an educational program under 16 <u>Del. C.</u> §9813(c) referred to in paragraph 14 hereof.

	Delaware Office of Emergency Medical Services
Date:///_///////////////////////////////	By: Britany Hess, Paramedic Administrator

ENGINEERING DEPARTMENT

ADMINISTRATION (302) 855-7718 (302) 855-7774 AIRPORT & INDUSTRIAL PARK 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





DELAWARE sussexcountyde.gov

HANS M. MEDLARZ, P.E. COUNTY ENGINEER

Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President

The Honorable Samuel R. Wilson, Jr. The Honorable Irwin G. Burton III The Honorable John L. Rieley The Honorable Douglas B. Hudson

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

RE: SUSSEX COUNTY MAINTENANCE GARAGE, Project 17-09

Change Order No.3

DATE: January 8, 2019

County Council included funding in two consecutive fiscal years for a multi-function Sussex County Maintenance Garage. The proposed 10,000 square feet facility is currently being constructed on the site of the existing, smaller single bay shop used to service EMS vehicles.

The project was publicly advertised and on March 27, 2018, five (5) bids were received. On April 10, 2018, Council awarded the Sussex County Maintenance Garage Project to Delmarva Veteran Builders, LLC, in the amount of \$1,993,110.00 for their low bid in the amount of \$1,993,110.00 for base bid items A1, A2, A3, A5 and bid alternate B3.

On July 31, 2018, County Council awarded Change Order No. 1 in the amount of \$8,970.00 addressing foundation increases necessary to maintain structural stability under the Code prescribed load scenarios based on the metal building manufacturer actual reaction forces.

On November 13, 2018, County Council approved Change Order No. 2 for HVAC control modifications, fire alarm conduits & wiring and other minor credits/additions in the amount of \$79,691.49.

To improve the adjoining parking area drainage, the Sussex Engineering Department has requested underground piping to direct the majority of the roof runoff directly into the drainage swale. This change, in addition to an additional interior wall in the EMS radio shop and office area, are the primary cost drivers for Change Order No. 3. The additional interior wall improves functionality and esthetics by hiding structural steel columns. Sussex County Engineering Department requests Council's concurrence of Change Order No. 3 for an additional interior wall, underground drainage improvements, and other minor credits/additions in the amount of \$5,815.01.





SUSSEX COUNTY CHANGE ORDER REQUEST

A. <u>ADMINISTRATIVE</u>:

1. Project Name: SUSSEX COUNTY MAINTENANCE GARAGE

2. Sussex County Contract No. ____17-09 ____

3. Change Order No. ____3

4. Date Change Order Initiated - ____1/3/19___

5. a. Original Contract Sum <u>\$1,993,110.00</u>

b. Net Change by Previous __\$82,167.49_ Change Orders

c. Contract Sum Prior to \$2,075,277.49
Change Order

d. Requested Change _\$5,815.01_

e. Net Change (No. of days) _____-0-

f. New Contract Amount \$2,081,092.50

6. Contact Person: <u>Hans Medlarz</u>, P.E.

Telephone No. (302) 855-7718

B. REASON FOR CHANGE ORDER (CHECK ONE)

- _ 1. Differing Site Conditions
- Errors and Omissions in Construction Drawings and Specifications
- Changes Instituted by Regulatory Requirements
- X 4. Design Change
- _ 5. Overrun/Underrun in Quantity
- _ 6. Factors Affecting Time of Completion

C.	BRIEF DESCRIPTION OF CHANGE ORDER: Please refer to attached spreadsheet.					
D.	JUSTIFICATION FOR CHANGE ORDER INCLUDED?					
	YesX No					
E.	<u>APPROVALS</u>					
1.	Delmarva Veteran Builders, LLC, Project Gene	eral Contractor				
	Signature	Date				
	Representative's Name in Block Letters					
2.	Sussex County Engineer					
	Signature	Date				
3.	Sussex County Council President					
	Signature	Date				

Other (explain below):

7.

SCED CO#	DVB CO#	Description	Status	Contract Time Change (days)	Original/Current Contract Price	Change in Price	Resulting Price
1	1	1.) Enlarge Concrete Pier Sizes 2.) Enlarge Pier Reinforcement Detail 3.) Revised Hairpin Detail	Approved	0	\$ 1,993,110.00		\$ 2,002,080.00
	2	 Delete Stonhard in room #111 and add sealed concrete Delete VCT in room #103 and add Stonhard 	Approved CO#2	0	\$ 2,002,080.00	\$ 2,415.00	\$ 2,004,495.00
	3	Provide, install, wire and program the following: 1.) DDC control panel w related controllers 2.) Supply and exhaust fan control via VFDs 3.) Energy wheel control 4.) DX control 5.) Gas heat control 6.) Outside and exhaust dampers and actuators 7.) Bypass actuators (dampers are factory installed) 8.) Filter status x2 9.) OA, heat wheel, DX, supply, RA, EA temp sensors 10.) Zone thermostat w/ Wifi abilities	Approved CO#2	0	\$ 2,004,495.00	\$ 43,298.00	\$ 2,047,793.00
	4	DELETED	N/A	0	\$ 2,047,793.00	\$ -	\$ 2,047,793.00
2	5	1.) Add concrete pad for radio Tower	Approved CO#2	0	\$ 2,047,793.00	\$ 5,623.00	\$ 2,053,416.00
	6	 Install all backboxes for Advantech equipment Install complete raceway system inc. conduit, fittings, etc. Provide pull strings in the conduit Additions + Deletions on DWG EP-01, Rev C 	Approved CO#2	0	\$ 2,053,416.00	\$ 33,439.64	\$ 2,086,855.64
	7	1.) Credit for deleting Generator Installation + wiring at existing shop (DWG SD-01, Rev C)	Approved CO#2	0	\$ 2,086,855.64	\$ (5,698.15)	\$ 2,081,157.49
	8	1.) Credit for reducing 12" CMU to 8" CMU	Approved CO#2	0	\$ 2,081,157.49	\$ (1,280.00)	\$ 2,079,877.49
	12	1.) Extend 2' concrete apron (Dwg A-01, Rev C.)	Approved CO#2	0	\$ 2,079,877.49	\$ 1,100.00	\$ 2,080,977.49
	13	1.) Credit to reduce thickness of propane tank pad and condensing unit pad from 16" to 8" and revise turn down of condensing unit pad (Dwg S-06, Rev C)	Approved CO#2	0	\$ 2,080,977.49	\$ (3,900.00)	\$ 2,077,077.49
	14	1.) Credit to delete electric door strikes from scope of Salisbury Door subcontractor. (Electric strikes are being provided by Owner's alarm system subcontractor, Advantech)	Approved CO#2	0	\$ 2,077,077.49	\$ (1,800.00)	\$ 2,075,277.49

SCED CO#	DVB CO#	Description	Status	Contract Time Change (days)	Original/Current Contract Price	Change in Price	Resulting Price
	9	1.) Credit for reducing 4" water service to 2" service (DWG PL-01 + PL-02, Rev C)	Awaiting revised proposal	0	\$ 2,075,277.49		\$ 2,075,277.49
	10	1.) Add U.G drain pipes for downspouts (SCED DWG "Drainage Plan", Dated 10-26-18)	Awaiting council approval	0	\$ 2,075,277.49	\$ 6,104.00	\$ 2,081,381.49
	11	1.) Credit for not relocating above ground L.P tank; delete concrete pad (DWG SD-01, Rev C)	Awaiting council approval	0	\$ 2,081,381.49	\$ (4,200.00)	\$ 2,077,181.49
3	15	1.) Credit to eliminate concrete duct bank for HV UG Elec. Service	Awaiting council approval	0	\$ 2,077,181.49	\$ (3,188.99)	\$ 2,073,992.50
	16	1.) Credit to reduce steel gauge of 6 interior doors and frames	Awaiting council approval	0	\$ 2,073,992.50	\$ (850.00)	\$ 2,073,142.50
	17	 1.) Additional steel stud framing for North wall in Rooms 109 & 110 2.) 5/8" FR gypsum on new wall in Room 109, 5/8" FR plywood on new wall in Room 110 	Awaiting council approval	0	\$ 2,073,142.50	\$ 3,990.00	\$ 2,077,132.50
	18	Seal/prime interior CMU walls (2 coats)	Awaiting council approval	0	\$ 2,077,132.50	\$ 3,960.00	\$ 2,081,092.50
		Awaiting Proposal					
				Orig	inal Contract Price	\$ 1,993,110.00	
				F	Total CO Cost inal Contract Price	\$ 87,982.50 \$ 2,081,092.50	
		Advantech contract: \$30,860.00	I	SC	CED CO #1 Subtotal CED CO #2 Subtotal CED CO #3 Subtotal	\$ 73,197.49	

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 (302) 855-7799 FAX





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HANS M. MEDLARZ, P.E. COUNTY ENGINEER

Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President

The Honorable Samuel R. Wilson, Jr. The Honorable Irwin G. Burton III The Honorable John L. Rieley The Honorable Douglas B. Hudson

FROM: Hans Medlarz, P.E.

County Engineer

RE: BLADES SANITARY SEWER DISTRICT

ROUTE 13 COMMERCIAL EXPANSION

PROFESSIONAL SERVICES DBF AMENDMENT No.3

DATE: January 8, 2018

On June 3, 2014, County Council awarded five (5) year on-call contracts for miscellaneous consultant services to George Miles and Buhr (GMB), Davis, Bowen and Friedel (DBF), Hazen and Sawyer, RK&K, EA Engineering, Science and Technology, Inc. (EA), KCI, and Pennoni, Inc. Since then, Council utilized the services of DBF through the EJCDC Base Agreement by approving two amendments in the amount of \$291,000.00.

On July 19, 2016, a public hearing was held, and the RT-13 Commercial Expansion was approved. In accordance with the County's Procurement Policy, the Engineering Department authorized the associated design on the west side of RT-13 to proceed under a stand-alone arrangement with DBF valued at \$20,000.00.

The Department is now presenting a request for the approval of Contract Amendment No.3 in the not to exceed amount of \$25,000.00 to cover work related to the final design of the Route 13 sewer crossing, including existing utility line locates and all related permit submittals and regulatory approvals. The authorization further includes contract administration and part time inspection of the construction work authorized by Council under change order no. 3. Funding will be provided through previously collected Sewer Connection Charges.



This is E	XHII	BIT	K , cc	nsisti	ng	of [] pages,
referred	to	in	and	part	of	the	Agreement
between	Ow	ner	and	Engin	ieer	for	Professional
Services	date	ed _					

AMENDMENT 3 TO OWNER-ENGINEER EJCDC BASE AGREEMENT

The Effective Date of this Amendment is:					
Background Data					
Effective Date of Project Order:					
Owner: Sussex County					
Engineer: Davis, Bowen & Friedel, Inc.					
Project: Blades Sewer Expansion Rt. 113 Commercial					
Nature of Amendment:					
X Additional Services to be performed by Engineer	X Additional Services to be performed by Engineer				
Modifications to services of Engineer					
Modifications to responsibilities of Owner					
Modifications of payment to Engineer					
Modifications to time(s) for rendering services					
Modifications to other terms and conditions of the A	greement				
Description of Modifications:					
Project Order Summary:					
Original Project Order amount: \$ 25,000.00 Net change for prior amendments: \$291,000.00 This amendment amount: \$ 25,000.00 Adjusted Project Order amount: \$316,000.00					
Change in time for services (days or date, as applicable):	_				

The foregoing Project Order Summary is for reference only and does not alter the terms of the Agreement or the Project Order, including those set forth in Exhibit C.

Exhibit K – Amendment to Owner-Engineer Agreement.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

effect. OWNER: **ENGINEER:** Sussex County Council By: By: Print Print name: name: Title: President, Sussex County Council Title: Date Signed: Date Signed: (SEAL) PREVIOUSLY APPROVED FORM ATTEST: Ms. Robin Griffith Clerk of the County

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in

ENGINEERING DEPARTMENT

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HANS M. MEDLARZ, P.E. COUNTY ENGINEER

Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President

The Honorable Samuel R. Wilson, Jr. The Honorable Irwin G. Burton III The Honorable John L. Rieley The Honorable Douglas B. Hudson

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

RE: Agreement for Wastewater Services—Lewes Board of Public Works (BPW)

Amendment No. 2

DATE: January 8, 2018

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

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

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

The Engineering Department approached the BPW's General Manager with a request to increase the flow contributions, which the County Engineer presented to the Board on September 26, 2018. At that meeting, the Board instructed their Counsel to draw up the proposed amendment. It has since then been signed off by the Assistant County Attorney and is scheduled for final Board approval after the acceptance by County Council. Therefore, the



Engineering Department requests concurrence with the amended Agreement for Wastewater Services with the Lewes BPW.

AGREEMENT FOR WASTEWATER SERVICES

Between

LEWES BOARD OF PUBLIC WORKS

and

SUSSEX COUNTY

for and on behalf of

SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT

In Connection with

the Transmission and Treatment of Sewage Discharge to/from the West Rehoboth Sanitary Sewer District Area

This Agreement for Services is made and entered into this ____ day of ________, 2019 (the "Effective Date"), by and between Lewes Board of Public Works, a charted utilities board for the Lewes area (hereinafter referred to as the "BPW"), and Sussex County, a political subdivision of the State of Delaware (hereinafter referred to as the "County"), in connection with the West Rehoboth Sanitary Sewer District Area.

WITNESSETH:

WHEREAS, the BPW and the County entered into an agreement dated September 28, 2016 to allow the County to transmit sanitary sewage from the West Rehoboth Sanitary Sewer District Area to the BPW Wastewater Treatment Facility, as defined in Article II below, for treatment and disposal, which was later terminated and replaced in its entirety by an agreement between the parties dated March 28, 2018; and

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

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

WHEREAS, the BPW wishes to provide such wastewater services to the County, and the County wishes to provide such wastewater services to the BPW consistent with the terms herein.

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

ARTICLE I - TERM OF AGREEMENT

Upon the Effective Date of this Agreement, the March 28, 2018 Agreement is hereby terminated and replaced in its entirety by this Agreement. The term of this Agreement shall be ten (10) years, commencing upon the Effective Date of this Agreement and terminating ten (10) years thereafter. The County and BPW shall each have an option to renew this Agreement for an additional term of ten (10) years if, at the expiration of the term of this Agreement, the renewing party is not in default of any of the terms or conditions of this Agreement.

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

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ARTICLE II - DEFINITION OF TERMS

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

- A. "Add Alternate" shall mean an additional item of work that is priced separately in bid documents for a construction project and that may be awarded as a part of the construction contract for the relevant project.
- B. "Base Flow Volume" shall mean a permitted discharge throughout the calendar year, pro-rated as applicable.
- C. "Biological Treatment" shall mean the handling of either party's sewage by means of biological processes performed within the applicable Wastewater Treatment Facility.
- D. "Collection System" shall mean local gravity pipelines and pump station(s) with pressurized pipelines used to convey each party's respective sewage to the designated Connection Point.
- E. "Connection Point" shall mean the mutually agreed upon point of transfer shifting conveyance responsibilities from the County to the BPW or the BPW to the County as appropriate.
- F. "Equivalent Dwelling Unit or EDU" shall mean one average sized residential dwelling unit.
- G. "Sewage" shall mean water-carried waste from residences, businesses and institutions.
- H. "Transmission System" shall mean collector gravity pipelines and pump station(s) with pressurized pipelines used to convey both BPW and County sewage from the applicable Connection Point to the applicable Wastewater Treatment Facility.
- I. "Wastewater Treatment Facility" shall mean the applicable treatment plant and any disposal facilities used to treat Sewage, including any future additions, modifications, or improvements thereto.

ARTICLE III - SERVICES TO BE RENDERED

A. <u>Transmission of Sewage</u>

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

B. Treatment of Sewage

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

ARTICLE IV - CHARACTERISTICS AND QUANTITY OF SEWAGE

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

A. Quality of Sewage

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

B. The County's Quantity of Flow

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

4

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Wastewater Treatment Facility operates at less than seventy-five percent (75%) capacity, respectively, at the time of request. Notwithstanding anything herein to the contrary, at any time, the County may request to exceed the Seasonal Flow Volume, and the BPW, in its sole and absolute discretion, may grant such request so long as the County is solely responsible for the costs of any improvements to the BPW's Transmission Systems and Wastewater Treatment Facilities necessary, in the BPW's sole and absolute discretion, to accommodate the additional flow volume.

C. The BPW's Quantity of Flow

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

ARTICLE V - PAYMENT FOR SERVICES

A. Manner of Payment

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

B. Rate

The County agrees to pay the BPW for all of the County's Sewage transmitted and treated by the BPW at an initial rate of \$2.40 per 1,000 gallons of Sewage flow, as calculated pursuant to Article VI. The rate shall be adjusted annually on January 1st based on the Philadelphia Region Consumer Price Index as published by the US Census Bureau.

C. Adjustments

The BPW agrees to adjust the monthly invoice by deducting the flow volume for any and all transmission and/or treatment services rendered by the County under this Agreement in the

00036475.DOCX.7 5

previous month. Unless metered data of actual sewage flow volume is available, in which case the actual sewage flow volume data shall be used to calculate deductions under this Section, deductions shall be calculated by multiplying the number of EDUs connected to the County's sewer system by 250 gallons per day. An EDU is considered connected after receiving a Certificate of Occupancy from the appropriate government entity having jurisdiction over land use.

ARTICLE VI - MEASUREMENT OF SEWAGE FLOW

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

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

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

ARTICLE VII – CAPITAL IMPROVEMENTS

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

B. Except as provided in Article IV. B. herein, the BPW and the County shall be jointly responsible for all future capital expenses associated with the Transmission Systems and Wastewater Treatment Facilities downstream of the system Connection Points if said improvements are directly attributable to the addition of the County's flow volume to the BPW's Transmission System, or the BPW's flow volume to the County's Transmission System, or both the County's flow volume and the BPW's flow volume to the other party's Transmission System. Responsibility shall be allocated proportionally based on the amount of each party's sewage flow volume.

ARTICLE VIII – WASTEWATER IMPACT FEES

The County partially paid the "Treatment and Transmission" portion of the BPW's impact fees for the <u>Base Flow Volume</u> valued at \$1,500.00 per EDU equaling 300 gallons per day, in the total amount of \$375,000.00. The remaining fees in the amount of \$125,000.00 shall due within thirty (30) days of the Effective Date of this Agreement.

Subsequent impact fee payments shall be made in full within thirty (30) days of the BPW's approval of increases in Base Flow Volume requested by the County, as provided in Article IV, Section B. In addition, calculations of future impact fees shall be made at the "Treatment and Transmission" portion of the BPW's impact fee rate in effect at the time.

ARTICLE IX – PROJECT COOPERATION

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

00036475.DOCX.7 7

ARTICLE X – MAINTENANCE RESPONSIBILITIES

Each party shall properly operate and maintain its respective Collection Systems, Wastewater Treatment Facilities, and Transmission Systems in good and efficient operating condition and in compliance with all permits and applicable laws, regulations, orders, standards, and policies.

ARTICLE XI – TERMINATION OF SERVICES

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

ARTICLE XII - LAW GOVERNING

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

ARTICLE XIII – GOVERNMENTAL AUTHORITY

This Agreement shall be contingent upon, and subject to, all governmental and regulatory approvals required to enable either party to enter into and perform pursuant to this Agreement including but not limited to any approvals required from the Delaware Department of Natural Resources and Environmental Control. In addition, the parties agree to comply with all applicable laws, regulations, permits and policies of the federal, state, county and local authorities in the performance of this Agreement.

ARTICLE XIV – RECORDS AND TESTING

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

ARTICLE XV - SEVERABILITY

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

9

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ARTICLE XVI – MISCELLANEOUS

- A. This Agreement supersedes any and all previous agreements and understandings, written or oral, between the parties hereto concerning the subject matter hereof.
- B. This Agreement constitutes the entire understanding of the parties with regard to the subject matter hereof, and the parties acknowledge and agree that there is no other agreement or understanding, written or oral, between the parties hereto concerning the subject matter hereof.
- C. No change, modification, revision, or amendment to this Agreement shall be made or enforceable unless such change, modification, revision, or amendment is reduced to a writing duly executed by both parties hereto.
- D. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, and assigns. No third-party beneficiaries to this Agreement are intended.
- E. Any notice required to be delivered to or by either party under this Agreement shall be sent via first class US mail. For purposes of this provision, the BPW's address shall be: 107 Franklin Street, Lewes BPW Administration Building, Lewes, Delaware 19958, and the County's address shall be: Attn: Sussex County Engineer, 2 The Circle, P.O. Box 589, Georgetown, Delaware 19947.F. Assignment, subcontracting, or transfers of this Agreement or any part hereof, shall be prohibited, unless both parties sign a written consent.

[signature page follows]

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

		LEWES BOARD OF PUBLIC W	ORKS
ATTEST:			
	(SEAL)	BY:	_(Seal)
Name:		D. Preston Lee	_`
Title:		President, Lewes BPW	
		Date:	
ATTEST:		SUSSEX COUNTY, DELAWARE	E
	(SEAL)	BY:	
Robin Griffith, Clerk of Co	` '	Michael H. Vincent	
		President, Sussex County Council	
		Date:	

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 (302) 855-7799 FAX





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HANS M. MEDLARZ, P.E. COUNTY ENGINEER

MEMORANDUM

TO: Sussex County Council

The Honorable Michael H. Vincent, President

The Honorable Samuel R. Wilson, Jr. The Honorable Irwin G. Burton III The Honorable John L. Rieley The Honorable Douglas B. Hudson

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

RE: CONSTRUCTION of PARALLEL TAXIWAY D, PHASE 2,

PROJECT 18-03, CHANGE ORDER NO.1

DATE: January 8, 2019

Construction of Taxiway D will allow for the development of several corporate size hangars and a large apron for aircraft parking. In addition, Taxiway D will support the development of GPS based instrument flight approaches to both ends of the crosswind Runway 10-28.

On June 27, 2018, two (2) construction bids were received. Both bids were significantly above the engineer's estimate. In addition, the "low" bidder was non-responsive for submittal of an incorrect bid form. On July 17, 2018, Council rejected all bids and authorized re-advertising the project. The Engineering Department and Delta Airport Consultants, Inc. reviewed bid items to determine the disparity of costs, restructured the documents, and rebid the project. The resulting bids were nearly \$1,000,000 lower than the original bids and on August 21, 2018 Council awarded the Alternate 2 Base Bid of \$4,939,835.70 and Bid Additive 1 of \$599,353.60 to George & Lynch, Inc. contingent on FAA funding. The project is now in the construction phase, after receipt of the FAA grant in the amount of \$5,532,528.00 covering 90% of the project cost.

After reviewing Delta Airport Consultants design for Bid Additive 1 for Parallel Taxiway D, Phase 2, the Engineering Department determined the design didn't efficiently address the overall project area drainage. The bid additive was redesigned in house and a change order proposal solicited from the contractor. In addition, Delta Airport Consultants provided an independent cost estimate. Brian Gearhart, FAA area representative reviewed the justification for the proposed Change Order no. 1 and determined the request is eligible for reimbursement up to the maximum amount of FAA grant.

George & Lynch estimated the new cost of the Bid Additive 1 to be \$621,488.60 an increase of \$22,135.00 over the original bid. The main cost driver was the 36" diameter stormdrain slated for replacement which crosses the old concrete runway now used an as access road covered by asphalt. This fact was not disclosed in the original bid, but it is now considered in the proposed change order. The Engineering Department requests Council's approval of Change Order no. 1 in the amount of \$22,135.00.





SUSSEX COUNTY CHANGE ORDER REQUEST

A. <u>ADMINISTRATIVE</u>:

6.

1.	Project Name: Construction of Parallel Taxiway D, Phase 2		
2.	Sussex County Project No.		<u>18-03</u>
3.	Change Order No.		1
4.	Date Change Order Initiated		1/8/19
5.	a.	Original Contract Sum	<u>\$5,539,189.30</u>
	b.	Net Change by Previous Change Orders	\$ 0
	C.	Contract Sum Prior to Change Order	\$5,539,189.30
	d.	Requested Change	\$22,135.00
	e.	Net Change (No. of days)	
	f.	New Contract Amount	<u>\$5,561,324.30</u>

B. REASON FOR CHANGE ORDER (CHECK ONE)

Telephone No. (302) 855-7718

_ 1. Differing Site Conditions

Contact Person: <u>Hans Medlarz, P.E.</u>

- 2. Errors and Omissions in Construction Drawings and Specifications
- _ 3. Changes Instituted by Regulatory Requirements
- X 4. Design Change
- _ 5. Overrun/Underrun in Quantity

	_	6.	Factors Affecting T	ime of Completion
	-	7.	Other (explain belo	w):
C.			ION OF CHANGE OR roject areas' drainage.	DER:
D.	JUSTIFIC	ATION F	OR CHANGE ORDER	NCLUDED?
	Yes	<u>X</u>	No	
E.	APPROV	ALS		
1.	George &	Lynch, In	nc., Contractor	
	Signature	<u> </u>		Date
	Represen	ntative's N	ame in Block Letters	
2.	Sussex C	ounty Eng	gineer	
	Signature	;		Date
3.	Sussex C	county Cou	uncil President	
	Signature			Date



SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

% ORGANIZATION NAM	ME: Seaford Police Dep	artment	ericky by make a make of the control
PROJECT NAME:	2019 Civilian Police		Anguan markan Araba
FEDERAL TAX ID:	51-6000241	NON-PROFIT:	YES NO
DOES YOUR ORGANI	ZATION OR ITS PARENT ORGANI	IZATION HAVE A RELIGIOUS AF	FILIATION?
T. (**)	YES NO *IF YE	S, FILL OUT SECTION 3B.	
ORGANIZATION'S MI	ISSION: To build relations betwe education in proper police	en the police department and cing and departmental policy.	community by
			$m_{ij} = m_{ij}$
	•		
ADDRESS:	300 Virginia Aver	nue	era e meganis e e e e e e e e e e e e e e e e e e e
ADDRESS:	300 Virginia Aver	nue Delaware	19973
ADDRESS:	Santanan de persona de la companya del companya de la companya del companya de la		19973 (ZIP)
	Seaford	Delaware (STATE)	reaction of the particle of the control of the cont
b d w	Seaford (CITY)	Delaware (STATE)	reaction of the particle of the control of the cont

	turques ingrés et (d. 4 y m. 5 y 7). Sur la gradient de l
TOTAL FUNDING REQUEST: \$500.00	bor
Has your organization received other grant funds from Sussex County Government in the last year?	YES MNO
If YES, how much was received in the last 12 months?	and the second second second
If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for?	YES NO
Are you seeking other sources of funding other than Sussex County Council?	YES NO
If YES, approximately what percentage of the project's funding does the Council grant	represent? 25%

SECTION 2: PROGRAM DESCRIPTION PROGRAM CATEGORY (choose all that apply) Health and Human Services Other Cultural Fair Housing Infrastructure1 **■** Educational BENEFICIARY CATEGORY Disability & Special Needs Homeless Victims of Domestic Violence Elderly Persons Youth Low to Moderate Income² Other Sussex County Residents Minority BENEFICIARY NUMBER Approximately the total number of Sussex County Beneficiaries served annually by this program:

SECTION 3: PROGRAM SCOPE

A. Briefly describe the program for which funds are being requested. The narrative should include the need or problem to be addressed in relation to the population to be served or the area to benefit.

The Citizens Police Academy ("CPA") is an 8-week program designed to provide a direct overview of both law enforcement and community-related functions of Seaford Police Department (SPD). Graduates of this course will have a better understanding of the operation of the Agency, and a greater awareness and appreciation of the daily challenges faced by our officers.

The Citizens Police Academy will meet each week, for 8-weeks, on Wednesday evenings beginning January 23, 2019 from 6:00 PM – 9:00 PM. Classes are held at the Seaford Police Department located at 300 Virginia Avenue, Seaford, DE 19973. There is no fee to attend this program; however, we request that applicants be committed to the full eight-weeks.

The Citizens Police Academy consists of classroom and hands-on instruction. Some of the topics covered during the CPA include the following and are subject to change at any time by our agency.

- Functions of the 911/Dispatch Center CPR/AED Certification
- Current Police Issues Defensive Tactics
- Officer Involved Shootings Scenario Based Training (Airsoft) / Ride-A-Longs
- Use of Force Computer/Telephone Scams
- S.C.O.P.E Team Range/Firearms Safety
- · And more...

All instructors for the academy are highly-trained and experienced police officers or professionals in their respective fields. In addition to in-depth presentations and demonstrations over the 8-week period, class members will be given the opportunity to participate in classroom discussions and hands on scenarios using airsoft weapons. Members will receive instruction on proper weapon handling, weapons safety, and be allowed to participate in exercises. There will be an evening spent at the range to fire police issued firearms, and discuss firearms safety. The Citizens Police Academy will conclude with a graduation ceremony on March 13, 2019.

The Citizens Police Academy is open to all Delaware residents that are 18 years old or older. A clear copy of a valid state-issued ID or driver's license must be included with the application. A criminal history check will be performed on all applicants. The class size is limited to 20 students. Due to the high demand for this course, applicants are encouraged to apply immediately and include a valid email address on your application.

B. IF RELIGIOUS AFFILIATION WAS CONFIRMED ABOVE IN SECTION 1, PLEASE FILL OUT THE FOLLOWING SECTION. IF RELIGIOUS AFFILIATION WAS NOT CHECKED IN SECTION 1, THIS SECTION MAY BE LEFT BLANK.

A faith-based nonprofit organization is eligible to receive and apply for a grant on the same basis as other nonprofit organizations, with respect to programs which are eligible. In the selection of grantees, the County will not discriminate for or against an organization on the basis of the organization's religious characterization or affiliation. However, certain requests to utilize funding for programs with religious purposes may not be eligible due to constitutional principles of the United States and/or the State of Delaware.

Briefly describe the components of the program that involve religious purposes and the components that involve secular purposes, or non-religious purposes. If both non-religious and religious purposes are involved in the program, this narrative must include the specific actions that will be implemented in order to ensure that the funding is solely used for non-religious purposes and will not be used to advance or inhibit religious or faith-based activities.

After the awarded funds have been made, receipts of the non-religious purchases shall be submitted in accordance with Section 5 below before funds will be disbursed.

SECTION 4: BUDGET

REVENUE	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
TOTAL REVENUES	0.00
EXPENDITURES	,
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure	
items: PERSONNEL-one lump sum that would include benefits, OPERATING	
COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost,	
physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
Student and Instructor Polo Shirts	\$ 853.00
d by great and the great and t	
	•
TOTAL EXPENDITURES	\$ 853.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	\$ 853.00

SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the Seaford Police Department agrees that:

(Name of Organization)

- 1) For non-religious organizations, all expenditures must have adequate documentation and must be expended within one (1) year of receipt of award funds. The funding awarded to the organization must be used in substantial conformity with the anticipated expenditures set forth in the submitted application. All accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.
- 2) For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before the funding is released.
- No person, on the basis of race, color, or national origin, should be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination under the program or activity funded in whole or in part by these Grant funds.

SECTION 5: STATEMENT OF ASSURANCES (continued)

- 4) All information and statements in this application are accurate and complete to the best of my information and belief.
- 5) All funding will benefit only Sussex County residents.
- All documents submitted by the applicant are defined as public documents and available for review under the Freedom of Information Act of the State of Delaware.
- 7) All funding will be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious purposes.
- 8) In the event that the awarded funding is used in violation of the requirements of this grant, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.

Applicant/Authorized Official

Witness

12/19/2018

Date

12/19/2018

Date

Completed application can be submitted by:

Email:

gjennings@sussexcountyde.gov

Mail:

Sussex County Government

Attention: Gina Jennings

PO Box 589

Georgetown, DE 19947

SUSSEX COUNTY COUNCIL NON-PROFIT GRANT PROGRAM **GUIDELINES FOR SUBMITTAL AND AFFIDAVIT OF UNDERSTANDING**

The Sussex County Council makes available a limited amount of funding to non-profit organizations that serve the citizens of Sussex County. Each application for funding shall be evaluated by Sussex County administrative staff and shall be subject to final approval from Sussex County Council.

In the attached application, each organization must outline its intended uses for the awarded funding and provide a detailed breakdown of the expenses and costs for such uses. Any funding awarded to the organization must be used in substantial conformity with anticipated expenditures of the submitted application.

All expenditures must have adequate documentation and must be expended within one (1) year of award of funds.

For non-religious organizations, all accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.

For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before funding is released. Grant is relinquished if supporting documentation is not provided within one year of County Council award.

Certain programs are not eligible for funding pursuant to United States Constitution and State of Delaware Constitution. Those constitutional principles prohibit the use of funding to advance or inhibit religious activities. By signing below, the organization acknowledges that the funding shall be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious activities.

In the event that such funding is used in violation of the requirements and assurances contained in this grant application, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.

I acknowledge and represent on behalf of the applicant organization that I have read and understand the above statements.

Applicant/Authorized Official

Title

12/19/2018

Date

Vincenty
12-20-18



SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

S •	ECTION 1 APPLICANT	INFORMATION			
ORGANIZATION NAME: Delmarva Boy Scouts Council					
PROJECT NAME:	ussex County Disti	nguished	entenden besonder de senten bestelle de senten de		
FEDERAL TAX ID: 5	1-0065733	NON-PROFIT:	YES NO		
DOES YOUR ORGANIZATION OR ITS PARENT ORGANIZATION HAVE A RELIGIOUS AFFILIATION?					
	YES ■ NO *IF YES, FILL OUT SECTION 3B.				
ORGANIZATION'S MISSION: The mission of the Boy Scouts of America is to prepare young people to make ethical and moral choices over their lifetimes by instilling in them the values of the Scout Oath and Law.					
ADDRESS:	100 W. 10th Stree		DO THE BUT THE RESIDENCE OF THE SECOND SECON		
Suite 915					
5.000000000000000000000000000000000000	Wilmington	DE	19801		
	(CITY)	(STATE)	(ZIP)		
CONTACT PERSON:	Shaina Adkins				
TITLE:	Development Director				
PHONE:	443-523-9816 _{EMA}	_{IL:} sadkins@dmvc.org			
TOTAL FUNDING REQUEST: 1,000					
Has your organization received other grant funds from Sussex County Government in the last year?					
If YES, how much was received in the last 12 months?					
If you are asking for funding for building or building improvements, do you own the YES NO					

If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for?

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

If YES, approximately what percentage of the project's funding does the Council grant represent? 2%

SECTION	ON 2: PROGRAM DESCRIPTION	
PRO (Fair Housing Infrastructure ¹	GRAM CATEGORY (choose all that an Health and Human Services	Cultural
Disability & Special Needs Elderly Persons Minority	BENEFICIARY CATEGORY Victims of Domestic Violence Low to Moderate Income ² Other	Homeless Youth
Approximately the total numl	BENEFICIARY NUMBER per of Sussex County Beneficiaries servented from 100 Scouters	ved annually by this program:
A. Briefly describe the prograthe need or problem to be a benefit. The Del-Mar-Va Council preninsula, serving over 30 Scouting to over 9,700 your is divided into 8 Scouting programs, providing programs, providing programs, counting programs, providing programs, counting programs, providing programs, counting progra	SECTION 3: PROGRAM SCOPE Im for which funds are being requested addressed in relation to the population provides Scouting opportunities throughout and 3,250 volunteers who are ung men and women. The Council condistricts. The Council serves over 600 rams to underserved neighborhoods county Distinguished Citizen Dinner wolving programming, and opportunities.	in to be served or the area to aghout the Del-Mar-Va re delivering the promise of overs fourteen counties and families in outreach in these communities. Funds will be used to continue to

B. IF RELIGIOUS AFFILIATION WAS CONFIRMED ABOVE IN SECTION 1, PLEASE FILL OUT THE FOLLOWING SECTION. IF RELIGIOUS AFFILIATION WAS NOT CHECKED IN SECTION 1, THIS SECTION MAY BE LEFT BLANK.

A faith-based nonprofit organization is eligible to receive and apply for a grant on the same basis as other nonprofit organizations, with respect to programs which are eligible. In the selection of grantees, the County will not discriminate for or against an organization on the basis of the organization's religious characterization or affiliation. However, certain requests to utilize funding for programs with religious purposes may not be eligible due to constitutional principles of the United States and/or the State of Delaware.

Briefly describe the components of the program that involve religious purposes and the components that involve secular purposes, or non-religious purposes. If both non-religious and religious purposes are involved in the program, this narrative must include the specific actions that will be implemented in order to ensure that the funding is solely used for non-religious purposes and will not be used to advance or inhibit religious or faith-based activities.

After the awarded funds have been made, receipts of the non-religious purchases shall be submitted in accordance with Section 5 below before funds will be disbursed.

SECTION 4: BUDGET

REVENUE	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
TOTAL REVENUES	47,500.00
EXPENDITURES	
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
appraisai. (Fut amounts in as a negative)	-\$ 12,388.00
	. ,
TOTAL EXPENDITURES	-\$ 12,388.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	\$ 35,112.00

SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the The Delmarva Boy Scouts Council agrees that:

(Name of Organization)

- 1) For non-religious organizations, all expenditures must have adequate documentation and must be expended within one (1) year of receipt of award funds. The funding awarded to the organization must be used in substantial conformity with the anticipated expenditures set forth in the submitted application. All accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.
- 2) For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before the funding is released.
- 3) No person, on the basis of race, color, or national origin, should be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination under the program or activity funded in whole or in part by these Grant funds.

SECTION 5: STATEMENT OF ASSURANCES (continued)

- 4) All information and statements in this application are accurate and complete to the best of my information and belief.
- 5) All funding will benefit only Sussex County residents.
- All documents submitted by the applicant are defined as public documents and available for 6) review under the Freedom of Information Act of the State of Delaware.
- 7) All funding will be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious purposes.

<u>In the event that the awarded funding is used in violation of the requirements of this grant, </u> the awarded funding shall be reimbursed to Sussex County within a timeframe designated

ussex County by written notice.

8)

12/20/18

Date

12/20/18

Date

Witness

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

Sussex County Government Mail:

Attention: Gina Jennings

PO Box 589

Georgetown, DE 19947

99

SUSSEX COUNTY COUNCIL NON-PROFIT GRANT PROGRAM GUIDELINES FOR SUBMITTAL AND AFFIDAVIT OF UNDERSTANDING

The Sussex County Council makes available a limited amount of funding to non-profit organizations that serve the citizens of Sussex County. Each application for funding shall be evaluated by Sussex County administrative staff and shall be subject to final approval from Sussex County Council.

In the attached application, each organization must outline its intended uses for the awarded funding and provide a detailed breakdown of the expenses and costs for such uses. Any funding awarded to the organization must be used in substantial conformity with anticipated expenditures of the submitted application.

All expenditures must have adequate documentation and must be expended within one (1) year of award of funds.

For non-religious organizations, all accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.

For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before funding is released. Grant is relinquished if supporting documentation is not provided within one year of County Council award.

Certain programs are not eligible for funding pursuant to United States Constitution and State of Delaware Constitution. Those constitutional principles prohibit the use of funding to advance or inhibit religious activities. By signing below, the organization acknowledges that the funding shall be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious activities.

In the event that such funding is used in violation of the requirements and assurances contained in this grant application, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.

I acknowledge and represent on behalf of the ap	plicant organization that I have read and
understand the showe staffelf lyggref by Shaina Adkins on our Delmarva Chinal Adkins on our Delmarva Chinal, ergall—sadkins edelmarva council.org, chis of the 2014 12.21/3:di:21-05'00'	Development Director
Applicant/Authorized Official	Title
Marin	12/20/18
Witness	Date

Rev. 08/2018

Vincent-18

Council District No. 1 - Vincent

Tax I.D. No. 531-6.00-72.00 (portion of)

911 Address: 22304 Atlanta Road, Seaford

ORDINANCE NO. ___

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENT VENUE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED,

SUSSEX COUNTY, CONTAINING 8.99 ACRES, MORE OR LESS

WHEREAS, on the 7th day of December 2018, a conditional use application,

denominated Conditional Use No. 2165, was filed on behalf of Vanderwende Acres, 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. 2165 be

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. 2165 as it applies to the property

hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Seaford

Hundred, Sussex County, Delaware, and lying on the southwest corner of Briarhook Road and

Atlanta Road also being the northwest corner of Atlanta Road and Owls Nest Road and being

more particularly described in the attached legal description prepared by Davis, Bowen &

Friedel, said parcel containing 8.99 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.

Council District No. 5 - Rieley

Tax I.D. No. 134-11.00-226.01

911 Address: 34745 Burbage Road, Frankford

ORDINANCE NO. ___

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE AND BUSINESS SERVICES AND RESIDENCE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.58 ACRES, MORE OR LESS

WHEREAS, on the 11th day of December 2018, a conditional use application, denominated Conditional Use No. 2166, was filed on behalf of Deborah Townsend; 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. 2166 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. 2166 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the north side of Burbage Road approximately 347 feet west of Roxana Road and being more particularly described in the attached legal description prepared by Smith O'Donnell Feinberg & Berl, LLP, said parcel containing 1.58 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.

Council District No. 3 - Burton Tax I.D. No. 234-23.00-10.00

911 Address: 31977 Eagle Lane, Millsboro

ORDINANCE NO. ___

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR OPEN OUTDOOR SALES (YARD SALE) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.073 ACRES, MORE OR **LESS**

WHEREAS, on the 14th day of December 2018, a conditional use application, denominated Conditional Use No. 2167, was filed on behalf of Karen Ann Muller; 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. 2167 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. 2167 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on the southwest corner of Eagle Lane and John J. Williams Highway (Route 24) approximately 914 feet northeast of Indian Mission Road (Route 5) and being more particularly described in the attached legal description prepared by Brennan Title Company, said parcel containing 1.073 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.

Council District No. 2 – Wilson Tax I.D. No. 133-10.00-10.16

911 Address: 22159 Paradise Road, Georgetown

ORDINANCE NO.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AMENDMENTS TO CONDITIONS OF APPROVAL OF CU 1645 (ORDINANCE NO. 1843) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.0 ACRE, MORE OR LESS

WHEREAS, on the 18th day of December 2018, a conditional use application, denominated Conditional Use No. 2168, was filed on behalf of Michael Mears; 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. 2168 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. 2168 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 north side of Paradise Road, approximately 0.26 miles west of Governor Stockley Road and being more particularly described in the attached legal description prepared by Schab & Barnett, said parcel containing 1.0 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.

Council District No. 3 – Burton Tax I.D. No. 235-13.00-2.00, 2.06, 2.07, 2.08 and 235-13.00-32.00 through 332.00 911 Address: None Available

ORDINANCE NO.

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO ALLOW FOR AMENDMENTS TO CONDITIONS OF APPROVAL FOR CZ 1721 (ORDINANCE NO. 2295) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 154.72 ACRES, MORE OR LESS"

WHEREAS, on the 11th day of October 2018, a zoning application, denominated Change of Zone No. 1873, was filed on behalf of Captain's Way Development, 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 Change of Zone No. 1873 be ______; and ______; and _______ 2019, 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 [GR-RPC General Residential District – Residential Planned Community] and adding in lieu thereof the designation of GR-RPC General Residential District – Residential Planned Community to allow for amendments to conditions of approval for CZ 1721 (Ordinance No. 2295) as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying on the northeast side of Milton Ellendale Highway (Route 16) approximately 0.34 mile east of Hollytree Road and being more particularly described in the attached legal description prepared by Parkowski, Guerke & Swayze, P.A., Griffith & Hackett, P.A. and Griffin & Robertson, P.A., said parcel containing 154.72 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.

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



Sussex County DELAWARE sussexcountyde.gov

Memorandum

To: Sussex County Council Members

From: Janelle Cornwell, AICP, Planning & Zoning Director

CC: Everett Moore, County Attorney

Date: January 3, 2019

RE: County Council Report for CZ 1863 Triumf I, LLC

The Planning and Zoning Department received an application (CZ 1863 Triumf I, LLC) to allow for a Change of Zone to allow for a change of zone from AR-1 (Agricultural Residential District) to CR-1 (Commercial Residential District) located on Roxanna Rd. The Planning and Zoning Commission held a public hearing on November 15, 2018. The following are the draft minutes for the Conditional Use from the Planning and Zoning Commission meetings. Staff notes that this application was submitted prior to the new zoning designations going into effect.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, exhibit booklet, survey, comments from the Sussex Conservation District. One letter was received in support to the application and was entered into the record.

The Commission found that Ms. Shannon Carmean Burton, Attorney with Sergovic, Carmean, Weidman, McCartney and Owens and Mr. Ken Christenbury with Axiom Engineering, LLC were present on behalf of the application; that Ms. Burton stated there are a number of parcels in the area that are zoned CR-1 and C-1 and various commercial uses; that in January 20, 2018, Change of Zone #1840 was approved for CR-1 zoning; that the trends in this area is toward commercial uses; that the applicant is seeking a rezoning of the property to CR-1 in order to allow for further permitted commercial uses; that Mr. Christenbury stated there is an increase in commercial zoning since 2005; that the Land Use Classification per the Comprehensive Plan the land use is Highway Commercial and Environmentally Sensitive Developing Area: that water and sewer is not immediately on the parcel; that a small office could be supported by septic and well; that water and sewer is anticipated to come in the future; that DelDOT did not require a TIS; that Ms. Burton stated the Comprehensive Plan identifies this property as being located in both the Highway Commercial Area and the Environmentally Sensitive Developing Area; that the property is consistent with the Zoning Code; that the property is located near larger scale uses as well as smaller scale commercial uses; that a TIS may be required depending on the future use; and that a rezoning of this land from AR-1 to CR-1 is appropriate and capable of the uses and zones.

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

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



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

At their meeting of November 29, 2018, the Planning Commission discussed the application that has been deferred since November 15, 2018.

Mr. Hudson moved that the Commission recommend approval of Change of Zone #1863 for Triumf, I, LLC for a change in zone from AR-1 to CR-1 based upon the record made during the public hearing and for the following reasons:

- 1. The site is located in an area of Roxana Road near the intersection with that road and Route 26. There are many other commercial and business zoned properties that exist at this intersection. The CR-1 zoning will be consistent with the area zoning and uses.
- 2. Although the property is currently zoned AR-1 Agricultural Residential, it is in a location that is no longer viable for agricultural or residential uses. CR-1 Zoning is a more appropriate zoning for this property.
- 3. The site is in a Developing Area according to the Sussex County Comprehensive Plan. CR-1 Zoning is appropriate within this area according to the Plan.
- 4. The proposed use will not adversely affect neighboring or adjacent properties or roadways.
- 5. No parties appeared in opposition to this rezoning application.
- 6. Whenever this property is developed for a particular use, the applicant will be required to meet or exceed all DelDOT requirements. DelDOT will determine where appropriate entrance locations should be.
- 7. Any development of the site will require Preliminary and Final Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Hudson, 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 conditions stated in the motion. Motion carried 5-0.

PLANNING & ZONING

JANELLE M. CORNWELL, AICP DIRECTOR

> (302) 855-7878 T (302) 854-5079 F





Memorandum

To: Sussex County Planning Commission Members

From: Janelle Cornwell, AICP, Planning & Zoning Director CC: Vince Robertson, Assistant County Attorney and applicant

Date: November 8, 2018

RE: Staff Analysis for CZ 1863 Triumf, I LLC – C/O Fulton Jeffers

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1863 Triumf, I LLC – C/O Fulton Jeffers to be reviewed during the November 15, 2018 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for parcel 134-11.00-805.01 to allow for change from AR-1 (Agricultural Residential District) to CR-1 (Commercial Residential District) to be located on Roxanna Rd. The size of the property is 0.51646 ac. +/-.

The 2008 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map indicates that the property has the land use designations of Environmentally Sensitive Developing Area and Highway Commercial Areas.

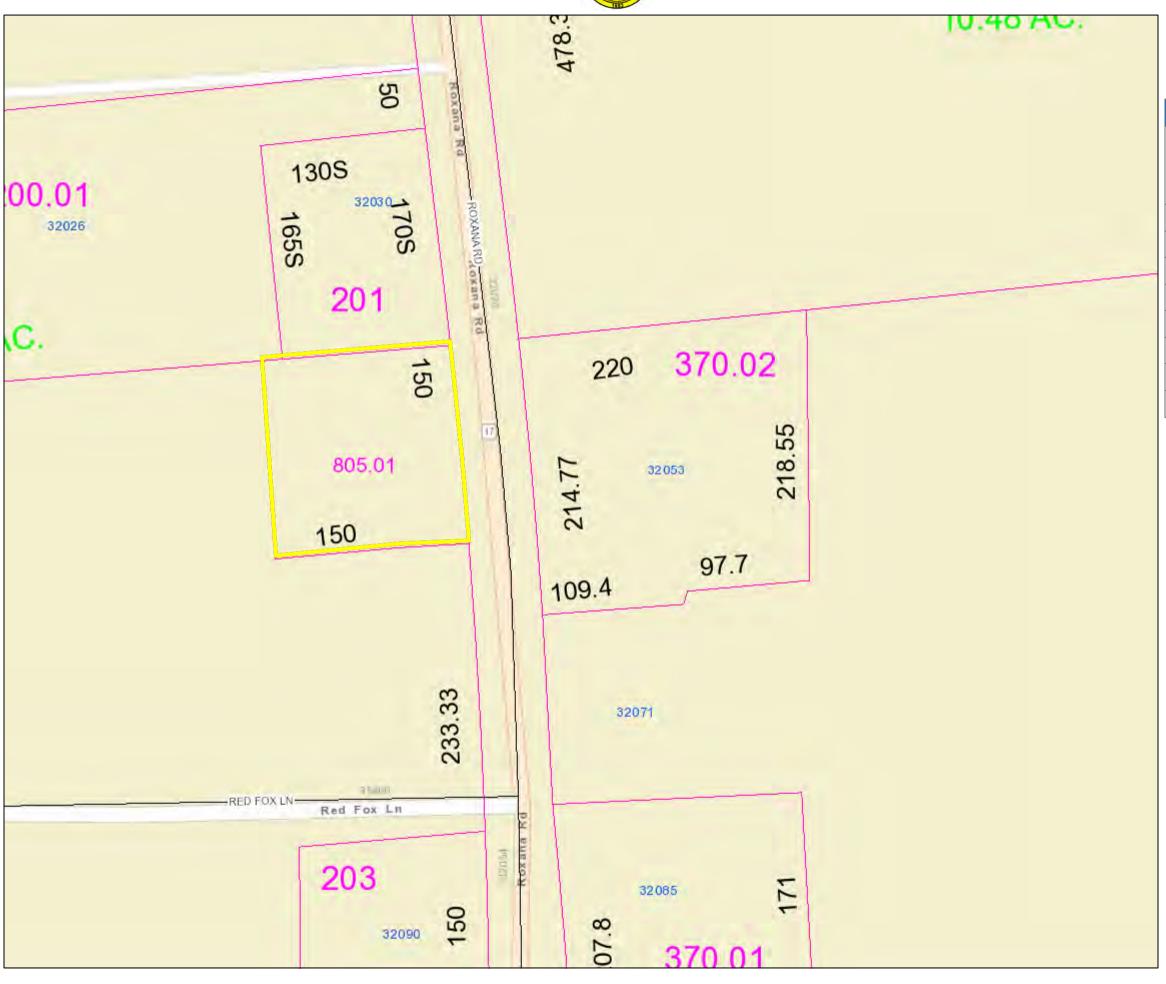
The surrounding land uses to the north, south, east and west are Environmentally Sensitive Developing Area and Highway Commercial Areas. There is also Developing Areas land use to the west and Mixed Residential Areas land use to the north. The Environmentally Sensitive Developing Areas land use designation recognizes that a range of housing types should be permitted including single-family, townhouses and multi-family and that variety of office and retail uses would be appropriate in many areas and that business and industrial parks with good road access would be appropriate. It also recognizes that mixture of homes with light commercial and institutional uses could be appropriate to provide for convenient services and let people work close to home. The Highway Commercial Areas recognizes that these areas include concentrations of retail and services uses near highways and that the commercial uses should be geared towards vehicular traffic.

The portion of the property is zoned AR-1 (Agricultural Residential District). The properties to the north are zoned AR-1 (Agricultural Residential District), CR-1 (Commercial Residential District) and C-1 (General Commercial District). The properties to the east are zoned C-1 (General Commercial District) and parcels are located within the Town of Millville. The properties to the south and west are zoned AR-1 (Agricultural Residential District). There are no known Conditional Uses in the area.

Based on the analysis of the land use, surrounding zoning and uses, the Change of Zone to allow for a change from AR-1 (Agricultural Residential District) to CR-1 (Commercial Residential District) would be considered consistent with the land use, area zoning and uses. Staff notes that the application for CR-1 was submitted prior to the implantation of the new commercial zoning districts.



Sussex County



PIN:	134-11.00-805.01
Owner Name	TRIUMF I LLC
Book	3598
Mailing Address	PO BOX 75
City	GREENWOOD
State	DE
Description	W/RT 17 1045'
Description 2	S/RT 26
Description 3	N/A
Land Code	

polygonLayer

Override 1

polygonLayer

Override 1

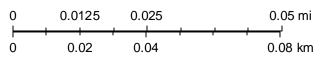
Tax Parcels

911 Address

Streets

County Boundaries

1:1,128



Sussex County



PIN:	134-11.00-805.01
Owner Name	TRIUMF I LLC
Book	3598
Mailing Address	PO BOX 75
City	GREENWOOD
State	DE
Description	W/RT 17 1045'
Description 2	S/RT 26
Description 3	N/A
Land Code	

polygonLayer

Override 1 polygonLayer

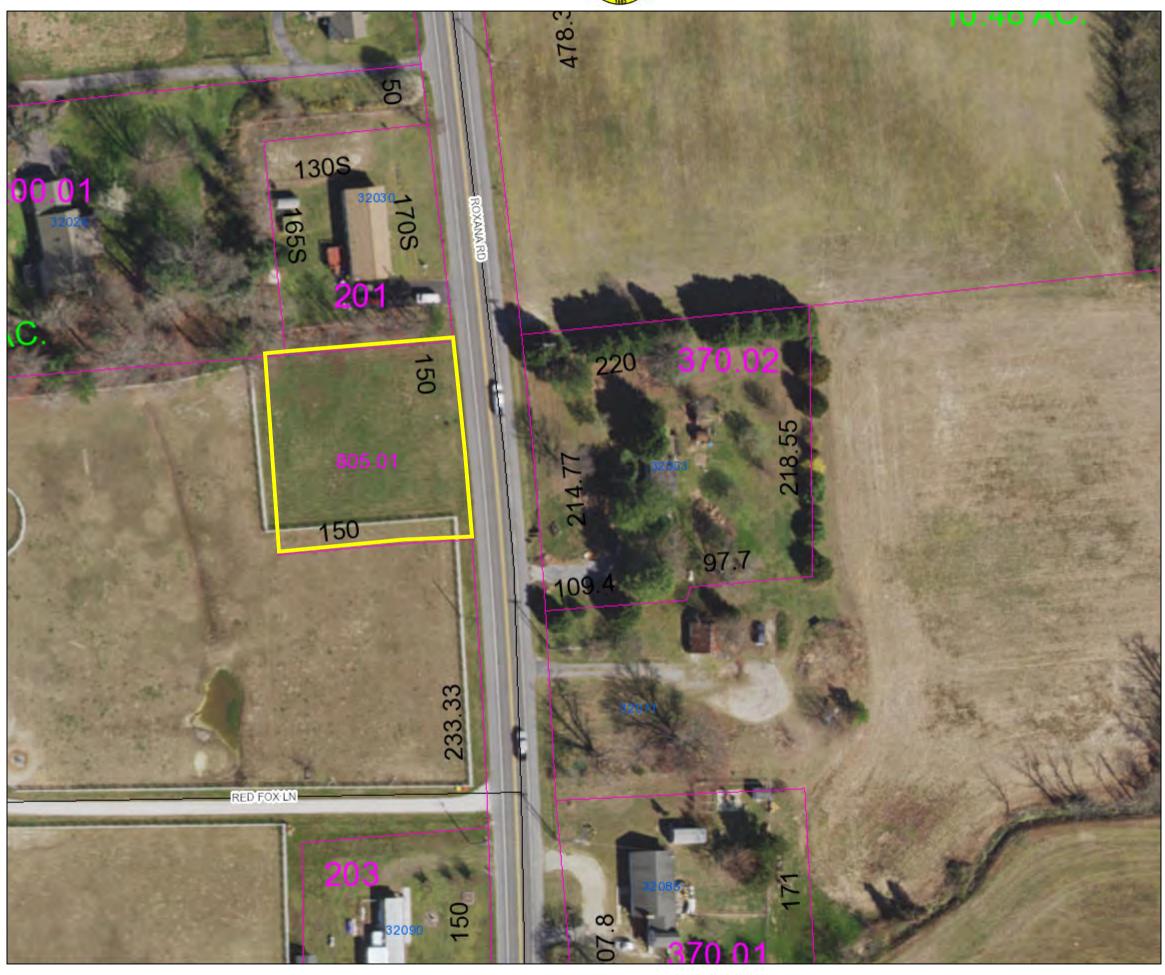
Override 1

Tax Parcels

911 Address

Streets

1:2,257 0 0.0275 0.055 0.11 mi 0 0.0425 0.085 0.17 km



PIN:	134-11.00-805.01
Owner Name	TRIUMF I LLC
Book	3598
Mailing Address	PO BOX 75
City	GREENWOOD
State	DE
Description	W/RT 17 1045'
Description 2	S/RT 26
Description 3	N/A
Land Code	

polygonLayer

Override 1

polygonLayer

Override 1

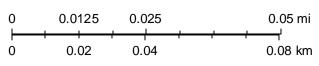
Tax Parcels

911 Address

Streets

County Boundaries

1:1,128



Introduced 06/19/18

Council District No. 4 - Cole Tax I.D. No. 134-11.00-805.01

911 Address: N/A

ORDINANCE NO.

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.51646 ACRES, MORE OR LESS

WHEREAS, on the 8th day of June 2018, a zoning application, denominated Change of Zone No. 1863 was filed on behalf of Triumf I, LLC and WHEREAS, on the ____ day of ____ 2018, 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. 1863 be _____; and WHEREAS, on the day of 2018, 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 CR-1 Commercial Residential District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the west side of Roxanna Road, approximately 1,040 feet south of Atlantic Avenue and being more particularly described in the attached legal description prepared by Thomas & Libowitz, P.A., said parcel containing 0.51646 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.

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





Memorandum

To: Sussex County Council Members

From: Janelle Cornwell, AICP, Planning & Zoning Director

CC: Everett Moore, County Attorney

Date: January 3, 2019

RE: County Council Report for CZ 1864 Scott and Monica Shubert

The Planning and Zoning Department received an application (CZ 1864 Scott and Monica Shubert) to allow for a Change of Zone to allow for a change of zone from AR-1 (Agricultural Residential District) to C-3 (Heavy Commercial District) located 11133 Iron Hill Rd. The Planning and Zoning Commission held a public hearing on November 15, 2018. The following are the minutes for the Conditional Use from the Planning and Zoning Commission meeting. Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, survey, comments from the Sussex Conservation District and Sussex County Engineering Department Utility Planning Division.

The Commission found that Mr. Scott Shubert was present on behalf of the application; that Mr. Shubert stated he wanted to convert the Conditional Use to a Change of Zone to be able to rent out the buildings; that there is a produce stand and a garden center on the site; that there is commercial zoning across the street; that he has started installing a buffer on the west side of the property to protect neighboring parcels; that he is willing to exclude 4.5 acres to the west; that he would like to use the existing infrastructure on the site for commercial uses; that the main use would be for offices; that the parking and entrance would stay the same on the site; that the other buildings are storage with some outdoor storage; that the back entrance can be closed off; and that the septic is located on the north side of the parcel.

The Commission found that Mr. Bob Kreps spoke in favor of the application; that Mr. Kreps stated he is good friends with the Shubert's; and that he has concerns with future uses and to the area to the west side of the property.

The Commission found that no one spoke in opposition to the application.

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

Ms. Wingate moved that the Commission recommend approval of Change of Zone 1864 for Scott and Monica Shubert for a change in zone from AR-1 to C-1 "Heavy Commercial" based upon the record made during the public hearing and for the following reasons:



- 1. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices and vehicle service stations.
- 2. The site is at the intersection of Iron Hill Road and Old Stage Road. This intersection is appropriate for this type of zoning.
- 3. Most of the site is currently used for commercial purposes. This rezoning is consistent with the types of uses that have been evolving at this location over the years.
- 4. The proposed C-3 Zoning at this site lessens the congestion on area roads by providing commercial activities at an appropriate location so that residents and visitors to the area can meet some of their commercial needs without having to travel to Route 13 or other commercial areas.
- 5. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
- 6. The site has a history of commercial uses and is currently the subject of an existing conditioned use. This rezoning is a reasonable expansion to the existing uses that occurred on the property.
- 7. There is existing commercial zoning across the street.
- 8. As proffered by the Applicant, it is recommended that Sussex County Council delete the 200-feet of the western side of the property from C-3 Zoning District.
- 9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

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

PLANNING & ZONING

JANELLE M. CORNWELL, AICP DIRECTOR

> (302) 855-7878 T (302) 854-5079 F





Memorandum

To: Sussex County Planning Commission Members

From: Janelle Cornwell, AICP, Planning & Zoning Director CC: Vince Robertson, Assistant County Attorney and applicant

Date: November 8, 2018

RE: Staff Analysis for CZ 1864 Scott and Monica Shubert

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1864 Scott and Monica Shubert to be reviewed during the November 15, 2018 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for parcel 532-14.00-6.05 to allow for change from AR-1 (Agricultural Residential District) to C-3 (Heavy Commercial District) to be located at the northwest corner of Iron Hill Rd. and Old Stage Rd. The size of the property is 9.9 ac. +/-.

The 2008 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map indicates that the property has the land use designation of Low Density Areas.

The surrounding land uses to the north is Low Density and Mixed Residential Areas. The land use to the east is Low Density and Town Center. The land use to the south is Town Center. The land use to the west is Low Density and Industrial Areas. The Low Density Areas land use designation recognizes that the primary uses are agriculture and single family detached homes and that a business development should be largely confined to businesses that address the needs of single family residences and agriculture. It should also permit industrial uses that support or depend on agricultural uses. The focus of retail and office should provide convenience goods and services to nearby residents and should be limited in their location, size and hours of operation. The use as auto repair and gasoline sales, should be avoided in these areas.

The portion of the property is zoned AR-1 (Agricultural Residential District). The properties to the north and west are zoned AR-1 (Agricultural Residential District). Further west are parcels zoned industrial. The properties to the east area zoned C-1 (General Commercial District) and AR-1 (Agricultural Residential District). Further to the northeast are properties zoned GR (General Residential District). The properties to the south are zoned AR-1 (Agricultural Residential District) and parcels are located within the Town of Delmar. There are Conditional Uses in the area (CU 1000 private airstrip and CU 250).

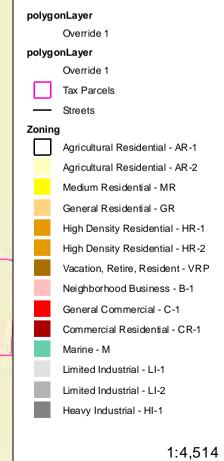
Based on the analysis of the land use, surrounding zoning and uses, the Change of Zone to allow for a change from AR-1 (Agricultural Residential District) to C-3 (Heavy Commercial District) could be considered consistent with the area zoning and uses; however, it could be considered inconsistent with the land use.

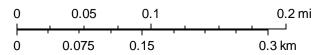


Sussex County



PIN:	532-14.00-6.05	
Owner Name	SHUBERT SCOTT A MONICAL	
Book	4870	
Mailing Address	11133 IRON HILL RD	
City	DELMAR	
State	DE	
Description	CRN/OLD STAGE RD	
Description 2	& IRON HILL RD	
Description 3	N/A	
Land Code		







PIN:	532-14.00-6.05		
Owner Name	SHUBERT SCOTT A MONICAL		
Book	4870		
Mailing Address	11133 IRON HILL RD		
City	DELMAR		
State	DE		
Description	CRN/OLD STAGE RD		
Description 2	& IRON HILL RD		
Description 3	N/A		
Land Code			

Override 1

polygonLayer

Override 1

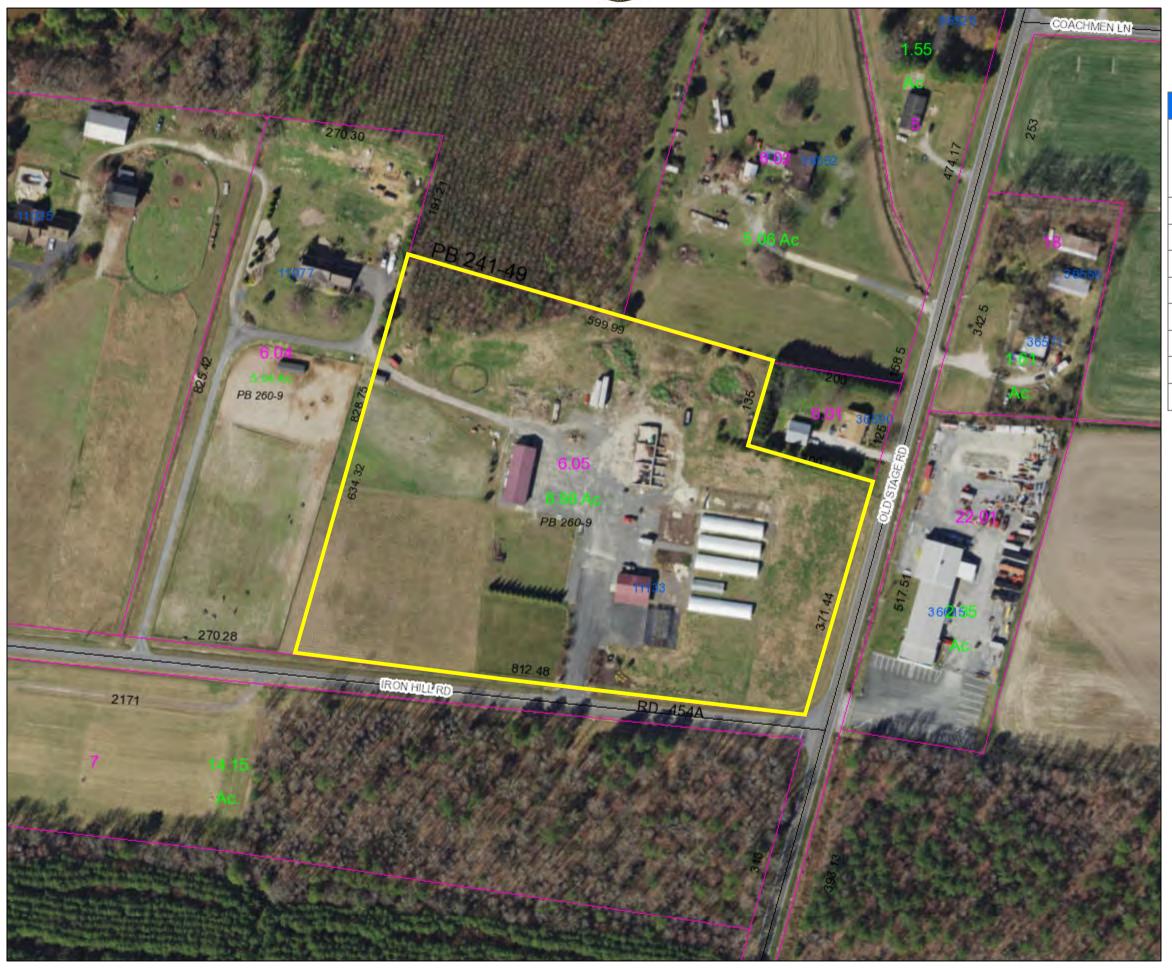
Tax Parcels

911 Address

Streets

0

County Boundaries



PIN:	532-14.00-6.05	
Owner Name	SHUBERT SCOTT A MONICAL	
Book	4870	
Mailing Address	11133 IRON HILL RD	
City	DELMAR	
State	DE	
Description	CRN/OLD STAGE RD	
Description 2	& IRON HILL RD	
Description 3	N/A	
Land Code		

Override 1

polygonLayer

Override 1

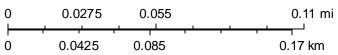
Tax Parcels

911 Address

Streets

County Boundaries

1:2,257



Introduced 06/26/18

Council District No. 5 - Arlett Tax I.D. No. 532-14.00-6.05

911 Address: 11133 Iron Hill Road, Delmar

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 9.9 ACRES, MORE OR LESS

WHEREAS, on the 12th day of June 2018, a zoning application, denominated

Change of Zone No. 1864, was filed on behalf of Scott and Monica Shubert; and

WHEREAS, on the ______ day of ______ 2018, 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. 1864 be

______; and

WHEREAS, on the _____ day of ______ 2018, a public hearing was held,
after notice, before the County Council of Sussex County and the County Council of Sussex

County has determined, based on the findings of facts, that said change of zone is in
accordance with the Comprehensive Development Plan and promotes the health, safety,
morals, convenience, order, prosperity and welfare of the present and future inhabitants of
Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Little Creek Hundred, Sussex County, Delaware, and lying at the northwest corner of Iron Hill Road and Old Stage Road, and being more particularly described in the attached deed prepared by D. Stephen Parsons, P.A., said parcel containing 9.9 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.

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



Sussex County delaware

sussexcountyde.gov

<u>Memorandum</u>

To: Sussex County Council Members

From: Janelle Cornwell, AICP, Planning & Zoning Director

CC: Everett Moore, County Attorney

Date: January 3, 2019

RE: County Council Report for CZ 1862 Old Orchard Ventures, LLC c\o Barry J. Baker

The Planning and Zoning Department received an application (CZ1862 Old Orchard Ventures, LLC c\o Barry J. Baker) to allow for a Change of Zone to allow for a change of zone from AR-1 (Agricultural Residential District) to C-2 (Business Community District) for a portion of a parcel located on Old Orchard Rd. The Planning and Zoning Commission held a public hearing on November 15, 2018. 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, exhibit booklet, comments from the Sussex Conservation District, Sussex County Engineering Department Utility Planning Division, and PLUS. 20 letters in opposition to the application were read into the record.

The Commission found that Mr. Larry Fifer, Attorney, Mr. Barry Baker, owner of Old Ventures, LLC, Mr. Bob Palmer, with Beacon Engineering, Mr. Patrick Ryan and Mr. Walt Bryan, land use consultants were present on behalf the application; that Mr. Fifer stated the property is a 9.8 acre parcel; that the site is located on Old Orchard Road; that the site is adjacent to Oyster Cove Development; that it is adjoining the railroad which is the new Lewes-Georgetown trail; that 3.9 acres along Old Orchard Road is currently zoned C-1; that this application is to rezone the rear 5.81 acres to C-2; that they propose to construct medical and professional offices; that the commercial uses would complement the other offices further to the south and near Savannah Road; that there are currently three pharmacy's within 300-feet of the site; that the proposed use would meet the need of an aging population; that sewer would be provided by Lewes Board of Public Works which has an agreement with Sussex County: that water would be provided by Tidewater Utility Company; that the Land Use Classification per the 2018 Comprehensive Plan is in the Coastal Area and C-2 would be applicable; that there is also offices and commercial uses in the Village of Five Points; that Mr. Palmer stated the property first Change of Zone application #1069 was first submitted in February 1990 and the Change of Zone was declared null and void by the Court of Chancery; that a new application for a Change of Zone #1231 was unanimously approved for the front portion of the property C-1; that an old subdivision was generated in 1997; that since that time central water and sewer have been provided in the local area; that they have amended their Certificate of Public Convenience necessary to include this area; that Sussex County is the second largest County but also the fastest growing County; that commercial development would be needed to support the new residential growth; that by 2045 the



County would have another 46,000 residents; that there are expansion plans for Beebe Medical Center and a TIS is underway; that DelDOT has a road safety program; that the property is good for an infiltration for stormwater management ability; that this would not have an adverse impact to the neighbors and they can manage beyond what the State requires; that they expect a number of off-site improvements by DelDOT per the TIS; that there are no known endangered species on the site; that there are no tidal wetlands but at Black Hog there are non-tidal wetlands and these have been delineated; that they would provide 1.5 acres of open space through stormwater management; that all the utilities would be privately financed and constructed; that this would create jobs for many people and other support services; that there are no known cultural resources on-site; that this site is located in the Environmentally Sensitive Developing Area and this allows for mixed-use which would fit in with the character of the area; that there is a mixture of commercial and residential uses in the Village of Five Points; that there are medical and professional offices in the area and along Savannah Road; that Mr. Bryan stated there are duplexes adjacent to the site; that there was an hearing for an Special Use Exception for an assisted living facility on the rear parcel; that the front portion of the site is zoned C-1; that the intent is for independent living, assisted living facility and professional offices; that Mr. Palmer stated they have talked to DelDOT and DART about having bus service to the site; and that expected number of trips for C-1 is less than 2,000 trips a day.

The Commission found that no one spoke in favor of the application.

The Commission found that Ms. Jan Allmaras, Mr. Frank Piorko, Ms. Carol Kohler, and Mr. Paul Reiger spoke in opposition to the application; that Ms. Allmaras stated that the residents of Village of Points would have to cross Old Orchard Road to get to the amenities; that there are also six other smaller communities and Atlantic Gravel in the area; that this parcel is surrounded by residential communities; that there is a commercial area located along Savannah Road; that area is not developed as commercial; that there are lots of things going on in the area; that she has concerns with traffic; that there are lots of uses in the area; that the commercial use is not consistent with the area; that this is out of character for the area; that she has concerns with entrances; that she has concerns with surrounding uses; that Mr. Piorko stated he has concerns with the expunged old subdivision; that he had concerns with sewer alignment and service; that he liked the mixture of uses in Village of Five Points and this proposal is haphazard; that Ms. Kohler read a letter into record, a copy of which was submitted; that the letter stated a TIS is needed and needs to be approved by the County and the State before any spot rezoning is approved; that they have concerns with the upkeep of Parker Run Mr. Reiger questioned whether a change of zone application was needed or whether the applicant should be required to apply for a Conditional Use Permit; that he had concerns with traffic; that he believed that the proposal should be considered as part of a Conditional Use Permit application and not a Change of Zone.

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

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

At their meeting of November 29, 2018, the Planning Commission discussed the application that has been deferred since November 15, 2018.

Ms. Stevenson moved that the Commission recommend denial of Change of Zone #1862 for Old Orchard Ventures, LLC for a change in zone from AR-1 to C-2 Medium Commercial, based upon the record made during the public hearing and for the following reasons:

- 1. This application seeks to rezone the rear portion of a property where the front of the property is currently zoned C-1. However, this is the only commercially zoned property along this area of Old Orchard Road.
- 2. The front portion of this property was rezoned to C-1 many years ago and was never developed for commercial purposes.
- 3. Since this time when the existing C-1 area was established, the rest of Old Orchard Road has developed residentially. The only exceptions are a concrete company across the road which has been in existence for decades and pre-dated the surrounding residential development and the commercial areas within the Village of Five Points, which was a master-planned community.
- 4. The only other stand-alone commercial or business uses are located much nearer to the intersection of Old Orchard Road and Savannah Road where many other business and commercial uses exist.
- 5. For all of these reasons, it is not appropriate to increase the commercial zoning of this parcel, which is currently not consistent with the surroundings.
- 6. I appreciate that the new commercial zoning districts limit the number and type of permitted uses that can occur in a given district. However, given the particular location of this parcel with all of the residential development that has occurred around it, not all of the permitted uses in the C-2 District are appropriate.
- 7. It is my recommendation that this rezoning be denied. The applicants may consider applying for a Conditional Use, where greater control over the proposed use with protection of the surrounding properties can occur.

Motion by Ms. Stevenson, seconded by Ms. Wingate 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.

PLANNING & ZONING

JANELLE M. CORNWELL, AICP DIRECTOR

> (302) 855-7878 T (302) 854-5079 F





Memorandum

To: Sussex County Planning Commission Members

From: Janelle Cornwell, AICP, Planning & Zoning Director CC: Vince Robertson, Assistant County Attorney and applicant

Date: November 8, 2018

RE: Staff Analysis for CZ 1862 Old Orchard Ventures, LLC – C/O Mr. Barry J. Baker

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1862 Old Orchard Ventures, LLC – C/O Mr. Barry J. Baker to be reviewed during the November 15, 2018 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for a portion of parcel 335-8.00-29.00 to allow for change from AR-1 (Agricultural Residential District) to C-2 (Medium Commercial District) to be located on Old Orchard Rd. The size of the portion of the property to be rezoned is 5.82 ac. +/-. The remainder of the parcel is zoned C-1 (General Commercial District).

The 2008 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map indicates that the property has the land use designations of Environmentally Sensitive Developing Area and Mixed Residential Areas. A portion of the property is in the Mixed Residential Areas.

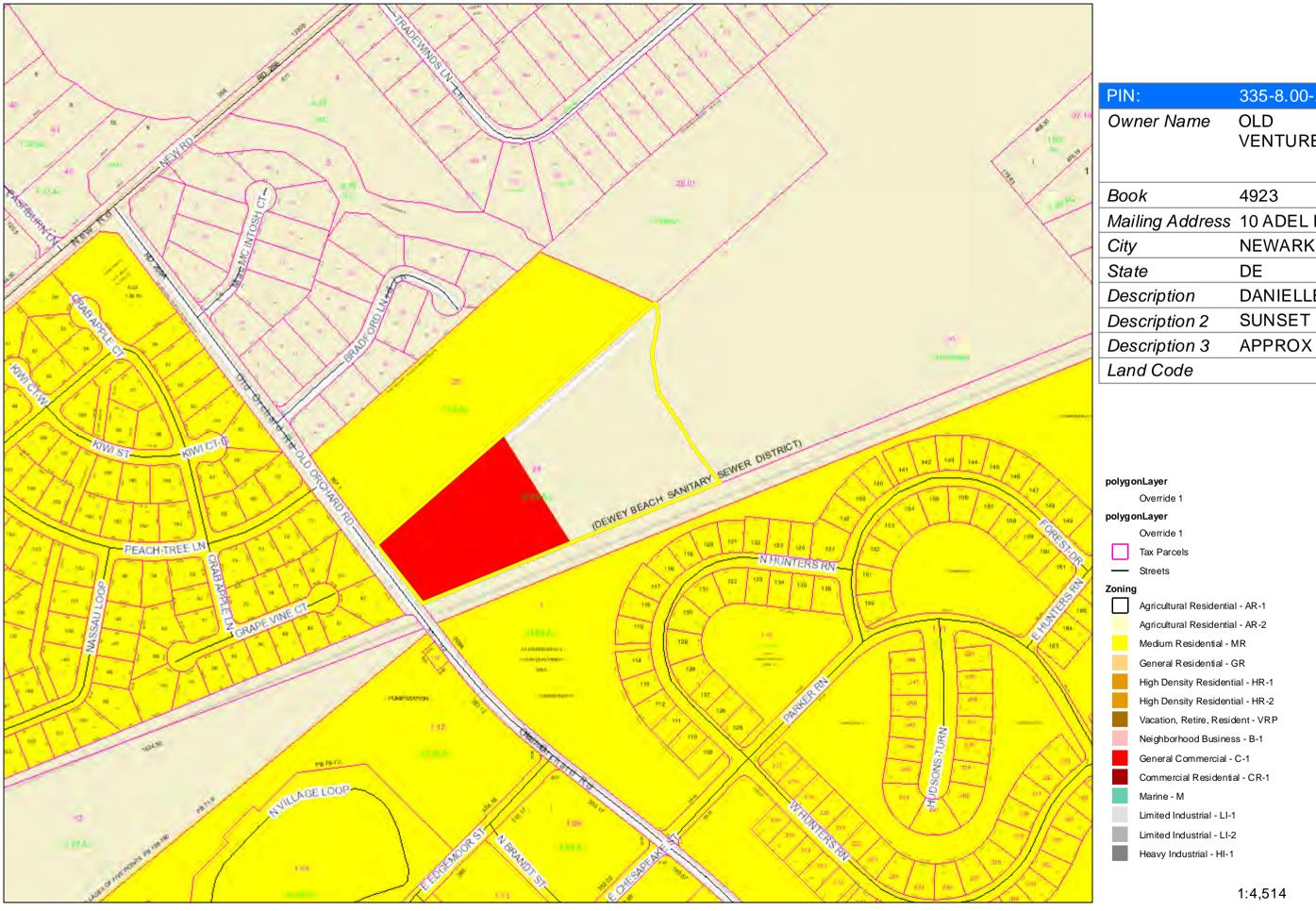
The surrounding land uses to the north, south, east and west are Environmentally Sensitive Developing Area and Mixed Residential Areas. The Environmentally Sensitive Developing Areas land use designation recognizes that a range of housing types should be permitted including single-family, townhouses and multi-family and that variety of office and retail uses would be appropriate in many areas and that business and industrial parks with good road access would be appropriate. It also recognizes that mixture of homes with light commercial and institutional uses could be appropriate to provide for convenient services and let people work close to home. The Mixed Residential Areas recognizes that a mixture of residential uses and types should be permitted, and non-residential development is not encouraged.

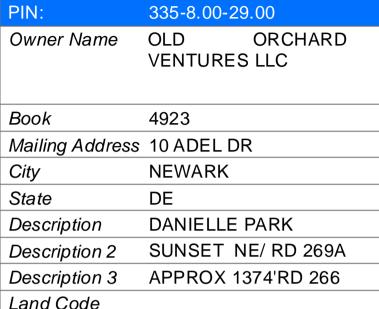
The property is zoned AR-1 (Agricultural Residential District) and C-1 (General Commercial District). The properties to the north, south, and west are zoned MR (Medium-Density Residential District), MR-RPC (Medium-Density Residential District Residential Planned Community) and AR-1 (Agricultural Residential District). The properties to the east are zoned AR-1 (Agricultural Residential District). Further south no Old Orchard Rd. is B-1 (Neighborhood Business District) and C-1 (General Commercial District). There are known Conditional Uses in the area (CU 2058 multi-family). There is also a non-conforming use across the road (concrete material processing).

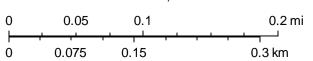
Based on the analysis of the land use, surrounding zoning and uses, the Change of Zone to allow for a change from AR-1 (Agricultural Residential District) to C-2 (Medium Commercial District) could be considered consistent with the land use, area zoning and uses.

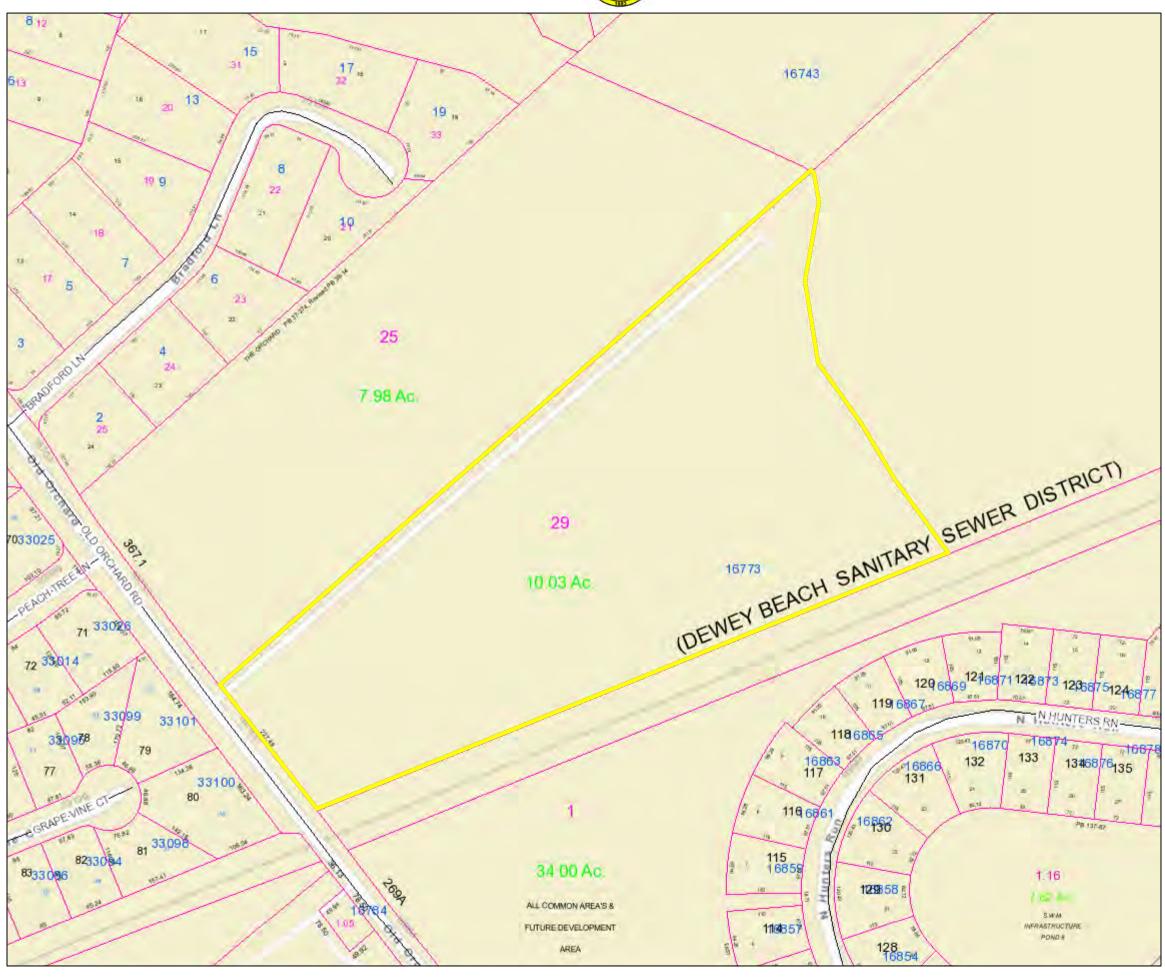


Sussex County









PIN:	335-8.00-29.00	
Owner Name	OLD VENTURES	ORCHARD LLC
Book	4923	
Mailing Address	10 ADEL DR	1
City	NEWARK	
State	DE	
Description	DANIELLE F	PARK
Description 2	SUNSET N	E/ RD 269A
Description 3	APPROX 13	374'RD 266
Land Code		

Override 1

polygonLayer

Override 1

Tax Parcels

911 Address

Streets

0

County Boundaries



PIN:	335-8.00-29.00	
Owner Name	OLD VENTURES	ORCHARD LLC
Book	4923	
Mailing Address	10 ADEL DR	?
City	NEWARK	
State	DE	
Description	DANIELLE F	PARK
Description 2	SUNSET N	E/ RD 269A
Description 3	APPROX 13	374'RD 266
Land Code		

Override 1

polygonLayer

Override 1

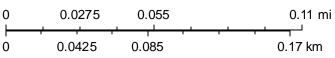
Tax Parcels

911 Address

Streets

County Boundaries

1:2,257



Introduced 06/26/18

Council District No. 3 - Burton Tax I.D. No. 335-8.00-29.00 (portion of)

911 Address: Not Available

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 5.82 ACRES, MORE OR LESS

WHEREAS, on the 30th day of May 2018, a zoning application, denominated

Change of Zone No. 1862, was filed on behalf of Old Orchard Ventures, LLC c/o Barry J. Baker; and

WHEREAS, on the _____ day of _____ 2018, 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. 1862 be _____; and

WHEREAS, on the ____ day of ____ 2018, 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 east side of Old Orchard Road, approximately 1,370 feet south of New Road, and being more particularly described in the attached legal description prepared by Beacon Engineering, LLC, said parcel containing 5.82 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.