

Sussex County Council Public/Media Packet

**MEETING:
January 11, 2022**

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

COUNTY COUNCIL

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



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

A G E N D A

JANUARY 11, 2022

9:00 A.M.

Call to Order

Approval of Agenda

Election of Council Officers

Council Member Appointments

Appointment of Legal Counsel

Adoption of Rules of Procedure

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

Possible action on Executive Session items

Discussion and possible action related to an Appeal on the Sussex County Planning and Zoning Commission’s decision to deny Subdivision Application No. 2020-08 (Lockhaven)

Approval of Minutes – December 14, 2021

Reading of Correspondence

Public Comments

J. Everett Moore, Jr., County Attorney

- 1. Presentation and discussion related to County Council Redistricting**



Todd Lawson, County Administrator

1. Administrator's Report

Gina Jennings, Finance Director

1. Bank Accounts Resolutions
2. Update and discussion related to the Fiscal Year 2022 Budget

Old Business

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

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

10:30 a.m. Public Hearing

“AN ORDINANCE TO AMEND CHAPTER 99, SECTIONS 99-5, 99-6, 99-7, 99-23, 99-24, 99-26, AND 99-30, AND CHAPTER 115 SECTIONS 115-4, 115-25, 115-193, 115-220 AND 115-221 REGARDING CERTAIN DRAINAGE FEATURES, WETLAND AND WATER RESOURCES AND THE BUFFERS THERETO”

Recess

Hans Medlarz, County Engineer

1. Herring Creek and Chapel Branch Sanitary Sewer Districts with Robinsonville Road Development Area Pump Stations, Project S20-06
 - A. Change Order No. 2
2. South Coastal Regional Wastewater Facility Treatment Process Upgrade No. 3 and Rehoboth Beach Wastewater Treatment Plant Capital Improvement Program, Phase 2
 - A. General Construction, Project C19-11, Change Order Nos. 15 and 16
 - B. Electrical Construction, Project C19-17, Change Order Nos. 13 and 14
3. EMS Public Safety Building, Project C19-04
 - A. Change Order No. 5

Mark Parker, Assistant County Engineer

1. Delaware Coastal Business Park Improvements, Project A21-11

A. Recommendation to Award

John Ashman, Senior Manager of Utility Planning & Design Review

1. Request to prepare and post notices for Millville by the Sea Villages A-D

Grant Requests

1. William T. Spooner American Legion Post 17 for kitchen range replacement

2. Seaford Tomorrow for community event expenses

3. Clothing Our Kids for operating expenses

Introduction of Proposed Zoning Ordinances

Council Members' Comments

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on January 4, 2022 at 4:00 p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

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

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

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

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

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

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

#

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 14, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 14, 2021, at 9:00 a.m., in Council Chambers, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 534 21
Approve
Agenda**

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

Motion Adopted: 4 Yeas, 1 Absent.

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

**Appeal of
Denial of
Subdivision
Application
No. 2020-08**

The Council considered an Appeal on the Sussex County Planning and Zoning Commission's decision to deny Subdivision Application No. 2020-08 (Lockhaven).

Mr. Vincent introduced The Honorable Charles Toliver IV, Superior Court Judge Retired, who presided over the appeal hearing and ruled on matters of procedure.

Mr. Moore noted that Mr. Schaeffer was not in attendance due to the fact that he has a conflict in this matter; therefore, Mr. Schaeffer would not be participating in the appeal hearing nor will he be participating in any of the deliberations or in the vote on the matter.

Additionally, Mr. Moore noted a potential conflict for Mrs. Green; however, after a review of the matter, both Counsels made a determination that they did not have a problem with Mrs. Green's participation in the appeal hearing and action on the matter. Judge Tolliver noted that he did not have a problem with Mrs. Green's participation.

**Appeal of
Denial of
Subdivision
Application
No. 2020-08
(continued)**

Judge Toliver reviewed the basic matters of procedure for the appeal hearing. He advised that subdivision appeals are totally based on the record and that no new evidence would be allowed.

Fred Townsend, Attorney at Hudson, Jones, Jaywork & Fisher, was in attendance to present the Appeal. Also in attendance with him was his client, Don Lockwood of Lockwood Farms, LLC, and Carlton Savage, Engineer. Mr. Townsend commented on the responsibilities in an appeal as an appellant body. He noted that this subdivision denial may be the first denial of a subdivision plan by the Planning and Zoning Commission in the history of Sussex County and that is a relevant consideration because that makes this decision important. Mr. Townsend stated that the denial of this application results in very serious consequences felt by the Applicant including the value of the property, the degree in which it is suitable for development is questioned, and the market and carrying costs. Mr. Townsend stated that what is proposed on this 126 acre parcel is a 25 lot subdivision; that if it is the Planning and Zoning Commission's intention not to permit standard subdivisions of this type or to favor cluster subdivisions, then another owner of this property will potentially have three to four times the number of units. Mr. Townsend stated that the standard of review for Council is to consider whether the Commission misapplied the law and Mr. Townsend stated that he asserts that they have in a significant way and that the findings and conclusions that the Commission reached are not the result of an orderly and logical review of the evidence; and that the denial is not based on substantive evidence.

Mr. Townsend stated that the law in this case very heavily favors the Applicant. Mr. Townsend referenced Supreme Court law, case law from the Superior Court, and decisions that have been reached. Mr. Townsend specifically referenced a Kent County case, a City of Dover case, and a City of Elsmere case.

He noted that in the Kent County case, the Supreme Court of Delaware held that the Planning Commission lacked the power to deny a subdivision plan that complied with all of the applicable zoning and subdivision requirements. In this case, the Supreme Court reversed the denial of the subdivision because the subdivision denial was based on PLUS Review considerations offered by State agencies, not specific Code criteria.

He noted that in the City of Dover case, the Judge discussed the nature of health, safety, and welfare concerns and labeled them impact concerns and the Judge stated that impact concerns do not provide a basis for denial of a Code compliant plan because doing so would completely deny a use permitted under the Zoning Code. Mr. Townsend stated that this is what has happened here; that impact concerns have formed the basis of the Planning and Zoning Commission's denial, not Code considerations, and not whether the property is suitable for a subdivision.

He noted that the Elsmere case held that landowners are entitled to rely on

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No. 2020-08
(continued)**

zoning to implement a permitted use, and that to hold otherwise subjects a purchaser of land to the future whim and caprice of the Commission.

Mr. Townsend stated that if you apply these impact concerns to deny applications outright, then you are on the path to arbitrary and ad-hoc results.

Mr. Townsend stated that the Kent County case has a very applicable holding within it that has a direct bearing on the Code; the Court said that the very statute upon which the Commission relied on to deny the application provides only that the Commission consider State agency comments. The Court said that the statute does not expressly or by implication give the Commission unfettered discretion to deny an otherwise legally conforming subdivision. Mr. Townsend stated that the County Code 99-9C language begins with the exact same phrase that “the approval of a subdivision shall include consideration of the following...”, and then there are seventeen (17) considerations; it doesn’t say that approval or denial of a subdivision will take into consideration the seventeen (17) considerations; it says approval will involve “consideration of the following”. This statute has been interpreted by the Supreme Court to say that you cannot imply from that language that an unfettered denial of an application can be based on those seventeen (17) considerations (which are impact concerns). Mr. Townsend stated that the Planning and Zoning Commission is limited; it is not a legislative body; the Council is the legislative body. The Commission cannot approve a subdivision without considering seventeen (17) factors in 99-9C of the County Code; but the Commission cannot use those factors to deny a Code compliant application; that nothing in the body of the Ordinance speaks to denials; that the seventeen (17) considerations are the basis of applying appropriate and reasonable conditions to a plan that is Code compliant. Mr. Townsend stated that this is the first time the Planning and Zoning Commission has relied on 99-9C to deny an application and he questioned if this 25-lot subdivision is the most objectionable subdivision in the history of the County. He stated that it certainly is not the most objectionable and not the most worthy of denial in the Commission’s history.

Mr. Townsend stated that Section 16-A of Chapter 99 discusses circumstances under which a subdivision is not appropriate and it refers to subdivision denials as a product of a finding that the land (not the development plan) is unsuitable for subdivision due to flooding, improper drainage, adverse earth formations, utility easements, etc. that pose a danger to health, safety and welfare. This would justify a determination that land is unsuitable for subdivision, not that the plan is sub-optimal and this was not a finding of the Commission; the Commission does not say that the land is unsuitable. Mr. Townsend stated that the Commission has exceeded its authority in relying on these impact concerns in denying the application; the Commission cannot deny the application, they can only try to address the impact concerns through appropriate conditions and that is not what happened.

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(continued)**

Mr. Townsend reviewed the specifics of the Lockhaven development: it consists of 126 acres, it is proposing 25 oversized lots, the minimum lot size is 1.6 acres and the average lot size is 2.5 acres; the site does have 28.7 acres of wetlands and 38.44 acres of woodlands. He stated that a standard subdivision is proposed, not a cluster subdivision; that cluster subdivisions allow for greater density but the Applicant is not interested in maximizing the density on this property and the Applicant is considering making one of the lots his own homestead. He stated that the subdivision of wetlands is not prohibited in a standard subdivision. Mr. Townsend also commented on the availability of onsite septic and stated that the record shows that a feasibility study was performed on the land and the test revealed that the location could support 25 proposed lots. The soil tests were confirmed in an email from DNREC dated September 3, 2021 and that the test results in that feasibility study are currently valid. The Commission stated that the age of the feasibility study is a justification for reliance on the question whether onsite septic is available and found it is not. The substantial evidence in the record doesn't support that conclusion; DNREC has spoken. Mr. Townsend noted that this is just a preliminary approval that is being sought and that subdivision plans remain subject to being changed both during the preliminary approval process and prior to the final approval process. Therefore, the argument the Commission is making is that the feasibility study was done on a development that varies somewhat from what is currently proposed is not valid, and it is not substantive and it is not orderly and logical. Additionally, there is a reference in the Commission's decision to the potential for the need of mound systems on certain lots; mound systems are lot illegal. Final site evaluations are done on each lot prior to a lot being sold, so the risk to the public is nil. Another concern raised by the Commission is limited disturbance of woodlands and wetlands. The Code does not say that trees cannot be removed. This introduces an incredible amount of arbitrary and ad-hoc results into the application process because preservation of woodlands cannot be measured. Mr. Townsend stated that the protection of the wetlands is a 99-9C consideration and he questioned how that test can be passed or failed. The Applicant has proposed a wetlands buffer of 50 feet so the wetlands are protected and so is the next 50 feet from disturbance. The Commission stated that the wetlands are not protected and that is not supported by substantial evidence. DelDOT concerns were also raised; DelDOT's issued a Letter of No Objection; in the Letter it was found that this proposed subdivision will have a minor impact on neighboring roadways; and therefore; this minor impact cannot be a basis for denial of a Code-compliant plan.

Mr. Townsend stated that the Applicant is asking the Council to reverse the Planning and Zoning Commission's decision or to remand it for appropriate considerations with instructions to condition the proposal reasonably.

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Application
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(continued)**

Vince Robertson, Assistant County Attorney, stated that he was defending the Planning and Zoning Commission's denial of this subdivision application. He stated that there have been some denials of subdivisions by the Commission in the past; however, he noted that this is not a part of the record nor is it in the transcript and, therefore, it is not something to be considered. He stated that Mr. Townsend noted that this application was denied because it is not a cluster subdivision and that the Commission prefers cluster subdivisions. Mr. Robertson stated that this is also an irrelevant consideration as no where in the Commission's findings was there a reference to the fact that the Commission would prefer a cluster subdivision. Mr. Robertson referenced Mr. Townsend's comment about density being increased if this application got denied and the project got redesigned and came forward as another development, and Mr. Robertson stated that this is a misstatement; the density is 2 units per acre.

Mr. Robertson stated that the heart of the matter is the septic and the feasibility study. The original soils tests were done in 2006 and were reviewed by DNREC in 2015. Mr. Townsend stated that it was for 25 lots and therefore, it is the same. Mr. Robertson stated that it was not these same 25 lots; it is unknown what 25 lots were reviewed because the County never saw the plan that DNREC reviewed in 2015 that was accompanied by the feasibility study that DNREC reviewed in 2015. The Commission had no way of knowing whether DNREC signed off on a sewer evaluation for the same lots for this application; the Commission kept asking for that information through DNREC and DNREC responded that the soils don't change, the subdivision changed. The Commission doesn't know if the subdivision changed a little bit or materially because the Commission never saw that subdivision associated with what DNREC reviewed in 2015. Mr. Robertson stated that in the emails that came from DNREC to Sussex County, they actually state that if the situation of soils changes (compacted, regraded, etc.), then that could void out the feasibility study. The County does not have anything in the record to confirm the actual onsite conditions changed from 2006 to the present and there is nothing in the record to show that the site plan in 2006 is the same as what was reviewed by the Commission in 2021. Additionally, Section 99 of the Code requires septic feasibility; historically, septic feasibility is something the Commission asks for no matter the size of the subdivision. A subdivision cannot get approved without septic feasibility; it has to be known up front and the Commission did not know that in this case. It was unknown if the lots in this subdivision application could be served by an onsite septic system.

Mr. Robertson responded to Mr. Townsend's comments about the Kent County case which dealt with a Kent County ordinance. Mr. Robertson stated that Sussex County has Code based criteria (Section 99-9C) – the seventeen (17) items that are in Sussex County Code, and that Section 99-9A states that the Commission shall either tentatively approve or disapprove or conditionally approve the plat subject to certain changes and modifications; therefore, denial is one of the options that is available to the Commission with regard to a subdivision application. Mr. Robertson noted that the

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(continued)**

Commission cannot be the one to make a record or design a subdivision; that is not their role. Mr. Robertson referenced Mr. Townsend's comment that 99-9C only requires or only permits conditions on an approval and he noted that an applicant has to satisfy those seventeen (17) conditions in 99-9C and then, if the Commission is satisfied in accordance with 99-9A, then the Commission can approve it.

Mr. Robertson stated that the Council is to consider whether the Commission's review was the result of an orderly and logical review and a proper interpretation of the Chapter. There were four different considerations by the Commission: the public hearing in June 2021, old business discussion in July 2021, old business discussion again in September 2021, and then the vote which occurred in October 2021. There was also a proper application of Chapter 99 by the Commission as part of its decision.

Mr. Robertson stated that this is a unique subdivision; it is bounded on one side by Beaver Dam Creek and a water body on the other side by the Broadkill River and contains approximately 28.7 acres of wetlands. He noted, however, that there were questions about the actual amount of wetlands on the site. The Commission denied the application because the Applicant did not favorably address the requirements of 99-9C (referencing the seventeen (17) items). He noted that the application has extensive wetlands and woodlands that contain wetlands; it is unclear where the wetlands are in relation to those woodlands, it is unclear what the total amount of the wetlands are, there was a statement that the tree line may change, and there was a statement that the septic may dictate those woods being removed. From the record, there is no protection of the wetlands, the buffers or the woodlands; they are all within the lots and all subject to removal by the lot owners. Mr. Robertson reviewed those items and whether or not the application satisfied those items (99-9C1, 99-9C2, 99-9C3, 99-9C4, 99-9C5, 99-9C8 were not satisfied).

Mr. Robertson noted that the Applicant could have requested an updated DNREC review of the soils or shown a connection to central sewer,

Mr. Robertson stated that the Commission also considered 99-9C(11) which requires a consideration of safe vehicular movement within the site and to adjacent ways and 99-9C(15) which requires consideration of the effect on area roadways. DelDOT did take this into account and there was a lot of discussion and discourse between the Applicant and the Commission about it. The Opposition's testimony on this concerned the Commission since this property is located on Round Pole Bridge Road with substantial curves and an old bridge. DelDOT did state that the bridge was fine and did not impact anything; however, the Commission was concerned about information in the record about placing this subdivision with its entrance on this location on Round Pole Bridge Road. There was evidence that this is a heavily traveled road by farm equipment; that the road is tar and chip and either 18 feet or 20 feet wide; and that when there are crops along side of the road, it is difficult to see what is coming around a corner/bend.

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(continued)**

Mr. Robertson stated that the Commission did go through a lot of deliberations and considered all of the information in the record and came to the conclusion that there was not enough of a record to go on, i.e. sewer feasibility, where the woodlands are and would they be disturbed, will the buffers be disturbed, etc. Mr. Robertson stated that there were too many unanswered questions. He noted that there was an orderly and logical review of the record and the Commission's unanimous decision to deny the application was based on the record and the County Code.

Several questions were raised by Council and responded to by the attorneys.

Mr. Moore announced that the appeal hearing was closed.

Mr. Moore announced that the Council has until January 14, 2022 to render a decision in this matter.

Recess

At 10:20 a.m., Mr. Vincent declared a ten minute recess.

Reconvene

At 10:30 a.m., Mr. Vincent reconvened the meeting.

Mr. Schaeffer joined the meeting.

**Approve
Minutes**

The minutes of December 7, 2021 were approved by consent.

**Corre-
spondence**

Mr. Moore reported that correspondence was received from the following in appreciation of Human Service Grants: Delaware Seashore Preservation Foundation, Delaware Hospice, Delaware Consortium, Volunteer Delaware 50+, and LOVE, Inc.

**Public
Comments**

Public comments were heard:

Three people spoke regarding the home of Elizabeth Barrett which is going to Sheriff Sale later in December and asked the Council to follow through with taking the property to Sheriff Sale.

**M 535 21
Approve
Consent
Agenda
Items**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to approve the following item listed under the Consent Agenda:

- 1. Use of Existing Wastewater Infrastructure Agreement, IUA-S21-25 Cambria Hotel, West Rehoboth Area**

Motion Adopted: 5 Yeas.

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

**Sussex
Sports
Center
Foundation
Presenta-
tion**

Joe Schell, President of the Sussex Sports Center Foundation, discussed the opening of Sandhill Fields, a complex that is home to cross-country, field hockey, lacrosse, soccer, pickleball, a walking trail and many more activities. Mr. Schell discussed Phase One of the project (2017-2020) and the funding that made it possible. Mr. Schell then discussed Phase Two of the project (2021-2022) which proposes a field house with an estimated opening date in December 2022. Mr. Schell reviewed the estimated construction costs and a proposal for funding, to include public and private monies. Brad Leinbach, Sandhill Fields' General Manager, outlined the proposal for the fieldhouse and for a solar area which will provide revenue for the fields. Five people spoke in support of the Sandhill Fields proposal for an indoor venue.

**County
Council Re-
districting**

Mr. Moore presented a Redistricting Report including draft maps for Sussex County Council's five districts. He advised that, by law, the County must adjust its Council districts, a process known as redistricting, following each decennial census to equally distribute the population among the five County Council districts. Mr. Moore reported that Sussex County's population has grown substantially. The population of Sussex County is 237,378 based on the results of the 2020 U.S. census. That is an increase of 40,233 residents in 10 years. Redistricting is required every 10 years following each census to equally redistribute population among Council districts. Given the 2020 census figures, each Council district must be within plus or minus 5 percent of an ideal population of 47,475.6 residents.

Mr. Moore reported that, unlike ten years ago, when there were only two of the five districts outside of the acceptable deviation ranges, four of the five current Council districts are now outside the bounds of the acceptable deviation based on the new Census data.

Mr. Moore presented details on each district:

District 1 is below the deviation thus the need to expand its geographical boundaries.

District 2 is below the deviation and thus the need to expand its geographical boundaries.

District 3 is above the deviation creating the need to contract its geographical boundaries.

District 4 is above the deviation creating the need to contract its geographical boundaries.

District 5 is the only district that is within the acceptable deviation; however, in its current form, the district lacks communities of common interest.

Mr. Moore explained the goals of the redistricting process: impartial process, keep together communities of interest as much as possible, follow roads,

**County
Council Re-
districting
(continued)**

streams, and other landmarks to the extent possible, and look at both current and historic trends and data.

Mr. Moore stated that he looked at the school districts as they are considered communities of interest; unfortunately, the school districts' geography cannot be used in exact fashion especially in the eastern side of the County considering the larger school districts and population distribution.

Mr. Moore stated that in this redistricting process, public input was solicited and one of the maps received was from the League of Women Voters. The County received many comments concerning that map as well as some submittals of similar maps with derivations.

Mr. Moore stated that the proposed maps were developed (see map attachment to minutes):

District 1 - This District has to be expanded and communities of interest were aligned. Bridgeville was moved to District 2 and Delmar and Gumboro were moved from District 5 to District 1. This District is wholly contained in Western and Southern Sussex and includes all of Laurel, Seaford, Blades, Bethel, Gumboro and Delmar. It also contains most of the Seaford School District, all of the Laurel and Delmar School Districts, and a portion of the Indian River School District.

District 2 – This District gained Bridgeville from District 1 and Milton from District 3; however, it lost Georgetown to District 5. This District has most of the Woodbridge School District, and parts of the Cape Henlopen, Indian River and Milford School Districts.

District 3 – Because of the large population increase, this District underwent significant changes. With geographical limitations to the east, changes were achievable in the western and southern part of the District. This District contains all of the Delaware Bay/Beach communities: Rehoboth Beach, Bethany Beach, as well as some of the areas in the northern stretches of the Inland Bays. This District contains much of the Cape Henlopen School District as well as small parts of the Milford and Indian River School Districts.

District 4 – This District lost much of its northern regions but picked up Fenwick Island. In addition to Bethany, South Bethany, and Fenwick Island, this District includes Frankford, Dagsboro, and Selbyville, and many of the small southern towns and villages. All of this District's area is within the Indian River School District.

District 5 – Although this was the only District that was within the mandated deviation, it has undergone the most dramatic change. This is now the Central Sussex District. Georgetown was added to this District while Fenwick Island was added to District 4; Gumboro and Delmar were removed and added to District 1. The District spans portions of the Cape Henlopen and the

**County
Council Re-
districting
(continued)**

Sussex Central portion of the Indian River School District.

Mr. Moore reported on next steps: the County will receive written public comments on the proposed maps until 4:30 p.m. on Friday, January 7, 2022. Comments can be submitted by direct email to redistricting@sussexcountyde.gov or by standard mail to the Clerk of the Council, P.O. Box 589, Georgetown, DE 19947. A Draft Ordinance will be presented for possible introduction on January 11, 2022 and the Public Hearing on the Proposed Ordinance will be scheduled for some time in February 2022.

Mr. Moore thanked everyone that assisted in this redistricting process.

**Adminis-
trator's
Report**

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

1. Caroling on the Circle

The Sussex County Council would like to thank the community for participating in the 38th Annual Caroling on The Circle on Monday, December 13th. We had a very successful night with hundreds of carolers and thus far have collected nearly 18,000 canned goods and nonperishable food items for our less fortunate neighbors.

We remind everyone that the County is continuing to collect items until the end of the year and will continue to distribute these goods to our local food pantries. We want to thank all our volunteers, local businesses, and schools for helping to collect the food over the last month and for making this year's Caroling on The Circle a success!

2. Christmas and New Year's Holidays

Please note, County offices will be closed on December 23rd, 24th and the 27th, to celebrate the Christmas holiday, and December 31st for the New Year's holiday. The next regularly scheduled Council meeting will be held on Tuesday, January 4, 2022, at 10:00 a.m.

**Quarterly
Pension
Update**

Mrs. Jennings, along with Michael Shone of Marquette Associates, provided a Quarterly Pension Update, including an investment performance update for the Pension and OPEB funds, the annual actuarial report, and a report on the November 10, 2021 Pension Committee meeting. They discussed the Pension Committee's recommendations regarding some of the policies: to lower the assumed rate of returns/discount rate of both the Pension and OPEB funds and to adjust the OPEB Funding Policy.

**M 536 21
Revise OPEB
Funding
Policy**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based upon the recommendation of the Pension Committee, that the Sussex County Council revise the OPEB Funding Policy to reflect that Sussex County will fund at least the actuarial determined contribution.

**M 536 21
(continued)**

Motion Adopted: 5 Yeas.

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

**M 537 21
Lower
Assumed
Rate of
Return/
Discount
Rate/
Pension
and OPEB
Funds**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based on the recommendation of the Pension Committee, that the Sussex County Council lower the assumed rate of return/discount rate of both the Pension and OPEB funds to 6.75%.

Motion Adopted: 5 Yeas.

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

**Employee
Recognition
Awards**

Karen Brewington, Human Resources Director, announced the Fourth Quarter recipients of the Shining Star Employee Recognition Program. This program recognizes and celebrates employees who demonstrate exceptional performance, service, and accomplishments that reinforce the County's mission, vision and goals. Fourth Quarter recipients are Jacob Adams of the EMS Department and Holly Phleger of the Building Code Department. Mrs. Brewington also announced the Employee of the Year 2021 – Guillermo Montalvo Merino of the Community Development and Housing Department. Congratulations were extended to all.

**Ellendale
Water
District/
Project C/O**

Hans Medlarz, County Engineer, presented Change Order No. 1 to the Ellendale Water District Project, Contract W20-17. The contractor, Pact One, LLC submitted the Proposed Change Order in the amount of \$490,430.00 for an increase in project work and applicable item quantities.

**M 538 21
Approve
Change
Order/
Ellendale
Water
District
Project
W20-17**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for Contract W20-17, Ellendale Water District, be approved in the amount of \$490,430.00, contingent upon concurrence by the State Funding Agency.

Motion Adopted: 5 Yeas.

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

**Indian
River
Acres
Area
Boundary**

John Ashman, Senior Manager of Utility Planning & Design Review, presented a Proposed Resolution establishing the Indian River Acres Area (IRAA) of the Sussex County Unified Sanitary Sewer District. On November 20, 2021, the Engineering Department held a Public Hearing on the proposed boundary, County rate structure and estimated costs. Those

Indian River Acres Area Boundary (continued)

in attendance showed strong support for the establishment of a boundary to provide sewer service. Mr. Ashman presented the proposed boundary to Council as the recommended Final Boundary. Mr. Ashman asked for Council's approval of the Proposed Resolution and authorize the Engineering Department to take questions of establishing the District to a referendum.

**M 539 21
Adopt
R 026 21**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to Adopt Resolution No. R 026 21 entitled "BOUNDARIES FOR THE PROPOSED INDIAN RIVER ACRES AREA OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT".

Motion Adopted: 5 Yeas.

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

2021 Mass Annexation

John Ashman, Senior Manager of Utility Planning & Design Review, reported that, under the direction of the County Engineer and under his authority according to County Code §110-98 and §110-99, the Engineering Department has been accepting annexation fees and connecting individual parcels on an as-needed basis. Many of these parcels are close to a County sewer district, close to County sewer lines, and some already have lateral connections available. The County Engineer may grant connections to scattered parcels at the equivalent dwelling unit (EDU) density of the abutting property but cannot exceed 12 EDUs per acre; parcels must be able to become contiguous. The connection must be evaluated and determined to not overload capacity in existing infrastructure. Mr. Ashman noted that a list of parcels is being submitted as an all-encompassing annexation for parcels previously requesting annexation, paying the appropriate annexation fee and meeting the previously stated requirements. Approximately 80 percent of these are septic remediation projects; some are for new construction. Mr. Ashman asked for Council's approval for the Engineering Department to adjust the sewer tier maps to reflect the following individual parcels: 134-19.00-105.02, 134-8.00-10.00, 433-6.15-49.00, 134-11.00-170.01, 134-19.00-75.01, and 134-11.00-162.02.

**M 540 21
Approve
Mass
Annexation**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the mass annexation, as presented.

Motion Adopted: 5 Yeas.

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

Electronic Document Management System/ RFP Results and Recommendation

Jamie Whitehouse, Planning and Zoning Director, presented a recommendation to award a Request for Proposals (RFP) for an Electronic Document Management System. He reported that the Planning and Zoning Department currently operates a largely paper-based document management system for its land-use applications, with approximately 30,000 documents being received each year. Documents include application forms, supporting technical statements, exhibit books, plans, maps, photographs, and public comment letters. At present, for each application hearing, a paperless packet is prepared; this enables documents to be presented to both the public and decision makers in a paperless format.

On March 25, 2021, the Planning and Zoning Department published the RFP. The purpose of the RFP was to seek one or multiple vendors to provide the County with the ability to effectively collect, store, manage and publish documents associated with the various applications processed by the County. Mr. Whitehouse reviewed the anticipated scope of work.

Mr. Whitehouse reported that twenty-six (26) vendor proposals were received. Following a review and scoring by the Evaluation Committee, seven (7) vendors were selected to make presentations. Following the presentations, the final rankings of the vendors was completed. The highest scoring vendor was Versivo, Inc. The Planning and Zoning Department recommends that, subject to the final review of all agreements, the County Council award the Electronic Document Management System RFP to Versivo, Inc.

M 541 21 Award RFP/ Electronic Document Management System

A Motion was made by Mr. Hudson, seconded by Mrs. Green, based upon the recommendation of the Planning and Zoning Department, that the Sussex County Council awards the RFP for an Electronic Document Management System to Versivo, Inc., subject to completion of all necessary agreements.

Motion Adopted: 5 Yeas.

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

Old Business/ CZ 1922

Under Old Business, the Council considered Change of Zone No. 1922 filed on behalf of Baywood, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on May 13, 2021 at which time action was deferred. On May 27, 2021, the Commission recommended approval with the following conditions:

- A. The maximum number of residential units shall be 514.**
- B. All entrances, intersections, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT**

**Old
Business/
CZ 1922
(continued)**

- requirements.
- C. The project shall be served by central sewer through the Inland Bays Preservation Company and Sussex County. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
 - D. The project shall be served by central water to provide drinking water and fire protection.**
 - E. Interior street design shall meet or exceed the Sussex County street design requirements.**
 - F. Construction, material deliveries and site work shall only occur on the property between 7:30 a.m. and 7:00 p.m. Monday through Friday. No Saturday or Sunday hours shall be permitted. A 24 inch by 36 inch "NOTICE" sign confirming these hours shall be prominently displayed at all entrances to the site during construction.**
 - G. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
 - H. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
 - I. 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.**
 - J. The Applicant shall coordinate with the Indian River School District to establish a school bus stop area which shall be shown on the Final Site Plan if required by the District.**
 - K. The Central Recreational Complex, including the community clubhouse, indoor and outdoor swimming pools, shall be completed prior to the issuance of the Certificate of Occupancy for the 161st multi-family unit.**
 - L. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.**
 - M. Lighted signs shall be permitted at each of the four entrances to the development. Those signs shall not exceed 32 square feet in size per side.**
 - N. As proffered by the Applicant, this HR-RPC rezoning was sought for the specific purpose of development of a 514-unit multi-family development depicted on the site plan submitted with this application. In the event the RPC is not developed and is declared null and void pursuant to Section 99-9B or 99-40A of the Sussex County Code, then Sussex County may initiate the rezoning process and schedule public hearings to consider whether to revert this land (currently Tax Map Parcel 234-23.00-270.00, 273.01, 273.02, 270.03 and 270.05) back to the zoning classification of the land in existence immediately prior to this HR-RPC rezoning.**
 - O. The Developer shall coordinate with DelDOT for safe and clearly marked pedestrian crossings at the intersection of Long Neck Road and School Lane for the two sections of this development. The Developer shall clearly indicate the means of safe crossing on the Final Site Plan**

Old
Business/
CZ 1922
(continued)

and no apartments shall be constructed on the south side of Long Neck Road until those safety measures are installed.

- P. This recommendation is contingent upon an amendment to the Future Land Use Map in the Sussex County Comprehensive Plan revising the designation of a portion of the property from “Commercial Area” to the “Coastal Area” which otherwise surrounds it.
- Q. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

The County Council held a Public Hearing on this application on June 29, 2021 at which time action was deferred.

Jamie Whitehouse, Planning and Zoning Director, noted that, at its meeting of December 7, 2021, the Council approved the adoption of an Ordinance to amend the Future Land Use Map element of the Comprehensive Plan in relation to Tax Parcel 234-23.00-270.00. The amendment was to change the designation of the parcel from the Commercial Area to the Coastal Area.

M 542 21
Amend
Conditions/
CZ 1922

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to amend Condition F recommended by the Planning and Zoning Commission to read as follows: “Construction, material deliveries and site work shall only occur on the property between 7:30 a.m. and 7:00 p.m. Monday through Friday. No Saturday hours from May 15th to September 15th or any Sunday hours shall be permitted. The Saturday hours, when permitted, shall be limited from 8:00 a.m. to 5:15 p.m. A 24 inch by 36 inch “NOTICE” sign confirming these hours shall be prominently displayed at all entrances to the site during construction.”

Motion Adopted: 5 Yeas.

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

M 543 21
Adopt
Ordinance
No. 2820/
CZ 1922

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to Adopt Ordinance No. 2820 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A B-1 (NEIGHBORHOOD BUSINESS DISTRICT), C-1 (GENERAL COMMERCIAL DISTRICT) AND CR-1 (COMMERCIAL RESIDENTIAL DISTRICT) TO A HR-RPC HIGH DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 54.38 ACRES, MORE OR LESS” (Change of Zone No. 1922) filed on behalf of Baywood, LLC, with the following conditions, as amended:

- A. The maximum number of residential units shall be 514.
- B. All entrances, intersections, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT

**M 543 21
Adopt
Ordinance
No. 2820/
CZ 1922
(continued)**

- requirements.
- C. The project shall be served by central sewer through the Inland Bays Preservation Company and Sussex County. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
 - D. The project shall be served by central water to provide drinking water and fire protection.**
 - E. Interior street design shall meet or exceed the Sussex County street design requirements.**
 - F. Construction, material deliveries and site work shall only occur on the property between 7:30 a.m. and 7:00 p.m. Monday through Friday. No Saturday hours from May 15th to September 15th or any Sunday hours shall be permitted. The Saturday hours, when permitted, shall be limited from 8:00 a.m. to 5:15 p.m. A 24 inch by 36 inch “NOTICE” sign confirming these hours shall be prominently displayed at all entrances to the site during construction.**
 - G. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
 - H. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
 - I. 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.**
 - J. The Applicant shall coordinate with the Indian River School District to establish a school bus stop area which shall be shown on the Final Site Plan if required by the District.**
 - K. The Central Recreational Complex, including the community clubhouse, indoor and outdoor swimming pools, shall be completed prior to the issuance of the Certificate of Occupancy for the 161st multi-family unit.**
 - L. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.**
 - M. Lighted signs shall be permitted at each of the four entrances to the development. Those signs shall not exceed 32 square feet in size per side.**
 - N. As proffered by the Applicant, this HR-RPC rezoning was sought for the specific purpose of development of a 514-unit multi-family development depicted on the site plan submitted with this application. In the event the RPC is not developed and is declared null and void pursuant to Section 99-9B or 99-40A of the Sussex County Code, then Sussex County may initiate the rezoning process and schedule public hearings to consider whether to revert this land (currently Tax Map Parcel 2-34-23.00-270.00, 273.01, 273.02, 270.03 and 270.05) back to the zoning classification of the land in existence immediately prior to this HR-RPC rezoning.**
 - O. The Developer shall coordinate with DelDOT for safe and clearly marked pedestrian crossings at the intersection of Long Neck Road and**

**M 543 21
Adopt
Ordinance
No. 2820/
CZ 1922
(continued)**

School Lane for the two sections of this development. The Developer shall clearly indicate the means of safe crossing on the Final Site Plan and no apartments shall be constructed on the south side of Long Neck Road until those safety measures are installed.

- P. This recommendation is contingent upon an amendment to the Future Land Use Map in the Sussex County Comprehensive Plan revising the designation of a portion of the property from “Commercial Area” to the “Coastal Area” which otherwise surrounds it.**
- Q. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Old
Business/
CU 2269**

Under Old Business, the Council considered Conditional Use No. 2269 filed on behalf of Dennis Nelson, Jr.

The Planning and Zoning Commission held a Public Hearing on this application on October 14, 2021 at which time action was deferred. On October 28, 2021, the Commission recommended denial of the application.

The County Council held a Public Hearing on this application on November 9, 2021 at which time action was deferred.

**M 544 21
Adopt
Proposed
Ordinance
CU 2269**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt the Proposed Ordinance entitled AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR TRACTOR TRAILER PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 2.17 ACRES, MORE OR LESS” (Conditional Use No. 2269) filed on behalf of Dennis Nelson, Jr.

DENIED

Motion Denied: 5 Nays.

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

Mr. Vincent stated that he would like for the Applicant to have at least four (4) months to relocate his tractor trailer business and that no action should be taken against the Applicant during that time period. There was no objection from the other Council members.

Introduction of Proposed Ordinance Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GENERAL RESIDENTIAL DISTRICT FOR A SIGN AND VEHICLE GRAPHICS BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.34 ACRES, MORE OR LESS” (Conditional Use No. 2317) filed on behalf of William E. Martin, II (Tax I.D. No. 334-6.00-340.00) (911 Address: 35583 Wolfe Neck Road, Rehoboth Beach).

M 545 21 Go Into Executive Session At 12:33 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess the Regular Session and go into Executive Session to discuss matters relating to pending/potential litigation, land acquisition, personnel and job applicants’ qualifications.

Motion Adopted: 5 Yeas.

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

Executive Session At 12:37 p.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to pending/potential litigation, land acquisition, personnel and job applicants’ qualifications. The Executive Session concluded at 1:30 p.m.

M 546 21 Reconvene Regular Session At 1:36 p.m., a Motion was made by Mr. Hudson, seconded by Mrs. Green, to come out of Executive Session and reconvene the Regular Session.

Motion Adopted: 4 Yeas, 1 Absent.

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

Retirement of County Clerk Mr. Lawson announced that Robin Griffith, Clerk of the Council, has announced her retirement effective the beginning of 2022. Mr. Lawson reported that Ms. Griffith is the longest serving Clerk of the Council since the Council was established in the early 1970’s.

Selection Process/ County Clerk Mr. Lawson commented on the selection process for the Clerk of the Council position and announced that a candidate has been recommended for Council’s consideration. It was noted that this position is appointed by the County Council. The candidate’s name is Tracy N. Torbert. Ms. Torbert currently serves as the Clerk for the City of Seaford.

M 547 21 Approve Appointment A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, that the Sussex County Council approves the appointment of Ms. Tracy N. Torbert for the position of Sussex County Clerk of the Council.

M 547 21
Approve
Appoint-
men
(continued)

Motion Adopted: 5 Yeas.
Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Rules

Mr. Moore read the rules of procedure for County Council zoning hearings.

Public
Hearing
CU 2274

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.918 ACRES, MORE OR LESS” (Conditional Use No. 2274) filed on behalf of R&J Farms Limited Partnership (Tax I.D. No. 232-9.00-5.01) (911 Address: 28274 East Trap Pond Road, Laurel).

The Planning and Zoning Commission held a Public Hearing on this application on November 18, 2021 at which time action was deferred. On December 9, 2021, the Commission recommended approval with conditions.

(See the minutes of the Planning and Zoning Commission dated November 18 and December 9, 2021.)

Jamie Whitehouse, Planning and Zoning Director, presented the application.

The Council found that Jed James, Applicant, stated that they are asking to have a repair shop in the existing building on the site and that the repair shop would be for their own vehicles and other vehicles and that most of the vehicles are large trucks (Class A).

There were no public comments.

The Public Hearing and public record were closed.

M 548 21
Adopt
Ordinance
No. 2821/
CU 2274

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to Adopt Ordinance No. 2821 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.918 ACRES, MORE OR LESS” (Conditional Use No. 2274) filed on behalf of R&J Farms Limited Partnership, with the following conditions:

- A. The use shall be limited to diesel repairs on trucks and farm equipment. There shall not be any retail sales occurring on the property.**
- B. One lighted sign shall be permitted. It shall not be larger than 32 square feet per side.**

**M 548 21
Adopt
Ordinance
No. 2821/
CU 2274
(continued)**

- C. Security lighting shall be shielded and downward screened so that it is directed away from neighboring properties and roadways.**
- D. Any dumpsters shall be screened from view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.**
- E. All repairs shall occur indoors within the existing building or in outdoor areas in locations shown on the approved Final Site Plan. No outside storage of parts or other materials associated with the use shall be permitted.**
- F. The hours of operation shall occur between 7:00 a.m. and 8:30 p.m., seven days per week.**
- G. No junked, unregistered or permanently inoperable vehicles, trucks or trailers shall be stored on the site.**
- H. There shall be no more than four trucks or trailers on the site at any time.**
- I. There shall not be any parking in the front yard setback.**
- J. The parking shall be shown on the Final Site Plan and clearly marked on the site itself. Trucks and farm equipment shall only be parked and worked on within these designated areas.**
- K. All oils and other fluids shall be properly stored indoors in appropriate containers. The Applicant shall also comply with all State and Federal requirements for the disposal of these fluids.**
- L. There shall be sanitary bathroom facilities installed for this use. The type and location of these facilities shall be shown on the Final Site Plan.**
- M. The site shall be subject to all DelDOT entrance and roadway requirements.**
- N. Any violation of these conditions may be grounds for termination of this Conditional Use.**
- O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
CU 2275**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR RETAIL SALES OF ANTIQUES AND COLLECTIBLES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 9.7 ACRES, MORE OR LESS” (Conditional Use No. 2275) filed on behalf of Christopher L. Hooper and Lisa A. Hooper (Tax I.D. No. 231-7.00-36.00) (911 Address: 16842 Seashore Highway, Georgetown).

The Planning and Zoning Commission held a Public Hearing on this application on November 18, 2021 at which time action was deferred. On

**Public
Hearing/
CU 2275
(continued)**

December 9, 2021, the Commission recommended approval with conditions.

The Council found that Christopher Hooper was present on behalf of his application. He stated that he wishes to open a business for the retail sales of antiques and collectibles; that he and his mother would operate the business; that the hours proposed are 9:00 a.m. to 5:00 p.m., Thursday through Sunday; that there is an existing structure on the property, a 60 foot by 100 foot pole barn; and that he does not have any opposition to the conditions recommended by the Planning and Zoning Commission.

There were no public comments.

The Public Hearing and public record were closed.

**M 549 21
Adopt
Ordinance
No. 2822/
CU 2275**

A Motion was made by Mrs. Green, seconded by Mr. Hudson, to Adopt Ordinance No. 2822 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR RETAIL SALES OF ANTIQUES AND COLLECTIBLES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 9.7 ACRES, MORE OR LESS” (Conditional Use No. 2275) filed on behalf of Christopher L. Hooper and Lisa A. Hooper, with the following conditions:

- A. The use shall be limited to the retail sales of antiques and collectibles.**
- B. All merchandise shall be stored indoors.**
- C. The required parking shall be depicted on the Final Site Plan and clearly marked on the site itself.**
- D. All outdoor lighting shall be screened and shielded so that it does not shine on neighboring properties or roadways.**
- E. One lighted sign shall be permitted. It shall not be any larger than 32-square feet on each side.**
- F. Any dumpsters shall be screened from view of neighboring properties and roadways.**
- G. The Applicant shall comply with any requirements of the Sussex Conservation District regarding stormwater management and drainage.**
- H. The Applicant shall comply with any DelDOT entrance or roadway improvement requirements.**
- I. The failure to comply with any of these conditions of approval may be grounds for termination of this Conditional Use.**
- J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
CU 2276**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A WATER WELL DRILLING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 1.04 ACRES, MORE OR LESS” (Conditional Use No. 2276) filed on behalf of Atlantic Well Drilling, Inc. (Tax I.D. No. 132-3.00-4.09) (911 Address: 10872 Concord Road, Seaford).

The Planning and Zoning Commission held a Public Hearing on this application on November 18, 2021 at which time action was deferred. On December 9, 2021, the Commission recommended approval with conditions.

(See the minutes of the Planning and Zoning Commission dated November 18 and December 9, 2021.)

Jamie Whitehouse, Planning and Zoning Director, presented the application.

The Council found that Douglas Hudson was present on behalf of the Application. Also present was Mike Kelly who operates the well drilling business. Mr. Hudson stated that the well drilling business is operated out of the pole building on the property; that they operate out of the office located in the building; that only office work takes place there and the well drilling is offsite; that supplies are delivered to the site; and that maintenance to vehicles takes place on the site. Mr. Kelly stated that he owns the property located behind this site and that his house is located on his property behind this site; that Mr. Hudson also operates his farming business on the site; that he and Mr. Hudson together own a total of 41 acres; that all business is located by phone or online; that the well drilling business is a small business with only two rigs; and that they have about eight employees.

(It was noted that the Applicant, Douglas Hudson, is not the same as Councilman Douglas Hudson.)

There were no public comments.

The Public Hearing and public record were closed.

**M 550 21
Adopt
Ordinance
No. 2823/
CU 2276**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to Adopt Ordinance No. 2823 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A WATER WELL DRILLING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 1.04 ACRES, MORE OR LESS” (Conditional Use No. 2276) filed on behalf of Atlantic Well Drilling, Inc., with the

**M 550 21
Adopt
Ordinance
No. 2823/
CU 2276
(continued)**

following conditions:

- A. The use shall be limited to a well drilling business. No retail sales shall occur from the site.**
- B. All equipment and vehicle maintenance shall occur inside of the approved buildings on the property.**
- C. The required parking shall be depicted on the Final Site Plan and clearly marked on the site itself.**
- D. All outdoor lighting associated with this use shall be screened and shielded so that it does not shine on neighboring properties or roadways.**
- E. One lighted sign shall be permitted. It shall not be any larger than 32-square feet on each side.**
- F. Any dumpsters shall be screened from view of neighboring properties and roadways.**
- G. The Applicant shall comply with any requirements of the Sussex Conservation District regarding stormwater management and drainage.**
- H. The Applicant shall comply with any DelDOT entrance or roadway improvement requirements.**
- I. The failure to comply with any of these conditions of approval may be grounds for termination of this Conditional Use.**
- J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
CZ 1941**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.95 ACRES, MORE OR LESS” (Change of Zone No. 1941) filed on behalf of Charletta Speaks-Floyd (Tax I.D. No. 234-32.00-60.00) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on November 18, 2021 at which time action was deferred. On December 9, 2021, the Commission recommended approval.

(See the minutes of the Planning and Zoning Commission dated November 18 and December 9, 2021.)

Jamie Whitehouse, Planning and Zoning Director, presented the application.

**Public
Hearing/
CZ 1941
(continued)**

The Council found that Charletta Speaks-Floyd was present on behalf of her application, stating that she is the owner of the property and the adjacent property; that she operates a child care center that she wishes to expand; and that the expansion would be on the adjacent site where she wants to construct another facility so that there will be more room for additional children.

There were no public comments.

The Public Hearing and public record were closed.

**M 551 21
Adopt
Ordinance
No. 2824/
CZ 1941**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Ordinance No. 2824 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.95 ACRES, MORE OR LESS" (Change of Zone No. 1941 filed on behalf of Charletta Speaks-Floyd.

Motion Adopted: 5 Yeas.

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

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

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 AND 532-19.00-1.00".

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on November 18, 2021 at which time action was deferred. On December 9, 2021, the Commission recommended adoption of the Ordinance.

(See the minutes of the Planning and Zoning Commission meetings dated November 18 and December 9, 2021.)

Jamie Whitehouse, Planning and Zoning Director, presented the Proposed Ordinance. He reported that, on May 7, 2021, the Planning and Zoning Department received a request on behalf of the property owners to consider a potential revision to the Future Land Use Map Element of the Comprehensive Plan, specifically in relation to Tax Parcel Nos. 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 AND 532-19.00-1.00. The parcels are located on the north and south side of Delmar Road, west of the municipality of Delmar. The request is to change the area designation of the five parcels from being in the Low Density Area and also the existing Development Area to the Developing Area. Upon receipt, the applications

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

were submitted to the State Planning Office where they went through the PLUS Review. Following the PLUS Review, the applications were then discussed further with the State Planning Office. A copy of the PLUS comments is included in Council's packet. Following discussions with the State Planning Office, it was agreed to bring them forward to public hearing before the Planning and Zoning Commission and the County Council.

Mr. David Edgell, Director of the Office of State Planning Coordination (OSPC), was in attendance and provided an overview of their process and procedures following the PLUS application and reasons why the OSPC objects to this application.

Mr. Edgell explained the process that is stipulated in Code that starts with a 45-day negotiation period, which was initiated after the PLUS Review and the Office mutually agreed with Sussex County's Planning Office and with the Cabinet Committee that the time would be extended so that Public Hearings could be held to gather public input and Council's feedback before moving to the next step. Mr. Edgell stated that if the Council is inclined to move this plan amendment forward towards adoption, the OSPC asks that the Council push the pause button so that it can be sent to the Cabinet Committee on State Planning issues, for the dispute resolution process.

Mr. Edgell stated that, in regard to this application, it was reviewed in June 2021 and objected to in the PLUS Letter. The OSPC met with the Cabinet Committee in September 2021 and briefed them on the issue and the reasons for the objection; at that meeting, the Cabinet Committee agreed to extend the period so the public hearings could be held. At that meeting, the Cabinet Committee voted unanimously to support the PLUS letter and the objections.

Mr. Edgell stated that it is about 899 acres that is a part of this application; three of the five largest parcels are in the Low Density category in the County's Plan. The proposal is to move it all into the Developing Area in the Comprehensive Plan and making that change has some potential consequences. The PLUS letter states that it really doesn't match what a Developing Area is set out to be in the Plan. The Developing Area allows a very broad range of potential zoning districts that could be requested of the County Council for development in that area, including high density residential, heavy commercial, and industrial. He noted that this application was presented to the OSPC without a lot of additional information, as a change that did not come from the County, it came from a land developer. He stated that this application, if approved, could create a major town west of Delmar, and the OSPC would like more conversation about that. He stated that there is a tremendous amount of development potential already out there, and this was not anticipated in the State Strategies. Additionally, this site is far enough away from any infrastructure or services that it does not have any favoring growth aspects

**Public
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(continued)**

that they use as part of their analysis; that is why it is a Level 4 Area in State Strategies. He stated that the OSPC encourages the Council to push the pause button and start talking about this in a larger context within the Sussex County Comprehensive Plan rather than change the map now. If Council agrees with pausing, the OSPC can work with Mr. Whitehouse and the Planning Office. If Council is inclined to proceed at this time, the matter can be brought to the Cabinet Committee and they can have more specific input regarding their agencies and their funding and services. In response to questions, Mr. Edgell stated that, if the Cabinet Committee does not agree with the application, the State is not obligated to provide any funding.

David Hutt, Attorney, was present representing Double H Properties II, LLC and Blackwater Showfield LLC, which were the Applicants who initiated this process which resulted in the Public Hearing on this date. Mr. Hutt stated that, in this case, the Applicant is the County; this is in accordance with State Code. The owners of these properties asked for this Future Land Use Map change and that caused the County to file an application making the County the Applicant for this Future Land Use Map Amendment. Mr. Hutt noted that also in attendance was Robert Horsey, Principal of the two LLCs and Ring Lardner, Professional Engineer with Davis, Bowen & Friedel. Mr. Hutt stated the Proposed Ordinance to amend the Future Land Use Map within the Comprehensive Land Use Plan for five parcels consisting of approximately 895 acres of land; the request from the property owners is that the land be designated as being in an Developing Area. Mr. Hutt discussed the history of the properties including the prior consideration by the County of four applications for these parcels of land absent one parcel (in 2006 and 2007). Those applications were Change of Zone Nos. 1595, 1596, and 1597, and Subdivision Application 2005-57; these projects were known as the Blackwater Creek Project, and, in January 2007, all of the Change of Zone applications were approved by Council and the Blackwater Creek Project received preliminary approval by the Planning and Zoning Commission. Mr. Hutt noted that in 2008, the real estate market became severely depressed and the project was not built. In the 2008 Comprehensive Plan, it showed this area to be within a Developing Area. So, from 2008 to when the Governor certified the new Plan, all of the subject properties (except for a portion of the far northeast property) were within the Developing Area on Sussex County's Future Land Use Map. Mr. Hutt noted changes to Chapter 4 of the Plan between the time when the Planning and Zoning Commission provided its recommended version and when Council ultimately issued its recommended version, which was sent to the OSPC in mid-summer 2018. In August 2018, there was a PLUS Review, and a PLUS review letter was issued. On the version of the Land Use Map recommended by Council, some parcels were within the existing Developing Area and the parcel in the southeast corner was no longer in a Developing Area. Comments were received from PLUS and there was no particular mention of this area of the County. Mr. Hutt stated that there is a difference in Council's recommended map version and the version that ultimately appeared in the version certified by the Governor, despite the

**Public
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(continued)**

fact that this was never discussed at all. Mr. Hutt further noted that all of the properties on the eastern side of Providence Church Road are in a Low Density Area and no longer in a Growth Area.

Mr. Hutt noted how ideal this location is for a place for people to live and be in close proximity to employment centers; it is close in proximity to the largest metropolitan area on the Peninsula (City of Salisbury), it is in close proximity to Millsboro, Seaford, and Delmar; this is the basis for this request. Mr. Hutt further noted that there is no land use application pending. If the Future Land Use Map Amendment were approved and applications filed, those applications would have to go through the PLUS Review. Mr. Hutt referenced that these areas are shown as being in a Level 4 Area and that part of this is objective; this is also largely a function of how the County has it designated on its Comprehensive Plan Future Land Use Map.

Mr. Hutt stated that with most applications, one of the number one topics is traffic and traffic improvements. DelDOT's comments with respect to this application are instructive; DelDOT stated that the Developer would be required to build all infrastructure in and around any development.

Mr. Hutt referenced categories within the Growth Areas in the Comprehensive Plan and how this Land Use Map Amendment/Proposal meets those requirements and all weigh into to this being in a Developing Area.

Robert Horsey commented on the 2008 Comprehensive Plan and stated that their purpose in asking for the Land Use Map change is to clean up and reinstate what was on that property in 2008, and somehow got missed in the process. Mr. Horsey noted that, for 16 years, the Town of Delmar has been fighting the sewer issue; the State has not helped solve that problem so that the Town can grow. He stated that the western side of the County needs some growth areas; that the City of Salisbury is a large employer; that the Land Use Maps do not show the western side of the County's ties with Maryland (and the commercial area of Salisbury); that the definition of a growth area is where people want to live; and this area is an area where people can live near where they work; and that he will work with Tidewater/Artesian on how they plan to serve the area with sewer and water.

Mr. Hutt asked that the Council adopt the recommendation of the Planning and Zoning Commission to approve the Proposed Ordinance, which will begin the negotiation process with the OSPC and the Cabinet Committee.

In response to questions, Mr. Edgell strongly urged the Council not to adopt the Proposed Ordinance prior to going to the Cabinet Committee. Public comments were heard.

There were no public comments in support of the Proposed Ordinance.

**Public Hearing/
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(continued)**

Keith Steck, Vice President of the Delaware Coalition for Open Government, stated that there was no public notice; that there was no signage on the subject properties and no letters to the landowners regarding the proposed land use map change; and that if there had been, the public would have known about it and possibly more people would be in attendance. He stated that if something affects the Comprehensive Plan and the Land Use Maps, properties should be posted, and that the process should be changed to require this. Mr. Steck stated that this is the continuation of a process that seems to be slowly dismantling the Comprehensive Plan. Mr. Steck noted some confusion with the maps' preserved areas and he questioned how an area can be designated for preservation and also for development. Mr. Steck further noted that if the County proceeds with the adoption of the Proposed Ordinance, the State will not provide funding for infrastructure.

There were no additional public comments.

The Public Hearing was closed.

The public record was left open.

**M 552 21
Defer
Action on
Proposed Ordinance/
Land Use Map
Amendment
(Delmar Area)**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to defer action on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 532-12.00-1.00, 532-12.00-27.00, 532-18.00-42.00, 532-18.00-44.00 AND 532-19.00-1.00".

Motion Adopted: 5 Yeas.

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

Mr. Moore stated that he would like for discussions to take place with Vince Robertson, Assistant County Attorney, about how to proceed. He noted that this would need to be discussed in public session. It was decided to place the matter on the January 4, 2022 Council agenda to obtain additional information and guidance from Mr. Robertson.

**Public Hearing/
Proposed Ordinance/
Land Use Map
Amendment**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-23.00-2.02 (PORTION OF), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, AND 235-23.00-2.01".

The Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on November 18, 2021 at which time action was deferred. On December 9, 2021, the Commission recommended adoption of the Ordinance.

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(Route 1)**

(See the minutes of the Planning and Zoning Commission meetings dated November 18 and December 9, 2021.)

Jamie Whitehouse, Planning and Zoning Director, presented the Proposed Ordinance.

He reported that, on February 5, 2021, the Planning and Zoning Department received a request on behalf of the property owner to consider a potential revision to the Future Land Use Map Element of the Comprehensive Plan, specifically in relation to Tax Parcel Nos. 235-23.00-2.02 (portion of), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, and 235-23.00-2.01. The total area of the parcels is approximately 247 acres. The parcels are located on the northeast side of SR-1 (Route 1), east of the intersection of SR-1 and Cave Neck Road. Upon receipt, the application was submitted to the Office of State Planning Coordination where it went through the PLUS Review. Following the PLUS Review, the application was then discussed further with the OSPC. A copy of the PLUS comments is included in Council's packet. Following discussions with the State Planning Office, it was agreed to bring them forward to public hearing before the Planning and Zoning Commission and the County Council.

Mr. Whitehouse reported that 128 comments have been received pertaining to this ordinance; 48 of them appear to be in support and 79 are in opposition.

Mr. Moore noted that some of the comments made by Mr. David Edgell, Director of the Office of State Planning Coordination, during the previous public hearing have been made a part of this public hearing, per Mr. Edgell's request. (Mr. David Edgell, Director of the Office of State Planning Coordination, was in attendance and provided an overview of their process and procedures following the PLUS application and reasons why the Office objects to this application. Mr. Edgell explained the process that is stipulated in the Code that starts with a 45-day negotiation period, which was initiated after the PLUS Review and the Office mutually agreed with Sussex County's Planning Office and with the Cabinet Committee that the time would be extended so that Public Hearings could be held to gather public input and Council's feedback before moving to the next step. Mr. Edgell stated that if the Council is inclined to move this plan amendment forward towards adoption, the OSPC ask that the Council push the pause button so that it can be sent to the Cabinet Committee on State Planning, and for the dispute resolution process.)

Mr. Edgell stated that this amendment involves a group of parcels that have had quite a history in Sussex County and the PLUS process and he noted four different applications that have been seen throughout the years (2008-2018, including a shopping mall, shopping centers, and various residential subdivisions). He stated that this particular plan amendment was reviewed in June 2021 and objected to in the PLUS Letter. The OSPC met with the Cabinet Committee in September 2021 and briefed them on the issue and

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(Route 1)
(continued)**

the reasons for the objection; at that meeting, the Cabinet Committee agreed to extend the period so the public hearings could be held.

Mr. Edgell that the front area is approximately 274 acres along Route One, which is Low Density in the Comprehensive Plan and in an Investment Level 4 in State Strategies. The proposal is to move it to a Coastal Area designation in the Comprehensive Plan, a growth area designation which would allow a number of uses and would allow considerable additional density over what is allowed in a Low Density designation in the Plan, and that this caused some concern. The proposal could result in quite a large development at that location.

Mr. Edgell stated that State Strategies takes into account public sewer and public water and that they were not able to obtain private sewer information from Tidewater or Artesian during their 2019 data gathering phase and that he understands from the presentation given to the Planning and Zoning Commission, that there is a private sewer nearby and that they say they have access to. He noted that this information was not made available to the OSPC previously.

Mr. Edgell stated that other factors that go into State Strategies is environmental factors and he noted that when they processed the application, the 274 acres along the front is what was received and when the OSPC reviewed it, they actually looked at the parcels and the parcels go far back towards the marsh area, so some of the comments in the PLUS letter are related to the natural resources that are near this site; but they do recognize that the frontage along the road is what is the subject of the 274 acre application. He stated that, nevertheless, these parcels are adjacent to an Agricultural Preservation District and the eastern part of the parcel are full of ecological resources with wetlands, flooding and sea level rise concerns; it is a sensitive environmental area.

Mr. Edgell stated that part of their objection is the location in Level 4, its in an area where they did not anticipate any growth or development, and they want to keep with the Plan that is in place that was certified. Another concern they have is the proposed SR-1/Cave Neck Road grade separated intersection and that the design of this project is based on the current Comprehensive Plan, the current land use and the current zoning of AR-1, Low Density, on the eastern side of Route 1. Mr. Edgell emphasized that grade separated intersections are in no way intended to signal that this is a place for larger scale development. Mr. Edgell stated that his concern is that should the Council choose to move forward and change this land designation to the Coastal Area, the Council would then be faced with land use applications and zoning applications to increase density and allow additional uses and intensity on this site, which could jeopardize the success of the road improvement project.

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Proposed
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(Route 1)
(continued)**

David Hutt, Attorney, was present on behalf of the Robinson family. Mr. Hutt stated that Joe Reed, Principal of the Seaside of Lewes, LLC, was available and listening in by phone; Seaside of Lewes, LLC has an interest in these parcels (Seaside of Lewes, LLC purchased the Chappell piece). Mr. Hutt stated that the Proposed Ordinance is to amend the Future Land Use Map for five (5) parcels (4 parcels and a portion of a 5th parcel) consisting of 247 acres of land.

Mr. Hutt commented on the process and he noted that this land has been in the Growth Area since 2008 and that now this area is no longer in the Growth Area. Mr. Hutt spoke on “how we got here”. He stated that Mr. Chappell was considering the sale of his property and the potential buyer found that no portion of the property was within a Growth Area and that was a surprise to Mr. Chappell because, since 2008, the frontage of his property has been in a Growth Area on the County’s Future Land Use Plan. The Environmentally Sensitive Development District Overlay Zone was one of the County’s Growth Areas and these lands were in that Area from 2008 through the adoption and certification of the 2018 Comprehensive Plan that was certified in 2019.

Mr. Hutt asked that Council consider his comments that apply generally to the process from the last public hearing to also apply to this public hearing. He stated that during the workshop process, what resulted was the Planning and Zoning Commission issued its recommended version of the Future Land Use Plan to the Council, the Commission carried forward what existed in 2008 on its Future Land Use Plan (the County called it the 2045 Future Land Use Map). The Commission carried forward with this area being in the Growth Area, a Growth Area that recognizes that this is near an environmentally sensitive area. As the Comprehensive Plan was being developed, the property owners of these five parcels followed the process and they were content with the Plan which carried forward what historically was the designation of these properties since 2008. Council made changes to Chapter 4 of the Plan and the Future Land Use Map when it produced its recommended version. The recommended map was submitted to the OSPC and the property owners had no objection to this version of the Future Land Use Map. The surprise to the property owners in this case arises after the letter of response to the County from the OSPC. On October 23, 2018, the County Council held a public hearing for the final version of the Comprehensive Plan; the final draft was presented. At that public hearing, thirteen (13) people spoke. These subject properties were not discussed during the public hearing nor were they discussed in the PLUS response – there is no comment nor recommendation nor requirement from the OSPC that this map be adjusted; and that there was no comment from the public. At the conclusion of the Public Hearing on October 23rd, the Council did not vote on the various applications; the Council deferred action for one week. On October 30th, the Council resumed its discussions on the various applications to modify the Future Land Use Map by various property owners and the Council discussed modifying the Future Land Use Map on the eastern side of Route One for a

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(continued)**

number of properties. At that meeting and successive meetings, Council began to redraw that and, ultimately, the Comprehensive Plan, including the map, was approved on December 4, 2018 to be sent to the Governor for his certification. Through that process, the Plan was modified and there was significantly less Coastal Area including the entirety of the five parcels which are the subject of this Proposed Ordinance. Mr. Hutt noted that this happened after all of the public comment and all discussion was closed, and after two years of discussion about these properties where they had been shown consistently within a Growth Area. Thereafter, in December 2020, the property owners of these properties sent a letter objecting to the change that had occurred on Future Land Use Map designations. Mr. Hutt noted that the amendment of the Future Land Use Map is a new process in the County and those were considered in June 2021 by the OSPC and in that process, the property was misidentified. When the property owners asked to speak at the PLUS Review for this matter, they were told no because the County was the Applicant in this matter. Mr. Hutt stated that, in the letter from PLUS, one of the concerns is that no reason is given for the proposed amendment to the Future Land Use Map, because the County is the actual Applicant, and that is because the property owners could not speak to that. Mr. Hutt noted that in the July 22, 2021 letter from the OSPC, there are a number of errors and he stated that he does not believe the OSPC had the full picture of the properties when they issued their letter. Mr. Hutt commented on those errors.

Mr. Hutt stated that the properties were removed from the Growth Area and put in a Low Density Area and were not removed in a logical and orderly process, and were removed in an arbitrary manner.

Thomas Robinson, Jr., one of the family members that owns the parcels, stated that he has lived on the farm on Coastal Highway since 1988. He reported on the history of the farm and commented on the growth in the area and on land rights. He stated that they are asking for the property to be reinstated into the Growth Area, like many of the neighboring properties around them; that this would allow the highway portion of their farm to maintain some of the value that is soon to be lost with DelDOT's planned interchange. That in 2018, their farms and their neighbor's farms were removed from the Growth Area and the properties had been in the Growth Area for more than a decade, and without notice and after public notice was closed, the land was taken out. Mr. Robinson commented on the grade separated interchange and the impact the project will have on the land forever.

Public comments were heard.

Four people spoke in regards to the Proposed Ordinance.

Jeff Stone was in attendance and spoke on behalf of Sussex Alliance for Responsible Growth (SARG). He stated that SARG joins with the Office of State Planning Coordination and DNREC to oppose this proposed change

**Public
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(Route 1)
(continued)**

in land use designation and to support maintaining the Low Density designation. He stated that this proposed change will have profound ramifications for Sussex County far beyond the parcels involved. It raises the fundamental question: is the recently adopted Comprehensive Plan a true guide for the long range development of the County, to be honored and followed, or is it merely symbolic, to be ignored until it is convenient to reference it. Mr. Stone presented into the record a written statement of SARG's position on this matter.

John Bucchioni, a resident of Paynters Mill, was in attendance and spoke in opposition to the Proposed Ordinance. He stated that he is the single closest property owner to the subject properties and that he has a lot of concerns; that he does not know what the proposal is; that the Council needs to obtain a more specific plan; that crashes have increased in the area; that he questions if a sound barrier will be installed (at the round-about); that flooding is a concern; and that the Council needs to stick to the Comprehensive Plan.

Jill Compello spoke via teleconference and spoke in support of Council reinstating the properties to the Coastal Area. She referenced the fact that the property owners were never notified nor given the opportunity to comment on the last-minute modification; that she believes some of the communications about this application are confusing and may have generated mis-information that is being repeated in many of the letters of opposition; and that this is a proposed Comprehensive Plan amendment and not a land use application for these properties. Ms. Compello also commented on the design traffic numbers, which can be verified by DelDOT, for the planned interchange which are based on some anticipated commercial uses and not just 2 units per acre as stated incorrectly in the OSPC letter.

Erik Hein spoke via teleconference stated that this proposal is literally in his front yard and that he asks the Council to not act on the Proposed Ordinance at this time. He stated that he is very concerned about the proposed overpass; that changing the Comprehensive Plan is unnecessary; that the Comprehensive Plan can be revised after the overpass is built; and that not enough information has been made available to warrant the change that could forever alter the landscape of this area.

The Public Hearing was closed.

**M 553 21
Defer
Action on
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ment (RT. 1)**

The public record was left open.

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to defer action on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-23.00-2.02 (PORTION OF), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, AND 235-23.00-2.01".

**M 553 21
(continued)**

Motion Adopted: 5 Yeas.

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

It was decided to place the matter on the January 4, 2022 Council agenda to obtain additional information and guidance from Vince Robertson, Assistant County Attorney.

**M 554 21
Adjourn**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to adjourn at 6:09 p.m.

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

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

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

GINA A. JENNINGS, MBA, MPA
FINANCE DIRECTOR

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Sussex County

DELAWARE
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Memorandum

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

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

DATE: December 29, 2021

RE: **Bank Resolution**

Every year there is a chance that there will be a change in County Council leadership. If there are changes, the signers on the County's financial institutional and investment accounts will need to change. The signers are the President and Vice President of County Council and the Finance Director. To have the signers changed, a formal authorization is needed by County Council. The authorization is done through a resolution. The resolution's short title, which will be read into the record with the appropriate names, is as follows:

BE IT RESOLVED THAT THE SUSSEX COUNTY COUNCIL IS AUTHORIZING THE SIGNATURES ON THE ACCOUNTS OF THE SUSSEX COUNTY COUNCIL WITH VARIOUS FINANCIAL INSTITUTIONS AND INVESTMENT FIRMS TO BE XXXXXXXXX, PRESIDENT; XXXXXXXXXXXX, VICE PRESIDENT; AND GINA A. JENNINGS, FINANCE DIRECTOR/CHIEF OPERATING OFFICER

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

Attachment

pc: Mr. Todd F. Lawson



RESOLUTION NO. R --- 22

AUTHORIZING THE SIGNATURES ON THE ACCOUNTS OF THE SUSSEX COUNTY COUNCIL WITH VARIOUS FINANCIAL INSTITUTIONS AND INVESTMENT FIRMS TO BE XXXXXXXX, PRESIDENT; XXXXXXXX, VICE PRESIDENT; AND GINA A. JENNNINGS, FINANCE DIRECTOR/CHIEF OPERATING OFFICER

BE IT RESOLVED by the Sussex County Council that the accounts of the Sussex County Council be open or kept with financial institutions and investment firms for deposit to the credit of Sussex County Council from time to time of any and all moneys, checks, drafts, notes, acceptances, or other evidences of indebtedness, whether belonging to the Sussex County Council or otherwise, which may or hereafter come into its possession; and

BE IT FUTHER RESOLVED by Sussex County Council that all accounts opened at the financial institutions and investment firms are administered using the investment policies adopted by County Council; and

BE IT FURTHER RESOLVED by the Sussex County Council that the financial institutions and investment firms be and is hereby authorized to make payment from the funds on deposit with it and according to the checks, drafts, notes or acceptances of the Sussex County Council signed by any two of the following individuals:

XXXXXXXXXX – President

XXXXXXXXXX – Vice President

Gina A. Jennings – Finance Director/Chief Operating Officer

and a signature may be a facsimile, resembling the facsimile specimens filed with the financial institution and investment firms by the Clerk of the Sussex County Council.

BE IT FURTHER RESOLVED that the effective date of this Resolution shall be January 4, 2022.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF RESOLUTION NO. R ---22 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 4th DAY OF JANUARY 2022.

ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

JAMIE WHITEHOUSE, AICP
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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 30, 2021

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

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

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

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

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

The County Council held a Public Hearing at its meeting on December 14, 2021. At the conclusion of the meeting, Council left the record open to receive additional comments.



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

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

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

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

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

The Commission found that Mr. David Edgell spoke in opposition of the proposed Ordinance; that he is the Director of the Office of State Planning Coordination; that he is opposing the plan amendment and the change to the Future Land Use Map on behalf of State agencies; that the Sussex County Comprehensive Plan was certified in 2019; that the plan was prepared by Sussex County through an inclusive process that involved an extensive public outreach effort; that the plan was thoroughly reviewed by State agencies and the Cabinet Committee of State Planning Issues before being certified by the Governor; that certification of the plan indicates the plan is consistent with the Strategies for State Policies and Spending; that it also indicates the State agencies will work

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

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

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

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

The Commission found that Mr. Robert Horsey spoke on behalf of his Application; that he is part owner of the property, along with his brother; that he feels Mr. Edgell portrayed the request to be an

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. This area of Sussex County at the intersection of Delmar Road and Providence Church Road currently has two Area designations according to the Future Land Use Map in the Sussex County Comprehensive Plan: the Existing Development Area and the Low-Density Area. This Ordinance seeks to convert the subject properties in this location from the Low Density Area designation to the Developing Area.
2. The subject properties were previously identified as being within the Developing Area according to the Future Land Use Map found in the 2008 Sussex County Comprehensive Plan. Returning these properties to the Developing Area is consistent with that prior Plan and Map.
3. The subject properties are currently zoned GR, AR-1 and B-1. The combination of these zoning classifications and the facts that (a) the properties are adjacent to the Map's "Existing

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

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

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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 30, 2021

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

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

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

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

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



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

The County Council held a public hearing at its meeting of December 14, 2021. At the conclusion of the meeting, County Council left the record open until its meeting of January 4, 2022 for the submission of additional comments.

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

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

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

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

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

Mr. Thompson recused himself and left the dais.

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

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

The Commission found Mr. David Hutt, Esq. spoke on behalf of the Ordinance; that also present were Ms. Alice Robinson, along with her two children, Thomas and Mary Beth; that Mr. Joe Reed and his son Mr. Brent Reed were present; that they are the principals of the ownership groups for the properties; that proposed is an Ordinance to amend the Future Land Use Map designation for five parcels consisting of approximately 247 acres; that the Mr. Chapel, who was a previous owner of one of the parcels, considered selling the property; that he learned his property was not located within

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

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

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

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

Mr. Hopkins questioned if the site was located in the growth area, prior to the Planning Commission reviewing as part of the Comprehensive Plan update; that he stated the site was located within the

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

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

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

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

Montgomery County Maryland, or southeastern Pennsylvania, but not in Sussex County; that the improvements now being performed along Rt. 1, under the Corridor Capacity program are a response to safety, congestion and accident concerns which were caused by inadequate infrastructure that cannot safely handle the volumes of traffic already flowing as well as the anticipated traffic in the future; that the improvements are not for the purpose of new high density development; that DelDOT's plans are based on the Comprehensive Plan; that the Comprehensive Plan designates the east side of Rt. 1 as low density; that there currently is serious capacity and safety issues west of Rt. 1, along Rt 16 and Cave Neck Rd.; that there is no capacity issue east of Rt. 1 currently; that if a low density designation is maintained there will not be; that allowing heavy commercial and high-density housing on the east side will create new and significant capacity issues on both sides; that the traffic generated will overwhelm the millions of dollars the State is investing in improvements; that this will put residents and visitors back into traffic hell; that he questions if it makes sense to create more traffic, before the improvements are even underway; that we do not know if the improvements will relieve any of the current problems; that the public has been disappointed before; that the proposal also stated it will lead to the creation of jobs; that the pandemic caused profound and fundamental change to the nation's economy; that 4,000,000 people quit their jobs nationwide last August; that unemployment in Sussex County is just above 4%; that this is slightly above historic norms; the newspapers Help Wanted sections are overflowing with advertisements; that Sussex County employers are having difficulty recruiting employees; that according to a report from Stateline, which is an initiative of The Pew Charitable Trusts, dated November 12, 2021, stated a record number of job openings and fewer workers to fill the openings, have left 42 states with more available jobs than people looking for work; that Delaware is listed as one of the 42 mentioned states with 1.3 jobs available for every job seeker; the development projects do not create jobs; that the economy and employers create jobs; that the same jobs will be created if the project were located in a more appropriate area of the County; that it is a specious argument which will sacrifice a finite resource to gain jobs; that smart planning allows places to have both; that if the proposal is approved the Commission might as well include all properties on the eastside of Rt. 1, from Willow Creek to Milford; that once one of the properties changes, especially a property as ecologically critical as the subject property, all of the dominos must fall; that he has heard the justification time and time again; that if you give it to him, you must give it to me; that this does not seem apparent in Sussex County, developers have no right to develop anything more than the land use designation and zoning allow; that there is no right to change a land use designation because it does not fit a business model; there is no right to rezoning because the yield of the current zoning does not have enough return; that Sussex County has the sole authority to determine what land use best serves the community at large; that in this case, the decision by County Council responding to the clear desire of the citizens was that the most appropriate use of lands east of Rt. 1 is low density residential and open space; that there is no evidence showing that the decision by County Council to designate the land low density was incorrect, except for the fact it does not provide a developer with a high enough margin; that the developers knew what they were getting when they bought the land; that the developers are depending on the Sussex County government to bail them out; that within the Application documents they admit they dropped the ball, now requesting the County to fix it; that there are already approved subdivisions on the properties; that the fact is they can build hundreds of homes on the property in question without changing the land use designation or rezoning while still making a profit; that the Comprehensive Plan also permits, in addition to AR-1, business community, marine district and

institutional district; that there is no need to change the land use designation to provide for commercial units to serve the residential developments there; that the County recently approved commercial development west of Rt. 1 which would easily serve the areas communities; that to his knowledge the house development has already been approved and met no opposition; that while these options may not generate as much profit as developers would like it is not the County's responsibility to maximize the developers return; that he requests the Commission not repeat the mistakes of the past, creating another Five Points, or duplicate the situation along Rt. 1 near the outlets south of Five Points; that he requested the Commission protect the Great Marsh and the rural character of Sussex County; that one positive which could result from the proposal is to strongly encourage the County, specifically the Planning & Zoning Commission, to engage in a long range quarter planning effort to better determine how to achieve the Comprehensive Plan vision by specifying the specific types of development the County should encourage and where it should be located; that if this is done in cooperation with DelDOT, it would be game changing; that the new Comprehensive Plan gives the County the opportunity to change course from haphazard overdevelopment patterns over the last 10 years to a balance between rational growth which would serve the community and the preservation of the quality of life, history and environment of Sussex County; that we need to take advantage of the opportunity and not cut it off before it begins; that the Commission should give the Comprehensive Plan a chance to be implemented; that the Commission may like the results; that if the Commission begins making changes now, we will never know what is missed; that he states it is a simple choice; that the Commission can take the old road and continue to lose the things that make Sussex County, Sussex County; that the Commission can choose a new path which would enhance the things that make Sussex County special; that he states the decision is in the Planning & Zoning Commission's hands; that Sussex Alliance for Responsible Growth request the Commission choose to preserve the rural character of the county by recommending denial of the Application and he requests the Commission keep the record open for a reasonable time; that there were a lot of people who were surprised by the Ordinance request; that they were notified of the request late last week; that members of the public wanted to have the opportunity to speak and comment but did not have the information available and due to this they request for a reasonable amount of time be set for the record to remain open.

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

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

Mr. Whitehouse stated a notices were published, in advance, in two newspapers within general circulation within the County; that notice was published on the Sussex County website when the Ordinance was introduced in October, and on the County's noticeboard; that this request, prior to being introduced as an Ordinance, went through the PLUS process, which is required to be noticed on the State of Delaware's website; that the only difference being an Ordinance to amend the Comprehensive Plan is not considered in the same way as a development application; that postcard notifications are not sent out and a site notice not displayed.

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

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

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

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

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

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

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

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

Chairman Wheatley states the public hearing is part of a process; that the process was placed for a reason; that the reason being the Commission may not get the maps correct every time; that is why the process exists to be able to go back to look at things; that it is important to remember the State is not their enemy in the process; that he has been doing the job for 25 years; that they are currently enjoying the best relationship with the State the County has ever had; that it has been a good thing; that there are nine Comprehensive Plan amendment requests in front of the State currently; that the

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

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

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

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

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

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

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

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

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

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

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Sussex County

DELAWARE
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Memorandum

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

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

CC: Everett Moore, County Attorney

Date: January 7, 2022

RE: County Council Report for Ordinance Relating to Drainage Features, Wetlands, Water Resources and the Buffers Thereto.

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

The Planning and Zoning Commission held a public hearing on November 4, 2021. At the meeting of December 16, 2021, the Commission recommended adoption of the Ordinance subject to recommended revisions as outlined within the motion (included below).

Below are the approved minutes from the Planning & Zoning Commission meeting of November 4, 2021 and the draft minutes of the Planning & Zoning Commission meeting of December 16, 2021.

Minutes of the November 4, 2021 Planning & Zoning Commission Meeting

AN ORDINANCE TO AMEND CHAPTER 99, SECTIONS 99-5, 99-6, 99-7, 99-23, 99-24, 99-26, AND 99-30, AND CHAPTER 115 SECTIONS 115-4, 115-25, 115-193, 115-220 AND 115-221 REGARDING CERTAIN DRAINAGE FEATURES, WETLANDS AND WATER RESOURCES AND THE BUFFERS THERETO.

Mr. Whitehouse advised the Commission that since the notice of the Ordinance, the Planning & Zoning Department has received a total of five written responses; that these responses were received after the circulation of the paperless packet and the responses have been printed and circulated to the Commission; that of those five responses, none are in opposition to the Ordinance; that all of the



responses offer constructive comments on the content to the Ordinance and there is an additional public hearing scheduled before the Sussex County Council for December 7, 2021, at 1:30 pm.

The Commission found present were Mr. Vincent Robertson, Assistant County Attorney, to speak on behalf of the Ordinance to amend chapters of the Sussex County Code regarding drainage features, wetlands, water resources and buffers; that also present were Mr. Jamie Whitehouse, Sussex County Director of Planning Zoning, Mr. Todd Lawson, Sussex County Administrator, and Mr. Hans Medlarz, Sussex County Director of Engineering; that this started during 2018 Comprehensive Land Use Plan; that there are references all throughout the plan; that the reference make their way into the Ordinance, as a lot of the whereas clauses that are in the Ordinance; that there is a basis for that; that there was recognition of which the Sussex County Code needed updating; that there are undefined terms and some ambiguities which led to enforcement issues; that there are problems in that it places potential buffer requirements on properties that are currently used for agricultural purposes; that this was something that has never been enforced but has been stated in Sussex County Code; that what was in the Sussex County Code did not do anything to deal with the resources themselves, such as the rivers, streams and tidal bodies of water; that they chose that to be a goal moving forward; that the General Assembly as adopted Senate joint resolution 2; that this directs the Delaware Department of Natural Resources and Environmental Control to begin coordinating with federal agencies to carry out permitting authority for certain State non-tidal wetlands or create a statement on the non-tidal wetlands program; that this would be for the purpose of shifting permitting authority from the Federal level to the State; that the desire is to keep that control within Sussex County; that the new present Ordinance is 34 pages which amend parts of Chapter 99 and Chapter 115; that presented are two pages of whereas clauses, five pages of definitions which were required to be repeated for Chapter 99 and Chapter 115 and four pages of verbiage from the old Code which was deleted; that this Ordinance will not apply to undeveloped land; that this Ordinance is only triggered for residential land use permits; that this Ordinance will not apply to land that does not have a resource upon it; that there have been a lot of sensitive discussions to avoid the Ordinance becoming a back door to address density; that density should be addressed head on or not; that he requested to make it clear that to the fullest extent possible the Ordinance should be neutral in regards to density on a property as one goes to seek development on it; that it is not to say there may not be a swing of a lot or two, based on geometry and things of that nature; that there were multiple discussions within the working group to make sure everyone was comfortable with that; that they tried to avoid arbitrary lines drawn on a piece of paper; that to accomplish this there are methods of averaging the buffers; that the line will be drawn where it makes sense; that there are also incentives in the Ordinance; that this is an incentive to protect things that are worthwhile rather than another arbitrary line on a piece of paper; that for example, if there is a forest which could be preserved versus an open area of land that has no environmental significance, the desire is for the forest to be preserved; that this is an opportunity, through the Ordinance, to provide a mechanism to maintain the resource; that there are a few ways to do this; that one way is to require easements to get to the resource; that there were several people within the working group pointed out from their own personal experience; that if you have an issue and some kind of resource, you know it requires action to be fixed, but often takes a lot of hassle to get to the resource, that one of things the Ordinance will provide is easements to provide access to the resources; that if there is a problem which is causing issues upstream, one will now be able to have access to the resource to address any issues; that currently when land use Applications are presented, buffers are addressed but often times not the resource itself; that the Ordinance frontloads the look at the

resource; that this will allow reaction to anything that needs to be addressed; that this will allow these issues to be addressed at the time the land use Application comes through and during the time site work will be occurring; that it is a lot easier to fix an issue during these times than post development; that he presented the goals, objectives and strategies from the 2018 Comprehensive Land Use Plan that deal with or support the initiative of the current Ordinance; that this also gives rise to the whereas clauses within the Ordinance; that this was not something that was drummed up by staff; that this was derived directly from the 2018 Comprehensive Plan; that a working group was created approximately a year and a half ago; that he presented the names of the people within the working group; that the working group consisted of 13 members; that it is a wide range of people; that the working group contained people from Sussex Conservation District, The University of Delaware; Sussex County Engineering Department, as well as public representatives, environmental scientist, the Delaware Center for Inland Bays, land owners, farmers and Planning & Zoning staff; that there was a consultant, that acted as a facilitator, who also had an environmental background; that this helped everyone speak the right language and focus on what was relevant; that it was a very good working group; that there were a lot of different viewpoints; that there were a lot of conversations that occurred; that the working group participated in nine, three hour meetings; that these meetings took place between February 2019 to August 2019; that this was aside from subject matter presentations that were provided from members who were experts in the field; that the working group members did have homework assignments; that a lot of time and energy was spent constructing a draft Ordinance, which led to what was introduced; that the goal of the Ordinance was to provide recommendation to Sussex County Council for updating the buffer Ordinance as it applies to development projects; that this is what led to the origins of the working group based upon the Comprehensive Plan; that he presented the initiative details; that these are the goals, established by the working group, from the beginning; that General, Water Quality, Habitat and Flood Mitigation and Drainage initiatives were presented; that these four items make it into the definition of the buffer within the Ordinance; that these are the guiding principles; that there was a lot of conversation to construct the initiatives; that there are 13 sections of the Ordinance; that there is some repetition within the 13 sections, as things must be restated between Section 99 to 115; that the first section is the definitions; that the definitions currently within the Sussex Code were not all that great; that there were some terms that were not defined at all; that it took the group three to four meetings to come up with the definitions; that defined are femoral streams, intermittent streams, non-tidal wetlands, the ordinary high watermark delineation, perineal non-tidal rivers and streams, resource buffer, major subdivision and minor subdivision and tax ditches; that the group did not create a buffer from the tax ditch, but were required to define a tax ditch to better explain how buffers do not necessarily apply to tax ditches; that these definitions are spelled out very clearly in terms that can be uniformly applied; that the second section is the general requirements and restrictions; that this section requires resources and resource buffers to be depicted on the preliminary and final plot plans for each major subdivision of land; that the third section is a technical one; that there currently is a preliminary conference requirement for all subdivisions; that it took out a reference to major and minor subdivisions; that this is now addressed in the definition of the terms of Section 99-4; that the fourth section deals with information to be shown; that currently Section 99-23 has a checklist of items that need to be shown on a preliminary site plan; that it does add the additional items that need to be added to the preliminary site plan regarding the resources and the resource buffers; that the Applicant will have to show the resources and the resource's buffers; that the boundary and type of any tidal and non-tidal wetlands must be shown; that all existing native

forest and non-forest meadows must be shown with the future resource buffer; that this Ordinance seeks to maintain existing forests and meadows within the buffer area; that the desire is to avoid clear cutting of trees and meadows and then going back and planting things; that they desire to keep them in their natural state; that to use the calculations for buffer averaging or incentives a proposed access easement must be shown and a reference to the drainage assessment report; that the fifth section requires a resource and resource buffer management plan to be recorded as part of the subdivision; that this is currently a requirement; that the buffer management plan must be within the restrictive covenants as a method for providing for the perpetual maintenance of streets, roads, drainage, stormwater management facilities, open spaces and common areas; that the group is only adding to that requirement the maintenance and management of the buffers and the resources; that the sixth section is the same as section four; that this section recalls the checklist items for Preliminary Site Plans; that the sixth section stated the same checklist of items is required to be shown on the Final Site Plan; that the seventh section deals with construction plans which is currently within the Sussex County Code; that it states the public access easement needs to be shown on the construction plans; that the eighth section which is restatement of the same definitions stated in Chapter 99; that the group chose to put them in both places to stay consistent and avoid having to flip back and forth; that the ninth section is one the group picked up; that the Applicant would now have to comply with the buffer requirements which apply for all subdivisions; that this was to avoid any inconsistencies between the two places; that the tenth section establishes the heart of the Ordinance; that the group deleted what was currently within the Ordinance; that it was up to four pages of verbiage deleted; that it now jumps right into the requirements; that subsection A of the requirements addresses the resource buffer width, that the width must be established in accordance with Table I; that Zone A being the closest to the resource; that there was discussions among the working group about that the numbers should be; that as a result of the conversations, the group came up with tidal waters having a full buffer width of 100-ft. in Zone A; that there are two buffer zones – Zone A and Zone B; that Zone A is the area located the closest to the resource and beyond that is Zone B; that there are different things you can do within Zone B which is not permitted in Zone A in some situations; that for tidal waters it is a 100-ft. of total buffer width; that this is comprised of 50-ft. in both Zone A and Zone B; that tidal wetlands is also a 100-ft. of total buffer width, which is made up of 50-ft. in Zone A and 50-ft. in Zone B; that perennial non-tidal rivers and streams the total buffer width is 50-ft.; that this is broken down of 25-ft. in Zone A and 25-ft. in Zone B; that non-tidal wetlands and intermittent streams both have a total buffer width of 30-ft.; that this is broken down with 15-ft. in Zone A and 15-ft. in Zone B; that ephemeral streams are streams that do not exist very often but sometimes show up after a rain event; that the group chose not to require a buffer from ephemeral streams; that Section B deals with resource buffer width averaging; that the group wanted to make it so there was some flexibility, in regard to the Zone B buffer; that Applicant's will be able to average that Zone B buffer within the boundaries of the development; that averaging is not available within Zone A; that the averaging cannot exceed double the width of what Zone B would be; that an Applicant could not have a large arm of Zone B located on one corner of the property and have no Zone B located everywhere else; that this allows for averaging but not manipulation of the averaging to create it to be practically non-existent; that Section 10C deals with the permitted activities for Zones A and B; that this was another section the group spent a lot of time on; that if it is not listed on the chart presented, it is therefore not permitted; that the chart spells out all the different types of uses that can be permitted within the buffer areas; that stormwater management water quality BPMs is permitted but had a limitation; that

the chart is to make permitted uses within the buffer areas clear to everyone; that an Applicant cannot subdivide the buffers, unless it is a phase line; that this means there can be no lots located within Zone A and Zone B; that all lots have to be separate and outside of the buffer zones; that Section 10D addresses the buffer standards; that if an area is an existing forest or meadow, it is encouraged to maintain the existing forest or meadow, subject to selective cutting; that if the area is neither an existing forest or meadow, it is encouraged the Applicant establish it in either forest or meadow; that there are definitions for what a forest and non-forest meadow would be; that Section 10E defines the definition for Selective Cutting; that the group recognized the Applicant should be permitted to remove brush or forest understory; that selective cutting does not mean clear cutting; that it does not mean the use of heavy machinery to remove stumps and other things of that nature; that Section 10F is the maintenance of drainage conveyances; that this is the section that establishes easements; that this is the section that addresses taking action on any problems that may exist on the resource before development; that Section 10G addresses resource buffer options; that this is the section addressing incentives; that the group added this to deal with ways to protect other areas that may be offset within the buffers that are required by the rest of the section; that for example, if an Applicant is preserving the forest within the resource buffer, that has been in existence for at least five years prior to the date of the application; the Applicant can receive a corresponding area reduction in the resource buffer Zone B or the Applicant can receive a corresponding reduction in the perimeter landscape buffer; that the idea is, it is more important to preserve existing forest than it may be to preserve an area with no value or environmental importance; that there is also a credit to preserve offsite lands to perpetual conservation easements; that this would allow the Applicant to reduced Zone A and/or Zone B, depending on the credit in corresponding amount or percentage amount based on the land the Applicant is preserving offsite; that if an Applicant were to preserve land on the opposite side of a stream from where the property is located, creating buffers on both sides of the stream; with a conservation easement on the other side of the stream, the Applicant will receive a credit on the Applicant's side of the property; that the group looked at this as a positive for other land owners and farmers; that now value has been created where it did not previously exist on the adjacent property; that this will encourage the developer to go out and acquire a conservation easement on the property across the stream, which the Applicant can then use to their benefit within the subdivision; that the group does recognize they do need to make some minor textual changes to provide some clarity; that this would be brought back to the Commission in a recommendation should the Commission act favorably upon the Ordinance; that subsection H address resource and resource buffer management maintenance; that this is along the same lines discussed previously; that this encourages to get issues fixed at the time the development is occurring; that this would be facilitated through the Planning & Zoning staff, as well as the Sussex County Engineering as they review the condition of the resources, what is shown on the plan and look at ways to improve the resources through the construction process on the site itself; that Section 10I addresses modifications and exceptions; that the current buffer ordinance has this; that the group wanted a safety valve on it; that if there were conditions which are special and unique to the property, not created by the actions of the Applicant; or the exceptions will not adversely affect the functions or the resource or the buffers, there should be the ability to grant some relief by the Planning & Zoning Commission; that one thing stated is if the Commission should grant that relief it should not be something, that could otherwise be resolved through buffer averaging; that the group provided that flexibility with the intension the Applicant use it; that it is discouraged the Applicant come back in requesting modifications, when there is design flexibility; that this does

allow the Commission some leeway within certain guidelines to grant modifications to the buffer requirements; that Section 11 and Section 12 restates the Preliminary and Final Site Plan requirements; that the last section is the effective date and when the Ordinance was introduced by Sussex County Council; the Sussex County Council introduced the Ordinance with a six month lead time; that the Ordinance will not take effect until six months after the date of adoption and there is a map included in the presentation that offer examples of what the buffers would be and how they would work.

The Commission found that Mr. Hans Medlarz, Director of Sussex County Engineering, spoke on behalf of the Ordinance; that when looking at the map it provides the various resources; that the first resource would be the stream; that the stream has a buffer on the stream itself; that if wetlands are present around the intermittent or perennial stream, the buffer is then located around the wetlands; that in the definitions the various resources have been defined; that on the map tidal wetlands are not shown, but non-tidal wetlands are shown; that the wetland located in the upper left is a good example of where a wetland would be connected to the body of water with a stream which would require the wetland area to be buffered; that located to the lower left, there is a wetland area not connected; that this is also known as isolated wetlands; that these wetlands are not required to be buffered; that this is also true with man-made ponds, which is considered a non-buffered feature, not a resource; that located on the bottom right, there is a wetland area associated with a perennial stream which is required to be buffered; that this a play on the various buffers with Zone A and Zone B; that presented is a non-tidal example, not a tidal example; that the buffers in regards to tax ditches was a difficult item; that currently tax ditches are not considered a resource, which requires no buffering; that tax ditches to have associated rights-of-ways; that they may have wetlands located within the rights-of-ways; that if a wetland is located on a tax ditch right-of-way and extends past the tax ditch right-of-way, it would be required to be buffered; that agricultural ditches are not defined and are not covered by the proposed Ordinance.

Ms. Stevenson questioned the density increase; that part of the Ordinance is to preserve forest; that she questions if an Applicant performs some clearing of the forest, such as dead trees, but in the process other trees die, would the Applicant be required to replant the trees to keep the density the same.

Mr. Medlarz stated that once the project is accepted the entire responsibility shifts to the future owner; that in regards to residential development would be an HOA Homeowners Association; that the enforcement of whatever the interpretation of the density is, would shift to that entity; that if there were a major storm prior to the transition, the Sussex County Engineering Department would be making the requirement for the final acceptance of the plans and in the end, he would like it to be very clear, neither the Planning & Zoning Department nor the Sussex County Engineering Department is the enforcing agents after the project is complete.

Mr. Mears questioned if there was anything in place to keep property owners from clear-cutting the proposed buffers years before applying to develop.

Mr. Robertson stated there is nothing in place to keep property owners from cutting the buffers, but the Ordinance does offer an incentive to keep it.

Mr. Medlarz stated the buffers cannot be subdivided, which make the buffers, not private property; that this creates property owners to be taking the law into their own hands and would be subject to

enforcement actions; that clear-cutting the buffers prior to development is not, not prohibited and the incentive options speak to that, trying to incentivize it to not happen.

The Commission found that Mr. Rich Borrasso provided comment on the Ordinance; that his interest and knowledge of the topic runs deep because of his heavy engagement in the Comprehensive Plan process, as well as being a participant in the Wetland Buffer Working Group; that the latter was a great experience in an open forum which allowed for the free expression of points of view, exchange of ideas and spirited dialogue; that subject matter experts brought their experiences; that it was a learning experience that enabled him to gain a broader perspective on what he considers to be one of the most critical conservation decisions in County history; that it has been over 30 years since current wetland buffers have been deliberated; that a lot has happened in Sussex County over the last three decades; that one of his biggest takeaways from the group was that updating buffer regulations is not a property rights issue, but one of, striking a balance between private and public need; that to better reinforce this point, he reads an abstract from *The Public/Private Balance In Land Use Regulation* by Stanford Professor Mark W. Cordes; Private land ownership in America has always involved a balance between private and public interest; that protection of private interest is necessary to encourage investments to improve property, essential to meeting critical needs, such as housing and providing for personal autonomy and privacy; that private property has long been limited by implied public interest; that investment expectations regarding future uses of undeveloped land should include the possibility of regulation to protect public interests; that much of the value in private property has been added by government “giving’s”; that it cannot be viewed as unfair when government regulations for important purposes diminish some of that value; that fairness concerns must be evaluated from a broader perspective of “reciprocity”; that this will recognize although a landowner might be adversely affected by some regulatory actions, the same person is often benefitted by other regulatory actions; that overall a general adjustment of benefits and burdens occur; that he is pleased to see Sussex County Council exercise its authority to regulate land use; that he is more grateful the actions are aligned to goals and objectives outlined in the Sussex County Comprehensive Plan; that the public wants to see Sussex County Council priorities guided by strategies laid out in the plan, that it is a good example; that the public expects better alignment in the amending of existing codes and introduction of new ordinances in the future; that this Ordinance seeks to, consider strategies for preserving environmental areas from development and the protection of wetlands and waterways; that it recognizes the Inland Bays, their tributaries and other waterbodies as valuable open space area of ecological importance; that it determines if amendments are needed which will better help protect groundwater, waterways, sensitive habitat areas and other critical natural lands; that it calls for the protection of the natural functions and quality of Sussex County’s surface waters, groundwaters, wetlands and floodplains; that it identifies an appropriate range of wetland buffer distances based upon location and context; that it balances the protection of land equity with the protection of the resources defined in the Ordinance and their associated functions; that it works to establish a framework under which future property owners and Owners Associations will maintain the resources, resource buffers, and properties adjacent to, the systems that they are a part of in the future to ensure the ongoing positive conveyance of drainage features; that the Ordinance promotes and protects the health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex County; that according to *The State of Delaware 2018 Combined Watershed Assessment Report (305(b))* and *Determination for the Clean Water Act, Section 303(d) List of Waters needing TMDLs* and the Center for the Inland Bays research shows our area has lost about half of its original wetlands due to drainage, conversion to other land uses, and sea

level rise; that Wetlands and their beneficial functions continue to be lost; that 1,434 acres of Sussex County's wetlands were lost between 1992 and 2007 and 1,147 acres of wetlands were lost between 2007 and 2019; that saltmarshes continue to disappear and have decreased around the Inland Bays from a total of 10,838 acres in 1938 to 7,300 acres in 2007; that this is a 32% decrease; that many of the wetlands that remain are in poor condition; that an example of this is the health of streamside wetlands and saltmarshes in the Inland Bays watershed have received a grade of D; that in a most recent DNREC assessment of water pollution found that 87% of streams, ponds and bay within Sussex County were polluted due to high bacteria levels, high levels of nutrients or low dissolve oxygen levels; that in the Inland Bays Watershed, all assessed waters were found to be polluted by excess nutrients, 50% by bacteria, and 11% had low dissolved oxygen; that while significant improvements to the water quality of the Inland Bays have been realized, measured pollutant loads from the watershed to the Bays have not decreased; that many of the tributaries of the Inland Bays have very high pollutant levels and very poor water quality; that flooding which decades ago usually happened only during a powerful or localized storm, now happen frequently; that Lewes recorded an average number of four flood days in 2000; that in 2017, there were 15 flood days recorded; that in 2030, between 15-30 high tide flood days are projected; that from 2008-2015 over 13,500 building permits were issued; that a significant portion of this development has been in areas at risk of flooding; that from 2010 to 2017, Sussex County had the third highest number of homes, which was 1,233 homes, built in a 10-year flood risk zone of any county in the United States; that sea levels have been rising off the coast of Delaware for more than a century; that they will continue to do so at about twice the global average; that this is because of a geological phenomenon known as "subsidence"; that this means the section of the earth's crust beneath the Mid-Atlantic states is sinking at a rate slightly greater than one inch per decade, or about one foot per century; that Delaware's coastal communities already experience several days of high-tide flooding annually; that the problem is forecasted to grow; that the National Oceanic and Atmospheric Administration (NOAA) predicts that Lewes could see upwards of 30 high-tide flooding days annually by 2030 and as many as 135 by 2050; that Sussex County roads and bridges have the highest risk of inundation due to the sea level rise in the state; that this is according to DNREC's Sea Level Rise Vulnerability Assessment; that Sea Level Rise directly affects travel on roadways as a result of flooding, inundation, erosion of road bases, removal of sediment around bridges abutments or piers and reduced bridge clearance; that in Sussex County approximately 357 miles of roads and bridges that lie in the path of sea level rise may be adversely impacted; that according to the 2016 State of Delaware Inland Bays, from 1992 to 2012 upland forest decreased by 14 square miles in the Inland Bays watershed; that the existing water resource and buffer regulations are inadequate and failing to protect groundwater, waterways, sensitive habitat area and other critical natural lands in Sussex County; that regarding the proposed Ordinance Amendment, SARG has read, understands and is in agreement with the Wetland Buffer Workgroup regarding definitions, resources subject to the Ordinance, buffer purpose, buffer widths, two-zone buffer approach, buffer activities permitted and restricted, buffer averaging, buffers and lot lines, and resource management requirements; that however there are provision in the proposed Ordinance amendments that were altered or added post workgroup recommendations; that there was either no or limited debate on these provisions except one off with Sussex County officials in recent months; that personally he spent three hours with two other colleagues earlier in the week; that he feels strongly that this alone does not constitute an implied workgroup recommendation; that there are most likely modifications to the Buffer Ordinance Introduction dated October 21, 2021 in front of the Commission currently; that he

has no objection and he looks forward to the potential modifications; that it is unrealistic to expect the public to be able to review and consider on the day of the public hearing; that he requested a motion to keep the record open to allow for future public comment; that he feels selective cutting should be removed; that he references Line 705 D. regarding the Resource Buffer Standards; that in the January 9, 2020 Ordinance draft, it was defined as “Selective Clearing”; that this was defined as the removal or limbing of trees greater than two inches in diameter measure at breast height which does not change the areal extent of the forest boundary by concentrated removal of trees in one specific area; that based on the March 4, 2020 draft, which was shared with Sussex County Council, it is defined as “Selective Cutting” to be forest management activities; that includes the removal of trees less than three inches in diameter at breast height and the removal of understory vegetation less than three inches DBH and “Selective Cutting” shall not alter the canopy extent of the Resource by impacting an area more than 30 feet wide or one third the width of the Resource Buffer, which is less; that however in the proposed Ordinance Amendment it states “Selective Cutting” is defined as the removal or limbing of trees greater than three inches in diameter at breast height and no disruption of a contiguous forest canopy for a width greater than thirty feet; that it is apparent the “selective clearing” or “cutting” is a contradiction with the aforementioned overarching Buffer Standard; that it is vague and open for interpretation by developers; that more importantly the future caretakers of the Standards, that being the ability for HOA’s to govern their residents; that the most difficult to understand are the provisions in Section G.; that he does understand that any improvements to the resource water and wetland buffers are not intended to reduce density; that in the Agricultural Residential Zone up to two dwellings per acre is permitted today and will be with the proposed increases in the buffer widths outlined in the proposed amendment; that sometimes boundary irregularities present site plan design challenges; that for this reason there was a consensus from the work group to include the buffer averaging tool to provide flexibility to developers in unique situations; that some believe that the Buffer Averaging provisions more than sufficiently provide for flexibility; that there continues to be this desire for more flexibility; that depending on who you speak with “flexibility” to some is evading the proposed buffer width guidelines in order to respond to consumer demand for greater access and or proximity to the water resources; that also the belief some buffer options provide superior benefit via conservation and preservation easements in exchange for buffer reductions; that whichever the case each must scientifically demonstrate their ability to protect the resources and their associated functions; that they should do this by improving and protecting water quality via sediment filtration, reduce impact of nutrient loading on resources, moderate water temperature and enhance infiltration and stabilization of channel banks; that provide wildlife habitat via nesting, breeding, and feeding opportunities provide sanctuary and refuge during high water events; protect critical water’s edge habitat and protect rare, threatened and endangered species associated with each resource and its upland edge; that it should enhance and/or maintain the flood plain storage functionality via reduction 158 of flood conveyance velocities and dissipation of stormwater discharge; that each must demonstrate functional equivalency, both in terms of timing, protection, enforcement and ongoing maintenance and remediation; that at no time shall any incentives allow for the resource Buffer Zone A reductions and at no time reduce the buffer widths or permitted uses to less than the current Resource Buffer regulations; that specifically regarding G.1. which proffers “incentivizing the retention of forests”, he believe this is a band aid on a much more critical wound in Sussex County; that he believes this issue goes way beyond forest preservation in resource buffer areas alone; that if the County is serious about addressing the vast decimation of

forests and trees there must be a separate study with solutions that encompass tree conservation throughout all of Sussex County; that there are countless examples in neighboring jurisdictions where tree conservation is a priority; that it is working; that present is a distraction, especially when G.1 (a), (b), and (c) considers allowing the encroachment on the existing Forest and/or Landscape Buffers on the same property; that forest and/or landscape buffers intended purpose is to provide screening and open space between major subdivision; that allowing the reduction and/or elimination of the forest and/or landscape buffer has no relevance and provides no substitute or remedy for protecting the buffer resource; that this option must be removed; that regard H. Resource and Resource Buffer Maintenance and Management, he believes this is a long time in coming; that it will help to ensure that the resource buffers will continue to perform their intended purpose; that there needs to be a language included that any and all measure for access easement have minimal to no effect on disrupting the normal purpose and function of the buffers up to and including the width and number of access points; that he would like to make reference to Aesop's Fables of The Hare and the Tortoise, The Ant and the Grasshopper, The Fox and the Crow and most specifically The Goose that Laid the Golden Egg; that metaphorically the goose represents the world class water resources in Sussex County; that depending on your perspective the golden egg represents the benefits the public derives from their grandeur and indirect value derived from the ability for economic gain; that the golden egg is finite; that we are not creating more of these resources and we must work together to not kill the goose that laid the golden egg.

The Commission found that Dr. Edward Launay provided comment on the proposed Ordinance; that he is a professional wetland scientist and environmental consultant with Environmental Resources; that he was also a member of the Wetland Buffer Workgroup; that he supports the Ordinance as currently written, with one notable exception; that he has understanding and hope, that with a new section of the Ordinance, Section G. Resource Buffer Options, become more refined and better articulated as the Ordinance moves through the approval process; that he wishes to speak in the "Selective Clearing"; that Selective Clearing is the Resource Buffer Standards at Section 10.D2, Lines 705-707, which states that forest subject to the proposed Ordinance, all existing trees and understory shall be preserved and maintained in their natural state; that allowing Selective Cutting within a forested resource buffer does not constitute maintaining the resource buffer in a natural state; that as specified in the definition of Resource Buffers, which is Lines 145-159, resource buffers under the proposed ordinance are intended to provide resource protection, water quality protection, protection in conservation of wildlife habitats, and flood plain functions; that it is his personal and professional opinion that the provision allowing for Selective Cutting within resource buffers severely diminishes the functional values of proposed resource buffers; that allowing the removal of an entire natural forest understory, including shrubs, trees smaller than 3-in. in diameter, compounding that adverse impact by allowing the intensive select removal of large caliber trees; that as written, the Selective Cutting definition allows for the potential removal of essentially every other large tree in a forest stand; that in his opinion it is nearly equal to essentially having no buffer at all; that this is his interpretation as to what it is meant under Selective Cutting; that he feels the Commission might find it of interest, that he was the person that suggested the use of those words; that as a group there were individuals with the ability to do things to manipulate within the buffers was an essential item to the exercise of constructing the buffer Ordinance; that the reasons given were it may be tough to enforce and there must be ways to get into and around the buffers; that he states these things have been addressed; that he is requesting all references to selective cutting be removed from the Ordinance; that this will keep

forested resource buffers truly protected in their natural state; that many provisions are included in the Ordinance which already allow for a wide variety of activities within the resource buffer; that these include walking trails, gaining access to the water front, a variety of water related projects along the waterfront; that these projects include the removal of any invasive species, or individual trees that pose a safety hazard to public or private property; that these are all included on the list of activities permitted within the resource buffer; that there is no need for selective cutting; that including selective cutting within the document, the way it is currently written only serves to give the developer a blueprint for how to adversely impact and disturb the resource buffer prior to turning it over to a homeowners association; that he feels it is best to not say anything at all; that the County can decide where something happens or how forcefully they choose to control situations after the homeowners association owns the property; that in his experiences there will always be a homeowner that tries to encroach the buffer to make their backyard bigger, but most of the time, there are always other members of that HOA community which are quick to enforce the provisions; that he feels there is often times a good deal of self-enforcement; that he feels this is a good mechanism that we can rely on; that currently the document is acting as a blueprint for a developer to maximize his return while disturbing the buffer; that before the Buffer Workgroup was constructed, himself, Mr. Chris Bason and another environmental consultant were asked to make a presentation in front of Sussex County Council; that Mr. Bason presented a slide of a project on Whites Creek; that the slide presented a before slide with many mature pine trees and after slide with the majority of the mature pine trees removed; that several Commissioners questioned how that could happen; that he explained to Council the way the current buffer Ordinance is written and the way it has been enforced over the previous years, a person could pretty much do what they wanted and plant along the way; that is essentially what had happened in that situation on the slide; that currently that is what the Buffer Ordinance currently allows; that he believed the goal of the new Buffer Ordinance was to prevent situations like that from happening; that if the Ordinance should be approved with Selective Clearing the way it is currently written, developers will be back to doing the same thing again; that the Resource Buffer Options section is a more recently developed part of the proposed Ordinance; that it was largely composed after the involvement of the wetland workgroup; that over the past few weeks he has been able to review and discuss Section 10.G, Lines 782-859, with other members of the workgroup and County staff; that there are many questions about the intent, as well as how this section of the Ordinance would be applied have been answered in his mind; that many needed improvements to the text have been made in order to better define the intent; that improvements were being made up to the date of the public hearing; that he does support the goals and intentions outlined in the Buffer Options section; that he appreciated the opportunity to better understand the options, while providing input on them; that he believes this section of the Ordinance will require some additional work as the Ordinance moves forward to County Council; that he plans to continue working the Sussex County staff on this part of the document; that there are topics such as developing suitable templates for future conservation easements to protect offsite resource buffers; that his is already currently proposed; that the future conservation easement document needs to be worked out and truly understood; that the document does not yet exist; that it is his personal and professional opinion that the Ordinance does offer adequate flexibility through buffer averaging and other measure to ensure flexibility and enhance design project it applies to without the Resource Buffer section; that after his most recent review of this section and consultations with the staff, he is in support of the Resource Buffer section; that as intended he believes it will offer a positive impact to the goals and resource protection and provide

incentives for the retention of existing forest prior to future development; that the ongoing refinement of the section will undoubtedly need further effort; that if the proposed Buffer Ordinance did not move forward, he does believe there should be some incentive to ensure no clearing of the buffer from the moment they present an Application; that he makes the suggestion to construct a third Resource Buffer Table; that the table could reduce some of the buffer widths with the provision of demonstrating the future resource buffers on the project would not have been disturbed for five years advance of the project; that this would qualify the Applicant for buffer that are less than those proposed in Table A; that he would like the Commission to understand, often times, a tax ditch is a perennial stream; that currently buffers are required from tax ditches; that he believes Mr. Medlarz meant to say we are applying resource buffers, but are not being applied to the tax ditch buffer that applies to the tax ditch; that tax ditches already require a maintenance buffer; that often times the tax ditch buffer may be wider than the resource buffer; that his interpretation is if the resource buffer would be wider than the tax ditch buffer, the resource buffer would extend past the tax ditch buffer, within a Zone B, which allow certain activities, and extend beyond the tax ditch right-of-way; that saying we will not regulate a tax ditch is wrong; that he may be wrong in his interpretation; that there is no need to provide an easement to get into a tax ditch; that the easement already exists and is controlled by the State of Delaware; that anytime any maintenance is needed regarding tax ditches, an approval is required from DNREC and Army Corp of Engineers and if an Applicant receives the approvals, they would be exempt from the Buffer Ordinance.

Mr. Robertson stated he agrees with Mr. Launay in regards to tax ditches; that tax ditches in and of themselves do not require buffers but if they are considered a perennial stream it may require a buffer; that if there is a tax ditch easement, the buffer would not begin from the easement; that the buffer would be where the easement would be; that they will not require trees to be where an easement would be located; that he feels they are both correct in some extent; that the working group worked on the Ordinance through 2019; that product of the working group was an evolving document; that since the Ordinance was introduced to Sussex County Council the document has not changed.

Mr. Medlarz stated not all streams are tax ditches and not all tax ditches are streams, but some streams are tax ditches and if a stream is a tax ditch, it will be required to have a buffer.

The Commission found that Mr. Chris Bason, Executive Director for Delaware Center for the Inland Bays; that Mr. Bason presented a PowerPoint presentation to the Commission; that the presentation discussed the importance of Wetlands and Buffers to Inland Bays Comprehensive Conservation & Management Plan, the relevant water quality and land use trends in the Inland Bays, over comparison of the proposed Ordinance to those of nearby jurisdictions and recommended amendments to the proposed Ordinance; that the first iteration of the Inland Bays Comprehensive Conservation & Management Plan was in 1995; that it was amended in 2012 and again in 2021; that it has seven signatories; that the County is one of the signatories; that the mission is to bring back the water quality to the Inland Bays by reducing nutrient pollution and restoring ecosystems, education and mediating flooding and adapting to climate change; that the buffer action is within the Inland Bays Management Plan; that the idea is to take the bays we currently have, which is a system dominated by algae due to excessive nutrients, and restore the system by reducing the nutrients; that this will allow sunrays to get to the bottom of the bay floor; that they have had success with wastewater and reducing the nutrients going into the bay; that they have had little success, over the past 30 years, controlling the nutrients

coming off of the land; that they have seen no reduction in this source since the 1980's; that in the Little Assawoman Bay they have recently seen an increase in the nutrients, that we are backsliding on Delmarva and Sussex County in regards to water quality; that excessive algae growth often creates zero oxygen at night; that this leads to the death of our fish, shellfish and plant life; that this past year there were 15 fish kills recorded within the Inland Bays; that this is the largest recording of fish kills since 1985; that buffers are very important to water quality; that buffers can be the solution to these issues; that land use has changed dramatically of the last 25 years; that between 1992 -2017 we have had 30 sq. miles of development; that we have lost almost four square miles of wetlands; that we have lost 10 square miles of upland forest; that we have lost 22 sq. miles of agriculture; that there has been an 18% decrease in the upland forest cover from 1992-2017; that all forests are important to the watershed, but those closest to the resources are the most important; that we are also losing our saltmarshes; that we have lost over 3,600 acres of salt marsh since the 1930's; that the saltmarshes are now drowning due to sea level rise; that the only way to protect the marshes is to provide a buffer to the marshes to move into; that most development is taking place around the bays; that flooding is on the rise; that in 2020 there were eight High Tide Flood Days; that NOAA projects by 2030 there will be between 15-30 High Tide Flood Days; that we are building within flood prone areas; that from 2010-2017 Sussex County had the highest number of homes built within the 10-year flood risk zone of any ocean coastal county in the United States; that he presented a Wetland and Waterways Buffer Policy Comparison chart; that Sussex County's does not come close in many areas to what other jurisdictions are requiring; that achievements of the Ordinance includes the consensus points of the buffer workgroup on features, widths, activities, site design and flexibility with buffer averaging, the specific purposes of the buffer, requiring a Management Plan and including access through easements; that his recommendation for the Ordinance are the requirement for protecting and restoring the forest, restriction of selective cutting to small lengths of buffers on only tidal wetlands, waters and freshwater ponds, removal of the Resource Buffer Options section and clarification to Maintenance of Drainage Conveyance; that he would like to see existing forests being preserved from the time the Application is submitted; that forested buffers are more beneficial than grass buffers as they provide 36% more nitrogen; that a forest is an assemblage of different trees and different layers; that selective cutting currently does not have a defined purpose within the proposed Ordinance; that it does not seem to serve the purpose of the Ordinance over all; that he feels Selective Cutting is for the purpose of views capes; that these situations should be made specific within the Ordinance; that he recommends Selective Cutting should only be permitted for 20% of the buffer feature length; that this should only apply to buffers on tidal waters, wetlands and freshwater ponds were views area commonly desired; that he believes flexibility for site design is addressed through buffer averaging; and options should not reduce the width of a buffer; that any options should not reduce the effectiveness of another part of the Ordinance with a separate purpose; that he feels incentives should be, if an Applicant increased the width of their buffer, maybe they would be granted a few additional lots and he feels there should be clarification on the definition of "positive conveyance."

The Commission found that Mr. Preston Schell with Ocean Atlantic Companies spoke in favor to the Ordinance; that he stated he is heavily in favor of the Ordinance; that he feels it was a long time coming; that he was not part of the working group but is thankful for their hard work; that he feels the working group came to a lot of solutions that he had not even thought of; that he likes the idea over the averaging; that the options for developers are a great idea; that what he appreciates the most is the guidance it offers the Commission; that proposed Applications, especially for cluster

subdivisions, it is a guessing game as to what level of buffer the Commission or County Council will be satisfied by; that sometimes developers will come in and do the minimum; that he has always tried to exceed the requirement; that sometimes in doing so, it seems like you give an inch and they take a mile type of situation; that he feels the proposed Ordinance is very detailed and outlined well; that it allows everyone to see the Ordinance in more black and white; that it allows all developers to be on the same playing field and will be treated equally; that he agrees with Mr. Basons previous comments and recommendations; that he does not agree with Mr. Launay in regards to the Selective Cutting and he does not feel the developers will be the issue; that the issue will be with the homeowners and stated anyone can see an example of this within Coastal Club at how well homeowners obey the fact that they are prohibited from clearing trees within the buffer.

The Commission found that Mr. Jim Erikson provided comment to the proposed Ordinance; that he feels there should be clarification to who the beneficiaries would be for the easements; that he feels there should be clarification to the easements in regards to should they be cleared or should they remain in their natural state; that he does have some concern with the drainage assessment report; that he would like confirmation if drainage assessment would only be looked at on the property; that it would be difficult to request someone to go offsite, identify something and obtain access to fix it when it is not under their control; that he is curious as to who will perform the review and making the decisions; that in Section H, he worries slightly about the stormwater impacts of opening up the restriction, if the restriction has been in place for a long time; that he feels there could be a crisscross of communication in regards to grading plans depending on the engineer, and their standpoint when performing grading plans; that he is concerned walking trails, as they are currently constructed, may not be allowed as the Ordinance is currently written and he does feel there needs to be slight revisions to the Ordinance, but generally supports the Buffer Ordinance.

The Commission found that Mr. Scott Shaughnessy, Ms. Emily Knearl, and Ms. Michelle Forsley spoke by teleconference in support of the proposed Buffer Ordinance; that he does agree and support the comments made by Mr. Borrasso, Mr. Launay, and Mr. Bason; that he mentions concerns regarding flooding, what enforcement will look like, selective tree cutting, reserves in trusting HOAs and condo associations appropriately enforcing buffer regulations, the size of the non-tidal wetlands, intermittent and ephemeral stream buffers and the procedures which go along with the buffers once the Application is submitted.

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

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

In relation to the Wetlands Buffer Ordinance. Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action for 14 days, leaving the record open for the public written comment. Motion carried 4-0.

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

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

Mr. Mears moved the Commission recommend approval of the Buffer Ordinance” that amends various sections of Chapters 115 and 99 based on the record made during the public hearing and for the following reasons, but also with several recommended revisions based upon the record made during the public hearing and for the following reasons:

1. The current language in our Code regarding wetland buffers needs to be updated. It has ambiguities and it has not been applied uniformly over the years. It also contains regulations for agricultural drainage ditches which the County needs to remove.
2. The 2018 Comprehensive Plan contains many Goals, Objectives, and Strategies calling for Code improvements that protect waterways and wetlands, which are recognized as valuable open space of ecological importance. These are spelled out in detail in several of the “Whereas” clauses of the Ordinance. This Ordinance follows the direction of our Comprehensive Plan and all of the thoughtful work that went into drafting and adopting that Plan.
3. The Ordinance follows the efforts of a diverse and dedicated “Working Group” that was convened over many months to establish the framework for amending Chapters 99 and 115 of the Code of Sussex County regarding resource protection, buffers, and the maintenance of waterways and drainage areas. This ordinance is the result of that effort along with input from County staff.
4. The ordinance clearly details what is permitted and what is not permitted within the buffer areas.
5. The ordinance provides flexibility instead of a more arbitrary “one line fits all” requirement. The flexibility includes buffer width averaging within a development. It also includes several incentives with the intent to preserve and protect the existing resources such as forested areas or both sides of a waterway when that is most beneficial.
6. There was a lot of very valuable public input through the hearing process. A majority of the information given to the Commission was in favor of this Ordinance, but with constructive suggestions for improving it. For instance, there appears to be a strong desire to eliminate “selective cutting” from the buffer areas, since that could be detrimental to several of the goals of having the buffer areas in the first place.
7. This Ordinance also strikes a proper balance between the protection of land values and the protection of the Resources defined in the Ordinance. For instance, this Ordinance protects these Resources in way that should result in better residential development plans without affecting the density of the residential development.
8. This Ordinance will promote and protect the health, safety, convenience, orderly growth, and welfare of the inhabitants of Sussex County.
9. The Ordinance can be improved with several changes based upon information provided in the public record and by staff, listed by Section and Line Numbers, as follows:
 - a. Section 1, Line 76 and Section 8, Lines 380 regarding the definition of “Ephemeral Streams”: After “A feature”, add “, excluding laterals draining agricultural fields,”. This will confirm that ephemeral streams do not include ag ditches within farmland.
 - b. Section 1, Line 87 and Section 8, Line 391 regarding the definition of “Intermittent Streams”: After “A well-defined channel”, add “, excluding laterals draining agricultural fields,”. This will confirm that intermittent streams do not include ag ditches within farmland.

- c. Section 1, Line 118 and Section 8 Line 403 regarding the definition of “non-Tidal Wetlands”: After “adjacent Wetlands”, add “and ultimately downstream navigable waters”. This clarifies that Non-Tidal Wetlands do not include isolated wetlands.
- d. Section 1, Line 184 and Section 8, Line 469: Delete “tidal datum” at the end of the definition of “Tidal Waters (Mean High Water Line)”.
- e. Section 4, Line 279: Revise this line so that it now states “(2) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
- f. Section 4, after §99-23T.(7) after Line 292, add a new subsection (8) as follows: “(8) Any walking trails, including the method of construction and the materials used to establish the trails.”
- g. Section 6, Line 319: Revise this line so that it now states “(b) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
- h. Section 6, after §99-26A.(21) after Line 334, add a new subsection (22) as follows: “(22) Any walking trails, including the method of construction and the materials used to establish the trails.”
- i. Section 10, “Table 2: Resource Buffer Activities by Zone”, amend Item #17 regarding “Walking Trails” so that it now states, “Walking Trails where any impervious area runoff is managed under a Sussex Conservation District Permit.”
- j. Section 10, Line 702, replace the word “native” with “natural” in the reference to forests.
- k. Section 10, Line 707: Delete the sentence “‘Selective Cutting’ (Subsection E) activities may be implemented.”
- l. Section 10, Line 725: Replace “Selective Cutting” with “Removal of Invasive Species” as the heading for Subsection E, and delete lines 727 through 733 regarding “Selective Cutting”. At line 735, re-number subsection (2) as subsection (1), and replace lines 735 through 737 as follows to permit the removal of invasive species: “Invasive species control shall be completed under the guidance and approval of a Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or Qualified Resource Buffer Professional.”
- m. Section 10, Line 797, regarding incentives, insert the word “natural” before the word “forest”. At Line 799, after the word “achieved”, insert the words “by adding the area to Zone B”.
- n. Section 10, Line 804, regarding incentives, replace the word “widths” with “area”.
- o. Section 10, Line 813 through 819 regarding incentives, replace the current language so that it is clarified and restated as follows:
“(a)(i) When the creation of an off-site Resource Buffer is protected under a perpetual conservation easement, then a 75 percent corresponding area reduction of the Resource Buffer Zones A and/or B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County, and it must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development.”

- p. Section 10, Line 821 through 827 regarding incentives, replace the current language so that it is clarified and restated as follows:
“(a)(ii) When the creation of an off-site Resource Buffer for forest preservation is protected under a perpetual conservation easement, then a 125 percent corresponding area reduction of the Resource Buffer Zones A and/or B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County, and it must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development.”
- q. Section 10, Line 832 regarding incentives, after “Sussex County” insert “prior to final acceptance of the first phase of the proposed development by the Sussex County Engineering Department”. At Line 835, after “Resource Buffer area”, insert “on that same resource”.
- r. Section 10, Line 838 through 844 regarding incentives, replace the current language so that it is clarified and restated as follows:
“(c)(i) When a proposed development has a pre-existing property boundary that is located in the center of an Intermittent or Perennial Stream and the entire Resource (including the off-site portion of it) including an off-site Resource Buffer Zone A is protected under a perpetual conservation easement, then a corresponding area reduction of the Resource Buffer Zones B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer Zone A and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County.”
- s. Section 10, Line 846 through 852 regarding incentives, replace the current language so that it is clarified and restated as follows:
“(ii) When a proposed development has a pre-existing property boundary that is located in the center of an Intermittent or Perennial Stream and the entire Resource (including the off-site portion of it) including an off-site Resource Buffer Zone A in the form of a natural forest is protected under a perpetual conservation easement, then a corresponding 125% area reduction of the Resource Buffer Zones B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer Zone A and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County.”
- t. Section 11, Line 946: Revise this line so that it now states “(b) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
- u. Section 11, after §115-220B(17)(g) after Line 959, add a new subsection (h) as follows: “(h) Any walking trails, including the method of construction and the materials used to establish the trails.”

- v. Section 12, Line 974: Revise this line so that it now states “(b) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
- w. Section 12, after §115-221B(19)(h) after Line 989, add a new subsection (g) as follows: “(g) Any walking trails, including the method of construction and the materials used to establish the trails.”

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

1 **AN ORDINANCE TO AMEND CHAPTER 99, SECTIONS 99-5, 99-6, 99-7,**
2 **99-23, 99-24, 99-26, AND 99-30, AND CHAPTER 115 SECTIONS 115-4, 115-**
3 **25, 115-193, 115-220 AND 115-221 REGARDING CERTAIN DRAINAGE**
4 **FEATURES, WETLAND AND WATER RESOURCES AND THE BUFFERS**
5 **THERETO.**

6
7 WHEREAS, Pursuant to the provisions of Title 9, Chapters 68 and 69 of the
8 Delaware Code, the Sussex County Government has the power and authority to
9 regulate the use of land and to adopt a Comprehensive Land Use Plan; and

10 WHEREAS, Pursuant to Chapters 99 and 115 of the Code of Sussex County, the
11 Sussex County Government has undertaken to regulate the use of land; and

12 WHEREAS, the existing Section 115-193 of the Code of Sussex County currently
13 regulates the use of land adjacent to certain wetlands and water bodies; and

14 WHEREAS, the existing Section 115-193 of the Code of Sussex County is in need
15 of improvement regarding its interpretation, application and protection of Resources;
16 and

17 WHEREAS, certain Resources are in need of substantial enhancements to ensure
18 that Sussex County's drainage network is improved now and maintained in the
19 future; and

20 WHEREAS, the 2019 Sussex County Comprehensive Plan contemplates the review
21 and improvement of the protection of wetlands and waterways in Sussex County;
22 and

23 WHEREAS, Goal 4.3 and Objective 4.3.1 of the Future Land Use Element of the
24 2019 Sussex County Comprehensive Plan states that Sussex County should
25 "Consider strategies for preserving environmental areas from development and the
26 protection of wetlands and waterways", and this Ordinance carries out that
27 Objective; and

28 WHEREAS, Goal 4.6 and Strategy 4.6.2 of the Future Land Use Element of the 2019
29 Sussex County Comprehensive Plan states that Sussex County should "Recognize
30 the Inland Bays, their tributaries and other waterbodies as valuable open space areas
31 of ecological importance", and this Ordinance carries out that Strategy; and

32 WHEREAS, Goal 5.1 of the Conservation Element of the 2019 Sussex County
33 Comprehensive Plan states that Sussex County should “Encourage development
34 practices and regulations that support natural resource protection”, and this
35 Ordinance carries out that Goal; and

36 WHEREAS, Strategy 5.1.2.2 of the Conservation Element of the 2019 Sussex
37 County Comprehensive Plan states that Sussex County should “Review appropriate
38 sections of Sussex County’s zoning and subdivision codes to determine if
39 amendments are needed that will better help protect groundwater, waterways,
40 sensitive habitat areas and other critical natural lands in Sussex County”, and this
41 Ordinance carries out that Strategy; and

42 WHEREAS, Goal 5.3 of the Conservation Element of the 2019 Sussex County
43 Comprehensive Plan calls for the protection of the natural functions and quality of
44 the County’s surface waters, groundwater, wetlands and floodplains, and as part of
45 that Goal, the Plan includes Strategies 5.3.1.1, 5.3.1.2 and 5.3.1.6, which
46 respectively state that Sussex County should “Consider developing a program for
47 wetlands and waterways protection”, “Identify an appropriate range of wetlands
48 buffer distances based upon location and context”, and “Recognize the Inland Bays,
49 their tributaries and other waterbodies as valuable open space areas of ecological
50 and economic importance”, and this Ordinance carries out these Goals and
51 Strategies; and

52 WHEREAS, in adopting this Ordinance, it is the intent of Sussex County Council to
53 balance the protection of land equity with the protection of the Resources defined in
54 the Ordinance and their associated functions; and

55 WHEREAS, in adopting this Ordinance, it is the intent of Sussex County to establish
56 a framework under which future property owners and Owners Associations will
57 maintain the Resources, Resource Buffers, the properties they are on or adjacent to,
58 and the systems that they are a part of in the future and to ensure the ongoing positive
59 conveyance of drainage features; and

60 WHEREAS, it has been determined that this Ordinance promotes and protects the
61 health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex
62 County.

63

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

65

66 **Section 1. The Code of Sussex County, Chapter 99, Article I, §99-5**
67 **“Definitions,” is hereby amended by inserting the italicized and underlined**
68 **language alphabetically:**

69

70 **§99-5 Definitions.**

71 For purposes of this Chapter, certain terms and words are hereby defined:

72

73 . . .

74

75 **EPHEMERAL STREAMS**

76 *A feature that carries only runoff in direct response to precipitation with water*
77 *flowing only during and shortly after large precipitation events. An Ephemeral*
78 *Stream may or may not have a well-defined channel, its aquatic bed is always above*
79 *the water table during a year of normal rainfall, and runoff is its primary source of*
80 *water. An Ephemeral Stream typically lacks the biological, hydrological, and*
81 *physical characteristics commonly associated with the continuous or intermittent*
82 *conveyance of water.*

83

84 . . .

85

86 **INTERMITTENT STREAMS**

87 *A well-defined channel that contains flowing water for only part of the year, typically*
88 *during winter and spring when the aquatic bed is below the water table, connecting*
89 *otherwise isolated Non-Tidal Wetlands to downstream Tidal/Perennial*
90 *Waters/Streams. The flow may be heavily supplemented by runoff. An Intermittent*
91 *Stream often lacks the biological and hydrological characteristics commonly*
92 *associated with the continuous conveyance of water.*

93

94 . . .

95

96 **MAJOR SUBDIVISION**

97 *Any subdivision of land creating six or more new Lots* [involving a proposed new
98 *street or the extension of an existing street*].

99

100 . . .

101

102 **MINOR SUBDIVISION**

103 Any subdivision creating five or less Lots [~~beginning on an existing street and not~~
104 ~~involving any new street~~] and not adversely affecting the development of the
105 remainder of the parcel or adjoining property and not in conflict with any provisions
106 or portion of the County Comprehensive Plan, Official Map, Zoning Ordinance, or
107 this chapter. Only one such subdivision shall be approved per year per parcel. The
108 maximum number of lots created in the minor subdivision process shall not exceed
109 four plus one for each 10 acres of original parcel size.

110

111 . . .

112

113 **NON-TIDAL WETLANDS**

114

115 Non-Tidal Wetlands are those wetlands, not classified by this Chapter as Tidal
116 Wetlands, which lie contiguous or abutting to Tidal Waters, Tidal Wetlands,
117 Perennial Streams or those Intermittent Streams providing a surface water
118 connection between adjacent Wetlands. Non-Tidal Wetlands also include those
119 Wetlands only separated from otherwise contiguous or abutting Wetlands by
120 constructed dikes, barriers, culverts, natural river berms and beach dunes.

121

122 . . .

123

124 **ORDINARY HIGH WATER MARK DELINEATION**

125

126 The boundary of Perennial Non-Tidal Rivers or Streams, Intermittent Streams or
127 Ephemeral Streams shall be defined by the Ordinary High Water Mark. Ordinary
128 High Water Mark means the line on a shore or bank established by the fluctuations
129 of water and indicated by physical characteristics such as a clear, natural line
130 impressed on the bank, shelving, changes in the character of soil, destruction of
131 terrestrial vegetation, the presence of litter and debris, or other similar physical
132 characteristics indicating the frequent presence of flowing water.

133

134 . . .

135 **PERENNIAL NON-TIDAL RIVERS AND STREAMS**

136 A well-defined channel that contains flowing water year-round during a year of
 137 normal rainfall with the aquatic bed located below the water table for most of the
 138 year and which is not subject to tidal influence. Groundwater is the primary source
 139 of water for a Perennial Stream, but it also carries runoff. A Perennial Stream
 140 exhibits the typical biological, hydrological, and physical characteristics commonly
 141 associated with the continuous conveyance of water.

142

143 . . .

144

145 **RESOURCE BUFFER - WETLANDS AND WATERS**

146 A managed area between residential land uses and Resources that is not
 147 subdividable once established, with the exception of a subdivision boundary
 148 resulting from an approved phase. Resource Buffers function to:

- 149 • Protect the Resources and their associated functions.
 150 • Improve/protect water quality via sediment filtration, reduce impact of
 151 nutrient loading on Resources, moderate water temperature, and enhance
 152 infiltration and stabilization of channel banks.
 153 • Provide wildlife habitat via nesting, breeding, and feeding opportunities;
 154 provide sanctuary/refuge during high water events; protect critical water's
 155 edge habitat; and protect rare, threatened, and endangered species associated
 156 with each Resource and its upland edge.
 157 • Enhance and/or maintain the flood plain storage functionality via reduction
 158 of flood conveyance velocities as well as dissipation of stormwater discharge
 159 energy.

160

161 . . .

162

163 **RESOURCES**

164 Those Wetlands and waters to be provided with a Resource Buffer due to their
 165 importance to Sussex County. These Resources include Tidal Waters, Tidal
 166 Wetlands, Non-Tidal Wetlands, Perennial Streams, and those Intermittent Streams
 167 providing a surface water connection between Wetlands.

168

169 . . .

170

171 **TAX DITCH**

172

173 A Tax Ditch is a drainage channel or conveyance and the corresponding right-of-
174 way established and/or formed in accordance with Title 7, Chapter 41 of the
175 Delaware Code, and approved by a “ditch order” entered by the Superior Court of
176 the State of Delaware and County of Sussex.

177

178 . . .

179

180 **TIDAL WATERS (MEAN HIGH-WATER LINE)**

181 Those waters occurring below the mean high-water line of any tidal water body,
182 tidal stream, or tidal marsh, which is defined as the average height of all the high-
183 tide water recorded over a nineteen-year period as defined by the National Oceanic
184 and Atmospheric Administration tidal datum.

185

186 . . .

187

188 **TIDAL WETLANDS**

189 Areas under the jurisdiction of Title 7, Chapter 66 of the Delaware Code, as
190 regulated and mapped by the Department of Natural Resources and Environmental
191 Control.

192

193 . . .

194

195 **WATER DEPENDENT ACTIVITIES**

196 Activities that are approved through federal and state permit programs that meet the
197 definition of water dependent activities included in those programs. Water-
198 dependent uses are uses that can only be conducted on, in, over, or adjacent to the
199 water; each involves, as an integral part of the use, direct access to and use of the
200 water. Examples include marinas, boat ramps/launches, docks, piers, water intakes,
201 aquatic habitat restoration, and similar uses.

202

203 . . .

204

205 **WATER RELATED ACTIVITIES**

206 Water Related Activities are those considered ancillary to and supporting permitted
207 Water Dependent Activities completed on adjacent uplands. Examples include utility
208 connections, limited points of access, loading/unloading areas, and similar uses.

209

210 . . .

211

212 **WETLANDS**

213 Wetlands are areas that are inundated or saturated by surface or groundwater at a
214 frequency and duration sufficient to support, and that under normal circumstances
215 do support, a prevalence of vegetation typically adapted for life in saturated soil
216 conditions. Agricultural land consisting of "Prior Converted Croplands" as defined
217 by the National Food Security Act Manual (August 1988), are not wetlands. The
218 procedure for delineating the boundary of all wetlands, except for Tidal Wetlands
219 as defined by this ordinance, shall be the methodology provided in the Corps of
220 Engineers Wetland Delineation Manual (January 1987) and the Regional
221 Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and
222 Gulf Coastal Plain Region (November 2010).

223

224 **Section 2. The Code of Sussex County, Chapter 99, Article I, §99-6 "General**
225 **Requirements and Restrictions", is hereby amended by deleting the language**
226 **in brackets and inserting the italicized and underlined language in existing**
227 **subsection J. and as a new subsection K. thereof as follows:**

228

229 **§99-6 General Requirements and Restrictions.**

230

231 . . .

232

233 J. A forested and/or landscape buffer, as defined in § 99-5, Subsections A
234 through J must be depicted on the preliminary and final plot plans for each major
235 subdivision of lands [into four or more lots] and must be established in accordance
236 with all the requirements of the definition of "forested and/or landscaped buffer
237 strip," Subsections A through J in § 99-5.

238

239 . . .

240

241 K. Resources and Resource Buffers, as defined in § 99-5 must be depicted on the
242 preliminary and final plot plans for each major subdivision of lands and must
243 comply with the requirements of §115-193.

244

245 **Section 3. The Code of Sussex County, Chapter 99, Article II, §99-7**
246 **“Preliminary Conference”, is hereby amended by deleting the language in**
247 **brackets in subsection C. thereof as follows:**

248

249 **§99-7 Preliminary Conference.**

250

251 . . .

252

253 C. If the Director determines that the proposed subdivision represents a minor
254 subdivision of a parcel, existing as of the effective date of this amended provision,
255 on a street other than a major arterial roadway, and if the Director determines that
256 review by the Commission is not necessary or desirable, he may waive the
257 requirement of preparing a preliminary plat and may authorize the preparation of a
258 record plat for purposes of recordation. He may, however, request review assistance
259 from other concerned agencies prior to authorizing preparation of the plat. Lots in
260 any minor subdivision plat approved by the Director, without review by the
261 Commission, shall have a minimum area of 3/4 of an acre and a minimum width of
262 150 feet and shall utilize entrances as approved by the Delaware Department of
263 Transportation. [Such a minor subdivision shall be limited to four lots per parcel, as
264 well as one additional lot for each 10 acres of parcel size, with a maximum of four
265 subdivided lots approved for recordation per calendar year.]

266

267 **Section 4. The Code of Sussex County, Chapter 99, Article IV, §99-23**
268 **“Information to Be Shown”, is hereby amended by inserting the italicized and**
269 **underlined language as a new subsection T. thereof:**

270 **§99-23 Information to Be Shown.**

271 The preliminary plat shall be drawn in a clear and legible manner and shall show the
272 following information”

273 . . .

274 T. The location of all Water and Wetland Resources and their Resource Buffers.

275 (1) The boundary and type of any Non-Tidal/Tidal Wetland or water resources
276 (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will
277 be shown per methods identified in the definitions of Wetlands and Ordinary High
278 Water Line Delineation.

279 (2) All existing (i.e., at the time of application) native forest and non-forest
280 meadow within the future Resource Buffer shall be identified.

281 (3) The area limits of the required Resource Buffers.

282 (4) Calculations supporting Resource Buffer width averaging (§115-193B).

283 (5) Calculations supporting Resource Buffer enhancement calculations and
284 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-
285 193F).

286 (6) Proposed access easement layout for access to Resource Buffers and the
287 adjacent Resources with a note that such access easements are “public access
288 easements for maintenance purposes”. For purposes of this requirement, “public”
289 shall mean, and be limited to, those parties requiring access for maintenance
290 purposes.

291 (7) A reference by title, author and date, to the “Drainage Assessment Report”
292 required by Section 115-193.F.2.

293

294 **Section 5. The Code of Sussex County, Chapter 99, Article IV, §99-24**
295 **“Supporting Statements”, is hereby amended by inserting the italicized and**
296 **underlined language as a new subsection G thereof:**

297 **§99-24 Supporting Statements**

298 The preliminary plat shall be accompanied by the following written and signed
299 statements in support of the subdivision's application for tentative approval:

300 . . .

301 G. A Resource and Resource Buffer Management Plan that describes measures
302 for managing the Resource and Resource Buffer(s) required pursuant to Chapter

303 115, Article XXV, Section 115-193 on the site. The Resource and Resource Buffer
304 Management Plan shall be included as part of the recorded declaration for the
305 subdivision.

306

307 **Section 6. The Code of Sussex County, Chapter 99, Article V, §99-26,**
308 **“Information to Be Shown”, is hereby amended by inserting the italicized and**
309 **underlined language as a new subsection A.(21) and C thereof:**

310 **§99-26 Information to Be Shown.**

311 A. The final plat shall be legibly and accurately drawn and show the following
312 information:

313 . . .

314 (21) The location of all Resource Buffers.

315 (a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources
316 (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will
317 be shown per methods identified in the definitions of Wetlands and Ordinary High
318 Water Line Delineation.

319 (b) All existing (i.e., at the time of application) native forest and non-forest
320 meadow within the future Resource Buffer shall be identified.

321 (c) The area limits of the required Resource Buffer.

322 (d) Calculations supporting Resource Buffer width averaging (§115-193B).

323 (e) Calculations supporting Resource Buffer enhancement calculations and
324 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§155-
325 193F).

326 (f) Proposed access easement layout for access to Resource Buffers and the
327 adjacent Resources with a note that such access easements are “public access
328 easements for maintenance purposes”. For purposes of this requirement, “public”
329 shall mean, and be limited to, those parties requiring access for maintenance
330 purposes.

331 (g) A statement incorporating the Resource and Resource Management and
332 Maintenance Plan by reference.

333 (h) A reference by title, author and date, to the "Drainage Assessment Report"
334 required by Section 115-193.F.2.

335 . . .

336 C. An AutoCAD drawing file containing all items required in Section A above
337 shall be submitted in electronic format. The data shall be referenced in NAD 1983
338 StatePlane Delaware FIPS 0700 (U.S. Feet) Projected Coordinate System.

339

340 **Section 7. The Code of Sussex County, Chapter 99, Article VI, §99-30, "Plans",**
341 **is hereby amended by inserting the italicized and underlined language as a new**
342 **subsection J. and K. thereof:**

343 **§99-30 Plans.**

344

345 Plans, profiles and specifications for the required improvements shall be prepared
346 by the subdivider and submitted for approval by the appropriate public authorities
347 prior to construction. No construction shall commence prior to the issuance of a
348 notice to proceed by the County Engineer or his or her designee for the required
349 improvements. All plans, profiles and specifications approved by the County
350 Engineer or his or her designee with the issuance of a notice to proceed shall remain
351 valid or, if substantial construction is not actively and continuously underway, they
352 shall expire upon the expiration of the final site plan. Prior to the issuance of a notice
353 to proceed, the County Engineer may require the owner and/or his designee to
354 execute an agreement addressing the required improvements. The plans and profiles
355 submitted for all new construction shall include the following:

356

357 . . .

358

359 J. Resources and Resource Buffers.

360

361 K. Proposed access easement layout with a note that such access easements are
362 "public access easements for maintenance purposes". For purposes of this
363 requirement, "public" shall mean, and be limited to, those parties requiring access
364 for maintenance purposes.

365

366 **Section 8. The Code of Sussex County, Chapter 115, Article I, §115-4**
367 **“Definitions and Word Usage,” is hereby amended by inserting the italicized**
368 **and underlined language alphabetically in Subsection B thereof:**

369

370 **§115-4 Definitions and Word Usage.**

371

372

373

374 B. General definitions. For the purpose of this chapter, certain terms and words
375 are hereby defined as follows:

376

377

378

379 **EPHEMERAL STREAMS**

380 A feature that carries only runoff in direct response to precipitation with water
381 flowing only during and shortly after large precipitation events. An Ephemeral
382 Stream may or may not have a well-defined channel, its aquatic bed is always above
383 the water table during a year of normal rainfall, and runoff is its primary source of
384 water. An Ephemeral Stream typically lacks the biological, hydrological, and
385 physical characteristics commonly associated with the continuous or intermittent
386 conveyance of water.

387

388 . . .

389

390 **INTERMITTENT STREAMS**

391 A well-defined channel that contains flowing water for only part of the year, typically
392 during winter and spring when the aquatic bed is below the water table, connecting
393 otherwise isolated Non-tidal Wetlands to downstream Tidal/Perennial
394 Waters/Streams. The flow may be heavily supplemented by runoff. An Intermittent
395 Stream often lacks the biological and hydrological characteristics commonly
396 associated with the continuous conveyance of water.

397

398 . . .

399 **NON-TIDAL WETLANDS**

400 Non-Tidal Wetlands are those Wetlands, not classified by this Chapter as Tidal
 401 Wetlands, which lie contiguous or abutting to Tidal Waters, Tidal Wetlands,
 402 Perennial Streams or those Intermittent Streams providing a surface water
 403 connection between adjacent Wetlands. Non-Tidal Wetlands also include those
 404 Wetlands only separated from otherwise contiguous or abutting Wetlands by
 405 constructed dikes, barriers, culverts, natural river berms and beach dunes.

406

407 . . .

408

409 **ORDINARY HIGH WATER MARK DELINEATION**

410

411 The boundary of Perennial Non-Tidal Rivers or Streams, Intermittent Streams or
 412 Ephemeral Streams shall be defined by the Ordinary High Water Mark. Ordinary
 413 High Water Mark means the line on a shore or bank established by the fluctuations
 414 of water and indicated by physical characteristics such as a clear, natural line
 415 impressed on the bank, shelving, changes in the character of soil, destruction of
 416 terrestrial vegetation, the presence of litter and debris, or other similar physical
 417 characteristics indicating the frequent presence of flowing water.

418

419 . . .

420 **PERENNIAL NON-TIDAL RIVERS AND STREAMS**

421 A well-defined channel that contains flowing water year-round during a year of
 422 normal rainfall with the aquatic bed located below the water table for most of the
 423 year and which is not subject to tidal influence. Groundwater is the primary source
 424 of water for a perennial stream, but it also carries runoff. A Perennial Stream
 425 exhibits the typical biological, hydrological, and physical characteristics commonly
 426 associated with the continuous conveyance of water.

427

428 . . .

429

430 **RESOURCE BUFFER - WETLANDS AND WATERS**

431 A managed area between residential land uses and Resources that is not
 432 subdividable once established, with the exception of a subdivision boundary
 433 resulting from an approved phase. Resource Buffers function to:

- 434 • Protect the Resources and their associated functions.
- 435 • Improve/protect water quality via sediment filtration, reduce impact of
- 436 nutrient loading on Resources, moderate water temperature, and enhance
- 437 infiltration and stabilization of channel banks.
- 438 • Provide wildlife habitat via nesting, breeding, and feeding opportunities;
- 439 provide sanctuary/refuge during high water events; protect critical water's
- 440 edge habitat; and protect rare, threatened, and endangered species associated
- 441 with each Resource and its upland edge.
- 442 • Enhance and/or maintain the flood plain storage functionality via reduction
- 443 of flood conveyance velocities as well as dissipation of stormwater discharge
- 444 energy.

445

446 . . .

447

448 **RESOURCES**

449 Those wetlands and waters to be provided with a Resource Buffer due to their

450 importance to Sussex County. These Resources include Tidal Waters, Tidal

451 Wetlands, Non-Tidal Wetlands, Perennial Streams, and those Intermittent Streams

452 providing a surface water connection between Wetlands.

453

454 . . .

455

456 **TAX DITCH**

457

458 A Tax Ditch is a drainage channel or conveyance and the corresponding right-of-

459 way established and/or formed in accordance with Title 7, Chapter 41 of the

460 Delaware Code, and approved by a "ditch order" entered by the Superior Court of

461 the State of Delaware and County of Sussex.

462

463 . . .

464

465 **TIDAL WATERS (MEAN HIGH-WATER LINE)**

466 Those waters occurring below the mean high-water line of any tidal water body,

467 tidal stream, or tidal marsh, which is defined as the average height of all the high-

468 tide water recorded over a nineteen-year period as defined by the National Oceanic

469 and Atmospheric Administration tidal datum.

470

471 . . .

472

473 **TIDAL WETLANDS**

474 Areas under the jurisdiction of Title 7, Chapter 66 of the Delaware Code, as
475 regulated and mapped by the Department of Natural Resources and Environmental
476 Control.

477

478 . . .

479

480 **WATER DEPENDENT ACTIVITIES**

481 Activities that are approved through federal and state permit programs that meet the
482 definition of water dependent activities included in those programs. Water-
483 dependent uses are uses that can only be conducted on, in, over, or adjacent to the
484 water; each involves, as an integral part of the use, direct access to and use of the
485 water. Examples include marinas, boat ramps/launches, docks, piers, water intakes,
486 aquatic habitat restoration, and similar uses.

487

488 . . .

489

490 **WATER RELATED ACTIVITIES**

491 Water Related Activities are those considered ancillary to and supporting permitted
492 Water Dependent Activities completed on adjacent uplands. Examples include utility
493 connections, limited points of access, loading/unloading areas, and similar uses.

494 . . .

495 **WETLANDS**

496 Wetlands are areas that are inundated or saturated by surface or groundwater at a
497 frequency and duration sufficient to support, and that under normal circumstances
498 do support, a prevalence of vegetation typically adapted for life in saturated soil
499 conditions. Agricultural land consisting of "Prior Converted Croplands" as defined
500 by the National Food Security Act Manual (August 1988), are not wetlands. The
501 procedure for delineating the boundary of all wetlands, except for Tidal Wetlands
502 as defined by this ordinance, shall be the methodology provided in the Corps of
503 Engineers Wetland Delineation Manual (January 1987) and the Regional

504 Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and
505 Gulf Coastal Plain Region (November 2010).

506 **Section 9. The Code of Sussex County, Chapter 115, Article IV, §115-25**
507 **“Height, Area and Bulk Requirements,” is hereby amended by deleting the**
508 **language in brackets and inserting the italicized and underlined language in**
509 **Subsection F(3)(a)[4] thereof:**

510

511 **§115-25** Height, Area and Bulk

512

513 F. Review procedures for cluster development

514

515 ...

516

517 (3) The Planning & Zoning Commission shall determine that the following
518 requirements are met before approving any preliminary plan and such
519 application shall be reviewed on an expedited basis.

520

521 (a) The cluster development sketch plan and the preliminary plan of
522 the cluster subdivision provides for a total environment and design
523 which are superior, [and] *in* the reasonable judgment of the Planning
524 Commission, to that which would be allowed under the regulations for
525 the standard option. For the purposes of this subsection a proposed
526 cluster subdivision which provides for a total environment and design
527 which are superior to that allowed under the standard option
528 subdivision is one which, in the reasonable judgment of the Planning
529 Commission meets all of the following criteria:

530

531 ...

532

533 [4] [A minimum of 25 feet of permanent setback must be
534 maintained around the outer boundaries of all wetlands, except
535 for tidal waters, tidal tributary streams and tidal wetlands and
536 from the ordinary high water line of perennial nontidal rivers and
537 nontidal streams as provided for in §115-193B under Ordinance
538 No. 774 where a fifty-foot permanent setback is required. No
539 buildings or paving shall be placed within these setbacks.] *The*

540 preliminary plan shall comply with the requirements of §115-
541 193.

542

543 **Section 10. The Code of Sussex County, Chapter 115, Article XXV, §115-193**
544 **“Buffer Zones for Wetlands and Tidal and Nonperennial Waters,” is hereby**
545 **amended by amending the Title thereof to state “Resource Protection” and**
546 **deleting the language in brackets and inserting the italicized and underlined**
547 **language:**

548

549 **§115-193 [Buffer Zones for Wetlands and Tidal and Nonperennial Waters]**
550 **Resource Protection**

551

552 [A.

553 Definitions. As used in this section, the following terms shall have the meanings
554 indicated:

555 BUFFER ZONE

556 An existing naturally vegetated area or an area purposely established in
557 vegetation which shall not be cultivated in order to protect aquatic, wetlands,
558 shoreline and upland environments from man-made encroachment and
559 disturbances. The "buffer zone" shall be maintained in natural vegetation, but
560 may include planted vegetation where necessary to protect, stabilize or
561 enhance the area.

562

563 MEAN HIGH-WATER LINE OF TIDAL WATER

564 The average height of all the high-tide water recorded over a nineteen-year
565 period as defined by the National Oceanic and Atmospheric Administration
566 tidal datum.

567 PERENNIAL NONTIDAL RIVERS AND STREAMS

568 Any body of water which continuously flows during a year and which is not
569 subject to tidal influence.

570 TIDAL TRIBUTARY STREAM

571 A stream under tidal influence, either connecting fresh or salt water.

572 TIDAL WETLANDS

573 Areas under the jurisdiction of Title 7, Chapter 66, of the Delaware Code, as
 574 the chapter appears as of the date of the adoption of this Article, as regulated
 575 and mapped by the Department of Natural Resources and Environmental
 576 Control.

577 WETLANDS

578 A private or state wetland as defined by the Delaware Department of Natural
 579 Resources and Environmental Control regulations and maps as promulgated
 580 pursuant to Chapter 66, Title 7, of the Delaware Code, as the chapter appears
 581 upon the date of the adoption of this Article.

582 B. A fifty-foot buffer zone is hereby established landward from the mean high
 583 water line of tidal waters, tidal tributary streams and tidal wetlands and from the
 584 ordinary high water line of perennial nontidal rivers and nontidal streams in Sussex
 585 County.

586 C. Excluded from buffer zone designation are farm ponds, tax ditches and other
 587 man-made bodies of water where these waters are not located on or within perennial
 588 streams. A buffer zone shall not be required for agricultural drainage ditches if the
 589 adjacent agricultural land is the subject of a conservation farm plan established with
 590 the Sussex Conservation District.

591 D. Excluded from buffer zone regulations are facilities necessarily associated
 592 with water-dependent facilities (maritime, recreational, educational or fisheries
 593 activities that cannot exist outside of the buffer by reason of the intrinsic nature of
 594 their operation) and the installation, repair or maintenance of any stormwater
 595 management facility, sanitary sewer system, culvert, bridge, public utility, street,
 596 drainage facility, pond, recreational amenity, pier, bulkhead, boat ramp, waterway
 597 improvement project or erosion-stabilization project that has received the joint
 598 approval of the County Engineering Department and the appropriate federal, state
 599 and local agencies. An existing public storm-drain system may be extended in order
 600 to complete an unenclosed gap or correct a drainage problem, subject to receiving
 601 the approval of the County Engineering Department and the appropriate federal,
 602 state and local agencies.

603 E. Grandfathering provision. The following types of land uses may be developed
 604 notwithstanding the provisions of this section:

605 (1) Existing improvements and construction as of the date of the approval
 606 of this section may continue. Alterations or expansions which shall be
 607 attached to a preexisting structure built on nonconforming land, pursuant to
 608 this section, will not be permitted unless proven that such improvement is

609 constructed at an equal distance or landward of the preexisting structure which
610 is most proximate to the wetland area and a variance is granted as provided
611 below.

612 (2) Subdivision plats and site plans approved and of record in the office of
613 the Director of Planning and Zoning or in the office of the Recorder of Deeds
614 in and for Sussex County prior to the adoption of this section, originally
615 adopted July 19, 1988, or approved and similarly of record as of the effective
616 date of this amendment, adopted July 2, 1991, may be developed as of record
617 and shall be subject to setbacks or buffer restrictions established for the use
618 when originally approved. Any previously approved and similarly recorded
619 subdivision plats and site plans, if approved prior to the original date of this
620 section on July 19, 1988, or prior to this amendment, adopted July 2, 1991,
621 may be amended if it is determined by the Planning and Zoning Commission
622 that the amended plan represents an equal or less intrusive use on the buffer
623 area or setback area.

624 F. Variances to the provisions of this section will be considered by the Board of
625 Adjustment under the following conditions:

626 (1) That findings are made by the Board of Adjustment which demonstrate
627 that special conditions or circumstances exist that are peculiar to the land or
628 structure within the county and that a literal enforcement of provisions within
629 the buffer zone as designated by this section would result in unwarranted
630 hardship.

631 (2) That the variance request is not based upon conditions or circumstances
632 which are the result of actions by the applicant, nor does the request arise from
633 any condition relating to land or building use, either permitted or
634 nonconforming, on any neighboring property.

635 (3) That the granting of a variance will not adversely affect water quality
636 or adversely impact fish, wildlife or plant habitat within the designated buffer
637 zones and in waters adjacent to buffer zones. Variances will be in harmony
638 with the general spirit and intent of the section and any subsequent
639 regulations.

640 (4) That applications for a variance will be made, in writing, to the Board
641 of Adjustment, with a copy to the County Administrator.

642 (3) Any land upon which development has progressed to the point of
643 pouring of a foundation or the installation of structural improvements as of

644 the date of the approval of this section shall be permitted to be developed,
645 provided that there shall be no further encroachment upon the buffer zone, as
646 required in Subsection E(1) above.]

647

648 A. Resource Buffer Widths.

649

650 1. Resource Buffer Widths shall be established in accordance with Table
651 1, with Zone A being closest to the Resource.

652

653 2. Resource Buffers are not required landward/adjacent to those portions
654 of Resources to be filled or developed with a valid U. S. Army Corps of
655 Engineers or Delaware Department of Natural Resources and
656 Environmental Control permit.

657

658 3. No Resource Buffer shall overlay a Tax Ditch or Tax Ditch Right of
659 Way. If a proposed development contains a Tax Ditch, with a right-of-
660 way of less than the total Resource Buffer Width, then that area of the
661 Resource Buffer outside of the right-of-way shall be designated as Zone
662 B.

663

664

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

665

666 B. Resource Buffer Width Averaging.

667

668 1. Resource Buffer width averaging may be utilized to adjust the required
 669 Zone B Resource Buffer width thereby allowing flexibility for the
 670 proposed development, so long as the overall square footage of the
 671 Zone B Resource Buffer is maintained.

672

673 2. Criteria for utilizing Resource Buffer width averaging:

674 (a) Resource Buffer width averaging is not available for Zone A.

675 (b) The overall square footage of Zone B Resource Buffer must be
 676 achieved within the boundaries of the proposed development unless a
 677 Resource Buffer Option permitted under subsection G is utilized.

678 (c) Resource Buffer width averaging may be used on all of the Zone
 679 B Resource Buffers within the boundaries of the proposed development.

680 (d) Zone B Resource Buffer averaging shall not be expanded more
 681 than double the width of Zone B Resource Buffer as referenced in
 682 Section 115-193A.

683 (e) The overall square footage of Zone B Resource Buffer must be
 684 calculated based upon the entire length of the Resource borderline that
 685 is located within the boundaries of the proposed development.

687 C. Permitted Activities.

688
 689 Activities in Zone A and B shall be "Permitted" or "Not Permitted" as set forth in
 690 the following Table. Uses not specifically identified shall be prohibited, unless the
 691 contrary is clear from the context of the Table, as determined by the Commission.

<u>Table 2: Resource Buffer Activities by Zone</u>		
<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<u>1. Impacts to resource buffers resulting from State and/or Federally permitted disturbances to Resources (wetlands/waters) such as maintenance of Resources and Resource Buffers, utilities, roads, bridges, docks, piers, boat ramps, bulkheads, shoreline stabilization, and resources authorized to be filled or disturbed for development.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>2. Water-related facilities and ancillary uses required to support water-dependent projects approved by a federal or state permit, including but not limited to: marinas, wharfs, community docking facilities, boat ramps, and canoe/kayak launches.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>3. Repair or maintenance of existing infrastructure or utilities, including roads, bridges, culverts, water lines, and sanitary sewer lines.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>4. Temporary impacts resulting from installation of utilities by trenching</u>	<u>PERMITTED</u>	<u>PERMITTED</u>

<u>Table 2: Resource Buffer Activities by Zone</u>		
<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<i>methods which are part of State or Federally approved utility installation projects or the installation of utilities by directional boring methods.</i>		
<i>5. Stormwater Management conveyances as approved by the Sussex Conservation District.</i>	<u>PERMITTED</u>	<u>PERMITTED</u>
<i>6. Tax Ditch Maintenance as approved by DNREC Drainage Program.</i>	<u>PERMITTED</u>	<u>PERMITTED</u>
<i>7. Maintenance or repair of drainage conveyances not within a Tax Ditch Right of Way as approved by the Sussex County Engineering Department or Sussex Conservation District.</i>	<u>PERMITTED</u>	<u>PERMITTED</u>
<i>8. Structural crossings of Resources such as bridges or boardwalks which may not require a State or Federal permit.</i>	<u>PERMITTED</u>	<u>PERMITTED</u>
<i>9. Maintenance or modification to previously existing structures and improvements within existing footprint.</i>	<u>PERMITTED</u>	<u>PERMITTED</u>
<i>10. State or Federally approved wetland restoration, creation, and enhancement projects.</i>	<u>PERMITTED</u>	<u>PERMITTED</u>
<i>11. State or Federally approved flood plain restoration, or Resource restoration projects involving the maintenance, repair, restoration, creation, or enhancement of Resources and their Resource Buffers.</i>	<u>PERMITTED</u>	<u>PERMITTED</u>
<i>12. Soil Erosion and Sediment Control measures as approved by Sussex Conservation District.</i>	<u>PERMITTED</u>	<u>PERMITTED</u>
<i>13. Forest Management Activities conducted under the guidance and direction of a Licensed Forester.</i>	<u>PERMITTED</u>	<u>PERMITTED</u>

<u>Table 2: Resource Buffer Activities by Zone</u>		
<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<u>Arborist, Landscape Architect, or Qualified Resource Buffer Professional.</u>		
<u>14. Invasive Species Control (plant, insect, animal) conducted in accordance with State and Federal law.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>15. Planting/establishment of non-invasive native species (as listed by DNREC).</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>16. Installation, repair, maintenance, and removal of wells (potable, monitoring, injection as approved by state/federal agencies).</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>17. Walking Trails approved by a State and/or Federal Permit where any associated impervious area runoff is managed under a Sussex Conservation District permit.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>18. Extended Detention dry and wet stormwater management ponds.</u>	<u>NOT PERMITTED</u>	<u>PERMITTED</u>
<u>19. Removal of any dead, dying, damaged, or unstable live tree from a Resource or Resource Buffer which presents an imminent danger to property or public safety.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>20. Stormwater Management Water Quality BMPs as approved by the Sussex Conservation District.</u>	<u>PERMITTED</u> <u>(Limited to 10% of Total square footage of Zone A in a proposed development)</u>	<u>PERMITTED</u>
<u>21. Sewage disposal facilities.</u>	<u>NOT PERMITTED</u>	<u>NOT PERMITTED</u>
<u>22. Storage of hazardous materials and siting of industrial sites, landfills, or junkyards.</u>	<u>NOT PERMITTED</u>	<u>NOT PERMITTED</u>

<u>Table 2: Resource Buffer Activities by Zone</u>		
<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<u>23. Swimming pools, community clubhouses, and all Non-Water-Dependent or Non-Water Related improvements not specifically permitted under this section.</u>	<u>NOT PERMITTED</u>	<u>NOT PERMITTED</u>

692

693 D. Resource Buffer Standards.

694

695 1. All existing (i.e., at the time of application) conditions, including the
 696 vegetative land features, and the proposed conditions within the proposed
 697 Resource Buffer shall be identified on the Preliminary Site Plan.

698

699 2. If a proposed development contains a Resource, then the associated Resource
 700 Buffer shall conform with the following criteria based on vegetative features
 701 existing at the time of Preliminary Site plan Submission:

702 (a) Established native forests and non-forest meadows predominated by
 703 non-invasive species shall be retained.

704

705 (i) Forest: Subject to §115-193C, all existing trees and understory
 706 constituting a proposed Resource Buffer shall be preserved and
 707 maintained in their natural state. "Selective Cutting" (Subsection E)
 708 activities may be implemented. Invasive species may be removed from the
 709 Resource Buffer.

710

711 (ii) Non-forest Meadow: Subject to §115-193C, all existing meadows
 712 constituting a proposed non-forested Resource Buffer that are composed
 713 of herbaceous and shrub species shall be preserved and maintained in
 714 their natural state. Non-forest meadow may also include old field areas
 715 with a mixture of herbaceous vegetation, shrubs and trees transitioning to
 716 a forested condition through natural succession. Invasive species may be
 717 removed from the Resource Buffer.

718

719 (b) Grazed pasture, managed turf, active cropland or areas of bare earth
 720 not stabilized with vegetative cover shall be re- established as native forest or
 721 non-forest meadow prior to determination of substantial completion of the
 722 proposed development phase where that “unstabilized” area is located by
 723 planting of non-invasive species or through the process of natural succession
 724 augmented with invasive species control.

725 E. Selective Cutting.

726

727 1. “Selective Cutting” is defined as the removal or limbing of trees greater than
 728 three inches in diameter at breast height which does not change the area of
 729 the overall forest canopy by the concentrated removal of trees in a specific
 730 location. “Selective Cutting” also permits the removal or brushing of forest
 731 understory. Disruption of a contiguous forest canopy for a width greater
 732 than thirty feet shall not occur and does not meet the definition of “Selective
 733 Cutting”. “Selective Cutting” does not include stump removal.

734

735 2. “Selective Cutting” shall be completed under the guidance and approval of a
 736 Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or
 737 Qualified Resource Buffer Professional

738

739 F. Maintenance of Drainage Conveyances

740

741 1. All Resource Buffers identified on a Final Site Plan shall be designated as a
 742 drainage and access easement permitting access by any future owners’
 743 association, federal, state or local agency and the public, for the limited
 744 purpose of maintenance or monitoring of drainage capacity or conveyance by
 745 any future owners’ association; federal state or local agency; and the public.
 746 In addition, a corresponding easement for access into each individual
 747 Resource Buffer established on the site shall, whenever possible, be provided
 748 from a public road or street within a proposed development.

749

750 2. If a Resource Buffer abuts or contains features such as ephemeral,
 751 intermittent or perennial streams which are not part of an established Tax
 752 Ditch and which convey drainage from or through a site proposed for
 753 development, a “Drainage Assessment Report” shall be prepared by a
 754 registered Delaware Professional Engineer. As part of the pre-application
 755 process, Sussex County will determine the information to be included in the
 756 Drainage Assessment Report. At a minimum, the Drainage Assessment

757 Report shall identify the following concerning measures needed for drainage
758 conveyances:

759
760 (a) Identification of any unstable or eroding stream banks or
761 conveyance requiring stabilization or restoration measures.

762
763 (b) The location of any stream blockages such as debris jams, fallen
764 or unstable trees, beaver dams or similar impediments to conveyance.

765
766 (c) The location of any sand or gravel deposition within a channel
767 or conveyance which impedes the flow of water produced by a storm
768 having an annual probability of occurrence of 10%.

769
770 (d) A discussion of all recommended measures to remedy any
771 impediment to drainage conveyance or drainage stability.

772
773 (e) A summary of required local, state or federal permits required to
774 remedy any impediment to drainage conveyance.

775
776 (f) The easement width and a sufficient number of easements to provide
777 adequate access to the Resource for maintenance.

778
779 3. Remedies required by Sussex County as a result of the Drainage
780 Assessment Report shall be shown on the Final Site Plan.

781
782 G. Resource Buffer Options

783
784 1. A proposed development shall be permitted to utilize the following options,
785 consistent with §115-193, Section B. Resource Buffer Width Averaging, to
786 incentivize the retention of forests:

787
788 (a) When the preservation of a forest within the Resource Buffer that has
789 been in existence for at least five years prior to the date of application
790 as identified by a Licensed Forester, Arborist, Landscape Architect, or
791 Qualified Resource Buffer Professional is achieved, then a
792 corresponding area reduction of either the Resource Buffer Zone B
793 along the entire or part of that Resource; or the Forested and/or

794 Landscaped Buffer required in Chapter 99 in areas adjacent to like-
795 zoned land is permitted.

796

797 (b) When the Preservation of a forest connected to (but not within) a
798 Resource Buffer in excess of the requirements listed in Section 115-
799 193.A. is achieved, then a corresponding area reduction of either non-
800 Forest Resource Buffer Zone B on the same Resource, or Forested
801 and/or Landscaped Buffer required in Chapter 99 in areas adjacent to
802 like-zoned land is permitted.

803

804 (c) When the provision of Resource Buffer widths in excess of the
805 requirements listed in Section 115-193.A. is achieved, then a
806 corresponding area reduction of the Forested and/or Landscaped Buffer
807 required in Chapter 99 in areas adjacent to like-zoned land is permitted.

808

809 2. A proposed development shall be permitted to utilize the following options to
810 incentivize the retention or expansion of Resource Buffers or provide
811 additional functional benefit of Resource Buffers:

812

813 (a) (i) When the creation of a Resource Buffer under a perpetual conservation
814 easement for the benefit of a conservation organization approved by
815 Sussex County on lands in the same twelve-digit hydrologic unit code as
816 defined by the United States Geological Survey as the proposed
817 development is achieved, then a 75 percent corresponding area
818 reduction of the Resource Buffer Zones A and/or B on the same Resource
819 within the proposed development is permitted.

820

821 (ii) When the creation of a Resource Buffer for forest preservation under
822 a perpetual conservation easement for the benefit of a conservation
823 organization approved by Sussex County on lands in the same twelve-
824 digit hydrologic unit code as defined by the United States Geological
825 Survey as the proposed development is achieved, then a 125 percent
826 corresponding area reduction of the Resource Buffer Zones A and/or B
827 on the same Resource within the proposed development is permitted.

828

829 (b) Funding, partially or entirely, an off-site restoration project under the
830 Sussex County Clean Water Enhancement Program, subject to approval

831 of the Sussex Conservation District, with completion of the restoration
832 by Sussex County in the same twelve digit hydrologic unit code as
833 defined by the United States Geological Survey as the proposed
834 development with a corresponding Resource Buffer Zone A and/or B
835 reduction equal to the Resource Buffer area created in the off-site
836 project.

837

838 (c) (i) A proposed development with a pre-existing property boundary in the
839 center of an Intermittent or Perennial Stream that includes a perpetual
840 conservation easement for the benefit of a conservation organization
841 approved by Sussex County in the form of a Zone A Resource Buffer on
842 the opposite side of the Intermittent or Perennial Stream may receive a
843 corresponding area reduction of the Zone B Resource Buffer within the
844 proposed development.

845

846 (ii) A proposed development with a pre-existing boundary in the center
847 of an Intermittent or Perennial Stream may receive a 200 percent area
848 reduction of Zone B Resource Buffer if forest lands designated as Zone
849 A Resource Buffers are secured under a perpetual conservation
850 easement for the benefit of a conservation organization approved by
851 Sussex County on the opposite side of the Intermittent or Perennial
852 Stream along the proposed development boundary.

853

854 3. For purposes of this Subsection G., "Forest" shall mean: A vegetative
855 community dominated by trees and other woody plants covering a land area
856 of 10,000 square feet or greater. Forest includes: (1) areas that have at least
857 100 trees per acre with at least 50% of those having a two-inch or greater
858 diameter at 4.5 feet above the ground and larger, and (2) forest areas that
859 have been cut but neither stumps were removed nor the land surface regraded.

860

861

862 H. Resource and Resource Buffer Maintenance and Management.

863

864 1. Resource and Resource Buffer Management Plan

865 Any proposed development where Resource Buffers are required shall submit
866 a Resource and Resource Buffer Management Plan, prepared by a Qualified

867 Resource Buffer Management Professional, that describes measures for
 868 maintaining or improving the Resource and the Resource Buffer(s) on the site.
 869 The Resource and Resource Buffer Management Plan shall be proffered as
 870 part of the Supporting Statement requirements of §99-24, or at the time of
 871 Preliminary Site Plan approval for any residential conditional use. The
 872 maintenance standards or management actions associated with the Resource
 873 and Resource Buffer Management Plan shall be included as an obligation of
 874 the owners' association in the recorded declaration for any new development.
 875 The Resource and Resource Buffer Management Plan shall describe how the
 876 Resource Buffer will be managed to maintain its functions and cite any
 877 measures to be implemented for the enhancement of Resource Buffers or their
 878 functions. It shall also include a narrative discussing the overall plan for
 879 access easements sufficient for expected short- and long-term maintenance
 880 and management needs.

881 2. Any Perennial or Intermittent Stream within a proposed development
 882 that does not exhibit a positive conveyance (regardless of whether it is part of
 883 a Tax Ditch) shall be identified by phase on the Detailed Grading Plan as
 884 follows:

885 (a) If the deficient Perennial or Intermittent Stream has adjacent
 886 Non-Tidal Wetlands, the applicant shall restore the conveyance
 887 channel to a positive conveyance (i.e. the removal of conveyance
 888 impediments) within the entire site prior to the issuance of substantial
 889 completion of the final approved phase. This restoration shall be in
 890 compliance with all applicable federal, state and county requirements.

891 (b) If the deficient Perennial or Intermittent Stream has no adjacent
 892 Non-Tidal Wetlands, the applicant shall restore the conveyance
 893 channel to a positive conveyance (i.e. the removal of conveyance
 894 impediments) within the entire site prior to the issuance of substantial
 895 completion of the first approved phase. This restoration shall be in
 896 compliance with all applicable federal, state and county requirements.

897 I. Modifications and Exceptions.

898
 899 The Planning and Zoning Commission shall be authorized, as part of the site plan
 900 review process, to grant preliminary or final site plan approval with modifications
 901 of, or exceptions to, the foregoing requirements upon the submission of a detailed

902 and specific written request from the applicant with supporting documentation from
903 a Qualified Wetland Resource Professional or Qualified Resource Buffer
904 Management Professional, but only upon the satisfaction of all of the following
905 conditions:

906

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

910

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

915

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

920

921 4. That the basis for the modification or exception cannot be achieved
922 through Resource Buffer Width Averaging as provided by §115-193B.

923

924 5. That in no event shall there be a modification or exception to the width
925 requirements of Zone A.

926

927 The date of any modification or exception by the Commission shall be noted on the
928 final site plan.

929 J. These requirements shall only apply to subdivisions governed by Chapter 99,
930 Residential Planned Communities and uses identified in §115-219A(1) and (2).

931

932 **Section 11. The Code of Sussex County, Chapter 115, Article XXVIII, §115-220**
933 **“Preliminary Site Plan Requirements”, is hereby amended by inserting the**
934 **italicized and underlined language as a new Subsection B(17) thereof:**

935 **§115-220 Preliminary Site Plan Requirements**

936 ...

937 B. The preliminary site plan shall show the following:

938 . . .

939 (17) In the case of a proposed development with the uses identified in §115-
940 219A(1) and (2) or Residential Planned Communities, the site plan shall include all
941 required Resource Buffers and the following:

942 (a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources
943 (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will
944 be shown per methods identified in the definitions of Wetlands and Ordinary High
945 Water Line Delineation.

946 (b) All existing (i.e., at the time of application) native forest and non-forest
947 meadow within the future Resource Buffer.

948 (c) The limits of the required Resource Buffers.

949 (d) Calculations supporting Resource Buffer width averaging (§115-193B).

950 (e) Calculations supporting Resource Buffer enhancement calculations and
951 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-
952 193F).

953 (f) Proposed access easement layout for access to Resource Buffers and the
954 adjacent Resources with a note that such access easements are “public access
955 easements for maintenance purposes”. For purposes of this requirement, “public”
956 shall mean, and be limited to, those parties requiring access for maintenance
957 purposes.

958 (g) A reference by title, author and date, to the “Drainage Assessment Report”
959 required by Section 115-193.F.2.

960

961 **Section 12. The Code of Sussex County, Chapter 115, Article XXVIII, §115-221**
962 **“Final Site Plan Requirements”, is hereby amended by inserting the italicized**
963 **and underlined language as a new Subsections B(19) and E. thereof:**

964 **§115-221 Final Site Plan Requirements**

965 . . .

966 B. The final site plan shall show the following:

967 (19) In the case of a proposed development with the uses identified in §115-
968 219A(1) and (2) or Residential Planned Communities, the site plan shall include all
969 required Resources and Resource Buffers including the following, where applicable:

970 (a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources
971 (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will
972 be shown per methods identified in the definitions of Wetlands and Ordinary High
973 Water Line Delineation.

974 (b) All existing (i.e., at the time of application) native forest and non-forest
975 meadow within the future Resource Buffer.

976 (c) The limits of the required Resource Buffers.

977 (d) Calculations supporting Resource Buffer width averaging (§115-193B).

978 (e) Calculations supporting Resource Buffer enhancement calculations and
979 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-
980 193F).

981 (f) Proposed access easement layout for access to Resource Buffers and the
982 adjacent Resources with a note that such access easements are “public access
983 easements for maintenance purposes”. For purposes of this requirement, “public”
984 shall mean, and be limited to, those parties requiring access for maintenance
985 purposes.

986 (g) A statement incorporating the Resource and Resource Management and
987 Maintenance Plan by reference.

988 (h) A reference by title, author and date, to the “Drainage Assessment Report”
989 required by Section 115-193.F.2.

990 . . .

991 E. An AutoCAD drawing file containing all items required in Section A above
992 shall be submitted in electronic format. The data shall be referenced in NAD 1983
993 StatePlane Delaware FIPS 0700 (U.S. Feet) Projected Coordinate System.

994

995 **Section13. Effective Date.**

996 This Ordinance shall take effect upon _____ () months from the date of adoption
997 by Sussex County Council. Provided however, that it shall not apply to any
998 completed applications on file with the Sussex County Office of Planning & Zoning.

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
UTILITY PLANNING	(302) 855-1299
FAX	(302) 853-5881



Sussex County

DELAWARE
sussexcountye.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

Memorandum

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

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

RE: *Herring Creek & Chapel Branch Sanitary Sewer Districts with Robinsonville Road Development Area Pump Stations, Project S20-06*
A. Change Order No. 2

DATE: January 11, 2022

On August 2, 2016, County Council created the Herring Creek Area Expansion of the Sussex County Unified Sewer District. On October 2, 2018, County Council approved WRA Associates, Inc.'s professional services Amendment No. 1 under the Herring Creek base contract for the final design followed by an approval on November 19, 2019 for the contract administration and inspection of Project S20-06.

On March 20, 2017, the Finance Department filed an overall funding application for approximately \$20,500,000 with USDA/Rural Development, Rural Utility Service. Ultimately USDA funding was obligated over three (3) funding cycles. Due to the size of the project USDA requested a phasing plan. Phase 1 encompasses the pump stations and pressure mains, Phase 2 provides the sewer collection system off Sloan Road, Phase 3 provides the collection system for all minor and major subdivisions off Banks Road and Phase 4 includes the collection system in the Winding Creek Village subdivision.

In addition to the Herring Creek pump stations, the County was pursuing design and construction of two (2) County funded pump stations in the Chapel Branch Sewer District Area as well as the 3rd party funded pump station in the greater Robinsonville Road area. In an attempt to obtain the best pricing, the Engineering Department packaged these stations together with the Herring Creek ones after obtaining USDA concurrence for a joint bid with separate bid items for each station.



The overall contract was publicly advertised and on September 19, 2019, six (6) bids were received. On October 8, 2019 County Council awarded the contract to Chesapeake Turf, LLC in the amount of \$5,256,760.00.

On July 10, 2020, during tropical storm Faye, a bank failure occurred not caused by an “overtopping” of the lagoon bank event, but a “blow” at mid slope adjacent to the pump station Bay Hollow Drive at the upper reaches of Burton Prong in the Herring Creek watershed. Approximately 90 -feet of lagoon bank was affected including the rip-rap toe.

The Engineering Department requested a change order proposal to repair the damaged section in kind plus a diversion berm to direct any sheet flow away from the top of bank. For implementation the Department requested an emergency authorization for the lagoon damage remediation which was issued by DNREC on July 25, 2020 and on August 11, 2020, County Council authorized Change Order No. 1 in the not to exceed amount of \$51,460.00.

The contract started in the fall of 2019 and is now significantly behind schedule. The contractor has been advised that the incurred damages will be assessed under the liquidated damages provision of the contract. During the course of the project, a number of scope modifications were implements summarized in the attached Change Order No.2. The majority of these modifications resulted in credits with an overall net credit of \$(54,098.91). The Engineering Department recommends acceptance of Change Order No. 2 by County Council.

Date of Issuance: 7/21/21	Effective Date: 7/21/21
Owner: Sussex County	Owner's Contract No.: S20-06
Contractor: Chesapeake Turf, LLC	Contractor's Project No.:
Engineer: Whitman, Requardt & Associates	Engineer's Project No.:
Project: Herring Creek Sanitary Sewer District with Oak Crest & Chapel Green: Pumping Stations	Contract Name:

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

Attachments:

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ 5,256,760.00	Original Contract Times: Substantial Completion: <u>2/15/21</u> Ready for Final Payment: _____ 400 calendar days
Increase from previously approved Change Orders No. <u>1</u> to No. <u>1</u> : \$ 51,460.00	Increase from previously approved Change Orders No. <u>N/A</u> to No. <u> </u> : Substantial Completion: <u>2/15/21</u> Ready for Final Payment: _____ 400 calendar days
Contract Price prior to this Change Order: \$ 5,308,220.00	Contract Times prior to this Change Order: Substantial Completion: <u>2/15/21</u> Ready for Final Payment: _____ 400 calendar days
Decrease of this Change Order: -\$ 54,098.91	[Increase] [Decrease] of this Change Order: 30 days Substantial Completion: <u>3/17/21</u> Ready for Final Payment: _____ 430 calendar days
Contract Price incorporating this Change Order: \$ 5,254,121.09	Contract Times with all approved Change Orders: Substantial Completion: <u>3/17/21</u> Ready for Final Payment: _____ 430 calendar days

RECOMMENDED: By: <u>Michael J. Gilbert</u> Engineer (if required) Title: <u>WRA - Construction Manager</u> Date: <u>12/03/2021</u>	ACCEPTED: By: _____ Owner (Authorized Signature) Title: _____ Date: _____	ACCEPTED: By: <u>[Signature]</u> Contractor (Authorized Signature) Title: Managing Member Date: 12/02/2021
--	---	--

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____

Contract S20-06

Herring Creek Sanitary Sewer District with Oak Crest and Chapel Green Pumping Stations Potential Change Order No. 2 - Cost Summary Sheet (Addition and/or Changes of Various Items)

Change Order Cost Summary Sheet with Proposed Line Item Costs and/or Credits							
Line		Proposed			Actual	Contract	Contract
Item No.	Description of Individual PCO Line Items (USDA Funding Related)	Quantity	Unit	Unit Price	Quantity	Added Cost	Cost
PCO-001	Elimination of Owner's/Engineer's Field Office Trailer	1	LS	\$ (18,000.00)	1	\$ -	\$ (18,000.00)
PCO-002	Moving Manhole MH-4 Closer to P.S. #420 Wet Well	1	LS	\$ (12,560.00)	1	\$ -	\$ (12,560.00)
PCO-002	Eliminate Manhole MH-8 / 8" Gravity Sewer at P.S. #423	1	LS	\$ (13,400.00)	1	\$ -	\$ (13,400.00)
PCO-3R-1	Valve Vault Piping Changes at P.S. #420, P.S. #422, P.S. #424 and P.S. #425 PS #420 = \$1551.45, PS #422 = \$1581.86, PS #424 = \$1551.45 and PS #425 = \$1581.86	1	LS	\$ 6,266.62	1	\$ -	\$ 6,266.62
PCO-004	Eliminate V.V. Goose Neck Vents at P.S. #420, P.S. #421, P.S. #422 and P.S. #425	1	LS	\$ (2,181.00)	1	\$ -	\$ (2,181.00)
PCO-007	No Cost - 30 Calendar Day Contract Time Extension (COVID-19 Related)	1	LS	\$ -	1	\$ -	\$ -
PCO-008	Eliminate Entrance Including Paved and Geogrid / Stone Roads at P.S. No. 425	1	LS	\$ (21,241.00)	1	\$ -	\$ (21,241.00)

Sub-Totals for USDA - Costs and Credits \$ - \$ (61,115.38)

Line		Proposed			Actual	Contract	Contract
Item No.	Description of Individual PCO Line Items (Non-USDA / SCED Funding Related)	Quantity	Unit	Unit Price	Quantity	Added Cost	Cost
PCO-3R-1	Valve Vault Piping Changes at P.S. No. 408	1	LS	\$ 1,551.45	1	\$ -	\$ 1,551.45
PCO-3R-1	Valve Vault Piping Changes at P.S. No. 415	1	LS	\$ 4,691.77	1	\$ -	\$ 4,691.77
PCO-5R-1	Elimination of Fencing at P.S. No. 415	1	LS	\$ (9,086.00)	1	\$ -	\$ (9,086.00)
PCO-12(2)	Relocation of Existing Electric Lines at P.S. No. 409	1	LS	\$ 5,927.25	1	\$ -	\$ 5,927.25
PCO-013	Field Dosing System Force Main Relocation at P.S. No. 409	1	LS	\$ 3,932.00	1	\$ -	\$ 3,932.00

Sub-Totals for Non-USDA Costs and Credits \$ - \$ 7,016.47

Total Change Order No. 2 (Cost Decrease) \$ (54,098.91)

Summary of Contract Change Orders - Contract S20-06

Original Contract Amount	\$ 5,256,760.00
Amount of Previous Change Orders: No. 1 through No. 1	\$ 51,460.00
Contract Total Including Previous Change Orders	\$ 5,308,220.00
Proposed Change Order No. 2	Decrease \$ (54,098.91)

Revised Contract No. S20-06 Total (Including Change Order No. 2)	\$ 5,254,121.09
---	------------------------

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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

hans.medlarz@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

RE: ***South Coastal WRF Treatment Process Upgrade No.3 & Rehoboth Beach WTP Capital Improvement Program, Phase 2***
A. General Construction, Project C19-11 Change Order Nos. 15 & 16
B. Electrical Construction, Project C19-17 Change Orders Nos. 13 & 14

DATE: January 11, 2022

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

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

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



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

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

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

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

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

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

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

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

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

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

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

two of the existing headworks slide gates were compromised in need of replacement and we requested the replacement. On May 25, 2021, Council approved Change Order No. 10 in the aggregate amount of \$34,160.64.

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

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

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

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

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

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

budget of the City's financing arrangements previously approved. The City will pay for this change order directly out of City funds. Hence, the Engineering Department recommends approval of Change Order No. 15 to M.F. Ronca & Sons in the amount of \$ 324,996.81, subject to direct payment by the City.

GHD's design scope included a separate task for the hydraulic transient analysis of the South Coastal effluent force under various pumping scenarios. Attached to this memo are the transient models and the air valve selections. The recommendations are driven by pump trip (when two large pumps are running) and pipe filling (when two small pumps manage to fill the line).

After County approval of the findings, GHD issued RFP-023 for replacing air valves on the effluent force main and installing additional air valves at new locations. This work scope was not known at time of base bid and hence not included. After cost comparison between the General Labor & Equipment Contract versus a change order under the general construction contract we found Ronca's PCOR-023 to be more cost effective. Therefore, the Engineering Department recommends approval of Change Order No. 16 to M.F. Ronca & Sons in the amount of \$88,132.23.

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

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

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

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

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

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

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

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

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

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

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

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

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

The City initiated RFPs -043 & 049. The first one relates to the electrical control requirements for a City-furnished booster pump for installation in Building T-1. The second one addresses rewiring of the two (2) level sensors and dissolved oxygen probes at the oxidation ditches. The Engineering

Department recommends issuance of Change Order No. 13 in the aggregate amount of \$20,018.56.

The Environmental Services team initiated RFP-048 for modification to four valves eliminating the actuators. The Engineering Department recommends issuance of Change Order No. 14 in the credit amount of (\$6,485.87).

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

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



**SUSSEX COUNTY
CHANGE ORDER REQUEST**

A. ADMINISTRATIVE:

1. Project Name: **SCRWF Treatment Process Upgrade No. 3 & RBWTP Capital Improvement Program, Phase 2 – General Construction**
2. Sussex County Project No. C19-11
3. Change Order No. 15
4. Date Change Order Initiated - 1/4/21
5. a. Original Contract Sum \$39,526,400.00
b. Net Change by Previous Change Orders \$2,360,041.80
c. Contract Sum Prior to Change Order \$41,886,441.80
d. Requested Change \$ 324,996.81
e. Net Change (No. of days) 0
f. New Contract Amount \$42,211,438.61
6. Contact Person: Hans Medlarz, P.E.
Telephone No. (302) 855-7718

B. REASON FOR CHANGE ORDER (CHECK ONE)

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

- 6. Factors Affecting Time of Completion
- 7. Other (explain below):

C. BRIEF DESCRIPTION OF CHANGE ORDER:


RBWWTP Oxidation Ditch Pipe Replacement

D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?

Yes No

E. APPROVALS

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



Signature 12/23/2021
Date

David A. Ronca

Representative's Name in Block Letters

2. Sussex County Engineer



Signature 1/4/2022
Date

3. Sussex County Council President

Signature Date



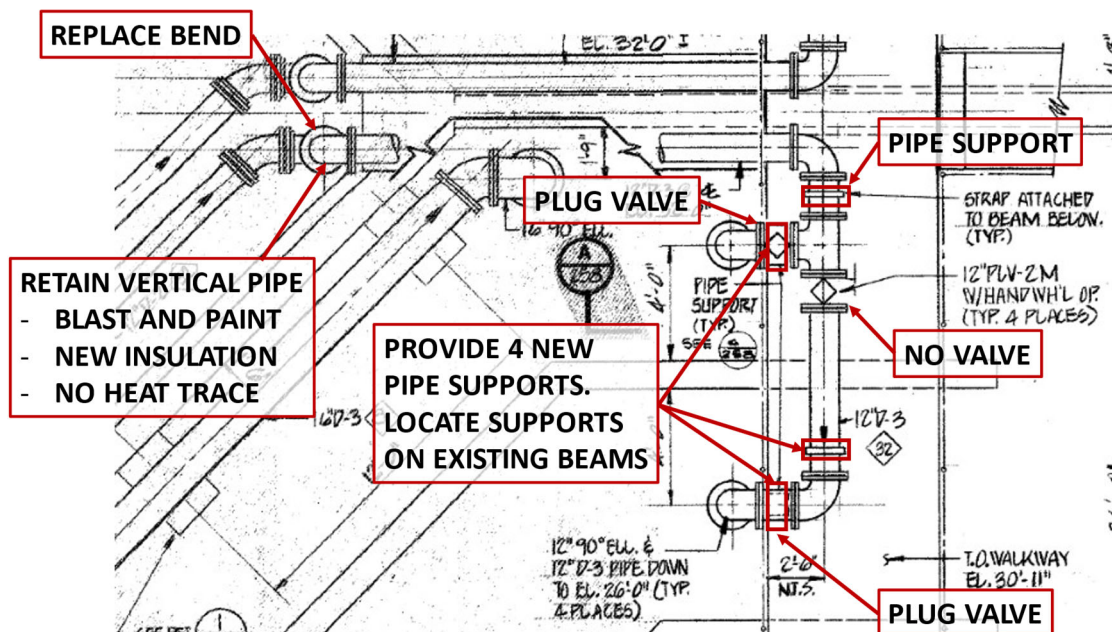
Request for Proposal

Project Title	SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2		
Owner	Sussex County, Delaware		
Contract No.	C19-11: General Construction	GHD Project No.	11121182
Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order.			
RFP No.	047A		
RFP Subject	RBWWTP T-2 Piping Replacement		
Issued By	S. Clark	Issue Date	Dec. 16, 2021

Description of proposed changes:

1. T-2A/B Influent Piping
 - a. Replace the four 16" oxidation ditch influent pipes between SB-1 and T- 2A/B. Scope is limited to the exterior piping, from the new wall pipes being constructed at SB-1 to the first flange inside the oxidation ditches. New pipe shall be flanged Class 53 DIP in accordance with Section 15060 or as submitted in Contractor's approved Shop Drawings.
 - b. Provide surface coatings for new DIP in accordance with Section 09900 or as submitted in Contractor's approved Shop Drawings.
 - c. Do not replace insulation, jackets, or heat trace system. Freeze protection is not required for the new influent piping.
 - d. Blast and paint existing pipe support frames. Replace saddles mounted on top of pipe support frames in kind.
 - e. Wall penetrations at T-2A/B are understood to be continuous piping through corrugated wall sleeves. Replace piping through sleeves to the first flange inside the tank and regrout in place to prevent leaks between pipe and sleeve. Locate the required flange adaptor at the joint inside the tank.
2. Return Sludge Piping at T-2A/B
 - a. Replace the two 12" return sludge pipes at T-2A/B starting with the 90 bends located at the top of the vertical piping. New pipe shall be flanged Class 53 DIP in accordance with Section 15060 or as submitted in Contractor's approved Shop Drawings.
 - b. Provide surface coatings for new DIP in accordance with Section 09900 or as submitted in Contractor's approved Shop Drawings. In addition, provide surface preparation and coatings for the full extent of the existing vertical piping that is not encased in concrete. That is, new coatings will start below grade, starting where the pipe leaves the concrete encasement.
 - c. Replacement scope includes four 12" flanged plug valves. New valves shall be in accordance with Section 15060 or as submitted in Contractor's approved Shop Drawings. Standard port size is also acceptable if required by availability and lead time considerations.

- d. Provide new insulation and jacket on the vertical piping that is being retained (after recoating). Do not replace the electrical heat trace system. The new piping on top of the oxidation ditches does not require freeze protection.
- e. Retain concrete pipe supports on dividing wall but replace the steel pipe supports for the existing vertical piping and the new piping in accordance with Section 15140 and the standard details. Four new Type 37 (or equivalent) supports are required. New supports shall be located on structural beams as indicated below (refer to original construction drawings sheets 249 and 258 for original intent). Adjust support locations to suit beam locations. Cut grating as required to accommodate supports.



3. Process Air Piping at T-2A/B

- a. Remove existing insulation and provide surface preparation and coatings for the full extent of the existing vertical piping that is not encased in concrete. That is, new coatings will start below grade, starting where the pipe leaves the concrete encasement.
- b. Replace four of the existing 8" flanged butterfly valves. New valves shall be stainless steel and for air service in accordance with Section 15060. Replace one valve for each sparge ring, in each case replacing the first valve after the tee.
- c. Replace the temporary repair pipe installed as a temporary fix for the failed coupling. The replacement pipe shall be unlined ductile iron, flange by plain end. Provide a flange adaptor to close the run.

Michael F.
RONCA
& Sons, Inc.

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



CONTRACTORS

179 Mikron Road, Bethlehem, PA 18020

December 17, 2021

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

Re: Sussex County
SCRWF-RBWWTP CIP Phase 2 Upgrades
Proposed Change Order Request No. 554-022
RBWWTP Ox. Ditch Pipe Replacement - Rev

Dear Mr. Clark:

Please consider this writing to be Michael F. Ronca & Sons, Inc.'s formal change order request for performance of the above referenced work, in the amount of Three Hundred Twenty Four Thousand Nine Hundred Ninety Six Dollars and 81 Cents.....(\$324,996.81).

Enclosed for your review is a corresponding breakdown of costs.

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

Regards,

Scott Wachinski

Project Manger

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

Sussex County - SCRWF-RBWWTP CIP Phase 2 Upgrades

PCOR 554-022 RBWWTP Ox. Ditch Pipe Replacement - Rev

12/17/2021

CHANGE ORDER SUMMARY

Item 1 Demo and Disposal of Ex. Ox. Ditch T-2A/2B 16" DI Influent Piping From SB-1 to First Flange Inside of Ditches per RFP-047A.

Labor	\$5,918.08
Materials	\$1,000.00
Equipment	\$2,633.28
Subcontract	\$0.00
Subtotal	\$9,551.36
Contractor Overhead & Profit @ 15%	\$1,432.70
Contr. Overhead & Profit on Subcontr. @ 5%	\$0.00
Item Total	\$10,984.06

Item 2 Install New 16" DI Ox. Ditch T-2A/B Influent Piping From SB-1 to First Flange In Ox. Ditches Including Blast/Paint Ex. Supports, Weld Install New Pipe Cradles on Ex. Supports and Painting of New Piping Per RFP-047A.

Labor	\$16,271.28
Materials	\$72,822.60
Equipment	\$5,266.56
Subcontract	\$27,002.00
Subtotal	\$121,362.44
Contractor Overhead & Profit @ 15%	\$14,154.07
Contr. Overhead & Profit on Subcontr. @ 5%	\$1,350.10
Item Total	\$136,866.61

Item 3 Demo and Disposal of Ex. Return Sludge Piping on Ox. Ditches T-2A/B Beginning with 90 at Top of Vertical Riser Piping to Discharge Points on Top of Ditches, Including Removal/Disposal of Ex. Vertical Riser Piping Insulation per RFP-047A.

Labor	\$5,918.08
Materials	\$750.00
Equipment	\$4,258.40
Subcontract	\$0.00
Subtotal	\$10,926.48
Contractor Overhead & Profit @ 15%	\$1,638.97
Contr. Overhead & Profit on Subcontr. @ 5%	\$0.00
Item Total	\$12,565.45

Item 4 Install New 12" DI Ox. Ditch T-2A/B Return Sludge Piping, Fittings and Valves Beginning with 90 at Top of Vert. Riser Piping to Discharge Points on Top of Ditches Including Blast/Paint Ex. Vert. Riser Piping, New Insulation on Ex. Vert. Riser Piping, New Supports on Ex. Vert Piping/New Piping Within Tank and Painting of New Piping Per RFP-047A.

Labor	\$20,195.52
Materials	\$54,427.78
Equipment	\$12,775.20
Subcontract	\$23,595.00
Subtotal	\$110,993.50
Contractor Overhead & Profit @ 15%	\$13,109.78
Contr. Overhead & Profit on Subcontr. @ 5%	\$1,179.75
Item Total	\$125,283.03

Item 5 Remove Ex. Insulation, Surface Prep and Coat Ex. Air Piping Vertical Riser Pipes, Replace 4 EA 8" Air Service BFVs and Replace Recently Repaired Section of Piping at Failed Coupling with Non-Lined DIP per RFP-047A.

Labor	\$5,086.72
Materials	\$16,224.00
Equipment	\$2,561.12
Subcontract	\$11,281.00
Subtotal	\$35,152.84
Contractor Overhead & Profit @ 15%	\$3,580.78
Contr. Overhead & Profit on Subcontr. @ 5%	\$564.05
Item Total	\$39,297.67
Change Order Total	\$324,996.81

Sussex County - SCRWF-RBWWTP CIP Phase 2 Upgrades

PCOR 554-022 RBWWTP Ox. Ditch Pipe Replacement - Rev

12/17/2021

<u>Item</u>	<u>Description</u>					
Item 1	Demo and Disposal of Ex. Ox. Ditch T-2A/2B 16" DI Influent Piping From SB-1 to First Flange Inside of Ditches per RFP-047A.					
	Labor:	Qty	Unit	Unit Cost	Total	
	Foreman	16.00	MH	\$120.65	\$1,930.40	
	Operating Engineer	16.00	MH	\$106.59	\$1,705.44	
	Laborer	32.00	MH	\$71.32	\$2,282.24	
						Labor Total: \$5,918.08
	Materials:	Qty	Unit	Unit Cost	Total	
	Material Disposal Fees	1.00	LS	\$1,000.00	\$1,000.00	
						Material Total: \$1,000.00
	Equipment:	Qty	Unit	Unit Cost	Total	
	Lull Mtrl. Hndlr.	16.00	HR	\$90.42	\$1,446.72	
	Man Lift	16.00	HR	\$58.50	\$936.00	
	STS	16.00	HR	\$15.66	\$250.56	
						Equipment Total: \$2,633.28
	Subcontract:	Qty	Unit	Unit Cost	Total	
					\$0.00	
						Subcontract Total: \$0.00
						Item Total: \$9,551.36

Item 2	Install New 16" DI Ox. Ditch T-2A/B Influent Piping From SB-1 to First Flange In Ox. Ditches Including Blast/Paint Ex. Supports, Weld Install New Pipe Cradles on Ex. Supports and Painting of New Piping Per RFP-047A.					
	Labor:	Qty	Unit	Unit Cost	Total	
	Foreman	32.00	MH	\$120.65	\$3,860.80	
	Welder/Fabricator	16.00	MH	\$122.18	\$1,954.88	
	Mechanic/Fitter	32.00	MH	\$122.18	\$3,909.76	
	Operating Engineer	40.00	MH	\$106.59	\$4,263.60	
	Laborer	32.00	MH	\$71.32	\$2,282.24	
						Labor Total: \$16,271.28
	Materials:	Qty	Unit	Unit Cost	Total	
	16" DIP and Fittings	1.00	LS	\$66,675.00	\$66,675.00	
	Flange Hardware	1.00	LS	\$3,647.60	\$3,647.60	
	Misc. Support Materials, Link Seals, Grout, Etc.	1.00	LS	\$2,500.00	\$2,500.00	
						Material Total: \$72,822.60
	Equipment:	Qty	Unit	Unit Cost	Total	
	Lull Mtrl Hndlr.	32.00	HR	\$90.42	\$2,893.44	
	Man Lift	32.00	HR	\$58.50	\$1,872.00	
	STS	32.00	HR	\$15.66	\$501.12	
						Equipment Total: \$5,266.56
	Subcontract:	Qty	Unit	Unit Cost	Total	
	Painting Subcontractor	1.00	LS	\$27,002.00	\$27,002.00	
						Subcontract Total: \$27,002.00
						Item Total: \$121,362.44

Item 3 Demo and Disposal of Ex. Return Sludge Piping on Ox. Ditches T-2A/B Beginning with 90 at Top of Vertical Riser Piping to Discharge Points on Top of Ditches, Including Removal/Disposal of Ex. Vertical Riser Piping Insulation per RFP-047A.

Labor:	Qty	Unit	Unit Cost	Total	
Foreman	16.00	MH	\$120.65	\$1,930.40	
Operating Engineer	16.00	MH	\$106.59	\$1,705.44	
Laborer	32.00	MH	\$71.32	\$2,282.24	
					Labor Total: \$5,918.08
Materials:	Qty	Unit	Unit Cost	Total	
Disposal Fees	1.00	LS	\$750.00	\$750.00	
					Material Total: \$750.00
Equipment:	Qty	Unit	Unit Cost	Total	
75 T RT Crane	16.00	HR	\$160.07	\$2,561.12	
Lull Mtrl Hndlr.	16.00	HR	\$90.42	\$1,446.72	
STS	16.00	HR	\$15.66	\$250.56	
					Equipment Total: \$4,258.40
Subcontract:	Qty	Unit	Unit Cost	Total	
			\$0.00	\$0.00	
					Subcontract Total: \$0.00
					Item Total: \$10,926.48

Item 4 Install New 12" DI Ox. Ditch T-2A/B Return Sludge Piping, Fittings and Valves Beginning with 90 at Top of Vert. Riser Piping to Discharge Points on Top of Ditches Including Blast/Paint Ex. Vert. Riser Piping, New Insulation on Ex. Vert. Riser Piping, New Supports on Ex. Vert Piping/New Piping Within Tank and Painting of New Piping Per RFP-047A.

Labor:	Qty	Unit	Unit Cost	Total	
Foreman	48.00	MH	\$120.65	\$5,791.20	
Mechanic/Fitter	48.00	MH	\$122.18	\$5,864.64	
Operating Engineer	48.00	MH	\$106.59	\$5,116.32	
Laborer	48.00	MH	\$71.32	\$3,423.36	
					Labor Total: \$20,195.52
Materials:	Qty	Unit	Unit Cost	Total	
12" DIP and Fittings	1.00	LS	\$31,296.30	\$31,296.30	
12" Plug Valves (Standard Port)	4.00	EA	\$2,884.20	\$11,536.80	
Pipe Supports	1.00	LS	\$4,500.00	\$4,500.00	
Misc. Flange Hardware	1.00	LS	\$7,094.68	\$7,094.68	
					Material Total: \$54,427.78
Equipment:	Qty	Unit	Unit Cost	Total	
75 T RT Crane	48.00	HR	\$160.07	\$7,683.36	
Lull Mtrl Hndlr.	48.00	HR	\$90.42	\$4,340.16	
STS	48.00	HR	\$15.66	\$751.68	
					Equipment Total: \$12,775.20
Subcontract:	Qty	Unit	Unit Cost	Total	
Pipe Insulation Subcontractor	1.00	LS	\$8,000.00	\$8,000.00	
Painting Subcontractor	1.00	LS	\$15,595.00	\$15,595.00	
					Subcontract Total: \$23,595.00
					Item Total: \$110,993.50

Item 5 Remove Ex. Insulation, Surface Prep and Coat Ex. Air Piping Vertical Riser Pipes, Replace 4 EA 8" Air Service BFVs and Replace Recently Repaired Section of Piping at Failed Coupling with Non-Lined DIP per RFP-047A.

Labor:	Qty	Unit	Unit Cost	Total	
Mechanic/Fitter	16.00	MH	\$122.18	\$1,954.88	
Operating Engineer	16.00	MH	\$106.59	\$1,705.44	
Laborer	20.00	MH	\$71.32	\$1,426.40	
					Labor Total: \$5,086.72
Materials:	Qty	Unit	Unit Cost	Total	
8" SS Butterfly Valves	4.00	EA	\$1,276.00	\$5,104.00	
Non-Lined DIP Materials and Hardware	1.00	LS	\$11,120.00	\$11,120.00	
					Material Total: \$16,224.00
Equipment:	Qty	Unit	Unit Cost	Total	
75 T RT Crane	16.00	HR	\$160.07	\$2,561.12	
STS	20.00	HR	\$15.66	\$313.20	
					Equipment Total: \$2,561.12
Subcontract:	Qty	Unit	Unit Cost	Total	
Coatings Subcontractor	1.00	LS	\$11,281.00	\$11,281.00	
					Subcontract Total: \$11,281.00
					Item Total: \$35,152.84

Notes:

- N1 Installation of Heat Trace and Insulation on Relaced T-2A/B Influent is Not Included per RFP-047
- N2 New Pipe Insulation to be Installed on Ex. T-2A/B Return Sludge Vertical Riser Piping Outside of Tank Only. Insulation of New Piping to be Installed on Top of Ox. Ditches and Heat Trace is Specifically Excluded per RFP-047.
- N3 Removal of Ex. Air Pipe Insulation Limited to Riser Piping and Area for Replacement of Valves Only. Reinstallation of Pipe Insulation in These Areas Is Specifically Excluded.
- N4 Proposal Assumes Ex. Pipe Insulation Does Not Contain Asbestos. Removal and Disposal of any Hazardous Materials is Specifically Excluded.



**SUSSEX COUNTY
CHANGE ORDER REQUEST**

A. ADMINISTRATIVE:

1. Project Name: **SCRWF Treatment Process Upgrade No. 3 & RBWTP Capital Improvement Program, Phase 2 – General Construction**
2. Sussex County Project No. C19-11
3. Change Order No. 16
4. Date Change Order Initiated - 1/11/21
5.
 - a. Original Contract Sum \$39,526,400.00
 - b. Net Change by Previous Change Orders \$2,685,038.61
 - c. Contract Sum Prior to Change Order \$42,211,438.61
 - d. Requested Change \$ 88,132.23
 - e. Net Change (No. of days) 0
 - f. New Contract Amount \$42,299,570.84
6. Contact Person: Hans Medlarz, P.E.
Telephone No. (302) 855-7718

B. REASON FOR CHANGE ORDER (CHECK ONE)

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

- 6. Factors Affecting Time of Completion
- 7. Other (explain below):

C. BRIEF DESCRIPTION OF CHANGE ORDER:


Replacement of air valves on the effluent force main and installation of additional air valves at new locations.

D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?

Yes No

E. APPROVALS

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



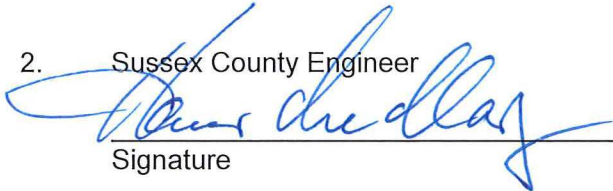
Signature 1/5/2022

Date

David A. Ronca

Representative's Name in Block Letters

- 2. Sussex County Engineer



Signature 1/5/22

Date

- 3. Sussex County Council President

Signature _____
Date



Request for Proposal

Project Title	SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2		
Owner	Sussex County, Delaware		
Contract No.	C19-11: General Construction	GHD Project No.	11121182
Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order.			
RFP No.	052		
RFP Subject	Effluent Force Main Air Valves		
Issued By	S. Clark	Issue Date	Dec. 20, 2021

Description of proposed changes:

Install air valves as specified in the following table on the SCRWF effluent force main:

Location	Air Valve Selection	Connection Details
Plant Effluent (high point between the sampling well and effluent pumping station wet well)	2" ARI D-025 combination air valve (as submitted in 15100-06-01)	New 2" tapping saddle and isolation valve at high point of piping
STA 2+50 (high point at connection between new and existing force main piping)	4" Ventomat RBX Anti-Slam Air Valve	New 4" tapping saddle and isolation valve at high point of piping
Hemlock Drive (existing)	4" Ventomat RBX Anti-Slam Air Valve	Existing 4" riser and isolation valve
Hemlock Drive (new)	3" Ventomat RBX Double Acting Air Valve	New 3" tapping saddle and isolation valve on existing 30" DIP force main
Assawoman Canal	4" Ventomat RBX Anti-Slam Air Valve	Existing 4" riser and isolation valve
Ocean Outfall	4" Ventomat RBX Anti-Slam Air Valve 6" Vacuum Breaker	New 6" tee arrangement (to replicate original arrangement) on existing 6" riser and isolation valve

For the new connections:

- Tapping size to match air valve size.
- Isolation valves shall be gate valves.
- Provide doghouse manhole for access. Manholes shall be suitable for H2O vehicle loading.
- Assemblies to be suitable for the test pressure specified for the receiving pipe.

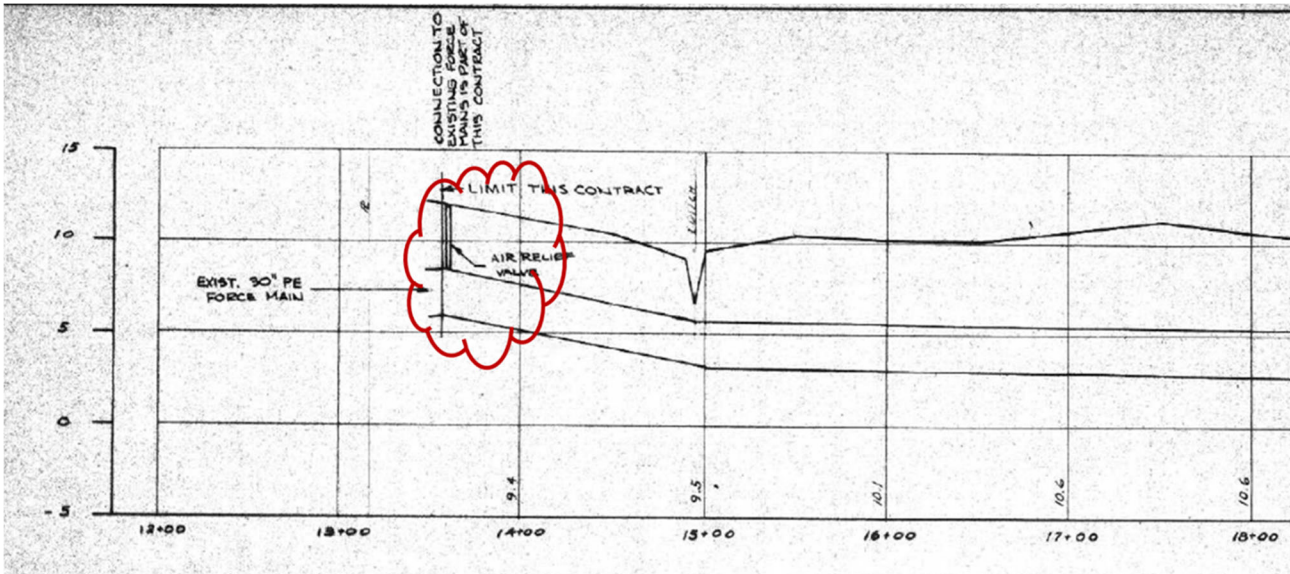
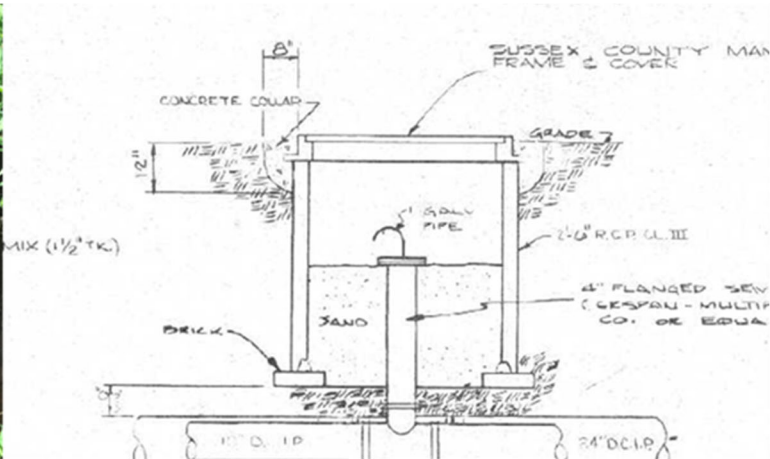


Figure 1 Hemlock Drive location, section, vault details, and photo

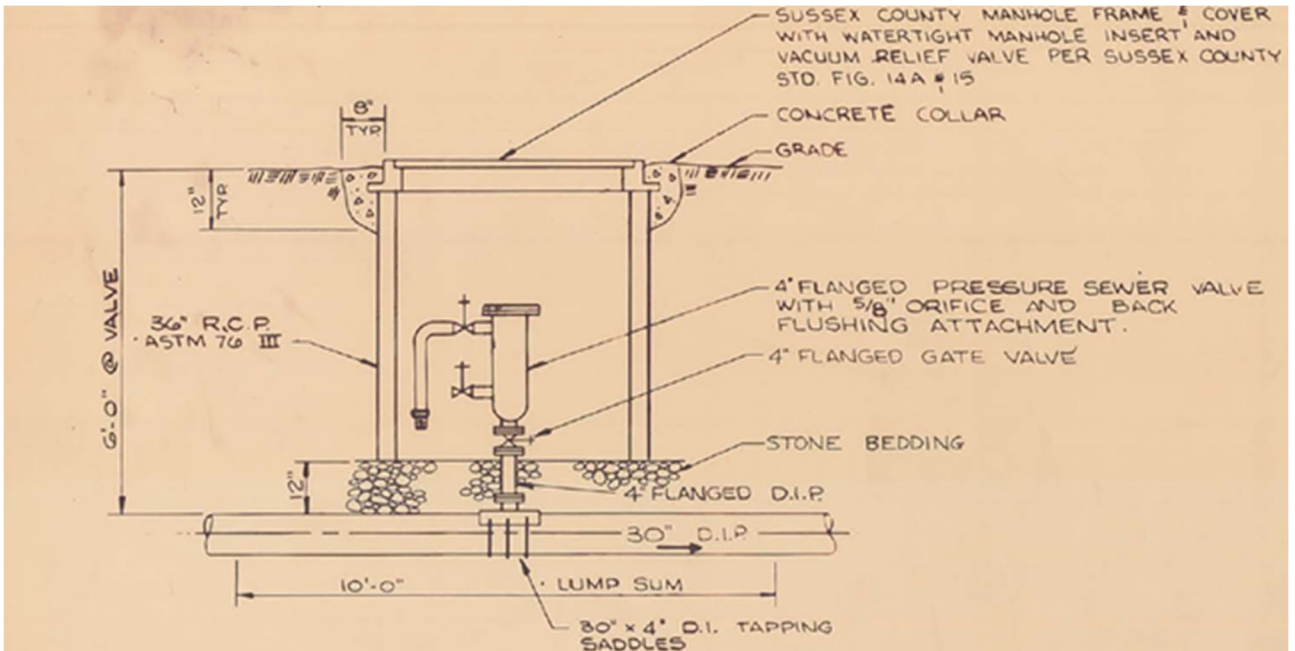
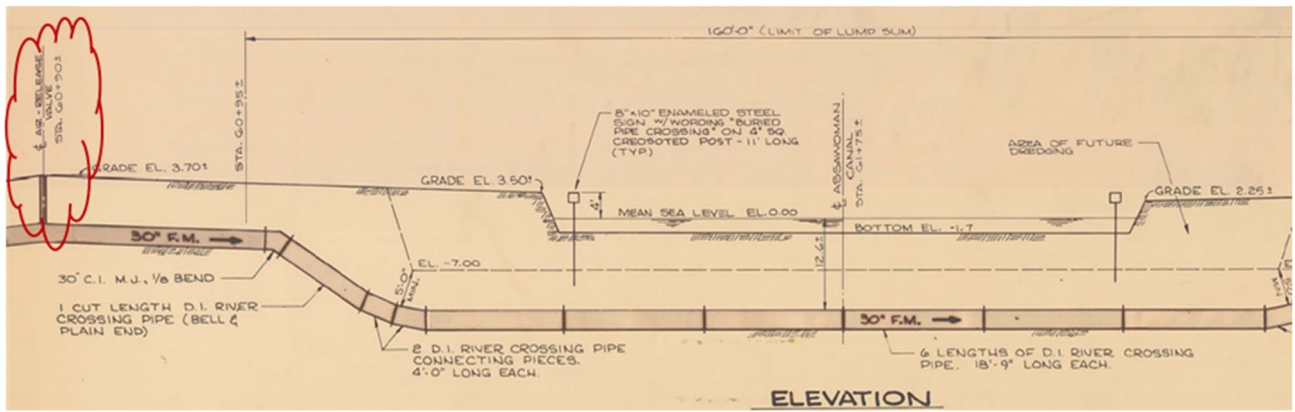


Figure 2 Assawoman Canal location, plan, section, and vault details



Figure 3 Ocean Outfall location, section, and vault details

Michael F.
RONCA
& Sons, Inc.

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



CONTRACTORS

179 Mikron Road, Bethlehem, PA 18020

January 4, 2022

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

Re: Sussex County
SCRWF-RBWWTP CIP Phase 2 Upgrades
Proposed Change Order Request No. 554-023
PCOR 554-023 SCRWF Effluent FM Air Valves

Dear Mr. Clark:

Please consider this writing to be Michael F. Ronca & Sons, Inc.'s formal change order request for performance of the above referenced work, in the amount of Eighty Eight Thousand One Hundred Thirty Two Dollars and 23 Cents.....(\$88,132.23).

Enclosed for your review is a corresponding breakdown of costs.

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

Regards,

Scott Wachinski

Project Manger

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

Sussex County - SCRWF-RBWTP CIP Phase 2 Upgrades

PCOR 554-023 SCRWF Effluent FM Air Valves

1/4/2022

CHANGE ORDER SUMMARY

Item 1 Install 2" ARI Combo Air Valve on Plant Effluent Between Sampling Well and Effluent PS to Include Tapping Saddle, Isolation Valve, Doghouse MH and Modifications to Sample Manhole per RFP-052.

Labor	\$3,601.08
Materials	\$11,304.00
Equipment	\$2,378.64
Subcontract	\$0.00
Subtotal	\$17,283.72
Contractor Overhead & Profit @ 15%	\$2,592.56
Contr. Overhead & Profit on Subcontr. @ 5%	\$0.00
Item Total	\$19,876.28

Item 2 Install 4" Ventomat RBX Anti-Slam Air Valve on Plant Effluent at STA 2+50 (High Point at Connection Between New and Existing FM Piping) to Include Tapping Saddle, Isolation Valve and Doghouse MH per RFP-052.

Labor	\$2,400.72
Materials	\$8,970.00
Equipment	\$1,585.76
Subcontract	\$0.00
Subtotal	\$12,956.48
Contractor Overhead & Profit @ 15%	\$1,943.47
Contr. Overhead & Profit on Subcontr. @ 5%	\$0.00
Item Total	\$14,899.95

Item 3 Install New Plant Effluent 4" Ventomat RBX Anti-Slam Air Valve at Ex. Hemlock Dr. ARV Vault on Ex. Riser Pipe/Isolation Valve and Installation of New 3" Ventomat RBX Double Acting Air Valve Adjacent to Ex. Vault with New Tapping Saddle, Isolation Valve and Doghouse MH to Include Mobilization of Equipment, Excavation/Backfill, Etc. Per RFP-052

Labor	\$3,601.08
Materials	\$14,617.00
Equipment	\$4,463.68
Subcontract	\$0.00
Subtotal	\$22,681.76
Contractor Overhead & Profit @ 15%	\$3,402.26
Contr. Overhead & Profit on Subcontr. @ 5%	\$0.00
Item Total	\$26,084.02

Item 4 Install New Plant Effluent 4" Ventomat RBX Anti-Slam Air Valve at Existing Asswoman Canal ARV Manhole on Ex. Riser Pipe/Isolation Valve per RFP-052

Labor	\$1,059.28
Materials	\$4,287.00
Equipment	\$62.64
Subcontract	\$0.00
Subtotal	\$5,408.92
Contractor Overhead & Profit @ 15%	\$811.34
Contr. Overhead & Profit on Subcontr. @ 5%	\$0.00
Item Total	\$6,220.26

Item 5 Install New Plant Effluent 4" Ventomat RBX Anti-Slam Air Valve and 6" Vacuum Breaker at Ex. Ocean Outfall ARV Manhole on Ex. Riser Pipe/Isolation Valve to Include New 6"/4" Fittings Per RFP-052.

Labor	\$2,118.56
Materials	\$16,062.00
Equipment	\$125.28
Subcontract	\$0.00
Subtotal	\$18,305.84
Contractor Overhead & Profit @ 15%	\$2,745.88
Contr. Overhead & Profit on Subcontr. @ 5%	\$0.00
Item Total	\$21,051.72
Change Order Total	\$88,132.23

Sussex County - SCRWF-RBWWTP CIP Phase 2 Upgrades

PCOR 554-023 SCRWF Effluent FM Air Valves

1/4/2022

<u>Item</u>	<u>Description</u>					
Item 1	Install 2" ARI Combo Air Valve on Plant Effluent Between Sampling Well and Effluent PS to Include Tapping Saddle, Isolation Valve, Doghouse MH and Modifications to Sample Manhole per RFP-052.					
	Labor:	Qty	Unit	Unit Cost	Total	
	Operating Engineer	12.00	MH	\$106.59	\$1,279.08	
	Mechanic/Fitter	12.00	MH	\$122.18	\$1,466.16	
	Laborer	12.00	MH	\$71.32	\$855.84	
						Labor Total: \$3,601.08
	Materials:	Qty	Unit	Unit Cost	Total	
	2" ARI ARV w/Tapping Saddle & Iso Valve	1.00	LS	\$2,820.00	\$2,820.00	
	Dog House MH	1.00	LS	\$2,250.00	\$2,250.00	
	Sample Manhole Modifications (New Base and 1' Riser)	1.00	LS	\$5,884.00	\$5,884.00	
	Misc. Concr., Etc.	1.00	LS	\$350.00	\$350.00	
						Material Total: \$11,304.00
	Equipment:	Qty	Unit	Unit Cost	Total	
	40 K lb. Hyd. Exc.	12.00	HR	\$109.19	\$1,310.28	
	Tri. Ax. Dump Truck	12.00	HR	\$73.37	\$880.44	
	STS	12.00	HR	\$15.66	\$187.92	
						Equipment Total: \$2,378.64
	Subcontract:	Qty	Unit	Unit Cost	Total	
					\$0.00	Subcontract Total: \$0.00
						Item Total: \$17,283.72
Item 2	Install 4" Ventomat RBX Anti-Slam Air Valve on Plant Effluent at STA 2+50 (High Point at Connection Between New and Existing FM Piping) to Include Tapping Saddle, Isolation Valve and Doghouse MH per RFP-052.					
	Labor:	Qty	Unit	Unit Cost	Total	
	Operating Engineer	8.00	MH	\$106.59	\$852.72	
	Mechanic/Fitter	8.00	MH	\$122.18	\$977.44	
	Laborer	8.00	MH	\$71.32	\$570.56	
						Labor Total: \$2,400.72
	Materials:	Qty	Unit	Unit Cost	Total	
	4" Ventomat ARV w/Tapping Saddle & Iso Valve	1.00	LS	\$6,370.00	\$6,370.00	
	Dog House MH	1.00	LS	\$2,250.00	\$2,250.00	
	Misc. Concr., Etc.	1.00	LS	\$350.00	\$350.00	
						Material Total: \$8,970.00
	Equipment:	Qty	Unit	Unit Cost	Total	
	40 K lb. Hyd. Exc.	8.00	HR	\$109.19	\$873.52	
	Tri. Ax. Dump Truck	8.00	HR	\$73.37	\$586.96	
	STS	8.00	HR	\$15.66	\$125.28	
						Equipment Total: \$1,585.76
	Subcontract:	Qty	Unit	Unit Cost	Total	
				\$0.00	\$0.00	Subcontract Total: \$0.00
						Item Total: \$12,956.48

Item 3 Install New Plant Effluent 4" Ventomat RBX Anti-Slam Air Valve at Ex. Hemlock Dr. ARV Vault on Ex. Riser Pipe/Isolation Valve and Installation of New 3" Ventomat RBX Double Acting Air Valve Adjacent to Ex. Vault with New Tapping Saddle, Isolation Valve and Doghouse MH to Include Mobilization of Equipment, Excavation/Backfill, Etc. Per RFP-052

Labor:	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>	
Operating Engineer	12.00	MH	\$106.59	\$1,279.08	
Mechanic/Fitter	12.00	MH	\$122.18	\$1,466.16	
Laborer	12.00	MH	\$71.32	\$855.84	
					Labor Total: \$3,601.08
Materials:	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>	
4" Ventomat ARV	1.00	LS	\$4,287.00	\$4,287.00	
3" Ventomat ARV w/Tapping Saddle & Iso Valve	1.00	LS	\$7,730.00	\$7,730.00	
Dog House MH	1.00	LS	\$2,250.00	\$2,250.00	
Misc. Concr., Etc.	1.00	LS	\$350.00	\$350.00	
					Material Total: \$14,617.00
Equipment:	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>	
Lowboy w/Driver	8.00	HR	\$125.00	\$1,000.00	
40 K lb. Hyd. Exc.	12.00	HR	\$109.19	\$1,310.28	
RT Backhoe AWD	12.00	HR	\$90.42	\$1,085.04	
Tri. Ax. Dump Truck	12.00	HR	\$73.37	\$880.44	
STS	12.00	HR	\$15.66	\$187.92	
					Equipment Total: \$4,463.68
Subcontract:	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>	
			\$0.00	\$0.00	
					Subcontract Total: \$0.00
					Item Total: \$22,681.76

Item 4 Install New Plant Effluent 4" Ventomat RBX Anti-Slam Air Valve at Existing Asswoman Canal ARV Manhole on Ex. Riser Pipe/Isolation Valve per RFP-052

Labor:	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>	
Mechanic/Fitter	4.00	MH	\$122.18	\$488.72	
Laborer	8.00	MH	\$71.32	\$570.56	
					Labor Total: \$1,059.28
Materials:	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>	
4" Ventomat ARV	1.00	LS	\$4,287.00	\$4,287.00	
					Material Total: \$4,287.00
Equipment:	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>	
STS	4.00	HR	\$15.66	\$62.64	
					Equipment Total: \$62.64
Subcontract:	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>	
			\$0.00	\$0.00	
					Subcontract Total: \$0.00
					Item Total: \$5,408.92

Item 5 Install New Plant Effluent 4" Ventomat RBX Anti-Slam Air Valve and 6" Vacuum Breaker at Ex. Ocean Outfall ARV Manhole on Ex. Riser Pipe/Isolation Valve to Include New 6"/4" Fittings Per RFP-052.

Labor:	Qty	Unit	Unit Cost	Total	
Mechanic/Fitter	8.00	MH	\$122.18	\$977.44	
Laborer	16.00	MH	\$71.32	\$1,141.12	
					Labor Total: \$2,118.56
Materials:	Qty	Unit	Unit Cost	Total	
4" Ventomat ARV	1.00	LS	\$4,287.00	\$4,287.00	
6" Vacuum Breaker	1.00	LS	\$10,850.00	\$10,850.00	
Misc. Fittings and Hardware	1.00	LS	\$925.00	\$925.00	
					Material Total: \$16,062.00
Equipment:	Qty	Unit	Unit Cost	Total	
STS	8.00	HR	\$15.66	\$125.28	
					Equipment Total: \$125.28
Subcontract:	Qty	Unit	Unit Cost	Total	
			\$0.00	\$0.00	
					Subcontract Total: \$0.00
					Item Total: \$18,305.84

Notes:
 N1 PCOR Assumes Effluent FM can be Removed From Service to Allow Installation of New Tapping Valves. Wet Tapping is Specifically Excluded.



**SUSSEX COUNTY
CHANGE ORDER REQUEST**

A. ADMINISTRATIVE:

1. Project Name: **SCRWF Treatment Process Upgrade No. 3 & RBWTP Capital Improvement Program, Phase 2 – Electrical Construction**
2. Sussex County Project No. C19-17
3. Change Order No. 13
4. Date Change Order Initiated - 1/11/22
5.
 - a. Original Contract Sum \$22,178,674.00
 - b. Net Change by Previous Change Orders (\$303,370.92)
 - c. Contract Sum Prior to Change Order \$21,875,303.08
 - d. Requested Change \$ 20,018.56
 - e. Net Change (No. of days) 21
 - f. New Contract Amount \$21,895,321.64
6. Contact Person: Hans Medlarz, P.E.
Telephone No. (302) 855-7718

B. REASON FOR CHANGE ORDER (CHECK ONE)

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

6. Factors Affecting Time of Completion

 7. Other (explain below):

C. BRIEF DESCRIPTION OF CHANGE ORDER:

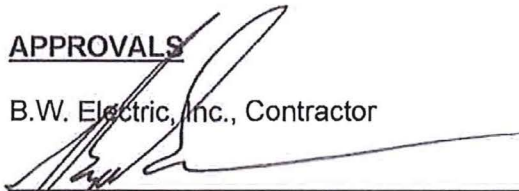
Electrical control modifications to the booster pump for installation in Building T-1 and rewiring of two level sensor and oxygen probes at the oxidation ditches.

D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?

Yes X No

E. APPROVALS

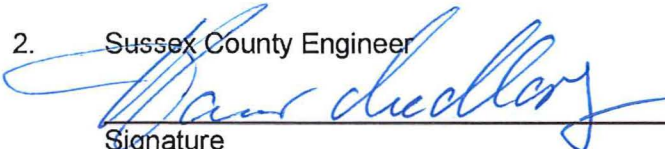
1. B.W. Electric, Inc., Contractor



Signature 1.5.2022
Date

Bryon S. Warren
Representative's Name in Block Letters

2. Sussex County Engineer



Signature 1/5/22
Date

3. Sussex County Council President

Signature Date



Request for Proposal

Project Title	SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2		
Owner	Sussex County, Delaware		
Contract No.	C19-17: Electrical Construction	GHD Project No.	11121182
Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order.			
RFP No.	043		
RFP Subject	RBWWTP Booster Pump & GPCV		
Issued By	D. Murray	Issue Date	Sep. 24, 2021

Description of proposed changes:

Contacto is requested to submit a proposal for the following changes:

Grit Pump Control Valve (GPCV)

1. GPCV is an open/close type valve, not modulating as the wiring on Drawing E9215 shows. Delete 3/4" conduit with TSP-2 between GPCV and Grit System OEM CP.

Booster Pump

1. Mount Booster Pump VFD in MCC-T1 Electrical Building to the west of pull boxes on south wall.
2. Provide nameplate for Booster Pump motor starter bucket in MCC-T1 that reads "SPARE".
3. Provide credit for control Grit Pump Control Station.
4. Provide interlock kit in Booster Pump disconnect switch to shut down VFD when switch is opened.
5. Route two conduits shown on Drawing E9215 from Booster Pump to VFD in lieu of MCC-T1. In power conduit provide #12 VFD cable and 2-#14. In control conduit provide 1-TSP from pressure transmitter mounted on pump skid.
6. Use Spare 20A circuit breaker in MCC-T1 to feed VFD. Provide nameplate on bucket that reads "Booster Pump P-73-10-01".
7. Provide one 3/4" conduit from VFD to PCS-T1 with 4-#14, 1-#12G. Update PCS-T1 as-built to show that the only signals associated with booster pump are VFD fail and VFD run. There is a digital input to PCS-T1 for each and a digital output from PCS-T1 to RTU-T1 for each.
8. Route spare conduit shown on Drawing E9215 from pressure transmitter to GPT1-32, in lieu of to the Grit System CP. Reduce conduit size to 3/4" and provide 2-#12, 1-#12G to power transmitter.



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Harrington DE 19952

Office: 302.566.6248
Fax: 302.566.6251

Bryon Warren
President
302-270-5719

Email(s):
office@bwelectricinc.com
estimates@bwelectricinc.com

December 28, 2021

Subject: SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2 RFP No. 43

Dear Mr. Medlarz,

Our price to perform the electrical work associated with the above project is based on RFP No. 43. Our price does not include the use of Prevailing Wages. Our price is **\$9,201.57** and includes the following:

Description of proposed changes:

Contactor is requested to submit a proposal for the following changes:

Grit Pump Control Valve (GPCV)

1. GPCV is an open/close type valve, not modulating as the wiring on Drawing E9215 shows. Delete 3/4" conduit with TSP-2 between GPCV and Grit System OEM CP.

Booster Pump

1. Mount Booster Pump VFD in MCC-T1 Electrical Building to the west of pull boxes on south wall.
2. Provide nameplate for Booster Pump motor starter bucket in MCC-T1 that reads "SPARE".
3. Provide credit for control Grit Pump Control Station.
4. Provide interlock kit in Booster Pump disconnect switch to shut down VFD when switch is opened.

5. Route two conduits shown on Drawing E9215 from Booster Pump to VFD in lieu of MCC-T1. In power conduit provide #12 VFD cable and 2-#14. In control conduit provide 1-TSP from pressure transmitter mounted on pump skid.

6. Use Spare 20A circuit breaker in MCC-T1 to feed VFD. Provide nameplate on bucket that reads "Booster Pump P-73-10-01".

7. Provide one 3/4" conduit from VFD to PCS-T1 with 4-#14,1-#12G. Update PCS-T1 as-built to show that the only signals associated with booster pump are VFD fail and VFD run. There is a digital input to PCS-T1 for each and a digital output from PCS-T1 to RTU-T1 for each.

8. Route spare conduit shown on Drawing E9215 from pressure transmitter to GPT1-32, in lieu of to the Grit System CP. Reduce conduit size to 3/4" and provide 2-#12, 1-#12G to power transmitter.

If this RFP is accepted, we are requesting 11 days be added to the contract.

Exclusions

1. No permit fees.
2. No cutting.
3. No patching or painting.
4. No liquidated damages.

This price is good for thirty (30) days only.

Sincerely,

Jason R. Walters
B. W. Electric, Inc.
Superintendent
JRW/

#SCRWF Upgrade No.3 and RBWWTP CIP Upgrade Phase 2 : RFP NO. 043

Totals (Summary) - Bid Summary: Default

Material	
Non-Quoted	\$2,173.97
Quotes	0.00
Sales Tax (0.00%)	0.00
Total Material	\$2,173.97
Labor	
Direct (86.13 hours @ \$65.00)	\$5,598.45
Non-Productive Labor	0.00
Total Labor (86.13 hours)	\$5,598.45
Direct Job Expenses	\$0.00
Tools and Miscellaneous Materials	0.00
Subcontracts	0.00
Job Subtotal (Prime Cost)	\$7,772.42
Overhead (10.00%)	777.24
Profit (5.00%)	427.48
Job Total	\$8,977.14
Bond	
Bond	224.43
Job Total with Bond	\$9,201.57
Actual Bid Price	\$9,201.57
Material to Direct Labor ratio: 0.28	
Prime Cost per square foot	\$0.00
Job Total per square foot	\$0.00
Actual Bid Price per square ft	\$0.00
Labor cost per square foot	\$0.00
Labor hours per square foot	0.00
Gross Profit %	15.53
Gross Profit \$	\$1,429.15
Net Profit %	7.08



Request for Proposal

Project Title	SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2		
Owner	Sussex County, Delaware		
Contract No.	C19-17: Electrical Construction	GHD Project No.	11121182
Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order.			
RFP No.	049		
RFP Subject	RBWWTP T-2 Instrumentation		
Issued By	D. Murray	Issue Date	Nov. 24, 2021

Description of proposed changes:

Contractor is requested to submit a proposal to rewire the two level sensors and two DO probes at T-2A/B Oxidation Ditches to PCS-T1:

1. Provide new TSP for each signal from new terminal box at T-2, through a spare conduit in duct banks DB-T2-1, DB-PS1-1, and DB-T1-2.
2. In DB-T1-2, provide three 1" inner ducts in the spare conduit. Pull TSP-4 through one inner duct and provide pull string in the two spare inner ducts.
3. Route TSP-4 in spare 1" conduit shown on Drawing RB-E9215 between MCC-T1 and PCS-T1. Route conductors in bottom MCC wireway to the MCC section where the 1" spare is to keep TSPs as far away from MCC feeders as possible.
4. Connect T-2A and T-2B instruments to separate AI cards PCS-T1, and update CSI's as-built drawings accordingly.



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Bryon Warren
President
302-270-5719

Email(s):
office@bwelectricinc.com
estimates@bwelectricinc.com

December 28, 2021

Subject: SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2 RFP No. 49

Dear Mr. Medlarz,

Our price to perform the electrical work associated with the above project is based on RFP No. 49. Our price does not include the use of Prevailing Wages. Our price is **\$10,816.99** and includes the following:

Description of proposed changes:

Contractor is requested to submit a proposal to rewire the two level sensors and two DO probes at T-2A/B Oxidation Ditches to PCS-T1:

1. Provide new TSP for each signal from the new terminal box at T-2, through a spare conduit in duct banks DB-T2-1, DB-PS1-1, and DB-T1-2.
2. In DB-T1-2, provide three 1" inner ducts in the spare conduit. Pull TSP-4 through one inner duct and provide pull string in the two spare inner ducts.
3. Route TSP-4 in spare 1" conduit shown on Drawing RB-E9215 between MCC-T1 and PCS-T1. Route conductors in bottom MCC wireway to the MCC section where the 1" spare is to keep TSPs as far away from MCC feeders as possible.
4. Connect T-2A and T-2B instruments to separate AI cards PCS-T1, and update CSI's as-built drawings accordingly.

If this RFP is accepted, we are requesting 10 days be added to the contract.

Exclusions

1. No permit fees.
2. No cutting.
3. No patching or painting.
4. No liquidated damages.

This price is good for thirty (30) days only.

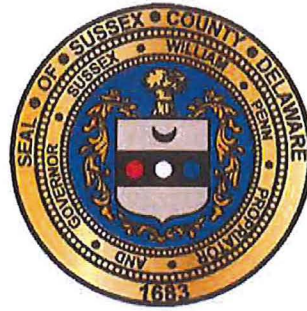
Sincerely,

Jason R. Walters
B. W. Electric, Inc.
Superintendent
JRW/

#SCRWF Upgrade No.3 and RBWWTP CIP Upgrade Phase 2 : RFP NO. 049

Totals (Summary) - Bid Summary: Default

Material	
Non-Quoted	\$3,182.94
Quotes	0.00
Sales Tax (0.00%)	0.00
Total Material	\$3,182.94
Labor	
Direct (91.60 hours @ \$65.00)	\$5,954.00
Non-Productive Labor	0.00
Total Labor (91.60 hours)	\$5,954.00
Direct Job Expenses	\$0.00
Tools and Miscellaneous Materials	0.00
Subcontracts	0.00
Job Subtotal (Prime Cost)	\$9,136.94
Overhead (10.00%)	913.69
Profit (5.00%)	502.53
Job Total	\$10,553.16
Bond	
Bond	263.83
Job Total with Bond	\$10,816.99
Actual Bid Price	\$10,816.99
Material to Direct Labor ratio: 0.35	
Prime Cost per square foot	\$0.00
Job Total per square foot	\$0.00
Actual Bid Price per square ft	\$0.00
Labor cost per square foot	\$0.00
Labor hours per square foot	0.00
Gross Profit %	15.53
Gross Profit \$	\$1,680.05
Net Profit %	7.08



**SUSSEX COUNTY
CHANGE ORDER REQUEST**

A. ADMINISTRATIVE:

1. Project Name: **SCRWF Treatment Process Upgrade No. 3 & RBWTP Capital Improvement Program, Phase 2 – Electrical Construction**
2. Sussex County Project No. C19-17
3. Change Order No. 14
4. Date Change Order Initiated - 1/11/22
5.
 - a. Original Contract Sum \$22,178,674.00
 - b. Net Change by Previous Change Orders (\$283,352.36)
 - c. Contract Sum Prior to Change Order \$21,895,321.64
 - d. Requested Change \$ (\$6,485.87)
 - e. Net Change (No. of days) _____
 - f. New Contract Amount \$21,888,835.77
6. Contact Person: Hans Medlarz, P.E.
Telephone No. (302) 855-7718

B. REASON FOR CHANGE ORDER (CHECK ONE)

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

6. Factors Affecting Time of Completion

 7. Other (explain below):


C. **BRIEF DESCRIPTION OF CHANGE ORDER:**
Modification to 4 valves eliminating actuators.

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

Yes X No

E. **APPROVALS**

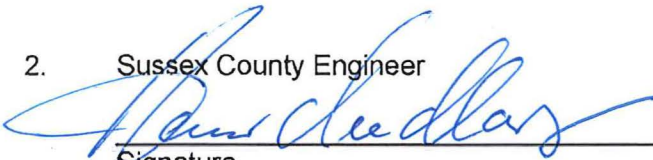
1. B.W. Electric, Inc., Contractor



Signature 1.5.2022
Date

Bryon S. Warren
Representative's Name in Block Letters

2. Sussex County Engineer



Signature 1/5/22
Date

3. Sussex County Council President

Signature Date



Request for Proposal

Project Title	SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2		
Owner	Sussex County, Delaware		
Contract No.	C19-17: Electrical Construction	GHD Project No.	11121182
Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order.			
RFP No.	048		
RFP Subject	SCRWF HW Gate Actuators		
Issued By	D. Murray	Issue Date	Nov. 23, 2021

Description of proposed changes:

Contractor is requested to submit a proposal to delete the motorized actuators for WG-115, WG-116, WG-117. Provide credit for the following:

1. Three disconnect switches shown on Drawings E0104 and E0107.
2. Conduits and fittings between actuators and pull boxes PB-SG-3,4 shown on Drawing E0107.
3. Conductors between actuators and PCS-HW and PPHWB2 shown on Drawing E0107.

Convert I/O in PCS-HW to spare points. Update CSI's as-built drawings accordingly.

Circuit Breakers in PPHWB2 shall be spares. Update as-built drawings and panelboard schedules accordingly.



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Harrington DE 19952

Office: 302.566.6248
Fax: 302.566.6251

Bryon Warren
President
302-270-5719

Email(s):
office@bwelectricinc.com
estimates@bwelectricinc.com

December 28, 2021

Subject: SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2 RFP No. 48

Dear Mr. Medlarz,

Our price to perform the electrical work associated with the above project is based on RFP No. 48. Our price does not include the use of Prevailing Wages. Our price is a credit of **\$6,485.87** and includes the following:

Description of proposed changes:

Contactors are requested to submit a proposal to delete the motorized actuators for WG-115, WG-116, WG-117.

Provide credit for the following:

1. Three disconnect switches shown on Drawings E0104 and E0107.
2. Conduits and fittings between actuators and pull boxes PB-SG-3,4 shown on Drawing E0107.
3. Conductors between actuators and PCS-HW and PPHWB2 shown on Drawing E0107. Convert I/O in PCS-HW to spare points. Update CSI's as-built drawings accordingly. Circuit Breakers in PPHWB2 shall be spares. Update as-built drawings and panelboard schedules accordingly.

Exclusions

1. No permit fees.
2. No cutting.
3. No patching or painting.

4. No liquidated damages.

This price is good for thirty (30) days only.

Sincerely,

Jason R. Walters
B. W. Electric, Inc.
Superintendent
JRW/

#SCRWF Upgrade No.3 and RBWWTP CIP Upgrade Phase 2 : RFP NO. 048

Totals (Summary) - Bid Summary: Default

Material	
Non-Quoted	-\$1,712.41
Quotes	0.00
Sales Tax (0.00%)	0.00
Total Material	-\$1,712.41
Labor	
Direct (-57.94 hours @ \$65.00)	-\$3,766.10
Non-Productive Labor	0.00
Total Labor (-57.94 hours)	-\$3,766.10
Direct Job Expenses	\$0.00
Tools and Miscellaneous Materials	0.00
Subcontracts	0.00
Job Subtotal (Prime Cost)	-\$5,478.51
Overhead (10.00%)	-547.85
Profit (5.00%)	-301.32
Job Total	-\$6,327.68
Bond	
Bond	-158.19
Job Total with Bond	-\$6,485.87
Actual Bid Price	-\$6,485.87
Material to Direct Labor ratio: 0.31	
Prime Cost per square foot	\$0.00
Job Total per square foot	\$0.00
Actual Bid Price per square ft	\$0.00
Labor cost per square foot	\$0.00
Labor hours per square foot	0.00
Gross Profit %	15.53
Gross Profit \$	-\$1,007.36
Net Profit %	7.08

South Coastal RWF & Rehoboth Beach WTF Upgrade

1/11/2022

Vendor/Contract	Description	Contract Value
Michael F. Ronca & Sons, Inc.	SCRWF/RBWWTW General Construction	42,299,570.84
BW Electric Inc.	SCRWF/RBWWTW Electrical Construction	21,888,835.77
BW Electric Inc. CO#3	DP&L Service Entrance Modification Conduit System	235,637.33
BW P.O.	Soil Screening @ Rehoboth Plant	4,504.50
GHD	Amd 11 - SCRWF Expansion to 10mgd - Planning & Concept	241,938.68
	Amd 12 - SCRWF Expansion Construction Docs	2,240,280.73
	Amd 13 - Value Engineering	95,080.15
	Amd 14 - Rehoboth WTP Capital Improvement Program Upgrade Phase 2/Joint Project with SCRWF Expansion	398,410.63
	Amd 16 - Ocean Outfall Discharge Modeling & Wetlands Delineation for SCRWF and Add'l Design Services for Rehoboth WTP Capital Improvement Program	181,089.72
	Amd 18 - RBWTP CIP Upgrade Phase 2 - Add'l Design	172,153.01
	Amd 19 - SCRWF Upgrade 3 Add'l Design	108,073.71
	Amd 20 - SCRWF Upgrade 3/RBWTP Upgrade Phase 2 Construction Engineering	6,589,558.49
Core & Main	Influent FM Consolidation Materials	339,944.59
Core & Main	Effluent FM Pipeline Materials	227,603.39
Delmarva Power	Improve service entrances for both projects. Payment not distributed.	175,000.00
G&L	FM Consolidation & Influent Consolidation Phase II	973,229.04
G&L Work- Effluent Relocation		316,635.20
G&L Work - RB Treatment Plant	Parking Lot Repavement	
Kershner Environmental Technologies	Belt Press	295,000.00
Melvin Joseph	Material Screening	80,000.00
DSWA	Loading, Hauling & Disposal of Debris	33,000.00
	Hauling of Rehoboth Oxidation Ditch Remnants	39,663.15
Totals		76,935,208.93

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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

hans.medlarz@sussexcountycle.gov



Sussex County

DELAWARE
sussexcountycle.gov

Memorandum

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

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

RE: *EMS Public Safety Building – Project C19-04*
A. *Change Order No. 5*

DATE: January 11, 2022

The single Public Safety Building concept was first introduced in the FY 2019 Budget Ordinance. The building's purpose is to consolidate all EMS training, administration, and logistics functions in one facility replacing the current locations. The scope and cost were updated in accordance with a space allocation programming effort in the FY 2020 Budget Ordinance and further refined based on design stages in the FY 2021 & FY 2022 Budget Ordinances reflecting a total project expense of \$12.00 million. At this stage in process, the anticipated overall project expenses are well within budget.

Following a publicly advertised process, Council awarded the EMS Department's - Architectural Consulting Services base contract to the George, Miles and Buhr, Inc. The subsequent Public Safety Building Project C19-04 base agreement covered professional services for an initial not to exceed amount of \$300,000.00.

The State's fire prevention regulations required a single-entry point necessitating a full sprinkler distribution system design and due to the critical nature of the facility a secondary air conditioning backup in the form of a cooling tower was desired. Council authorized a \$31,720.00 stand-alone purchase order to RMF Engineering for these specialty designs.

In October of 2020 the Departments presented the 60% design review to County Council followed by a 75% design presentation in March of 2021. Based on the County's request GMB was asked to create fiber optic cabling, audio/visual, security/alarm and fit out specialty scopes for procurement under Cooperative Purchasing Agreements increasing the project design complexity. Hence, Council approved on March 23, 2021 GMB's Amendment No.1 increasing the not to exceed threshold by \$61,500.00.



Following the March Council presentation, the scope still evolved considerably due to design revisions and added design features. Consequently, GMB and its subconsultants exceeded the previously approved allocations bringing the project to bid. GMB offered a discounted fee of \$75,000.00 to cover these services. In addition, they proposed a construction services fee of \$244,500.00. Overall, the professional services were well below 10% of construction comparing favorably with industry standards and on August 10, 2021 County Council authorized issuance of GMB's Amendments No. 2 & 3 increasing the overall not to exceed amount to \$681,000.00.

On June 4, 2021, invitations to bid for the Sussex County Public Safety Building, Project C19-04 were publicly advertised. On July 14, 2021, eight (8) bids were received. On August 10, 2021, Council awarded the project to Bancroft Construction Company in the amount of \$8,282,169.00.

The documents as bid included provisions to recover pandemic related price increases between *bid and award* for structural and light weight steel material costs. Therefore, on August 31, 2021 Council approved change order no. 1 in the not to exceed amount of \$40,000 for structural and change order no. 2 in the amount of \$8,800 for light weight steel material price increases.

The structural steel material change order No.1 was based on August 12, 2021 pricing. When Bancroft transmitted the "letter of intent to award", their subcontractor Iron Works, Inc. on August 30th they in turn issued material purchase orders. However, the material suppliers responded that material quotations are only binding for one week due to supply chain impacts and volatile steel markets. In consultation with the County Leadership the Engineering Department authorized Bancroft to lock in at the August 30th material costs triggering a \$22,829.00 revision to change order no. 1 approved by Council on September 14, 2021.

When the project bid the Fire Marshall site permit was had been issued but the associated building was still under review. When it was finalized two issues had to be addressed (i) fire protection details in the plenum and (ii) a secondary emergency egress from the mezzanine.

The plenum needed to be either sprinkled or all materials had to be fire rated. The only material not meeting the rating was the water piping. The County requested the PVC piping for ease of maintenance. The mechanical subcontractor suggested to add fire rated insulation but switch the valving to PVC under a partial credit for a net change order no. 3 cost of \$13,554.94. In addition, the County EMS team had initiated a proposed change order no. 4 for air filtration system safety upgrades paid for through American Rescue Plan Act funds in the amount of \$4,740.28. On November 20, 2021 County Council approved both change orders.

The Department and the contractor have concluded the change order scope associated with the Fire Marshall the emergency mezzanine exit required under the permit. The work was complex requiring scope modifications for eight (8) trades. The electrical trade also included some minor changes to the outlet configurations to accommodate the selected A/V equipment for a total \$58,245.80. The Department is recommending acceptance by County Council of change order no. 5 in that amount.

- 6. Factors Affecting Time of Completion
- 7. Other (explain below):

C. BRIEF DESCRIPTION OF CHANGE ORDER:


Addition of exterior egress from the mezzanine per fire marshal request, increasing costs associated with foundation work, metal stairs, egress door, light, canopy, downspouts and lighting.

D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?

Yes No

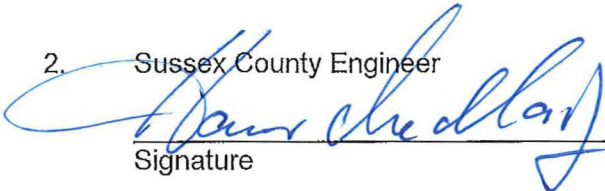
E. APPROVALS

1. Bancroft Construction Company, Contractor

 12/20/21
Signature Date

MICHAEL KALAFUT
Representative's Name in Block Letters

2. Sussex County Engineer

 12/21/21
Signature Date

3. Sussex County Council President

Signature Date



Bancroft Construction Company
 1300 N Grant Ave Ste 101
 Wilmington, Delaware 19806
 Phone: 302 655 3434

Project: CSED0001 - Public Safety Bldg. Addition
 21911 Rudder Lane
 Georgetown, Delaware 19947

DRAFT

Prime Contract Potential Change Order #005: CE 006 & 014

TO:	Sussex County Delaware 2 The Circle P.O. Box 589 Georgetown Delaware, 19947	FROM:	Bancroft Construction Company 1300 N. Grant Avenue Suite 101 Wilmington Delaware, 19806
PCO NUMBER/REVISION:	005 / 0	CONTRACT:	CSED001 - Public Safety Bldg. Addition Prime Contract
REQUEST RECEIVED FROM:		CREATED BY:	Cheryl Fearn (Bancroft Construction Company)
STATUS:	Draft	CREATED DATE:	12/17/2021
REFERENCE:		PRIME CONTRACT CHANGE ORDER:	None
FIELD CHANGE:	No		
LOCATION:		ACCOUNTING METHOD:	Amount Based
SCHEDULE IMPACT:		PAID IN FULL:	No
		TOTAL AMOUNT:	\$58,245.80

POTENTIAL CHANGE ORDER TITLE: CE 006 & 014

CHANGE REASON: No Change Reason

POTENTIAL CHANGE ORDER DESCRIPTION: *(The Contract Is Changed As Follows)*

CE #006 - Mezzanine Changes - Rev #5

Revision #5 was issued from GMB depicting the addition of exterior egress from the mezzanine per the fire marshalls request. This change requires additional foundation work, inclusion of metal stairs, egress door, lights, pre-manufactured canopy, downspouts and lighting.

CE #014 - AV Changes

ATTACHMENTS:

[Continental CO 2 - AV Changes.pdf](#) [Continental CO 1 - Revision 5 Lighting \(1\).pdf](#) [Charles Brown Entrance & Storefront.pdf](#) [EMS Public Safety Building Dwgs - Conformed E2.02 - AV markups.pdf](#) [EMS Public Safety Building Dwgs - Conformed E2.03 - AV markups.pdf](#) [Richardson PCO4.pdf](#) [HK CO- Mezzanine Gutter & Downspout.pdf](#) [Iron Works- CO Mezzanine.pdf](#) [NEC CO- Mezzanine Blocking.pdf](#) [Cavan Foundation and Concrete CO-Mezzanine.xlsx](#) [SDH CO-Mezzanine Door and Frame.pdf](#)

#	Cost Code	Description	Type	Amount
1	08-001 - Doors and Windows	Addition of Exterior Door and Frame	Subcontract	\$3,515.00
2	05-100 - Structural Metal Framing	Add Exterior stairs for Egress	Subcontract	\$26,000.00
3	03-330 - Architectural Concrete	Add foundation and rebar for metal stairs	Subcontract	\$7,959.00
4	09-250 - Gypsum Board	Additional Framing and blocking for door and metal canopy	Subcontract	\$996.58
5	15-001 - Mechanical	Roof Drain Changes	Subcontract	\$2,179.00
6	07-500 - Membrane Roofing	Add Downspout and Gutter	Subcontract	\$4,495.00
7	08-400 - Entrances and Storefronts	Additional Metal Canopy	Subcontract	\$2,950.00
8	16-001 - Electrical	Additional Lighting	Subcontract	\$1,841.00
9	16-001 - Electrical	AV Changes	Subcontract	\$2,372.00
			Subtotal:	\$52,307.58
			BCC GCs (5.00% Applies to all line item types.):	\$2,615.38
			Bond (1.00% Applies to all line item types.):	\$549.23
			Profit (5.00% Applies to all line item types.):	\$2,773.61
			Grand Total:	\$58,245.80

ENGINEERING DEPARTMENT

J. MARK PARKER, P.E.
ASSISTANT COUNTY ENGINEER

(302) 855-7370 T
(302) 854-5391 F
mark.parker@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

FROM: J. Mark Parker, P.E., Assistant County Engineer

RE: ***Delaware Coastal Business Park Improvements, Project A21-11***
A. ReBid Results and Recommended Action

DATE: January 4, 2022

On November 29, 2016, Council authorized the purchase of the King Farm Industrial Park and the assumption of existing contractual arrangements held by Georgetown Airport Center, LLC. Under this arrangement, the County assumed Melvin L. Joseph Construction Co., Inc.'s contracts for the DelDOT entrance and +/-500 feet of the Baltimore Avenue.

On March 14, 2017, Council approved the assumption of Georgetown Airport Center, LLC's Professional Engineering Contract and retained the Engineer of Record, Becker Morgan Group, Inc., as the consultant for Delaware Coastal Business Park on a time and material basis, in accordance with their hourly rate schedule with a not to exceed limit of \$200,000.00.

On October 10, 2017, Council approved a Memorandum of Understanding with AIC Building, LLC to achieve a better roadway alignment by incorporating the drive aisle behind the AIC building in the northern park access road via a modification of lease lines.

On January 16, 2018 Council approved Becker Morgan Group, Inc.'s scope modification No.1 for the realignment of Baltimore Avenue and stormwater over-management in an amount not to exceed \$48,000.00. The revised roadway alignment created a four-way intersection with Baltimore Avenue and a roadway serving Lease Areas 2 and 3.

On December 11, 2018, Council approved scope amendment No. 2 for Becker Morgan Group, Inc., in the not to exceed amount of \$350,000.00 for the Coastal Business Park Phase 2 design phase II, as well as the final phase of improvements to Baltimore Avenue between Nanticoke Ave and the railroad tracks.



Finally, on June 8, 2021, Council approved scope amendment No. 3 for Becker Morgan Group, Inc., in the amount not to exceed \$45,000.00 for additional design services related to the final phase of the Baltimore Avenue roadway improvements.

Contract Documents were assembled for both Phase 2 build-out of the Business Park and Baltimore Ave Improvements as a single Bid Package and advertised on October 15, 2021. A total of five (5) bids were received and opened publicly on November 18, 2021. Following a detailed review of all bids, numerous discrepancies were found in multiple bids effecting potential award recommendation. As a result, the Engineering Department and Council approved the rejection of all bids on November 30, 2021 with an immediate project rebid.

The project was rebid on following day on December 1, 2021, with a total of six (6) bids received and opened publicly on December 21, 2021. A subsequent detailed review revealed no major discrepancies in the submitted bids. The low apparent bid was submitted by A-Del Construction with a total project bid of \$3,839,433.00. As a result, the Engineering Department recommends award of the project to A-Del Construction for the noted amount.

ENGINEERING DEPARTMENT

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



Sussex County

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

Proposed Millville by the Sea, Villages A-D Expansion of the Sussex County Unified Sanitary Sewer District

PERMISSION TO POST FACT SHEET

- Expansion of the Sussex County Unified Sanitary Sewer District (Millville Area)
- The Engineering Department has received several requests from GMB, LLC on behalf of their client ASF MBTS, LLC, Inc. the owners/developers of a project to be known as Millville by the Sea.
- The requests include parcels 134-15.00-91.01, 134-15.00-16.00, 134-15.00-19.00 & 134-15.00-18.00.
- These (4) parcels will make up Villages A thru D and are proposed at 601 EDUS.
- The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates.
- The Engineering Department would like to request permission to prepare and post notices for a Public Hearing on the annexation of the area.
- A tentative Public Hearing is currently scheduled for February 22, 2022 at the regular County Council meeting.



Schaeffer-YES

Council Grant Form

Legal Name of Agency/Organization	William T. Spooner American Legion Post 17 Inc. ✓
Project Name	Post 17 Kitchen Range Replacement
Federal Tax ID	23-7037362 ✓
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	No
Organization's Mission	<p>To enhance the well-being of America's veterans, their families, our military, and our communities by our devotion to mutual helpfulness. The American Legion's vision statement is "The American Legion: Veterans Strengthening America." The American Legion's value principles are:</p> <p>A VETERAN IS A VETERAN SELFLESS SERVICE AMERICAN VALUES AND PATRIOTISM FAMILY AND COMMUNITY ENGAGEMENT ADVANCING THE VISION HONOR THOSE WHO CAME BEFORE US</p> <p>The American Legion's motto is "Veterans Strengthening America."</p> <p>The William T. Spooner American Legion Post 17 has a long history of supporting veterans in the Lewes Delaware community. Post 17 is the first American Legion Post, in the first town, and in the first state of our country. Since its</p>

humble start on September 14, 1945, Post 17 has been a pillar of the community known for its dedication to its members and the surrounding area.

Dedicated to community service, American Legion Post 17 is a regular contributor to charity and aid efforts throughout our community. As a patriotic veteran's organization devoted to mutual helpfulness. It's the nation's largest wartime veterans service organization, committed to mentoring youth and sponsorship of wholesome programs in our communities, advocating patriotism and honor, promoting strong national security, and continued devotion to our fellow service members and veterans.

Throughout the months, American Legion Post 17 hosts a number of events to support our local veteran population. From lunches and dinners for local military units to providing a safe haven for troops and their families to associate with veterans with the same background and experiences. Post 17 is their home away from home!

Address	PO BOX 5
Address 2	American Legion Post 17
City	LEWES
State	Delaware
Zip Code	19958-0005
Contact Person	Steven Missimer
Contact Title	Advisor to the Post Commander
Contact Phone Number	7039305269

Contact Email Address missimers1116@gmail.com

Total Funding Request \$5,000.00

Has your organization received other grant funds from Sussex County Government in the last year? No

If YES, how much was received in the last 12 months? N/A

Are you seeking other sources of funding other than Sussex County Council? No

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

Program Category (choose all that apply) Other

Program Category Other Veteran Support

Primary Beneficiary Category Other

Beneficiary Category Local Sussex County Veteran Community
Other

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 1000

Scope

Post 17 has a kitchen range in our Post home kitchen that is failing do to age. This kitchen range is our main source of food preparation that is used on a daily basis. In addition to our American Legion Post members, the kitchen range is also used by our Sons of the American Legion (SAL) and the American Legion Auxiliary (ALA). The SAL allows the sons of veterans to support veterans in the community and in our American Legion Post. Sons of The American Legion exists to honor the service and sacrifice of Legionnaires. The SAL members include males of all ages whose parents or grandparents served in the U.S. military and were eligible for American Legion membership. The ALA is for spouses of veterans In the spirit of Service, Not Self, the mission of the American Legion Auxiliary is to support The American Legion and to honor the sacrifice of those who serve by enhancing the lives of our veterans, military, and their families, both at home and abroad.

American Legion Post 17 has a full service kitchen, a bar for service to all members, a meeting room, a gaming area, restroom facilities, offices and a large outside pavilion for post events during the summer months. With a combined American Legion, SAL, and ALA population at Post 17 of over 1,000 members plus the community we serve on a daily basis, this kitchen range is critical to us continuing our food service for the Sussex county veterans we support on a daily basis.

From Memorial Day ceremonies to July 4th and Veterans day, just to name a few, Post 17 provides wholesome meals for veterans and their families in the Lewes and Sussex County area. The replacement kitchen range will allow us to continue these efforts and allow us to expand our veteran food offerings for current and former military members, and family and community engagement.

**Religious
Components**

**Please enter the
current support your
organization receives
for this project (not
entire organization
revenue if not
applicable to request)** 2,900.00

Description RANGE, 60", 6 BURNERS, 24" GRIDDLE

Amount 6,581.04

Description BLUE HOSE GAS CONNECTOR KIT

Amount 206.49

Description Delivery

Amount 486.53

Description Installation

Amount 635.00

Description

Amount

Description

Amount

Description

Amount

Description

Amount

TOTAL EXPENDITURES 7,909.06

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -5,009.06

Name of Organization William T. Spooner American Legion Post 17

**Applicant/Authorized
Official** Steven M. Missimer

Date 12/20/2021

**Affidavit
Acknowledgement** Yes

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Vincent - yes

Council Grant Form

Legal Name of Agency/Organization Seaford Tomorrow, Inc. ✓

Project Name Seaford Safe Community Events

Federal Tax ID 47-5519548 ✓

Non-Profit Yes

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

Organization's Mission Seaford Tomorrow is an all-volunteer non-profit organization formed with the specific purpose of improving Seaford's Downtown Business District in support of the local economy. This mission is pursued through two primary activities: our Facade Improvement grant program, and our downtown event series ("Friday Night Live"). Although centered in the Seaford area, these two programs benefit all residents of Western Sussex County, and through an open, equal-opportunity approach, benefit a number of minority businesses and residents from the area.

Address 414 High St

Address 2

City Seaford

State DE

Zip Code	19973
Contact Person	Ian (Toby) French
Contact Title	Chair
Contact Phone Number	(302) 257-0966
Contact Email Address	tobyfrench32@yahoo.com
Total Funding Request	\$5,000
Has your organization received other grant funds from Sussex County Government in the last year?	No
If YES, how much was received in the last 12 months?	N/A
Are you seeking other sources of funding other than Sussex County Council?	No
If YES, approximately what percentage of the project's funding does the Council grant represent?	N/A

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

**Program Category
Other**

**Primary Beneficiary
Category** Elderly Persons (62 +)

**Beneficiary Category
Other**

**Approximately the
total number of
Sussex County
Beneficiaries served,
or expected to be
served, annually by
this program** 400

Scope

Seaford Tomorrow provides monthly outdoor cultural events from May through October of each year. These events, called "Friday Night Live", take place in an outdoor setting on a vacant lot downtown on Friday evenings. We provide entertainment, normally music but it also could be a Trivia DJ, food trucks, kids games, and vendors. These events are a safe way for families and groups to gather and enjoy the downtown in these difficult times. Seaford Tomorrow worked hard in 2021 to get the word out about these events, and they grew significantly in popularity and attendance through the year. Since ST has no dues-paying membership, we support the events through fundraisers, but with the cost of musical acts, a grant would provide a significant boost to our ability to offer and expand these offerings.

**Religious
Components**

**Please enter the
current support your
organization receives
for this project (not
entire organization
revenue if not
applicable to request)** 750.00

Description Entertainment

Amount 4,500.00

Description New tables and umbrellas

Amount 1,000.00

Description Advertising costs (signs, placemats, etc)

Amount 250.00

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

TOTAL EXPENDITURES 5,750.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -5,000.00

Name of Organization Seaford Tomorrow, Inc

**Applicant/Authorized
Official** Ian G French

Date 12/14/2021

**Affidavit
Acknowledgement** Yes

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Rieley-yes

Council Grant Form

Legal Name of Agency/Organization Clothing Our Kids ✓

Project Name Clothe A Kid

Federal Tax ID 45-4382079 ✓

Non-Profit Yes

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

Organization's Mission The mission of Clothing Our Kids (COK) is to improve the lives of disadvantaged and at-risk elementary and preschool children by providing appropriate school clothing. Research demonstrates that not having appropriate school clothing can damage a child's self esteem, impair their ability to learn and can lead to bullying. COK provides new clothing to the children, something many of them have never had before. Our goal is to help these children have an equal start in their early education and help them become successful students. The COVID-19 pandemic has hit the more vulnerable families hardest, causing job loss and reduced income. We do not want families to have to chose between buying other necessities for their family or clothing for their children. The clothes provided by COK help the children in their school experience and help the families economically, while affirming to them that people in the community care about them. The pandemic forced cancellation of all 2020 fundraising activity, creating more financial pressure for the organization.

Address 26582 John J Williams Highway

Address 2	Suite 2
City	Millsboro
State	De
Zip Code	19966
Contact Person	Dr. Peter Thomas
Contact Title	Grant Coordinator
Contact Phone Number	484-269-4890
Contact Email Address	pt19610@gmail.com
Total Funding Request	5000
Has your organization received other grant funds from Sussex County Government in the last year?	Yes
If YES, how much was received in the last 12 months?	8450
Are you seeking other sources of funding other than Sussex County Council?	Yes
If YES, approximately what percentage of the project's funding does	3

the Council grant represent?

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

Program Category
Other

Primary Beneficiary Youth
Category

Beneficiary Category
Other

Approximately the 4000
total number of
Sussex County
Beneficiaries served,
or expected to be
served, annually by
this program

Scope

The "Clothe A Kid" program operates through coordination between school nurses in all 34 of the elementary schools in Sussex County and our program volunteers. The school nurse contacts COK with information such as gender, age and sizes. Our volunteers (we have no paid staff) put together a package that typically consists of three to five outfits of tops and bottoms, a hoody, underwear and PJ's. A mask is now included. If shoes are needed they are donated as well along with a weeks' worth of socks. Seasonally, jackets, hats, gloves and scarfs are included. Volunteers then drive the package to the school where the clothing is given to the child and their family. In Sussex County there are many families living at or below the poverty level. Since 2012, COK has distributed over 152,600 articles of clothing to over 27,000 children. This

demonstrates the enormous need for this program as well as the desire of schools and families to reach out for support.

Religious Components

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) 165,450.00

Description Personnel

Amount 0.00

Description Operating Expenses

Amount 46,680.00

Description Clothing Purchases

Amount 100,000.00

Description Event Expenses

Amount 31,250.00

Description

Amount

Description

Amount

Description	
Amount	
Description	
Amount	
TOTAL EXPENDITURES	177,930.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	-12,480.00
Name of Organization	Clothing Our Kids
Applicant/Authorized Official	Bob Bluin
Date	09/21/2021
Affidavit Acknowledgement	Yes

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To Be Introduced 01/11/22

**Council District 5 - Rieley
Tax I.D. Nos: 333-15.00-20.00
911 Address: 38531 Parker Road, Millsboro**

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 GUMBORO HUNDRED, SUSSEX COUNTY, CONTAINING 10.546 ACRES, MORE OR LESS

WHEREAS, on the 20th day of September 2021, a zoning application, denominated Change of Zone No. 1956 was filed on behalf of Jeffrey Behney; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1956 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of AR-1 Agricultural Residential District and adding in lieu thereof the designation of C-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 Gumboro Hundred, Sussex County, Delaware, and lying Northeast of the intersection of E. Line Road (S.C.R. 419), and Parker Road (S.C.R. 415), and being more particularly described in the attached legal description prepared by The Smith Firm, LLC, said parcel containing 10.546 acres, more or less.

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

To Be Introduced 01/11/22

Council District: 5 - Mr. Rieley

Tax I.D. No. 533-11.00-82.00

911 Address: N/A

ORDINANCE NO. ____

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

WHEREAS, on the 25th day of October 2021, a zoning application, denominated Change of Zone No. 1960 was filed on behalf of OA Oaks, LLC; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1960 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the northeast side of Zion Church Road (Rt. 20) approximately 0.27 mile northwest of Bayard Road (S.C.R. 384) and being more particularly described in the attached legal description prepared by Tunnell & Raysor, P.A., said parcel containing 14.84 acres, more or less.

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

To Be Introduced 01/11/22

**Council District 3 - Schaeffer
Tax I.D. No. 135-11.00-65.00
911 Addresses: None Available**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (42 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 9.72 ACRES, MORE OR LESS

WHEREAS, on the 20th of October 2021, a conditional use application, denominated Conditional Use No. 2320 was filed on behalf of Charles E. Turner, Jr.; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2320 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article 115, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2320 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

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