



Sussex County Council Public/Media Packet

**MEETING:
February 3, 2015**

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**Sussex County Council
2 The Circle | PO Box 589
Georgetown, DE 19947
(302) 855-7743**

MICHAEL H. VINCENT, PRESIDENT
SAMUEL R. WILSON JR., VICE PRESIDENT
ROBERT B. ARLETT
GEORGE B. COLE
JOAN R. DEAVER



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GEORGETOWN, DE 19947
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sussexcountype.gov

Sussex County Council

A G E N D A

FEBRUARY 3, 2015

10:00 A.M.

**AMENDED ON January 30, 2015 at 1:30 P.M.¹

Call to Order

Approval of Agenda

Approval of Minutes

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

1. Wastewater Agreement No. 1015
Sussex County Project No. 81-04
Americana Bayside – Village C
Fenwick Island Sanitary Sewer District

2. Administrator's Report

Hal Godwin, Deputy County Administrator

1. Legislative Update

10:30 a.m. Public Hearing

“AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXVIII, § 216D. AND F. OF THE CODE OF SUSSEX COUNTY TO GRANT THE COUNTY COUNCIL AND PLANNING AND ZONING COMMISSION DISCRETION TO RECONSIDER ZONING APPLICATIONS WHERE APPLICANT HAS FAILED TO APPEAR OR FAILED TO TIMELY WITHDRAW FOR REASONS BEYOND HIS CONTROL”



Old Business

Conditional Use No. 1994 filed on behalf of Robert Wilkerson

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTOMOBILE REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 1.5 ACRES, MORE OR LESS” (land lying north of Route 88 (Cave Neck Road) 340 feet east of Road 261 (Sweetbriar Road) (Tax Map I.D. 235-22.00-18.09) (911 Address: None Available)

Grant Requests

1. Sussex Cyclists for safety awareness program.
2. Delaware Senior Olympics for AED replacement batteries and pads.
3. Immanuel Shelter for operating expenses.

Introduction of Proposed Zoning Ordinances

Council Members' Comments

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

Possible Action on Executive Session Items

1:30 p.m. Public Hearing

Change of Zone No. 1759 filed on behalf of Osprey Point D, LLC

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 126.8795 ACRES, MORE OR LESS” (land lying west of Old Landing Road (Road 274) 1.2 mile south of Warrington Road (Road 275) (911 Address: 20836 Old Landing Road, Rehoboth Beach) (Tax Map I.D. #334-18.00-83.00)

Adjourn

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

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on January 27, 2015 at 4:45 p.m., and at least seven (7) days in advance of the meeting.

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

Agenda items listed may be considered out of sequence.

#

¹ Per 29 Del. C. § 10004 (e) (5) and Attorney General Opinion No. 13-IB02, this agenda was amended under Executive Session to include Personnel listed therein.

The Council intends to discuss public business in Executive Session. The agenda amendment was required to address these matters which need immediate Council attention and which arose after the initial posting of the agenda but before the start of the Council meeting.

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JANUARY 27, 2015

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, January 27, 2015, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

| | |
|------------------------------|-----------------------------|
| Michael H. Vincent | President |
| Samuel R. Wilson, Jr. | Vice President |
| George B. Cole | Councilman |
| Joan R. Deaver | Councilwoman |
| Robert B. Arlett | 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 040 15
Amend
and
Approve
Agenda**

A Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to amend the Agenda by deleting “Hal Godwin, Deputy County Administrator – Legislative Update” and by deleting “Sussex County Profile Luncheon”; and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of January 20, 2015 were approved by consent.

**Corre-
spondence**

Mr. Moore read the following correspondence:

**GREATER LEWES COMMUNITY VILLAGE, LEWES, DELAWARE.
RE: Letter in appreciation of Human Service Grant.**

**IMMANUEL SHELTER, NASSAU, DELAWARE.
RE: Letter in appreciation of grant.**

**DELMARVA TEEN CHALLENGE, SEAFORD, DELAWARE.
RE: Letter in appreciation of grant.**

**Public
Comments**

There were no public comments.

**Adminis-
trator's
Report**

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

1. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Lewes Crossing (aka Deep Valley Farm) – Phase 2 received Substantial Completion effective January 21, 2015.

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

**Compre-
hensive
Annual
Financial
Report
for
Fiscal
Year
End
6-30-14**

Mrs. Jennings presented the Sussex County Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2014.

Mrs. Jennings reported that the County received the Audited Financial Statements for Fiscal Year 2014 from BDO USA, LLP, the County's Auditors. Mrs. Jennings presented the Independent Auditor's Report and stated that the County has again received a clean opinion. Mrs. Jennings informed Council that the County's Auditors could not be in attendance due to weather conditions.

Mrs. Jennings reported that the County has received the GFOA (Government Finance Officers Association) Certificate of Achievement for Excellence in Financial Reporting for 12 years in a row. Additionally, the County continues with an Aa1 bond rating.

Mrs. Jennings reported that revenues total \$63 million and Expenditures total \$59 million, leaving a change in fund balance in the amount \$4 million (revenues over expenditures). Revenues are up over last year; revenues are up by 16.4%, or \$8 million. The largest increase was in Realty Transfer Tax (\$3.5 million). There was an increase in grants received of \$1.4 million and an increase in investment earnings of \$1.3 million. Mrs. Jennings reported that expenditures also increased, but not as much as revenues; however, she noted that these are not operating expenses, they are due to paying down long term obligations, i.e. pension contribution of \$1 million and paid back holiday pay and comp bank. Mrs. Jennings reported that capital expenditures are up \$3.7 million; capital expenditures include an airport project at \$6.7 million and library projects at \$2.2 million.

Mrs. Jennings reported that Realty Transfer Tax was 37% (\$3.5 million over previous year) of General Fund Revenues. Other revenues include property taxes (25%), charges for services (21%) (a \$350,000 increase over last year) Federal and State grants (13%) (\$1.4 million over last year), and fire service fee (2%).

Mrs. Jennings reported on General Fund expenditures:

- Paramedics – 28% (\$14 million)**
- General Government – 22% (\$11.2 million)**

**Comprehensive
Annual
Financial
Report
for
Fiscal
Year
End
6-30-14
(continued)**

- **Grant-in-aid – 16% (\$7.9 million)**
- **Libraries (Independent and County-owned) – 8% (\$4 million)**

Mrs. Jennings reported on the Statement of Revenues, Expenditures and Changes in Fund Balance (Budget and Actual) as of June 30, 2014. She reported that \$50 million was budgeted in revenues and \$57 million was brought in (actual exceeded budget by \$7 million). Expenditures were not increased and the County still spent under the budgeted amount by \$84,000. Mrs. Jennings noted that variances in revenues that cannot be depended on in the future are: Realty Transfer Tax (\$4.9 million), Charges for Services (\$2 million) and Intergovernmental Grants (\$1.1 million).

Kathy Roth, Budget and Cost Manager, presented information on business type revenues relating to sewer and water funds: charges for services were 48% of the budget (\$18.9 million) and non-operating revenues, which are connection and assessment fees, were 42% of the budget (\$14.9 million). Mrs. Roth noted that a lot of the funds are restricted, either for future capital or bond debt. The change in net position overall for the funds is \$6.1 million. Operating revenues increased \$2.1 million, or 11.7%, to \$20.0 million. Connection fees increased from \$1.5 million, or 37%, to \$5.6 million. Capital contributions decreased \$2.9 million to \$2.8 million.

Mrs. Roth presented information on the Pension Fund, which is made up of two different funds – the Pension Fund and Other Postemployment Benefits Fund (OPEB). This year, the contribution to the Pension Fund was \$13.9 million, which includes normal contributions (3.5%) as well as net investment earnings (10.3%). Payments to retirees (regular pension and health insurance benefits) was \$3.1 million. The increase in net position was \$10.8 million. Overall, there is \$86 million in the Pension Fund this year. On the OPEB side, there was an addition of \$6.2 million (\$2.4 million of that was contributions and \$3.7 million of that was investments). The County paid out \$1.8 million in health care costs for pensioners. Overall, the County increased the total pension \$15.1 million. There is \$70 million in the Pension Trust and \$30 million in the OPEB trust, for a total of \$101 million in pension funds. The County is at 89.7% funded on the pension side and 78.2% funded on the benefit trust side (OPEB).

Mrs. Roth reported that the County has no long-term General Fund debt. Sewer debt was at \$167 million last year and is at \$159 million this year.

Mrs. Roth referenced the statistical section of the report and she stated that the section includes economic, demographic and financial information.

Mrs. Roth reviewed the Single Audit Supplement which shows where the funding was this year:

- | | |
|--|-------------|
| • U.S. Department of Agriculture (sewer money) | \$ 293,754 |
| • U.S. Department of Housing and Urban Development | \$1,558,737 |
| • U.S. Department of Transportation (airport) | \$4,868,965 |

(continued)

• U.S. Department of Homeland Security

\$ 273,465

Mrs. Roth noted that the Comprehensive Annual Financial Report (CAFR) is available on the County's website (www.sussexcountype.gov).

Councilmembers discussed the report and raised questions regarding paramedic funding and Realty Transfer Tax revenues.

**Financial
Report
Ending
12/31/04**

Mrs. Jennings presented the Financial Report for the Second Quarter Ending December 31, 2014.

**Extend
Runway
4-22/
Package 2/
Contract
12-07/
C/O #2**

Bob Jones, Project Engineer, presented Change Order No. 2 in the amount of \$179,590.00 to the Extend Runway 4-22, Package 2, Project (Contract 12-07). This Change Order deletes the solar obstruction light and tower and adjusts final quantities; there are 16 add/deduct items – 2 are for additional landscaping and 14 are for minor adjustments to the electrical communications portion of the project. Mr. Jones stated that there will be a Change Order No. 3 for final cost adjustments for utilities (taking down lines on Route 9). Mr. Jones reported that this Change Order reduces the Contract by \$179,590.00.

**M 041 15
Approve
Change
Order
No. 2/
Extend
Runway
4-22/
Package 2/
Contract
12-07**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, based on the recommendation of the Sussex County Engineering Department, that Change Order No. 2 for Sussex County Contract No. 12-07, Extend Runway 4-22, Package 2, with George & Lynch, Inc. be approved, which decreases the Contract by the amount of \$179,590.00 for a new contract total of \$4,240,336.63, subject to the approval of the Federal Aviation Administration.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

**Tribute/
Bob Jones**

The County Council presented a Tribute to Bob Jones (William R. Jones) on the occasion of his retirement from the County after 8 years of service (March 2006 to January 2015).

**Grant
Requests**

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

**M 042 15
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$250.00 from Mr. Cole's Councilmanic Grant Account to the Town of Ocean View for the 2015 Homecoming Event.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

**M 043 15
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to Sussex County Habitat for Humanity for their annual fundraising event.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**M 044 15
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 (\$250.00 each from Mr. Cole's and Mrs. Deaver's Councilmanic Grant Accounts) to the Clear Space Theatre Company for operating costs.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Introduction
of Proposed
Ordinances**

Mrs. Deaver introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MEADERY MICROBREWERY FOR THE MANUFACTURING OF HONEY WINE AND TASTING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED AND BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.99 ACRES, MORE OR LESS" (Conditional Use No. 2013) filed on behalf of TBHM, LLC (Tax Map I.D. 334-4.00 34.00 (Part of) and 235-31.00-15.00) (911 Address – None Available).

Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 49.66 ACRES, MORE OR LESS" (Change of Zone No. 1768) filed on behalf of Convergence Communities (Tax Map I.D. No. 134-17.00-12.00) (911 Address: None Available).

Mrs. Deaver introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 114.4821 ACRES, MORE OR LESS" (Change of Zone No. 1770) filed on behalf of TD Rehoboth, LLC

**Introduction
of Proposed
Ordinances
(continued)**

(Tax Map I.D. No. 235-23.00-1.00) (911 Address: None Available).

Mr. Wilson introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 2.062 ACRES, MORE OR LESS” (Change of Zone No. 1771) filed on behalf of B. Ray Investments, LLC (Tax Map I.D. No. 530-14.00-15.00) (911 Address: None Available).

Mr. Vincent introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.33 ACRES, MORE OR LESS” (Change of Zone No. 1772) filed on behalf of Sussex Ventures, LLC (Tax Map I.D. No. 132-12.00-12.00 and 12.05) (911 Address: None Available).

The Proposed Ordinances will be advertised for Public Hearing.

[It was noted that a Councilmembers’ introduction of a Proposed Ordinance is not an indication of that members’ support of the application. Per Delaware State Code, “Every proposed ordinance shall be introduced...” and “An ordinance may be introduced by any member at any regular or special meeting of the county government.”]

**Council
Members’
Comments**

Council Members’ Comments

Mrs. Deaver commented on calls she receives regarding flooding issues.

Mr. Vincent commented on the Tribute Dinner held on January 26, 2015 to salute the Honorable Robert L. Venables, Sr., who served 26 years in Delaware’s General Assembly as the 21st District State Senator (1988-2014). Governor Markell awarded Senator Venables the Order of the First State, the highest honor for meritorious service granted by the Governor.

Mr. Arlett reported that he took a tour of the airport and received information on the details and plans for the airport. He also reported that he had the opportunity to visit and attend the Sussex County Advisory Committee on Aging and Adults with Physical Disabilities meeting; a discussion at the meeting included senior safety and the drug problem in Sussex.

**M 045 15
Go Into
Executive
Session**

At 10:55 a.m., a Motion was made by Mrs. Deaver, seconded by Mr. Cole, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to personnel and land acquisition.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Executive
Session**

At 11:00 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to personnel and land acquisition. The Executive Session concluded at 12:19 p.m.

**M 046 15
Reconvene
Regular
Session**

At 12:22 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Arlett, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

There was no action on Executive Session items.

**M 047 15
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to adjourn at 12:23 p.m.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Arlett, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

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

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

MICHAEL A. IZZO, P.E.
COUNTY ENGINEER

BRAD HAWKES
DIRECTOR OF UTILITY ENGINEERING

January 27, 2015

FACT SHEET

SUSSEX COUNTY PROJECT 81-04
AMERICANA BAYSIDE - VILLAGE C
AGREEMENT NO. 1015

DEVELOPER:

Mr. Thomas Halverstadt
CFM Bayside, L.L.C.
38017 Fenwick Shoals Blvd.

Selbyville, DE 19975

LOCATION:

Grays Neck Williamsville Road at Sand Cove Point

SANITARY SEWER DISTRICT:

Fenwick Island Sanitary Sewer District

TYPE AND SIZE DEVELOPMENT:

36 Residential Homes

SYSTEM CONNECTION CHARGES:

\$198,000.00

SANITARY SEWER APPROVAL:

Sussex County Engineering Department Plan Approval
11/21/14

Department Of Natural Resources Plan Approval
12/10/14

SANITARY SEWER CONSTRUCTION DATA:

Construction Days – 40

Construction Admin And Construction Inspection Cost – \$27,516.69

Proposed Construction Cost – \$183,444.58

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 |



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MICHAEL A. IZZO, P.E.
COUNTY ENGINEER

BRAD HAWKES
DIRECTOR OF UTILITY ENGINEERING

January 3, 2015

PROPOSED MOTION

BE IT MOVED THAT BASED UPON THE RECOMMENDATION OF THE SUSSEX COUNTY ENGINEERING DEPARTMENT, FOR SUSSEX COUNTY PROJECT NO. 81-04, AGREEMENT NO. 1015 THAT THE SUSSEX COUNTY COUNCIL EXECUTE A CONSTRUCTION ADMINISTRATION AND CONSTRUCTION INSPECTION AGREEMENT BETWEEN SUSSEX COUNTY COUNCIL AND "CFM BAYSIDE, LLC." FOR WASTEWATER FACILITIES TO BE CONSTRUCTED IN "AMERICANA BAYSIDE – VILLAGE C", LOCATED IN THE FENWICK ISLAND SANITARY SEWER DISTRICT.

ORDINANCE NO. 38
AGREEMENT NO. 1015

TODD LAWSON
COUNTY ADMINISTRATOR



Sussex County Council

Delaware General Assembly Legislative Report

Prepared by:

Hal Godwin, Deputy County Administrator

February 3, 2015

Hal

| Bill No. | Description and Purpose | Action |
|------------------------|---|--|
| 2015-2016 BILLS | | |
| HB 9 | This bill eliminates an existing conflict between the Delaware Code statute regulating licensed water system operators and the regulations governing licensed water system operators. This bill corrects the conflict by allowing the creation of an Advisory Council to assist the Secretary in implementing the regulations. In addition this bill allows for the waiver in the water system operator law and will provide clearer guidance to owners of public water systems. | 1/20/15 – Introduced and Assigned to Health & Human Development Committee in House 1/27/15 – Amendment HA 1 - Passed in House by Voice Vote 1/27/15 – Passed by House of Representatives. Votes: Passed 38 Yes, 2 No, 0 Not Voting, 1 Absent, 0 Vacant 1/27/15 – Assigned to Health & Social Services Committee in Senate |
| HA 1 to HB 9 | This technical amendment makes three clarifications to House Bill No. 9. First, clarification is added to a cross-reference to make clear the scope of the role of the Advisory Council. Second, it changes the word “waiver” to “variance” to match already existing language in the Administrative Code. This will avoid proliferation of different names referring to the same process. Finally, paragraph C. is amended to make clear that it is the applicant for the variance who may appeal a decision, rather than the holder of a water system operator license, since operator license requirements and procedures are addressed in a separate portion of the Code. | 1/27/15 – Passed in House by Voice Vote |
| HB 25 | This bill authorizes the Department of Natural Resources and Environmental Control to allow the harvesting of gray foxes and permitting of same. | |

| | | |
|-------|---|--|
| | | |
| HB 33 | This bill clarifies the types of signs that are permitted to be erected in the State's right-of-way by an outside entity, with department approval. The legislation provides consistency with federal regulations for outdoor advertising. | 1/27/15 – Introduced and Assigned to Transportation/Land Use and Infrastructure Committee in House |
| SB 29 | This bill restores language to the Delaware Code that was inadvertently repealed in 2010 when SB 240 and HB 419 were enacted concurrently. This bill adds cats to the list of domestic animals that are protected under the dangerous dog law. Cats are domestic animals and dogs that viciously attack a cat on the property of its owner or under the immediate control of its owner should be evaluated according to dangerous dog provisions. | |



SPONSOR: Rep. Barbieri & Sen. Hall-Long
Reps. Keeley, Miro, Mitchell, Viola, Wilson

HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 9

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE SANITARY PROTECTION OF ALL DRINKING WATER SUPPLIES WHICH ARE FURNISHED TO AND USED BY THE PUBLIC.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §122(3)c.1., Title 16 of the Delaware Code, by making deletions as shown by strike through and insertions as shown by underline as follows:

1. No public water system shall operate without a duly licensed public water supply operator. The Department shall have the authority to exempt the owners of seasonal public water systems, restaurants, hotels and similar businesses from the requirement to operate with a licensed public water supply operator. The Department shall have the exclusive power to grant or deny any such license and shall adopt regulations setting the requirements, including any acceptable performance or an examination for obtaining and retaining any such license. The Department shall assess an annual licensure fee of \$50 per operator.

A. The Department shall create an Advisory Council to assist the Secretary in implementing the requirements of this paragraph.

B. The Department shall have the authority to create a temporary waiver program for water systems upon the loss of their operator.

C. All decisions of the Secretary shall be final and conclusive. Where the holder of a water operator license is in disagreement with the action of the Secretary, that holder may appeal the Secretary's decision to the Superior Court within 30 days of the postmarked date of the copy of the decision mailed to the holder. The appeal shall be decided on the record and shall proceed as provided in §§ 10142-10145 of Title 29.

SYNOPSIS

The bill eliminates an existing conflict between the Delaware Code statute regulating licensed water system operators and the regulations governing licensed water system operators. This bill corrects the conflict by allowing the creation of an Advisory Council to assist the Secretary in implementing the regulations. In addition this bill allows for the waiver in the water system operator law and will provide clearer guidance to owners of public water systems.



SPONSOR: Rep. Barbieri

HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1

TO

HOUSE BILL NO. 9

1 AMEND House Bill No. 9 at line 11 by striking the words "this paragraph" and inserting in lieu thereof
2 "122(3)c.1".

3 FURTHER AMEND House Bill No. 9 on line 12 by striking the word "waiver" and inserting in lieu thereof
4 "variance".

5 FURTHER AMEND House Bill No. 9 by striking lines 14 through 18 in their entirety and substituting in lieu
6 thereof the following:

7 "C. All decisions of the Secretary with regard to issuance or renewal of a variance pursuant to
8 122(3)c.1.B. of this section shall be final and conclusive. Where the applicant for issuance or renewal of
9 a variance is in disagreement with the action of the Secretary, such applicant may appeal the Secretary's
10 decision to the Superior Court within 30 days of the postmarked date of the copy of the decision mailed to
11 the holder. The appeal shall be decided on the record and shall proceed as provided in §§ 10142-10145
12 of Title 29."

SYNOPSIS

This technical amendment makes three clarifications to House Bill No. 9. First, clarification is added to a cross-reference to make clear the scope of the role of the Advisory Council. Second, it changes the word "waiver" to "variance" to match already existing language in the Administrative Code. This will avoid proliferation of different names referring to the same process. Finally, paragraph C. is amended to make clear that it is the applicant for the variance who may appeal a decision, rather than the holder of a water system operator license, since operator license requirements and procedures are addressed in a separate portion of the Code.



SPONSOR: Rep. Wilson & Sen. Simpson ;
Reps. D. Short, Hudson, Briggs King, Collins, Dukes,
Gray, Kenton, Spiegelman, Carson; Sens. Ennis, Hocker,
Lawson

HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 25

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO REGULATIONS AND PROHIBITIONS
CONCERNING THE GRAY FOX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 7, Title 7 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 796. Regulation of the harvesting of gray fox.

(a) Notwithstanding any other provision, except for § 790 of this title, gray foxes (*Urocyon cinereoargenteus*)
may be harvested statewide. The Department shall establish the season structure and framework through regulations
promulgated pursuant to Chapter 101, Administrative Procedures Act, of Title 29.

(b) Notwithstanding any other provision of this title, the Department may issue a permit to a private landowner
authorizing the landowner to manage gray foxes on his or her property, provided there is a wildlife management plan for
the property, the wildlife management plan has been approved by the Department, and a reduction in the number of foxes
was recommended by such plan. The permit shall specify the time during which, the means and methods by which, and the
person or persons by whom the gray foxes may be killed or captured. The Department shall not charge a fee for the
issuance of a permit under this section.

(c) Nothing in this chapter shall be construed to prevent the killing of a gray fox by the owner of poultry if such
fox is in the act of attacking such poultry. Such person may kill such foxes within a reasonable time after the pursuit,
killing, or carrying away of the poultry.

(d) Notwithstanding anything to the contrary contained in this chapter, it shall be lawful to possess, buy, and sell
the hides of gray foxes which are legally taken in Delaware or in another state.

SYNOPSIS

This bill authorizes the Department of Natural Resources and Environmental Control to allow the harvesting of
gray foxes and permitting of same.



SPONSOR: Rep. Osienski & Sen. Peterson
Reps. Baumbach, J. Johnson, Q. Johnson, Keeley, Lynn,
Ramone

HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 33

AN ACT TO AMEND TITLE 17 OF THE DELAWARE CODE RELATING TO OUTDOOR ADVERTISING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 1108, Title 17 of the Delaware Code by making deletions as shown by strike through and
2 insertions shown by underline as follows:

3 (a) Subject to subsection (c) of this section, no outdoor advertising sign, display or device, except a directional,
4 gateway, or warning sign, official sign or notice erected by or with the approval of the Department, shall be erected
5 subsequent to July 14, 1969, within 25 feet of the right-of-way line of any public highway if visible from any portion of the
6 same.

7 (b) Subject to subsection (c) and subsection (d) of this section, no outdoor advertising sign, display or device,
8 except a ~~directional, gateway, or warning sign, official sign or notice~~ gateway sign or historical marker erected ~~by or~~ with
9 the approval of the Department, shall be erected or maintained:

10 (1) On the right-of-way of any public highways;

11 (2) Within 25 feet of any public playground, school or church if visible from any portion of the same;

12 (3) Upon the inside curves or at or near a railroad crossing or a highway intersection, if such would
13 obstruct or interfere with the view of a train, locomotive, streetcar or other vehicle at or approaching such crossing
14 or intersection or so as to obstruct the view of such intersection or crossing or of a turn or a sharp change in
15 alignment or in any manner dangerous to the public;

16 (4) If such sign, display or device is obsolete or is not in good physical condition;

17 (5) If such sign, display or device is not securely affixed to a substantial structure or in any way endangers
18 traffic on any public highway.

19 (c) Subsection (a) of this section shall not apply to outdoor advertising signs, displays or devices which advertise
20 the sale or lease of, or activities conducted upon, the real property where they are located, or any outdoor advertising signs
21 displayed on any school bus waiting shelter located and approved by the State Department of Education.

22 (d) Beautification/landscape planting sponsorship signs located within the right-of-way of any public highway shall
23 be erected or placed as defined below and as such are exempt from this chapter and section:

24 (1) Signs under the above provision denoting the name of the person(s) or organization sponsoring/or
25 donating, planting and/or maintaining beautification/landscape projects shall require an approved right-of-way use
26 agreement issued by the Department of Transportation;

27 (2) Such signs shall not exceed 6 square feet and shall be constructed, painted and lettered according to
28 standards for material and fabrication as required by the Department of Transportation.

SYNOPSIS

This bill clarifies the types of signs that are permitted to be erected in the State's right-of-way by an outside entity, with department approval. The legislation provides consistency with federal regulations for outdoor advertising.



SPONSOR: Sen. Peterson & Rep. Keeley
Sens. Blevins, Sokola, Townsend; Reps. Jaques,
Kowalko, Miro, Paradee, Ramone

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 29

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO DANGEROUS DOGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 9, Title 9 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 920 Definitions.

4 (5) "Domestic animal" shall mean any dog, cat, poultry or livestock.
5

SYNOPSIS

This bill restores language to the Delaware Code that was inadvertently repealed in 2010 when SB 240 and HB 419 were enacted concurrently. This bill adds cats to the list of domestic animals that are protected under the dangerous dog law. Cats are domestic animals and dogs that viciously attack a cat on the property of its owner or under the immediate control of its owner should be evaluated according to dangerous dog provisions.

Author: Senator Peterson

PUBLIC HEARING

February 3, 2015

This is to certify that on January 22, 2015 the Sussex County Planning and Zoning Commission conducted a public hearing on the below listed Ordinance Amendment. At the conclusion of the public hearing, the Commission moved and passed that the Ordinance Amendment be forwarded to the Sussex County Council with the recommendations as stated.

Respectfully submitted:

COUNTY PLANNING AND ZONING
COMMISSION OF SUSSEX COUNTY

Lawrence B. Lank

Director of Planning and Zoning

The attached comments relating to the public hearing are findings of the Planning and Zoning Commission based upon a summary of comments read into the record, and comments stated by interested parties during the public hearing.

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXVIII, §§ 216 D. AND F. OF THE CODE OF SUSSEX COUNTY TO GRANT THE COUNTY COUNCIL AND PLANNING AND ZONING COMMISSION DISCRETION TO RECONSIDER ZONING APPLICATIONS WHERE APPLICANT HAS FAILED TO APPEAR OR FAILED TO TIMELY WITHDRAW FOR REASONS BEYOND HIS CONTROL

The Commission found that this Ordinance Amendment amends the Code to provide that, in the event an applicant fails to appear or fails to withdraw its application in accordance with the Code for reasons beyond the applicant's control, if the failure to appear occurred before the Planning and Zoning Commission or, if the failure to appear occurred before the Sussex County Council, the Planning and Zoning Commission or the Sussex County Council, as applicable, shall have discretion to reconsider the application upon an affirmative vote of the body following the applicant's submission of a Petition for Reconsideration within fifteen (15) days of the scheduled public hearing containing facts sufficient to demonstrate that the failure to appear was beyond the applicant's control. Upon affirmative vote to reconsider the application, the public hearing shall be rescheduled.

Mr. Lank advised the Commission that the Department has not received any letters, emails, or comments from any parties in support of or in opposition to this Ordinance Amendment.

The Commission discussed the proposed Ordinance Amendment.

The Commission found that there were no parties present in support of or in opposition to the proposed Ordinance Amendment.

Mr. Robertson read the following suggested motion for consideration: “Mr. Chairman, I move that we recommend approval of the Ordinance to amend Chapter 115, Article XXVIII, §§ 216 D. and F. of the Code of Sussex County with the recommendation that it be revised to state that Sussex County Council shall not act upon any matter in which an applicant failed to appear before the Planning and Zoning Commission”.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to forward this Ordinance Amendment to the Sussex County Council with the suggested amendment as read by Mr. Robertson. Motion carried 4 – 0.

ORDINANCE NO. ____

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXVIII, §§ 216D. AND F. OF THE CODE OF SUSSEX COUNTY TO GRANT THE COUNTY COUNCIL AND PLANNING AND ZONING COMMISSION DISCRETION TO RECONSIDER ZONING APPLICATIONS WHERE APPLICANT HAS FAILED TO APPEAR OR FAILED TO TIMELY WITHDRAW FOR REASONS BEYOND HIS CONTROL

WHEREAS, Chapter 115, Article XXVIII, § 216 of the Code of Sussex County governs the procedure for amendments, supplements and changes to zoning ordinances; and

WHEREAS, Chapter 115, Article XXVIII, § 216F. currently mandates that, “a petition requesting an amendment, supplement or change substantially similar shall not be reconsidered sooner than one year after the previous failure to appear or failure to withdraw”; and

WHEREAS, Sussex County desires to amend Chapter 115, Article XXVIII, § 216 to provide that, in the event an applicant fails to appear or fails to withdraw its application for reasons beyond applicant’s control, if the failure to appear occurred before the Planning and Zoning Commission, or if the failure to appear occurred before the Sussex County Council, the Planning and Zoning Commission or the Sussex County Council, as applicable, shall have discretion to reconsider the application upon an affirmative vote of the body following applicant’s submission of a Petition for Reconsideration within fifteen (15) days of the scheduled public hearing containing facts sufficient to demonstrate the failure to appear was beyond applicant’s control and, upon affirmative vote to reconsider the application, to reschedule the public hearing.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Code of Sussex County, Chapter 115, Article XXVIII, § 216D., Changes and amendments, is hereby amended by deleting the language in brackets and inserting the italicized and underlined language as follows:

D. Reconsideration, one-year limitation. Whenever a petition requesting an amendment, supplement or change has been denied by the County Council, such petition or one substantially similar shall not be reconsidered sooner than one year after the previous denial[.]; *provided, however, that if a petitioner, applicant or appellant fails to appear, or appear by agent at the scheduled hearing for reasons beyond his control, applicant may submit a Petition for Reconsideration within fifteen (15) days containing facts sufficient to demonstrate the failure to appear was beyond applicant's control. After discussion, if the failure to appear occurred before the Planning and Zoning Commission, the Planning and Zoning Commission shall vote to approve or deny the request for reconsideration or, if the failure to appear occurred before the County Council, the Council shall vote to approve or deny the request for reconsideration. If a majority of members of the Planning and Zoning Commission or the County Council, as applicable, vote to approve reconsideration of the application, the public hearing will be rescheduled.*

Section 2. The Code of Sussex County, Chapter 115, Article XXVIII, § 216F., Changes and amendments, is hereby amended by deleting the language in brackets and inserting the italicized and underlined language as follows:

F. Failure to appear. If a petitioner, applicant or appellant fails to appear, or appear by agent, or fails to withdraw his application as provided for in Subsection E hereof, a petition requesting an amendment, supplement or change substantially similar shall not be reconsidered sooner than one year after the previous failure to appear or failure to withdraw [.] *unless the applicant's failure to appear was beyond his control and applicant's Petition for Reconsideration is approved in accordance with Subsection D hereof.*

Section 2. Effective Date. This Ordinance shall become effective on _____, 2014.

Synopsis

This Ordinance amends Sussex County Code, Chapter 115, Article XXVIII, §§ 216D. and F. to provide that, in the event an applicant fails to appear or fails to withdraw its application in accordance with the Code for reasons beyond applicant's control, if the failure to appear occurred before the Planning and Zoning Commission or, if the failure to appear occurred before the Sussex County Council, the Planning and Zoning Commission or the Sussex County Council, as applicable, shall have discretion to reconsider the application upon an affirmative vote of the body following applicant's submission of a Petition for Reconsideration within fifteen (15) days of the scheduled public hearing containing facts sufficient to demonstrate the failure to appear was beyond applicant's control. Upon affirmative vote to reconsider the application, the public hearing shall be rescheduled.

Deleted language is in brackets. Additional text is underlined and in italics.

OLD BUSINESS

February 3, 2015

This is to certify that the Sussex County Planning and Zoning Commission conducted a public hearing on the below listed application for Conditional Use. At the conclusion of the public hearing, the Commission moved and passed that this application be forwarded to the Sussex County Council with the recommendations as stated.

Respectfully submitted:

COUNTY PLANNING AND ZONING

COMMISSION OF SUSSEX COUNTY

Lawrence B. Lank

Director of Planning and Zoning

The attached comments relating to the public hearing are findings of the Planning and Zoning Commission based on a summary of comments read into the record, and comments stated by interested parties during the public hearing.

Conditional Use #1994 – Robert Wilkerson

Application of **ROBERT WILKERSON** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an automobile repair shop to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 1.5 acres, more or less, land lying north of Route 88 (Cave Neck Road) 340 feet east of Road 261 (Sweetbriar Road) (911 Address – None Available) (Tax Map I.D. #2-35-22.00-18.09).

The Commission found that the Applicant had submitted a copy of the survey of the property depicting the garage as existing on the property.

The Commission found that DelDOT provided comments on February 6, 2014 in the form of a Support Facilities Report referencing that a traffic impact study was not recommended, and that the current Level of Service “C” of Cave Neck Road (Route 88) will not change as a result of this application proposing to utilize the property for auto repair.

The Commission found that the County Engineering Department Utility Planning Division provided comments on August 20, 2014 in the form of a memorandum which reference that the property is not located in a County operated or maintained sanitary sewer and/or water district; that the property is located in the North Coastal Planning Area; that an on-site septic is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

Mr. Lank advised that Commission that the Department has received six (6) letters and/or emails in opposition to this application and provided the Commission with copies to review.

The Commission found that Robert Wilkerson was present and stated in his presentation and in response to questions raised by the Commission that he is proposing to use an existing garage on the property for an auto repair shop; that the activity is mostly a hobby; that he takes care of vehicles owned by family members and friends; that he does not charge fees; that he has received some donations for some of his work; that he has been utilizing the site for this purpose for approximately 5 years; that waste oils are pickup and handled by a waste oil handler; that parts removed from vehicles are disposed of or hauled away to salvage yards; that he does not want to have more than 10 vehicles on the site at any one time; that there are no other businesses in the area; that the area is predominantly residential and agricultural; that his normal business hours are from 8:30 a.m. to 5:00 p.m. Monday through Saturday; that there are no sanitary facilities on the site; that there are no vehicles for sale on the site; that he does offer any towing services; that he does not offer any repossession storage; that the service is needed in the area; that his father owns the property; and that his family owns the adjacent acreage as the Holland Family Land Corp.; that he has five or six people to and from the site daily; that he has no employees; that the building has a concrete floor; that he uses oil dry if any spill occurs; that he utilizes a parts cleaner system for cleaning parts; that there is no water on site; that security lighting exists; that he has an approved business license; and that he does not have a car lift in the shop, but utilizes jacks and jack-stands to service vehicles.

The Commission found that Ardie Bolden and Leeland Harmon, Jr. were present and spoke in support of the application stating that they have no objection to the application; that the site is well maintained; that there is little to no noise; that the site is clean, near and the grass is cut; that the applicant has been a good neighbor and is a good worker; and that he does a good job repairing vehicles and lawn mowers.

The Commission found that Nicki Trigg, Maureen Gosparik, Norma Jean Boudah, Roger Beaudin, Megan Stevens, Ben Cavaliere, Beverly Delli Santi, Debbie Kurpinski, and Ken Kurpinski were present and spoke in opposition to this application expressing concerns that there are normally 20 or more vehicles on the site; that there is heavy pedestrian activity on the site; that they do not support the need for an auto repair shop in the area; that the site is unsightly and an eyesore; that there are no restroom facilities; that power tool noises are disturbing; that the applicant has been in business for several years without any approvals; that tires have been stacked along the building; that the area is residential; that recently a convenience store application was denied near this site due to the residential area; that there are a large number of people coming and going to the site; that the lot does not have a septic system; that there is no hazardous materials waste report for review; that the entrance has not been built to State specification; that they purchases because the area is residential; that the intersection of Cave Neck Road, Hudson Road, and Sweetbriar Road is very dangerous; that the use is not compatible with the residential area surrounding the site; and that the area should remain residential and agricultural.

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

On August 21, 2014 there was a motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

On September 11, 2014 the Commission discussed this application under Old Business.

Mr. Johnson stated that he was prepared to make a motion, but asked if the other Commissioners had any comments.

Mr. Smith stated that the site is an appropriate location for an auto repair shop to serve the area based on some of the support heard during the public hearing.

Mr. Ross agreed with Mr. Smith's comments.

Mr. Burton stated that he would be abstaining from participating in the discussion and vote since he was not present during the public hearing.

Mr. Johnson stated that he would move that the Commission recommend approval of Conditional Use No. 1994 for Robert Wilkerson for an automobile repair shop based on the record made during the public hearing and for the following reasons:

- 1) Contrary to some of the statements made during the public hearing, this is not a conversion to a commercial or business zoning district. The use will be specific, with conditions and limitations placed upon it. Like any conditional use, if these requirements are violated, the conditional use can be terminated.
- 2) The use is relatively small in scope. If there was a home on this property, it is a small enough of a use with no employees that it is similar to a home occupation.
- 3) While there are some relatively new developments in this area, it is still a predominantly rural agricultural/residential area.
- 4) The use is adjacent to a much larger parcel owned by the applicant's family.
- 5) Although there was some opposition to this application, I am satisfied that these issues can be addressed through appropriate conditions.
- 6) I do not believe this use adversely affects traffic in the area.
- 7) With the conditions and limitations placed upon this use, it will not adversely affect neighboring properties or the community.
- 8) The use provides a benefit to Sussex County residents by providing a convenient location for automobile services.
- 9) This recommendation is subject to the following conditions:
 - A. The use shall be limited to the existing structure on the property. No additional structures will be permitted.
 - B. The use shall be operated solely by the applicant. As stated by the applicant, there shall not be any other employees associated with the business.
 - C. No outside repairs shall be permitted.
 - D. No junked, unlicensed or unregistered vehicles, trucks or trailers shall remain on the property for longer than six (6) months.
 - E. No more than ten (10) vehicles, trucks or trailers shall be located outside at any one time.

- F. The use shall include porta-toilet facilities. The nature and location of these facilities shall be shown on the Final Site Plan and shall be screened from neighboring properties.
- G. There shall not be any outside storage of vehicle parts, equipment, scrap, or similar materials.
- H. There shall not be any vehicle sales occurring on the site.
- I. All dumpsters or trash receptacles shall be screened from view of neighboring properties or roadways.
- J. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- K. One unlighted sign, not to exceed 32 square feet in size per side, shall be permitted.
- L. The areas for outside vehicles shall be shown on the Final Site Plan and clearly marked on the site itself.
- M. All oils, hazardous substances, fluids and similar substances shall be stored inside in accordance with all applicable laws and regulations and shall be disposed of the same way.
- N. The hours of operation shall be between 8:30 am and 5:00 pm, Monday through Saturday.
- O. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried with four (4) votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0, with Mr. Burton abstaining since he was not present during the public hearing.

Introduced 05/20/14

District No. 3

Tax Map I.D. 235-22.00-18.09

911 Address: None Available

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTOMOBILE REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 1.5 ACRES, MORE OR LESS”

WHEREAS, on the 2nd day of May 2014, a conditional use application, denominated Conditional Use No. 1994 was filed on behalf of Robert Wilkerson; and

WHEREAS, on the ____ day of _____ 2014, 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. 1994 be _____; and

WHEREAS, on the ____ day of _____ 2014, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

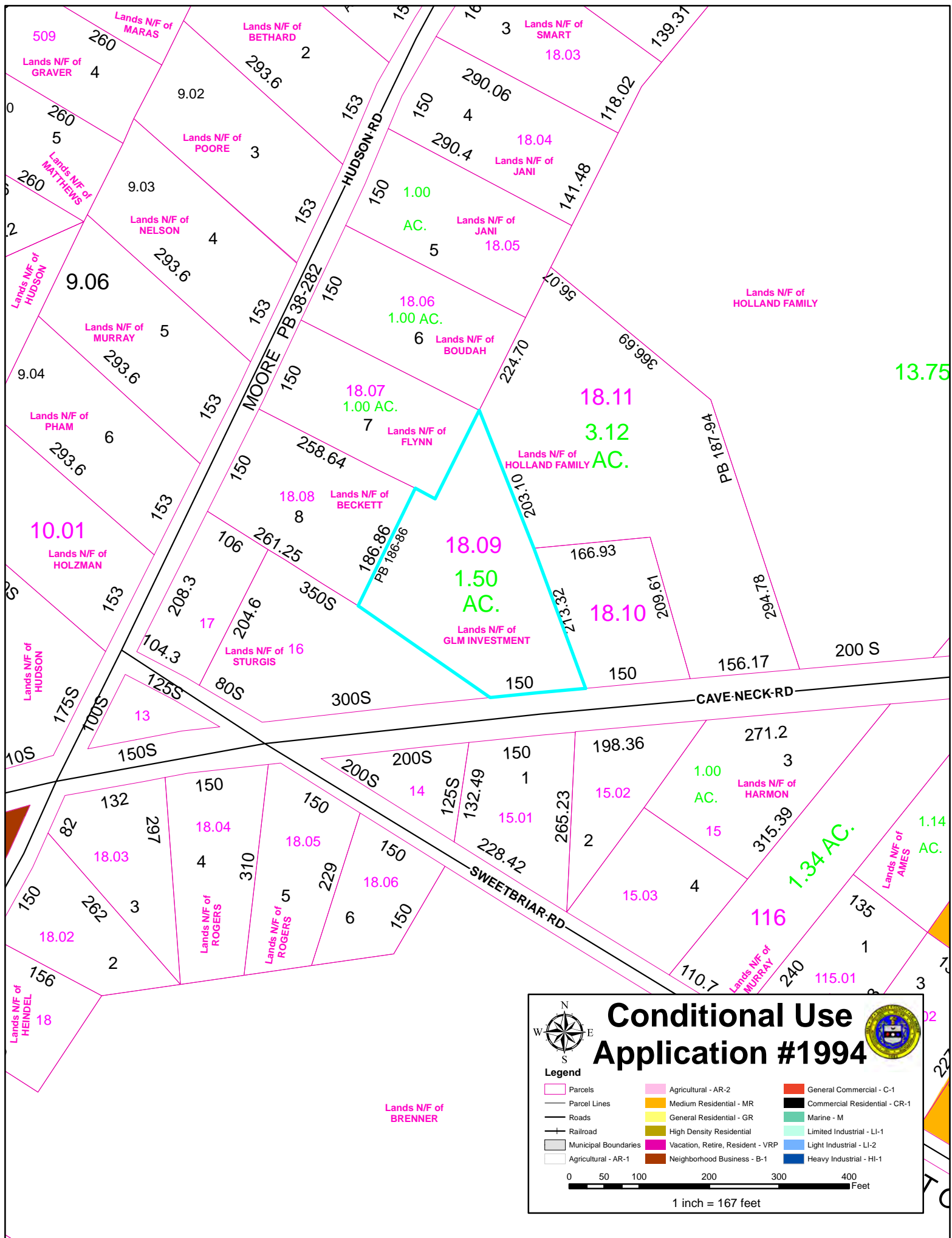
NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

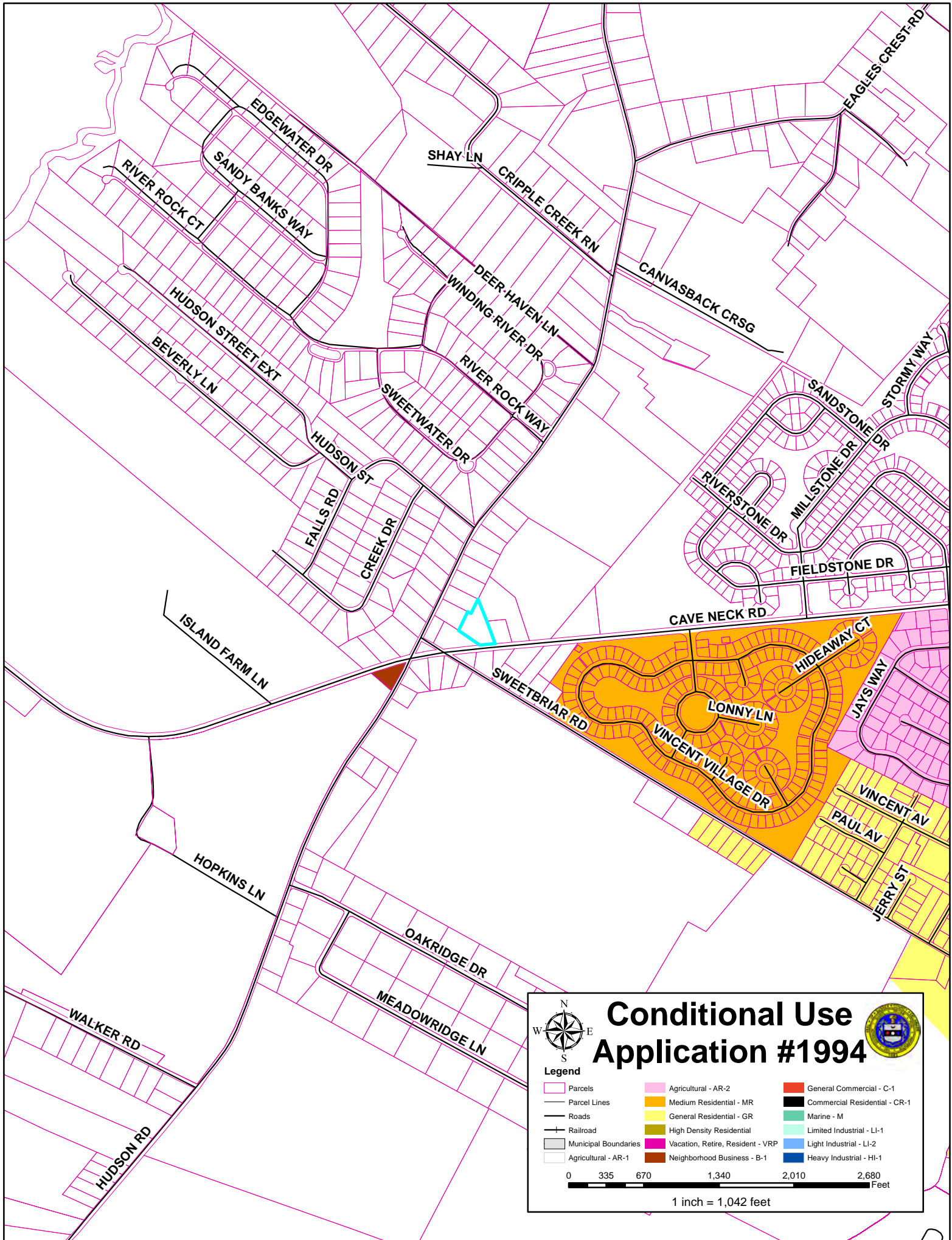
Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 1994 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying north of Route 88 (Cave Neck Road) 340 feet east of Road 261 (Sweetbriar Road) and being more particularly described as the residual parcel in Plot Book 186, Page 86, in the Office of the Recorder of Deeds in and for Sussex County, said parcel containing 1.5 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.







P.O. Box 204 – Rehoboth Beach, DE 19971

John R. Kurpuweit, President
27554 South Nicklaus Avenue
Millsboro, DE 19966
SussexCycleKorp@verizon.net

Michael Tyler, Advocacy Director
10 Drake Knoll
Lewes, DE 19958
ah3000@surfbest.net

January 12, 2015

Michael H. Vincent, President, Sussex County Council
2 The Circle
Georgetown, DE 19947

Dear Mr. Vincent:

Sussex Cyclists, a nonprofit 501C3 cycling organization in Sussex County, will sponsor its tenth year of promoting cycling safety. We would like Sussex County Council's continued support of these programs that have reduced serious and fatal bicycle accidents.

Our Bike Safety Program is a cooperative effort with DelDOT, State Police Troop 7 and other organizations interested in bicycle safety. Due to our efforts to provide cyclists with safety equipment, brochures explaining the rules of the road and bike safety adjustments, we have had a significant effect on reducing accidents. Furthermore, our on-road presence with signs and tents along Route One in Rehoboth and Dewey, Route 26 in Bethany, and on Rehoboth Avenue; created awareness among motorists that cyclists use the roads too. Many honk and give us the thumbs up sign.

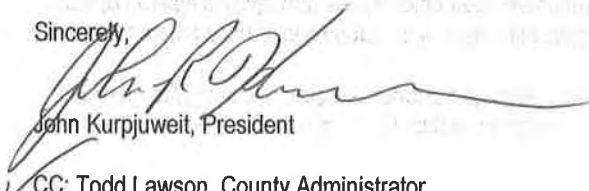
In the past several years our summer check points have been responsible for distributing over 500 helmets. We installed nearly 1,500 light sets which are instrumental in preventing accidents at night. We also adjusted brakes, seats, handle bars and provided other minor repairs to increase the safety of the riders. Each year we see an increase in the number of local riders that we were able to help with equipment and adjustments. Through DelDOT we acquired bikes which we repaired and installed lights on and then donated to visitor workers and especially to year round residents, many through their employer, to enable them to get back and forth to work.

Our program for 2015 is much the same as last year. Bicycle safety check points will be set up along Route One, Rehoboth Avenue and in Bethany. New this year are plans to add stops in the Fenwick area, as well as find ways to expand to Eastern Sussex County. Our partners will also attend church-sponsored dinners to interact with the cyclists and distribute bicycles and safety equipment.

Of course, all of this requires financial support. We hope that Sussex County Council recognizes the value of this program and will again help us provide visitors, local citizens and the cycling public with the tools that will help provide a margin of safety as they cycle on our roads. A contribution of \$2000 by Sussex County Council will represent a significant boost to help us achieve our goals to provide important information and essential equipment such as helmets and light sets to cyclists and to promote safety awareness for cyclists and motorists alike.

If you have any questions or would like to discuss specifics about the program please do not hesitate to contact us. If you decide to continue support please make the check payable to Sussex Cyclists, Inc. and direct it to the PO Box address above.

Sincerely,


John Kurpuweit, President

CC: Todd Lawson, County Administrator



Delaware Senior Olympics

1121 Forrest Avenue, Dover, Delaware 19904

Phone: 302-736-5698 - Fax: 302-736-5977

Toll Free: 888-881-6128

E-Mail: admin@delawareseniorolympics.org

Website: www.DelawareSeniorOlympics.org

January 16, 2015

Sussex County Council
Attn: Susan M. Webb, CPA
Administrative Office Building
2 The Circle
P O Box 589
Georgetown, DE 19947

Subject: Request for Financial Support

Ms. Webb,

Thank you for the financial support of \$500 that we received in 2014. It is the hope of the Delaware Senior Olympics that the Sussex County Council will continue its support in 2015.

The Delaware Senior Olympics (DSO) is a non-profit 501(C) 3 organization whose mission is to promote healthy life styles and fitness for people 50 years and older through competitive and non-competitive activities. We have been doing just that since 1991 through the efforts of a strong, all volunteer Board of Directors, Officers, and Advisors totaling 29 members as well as 40+ volunteer individual sports coordinators.


We recognize that our goal of "improving the quality of life and enhancing the vitality of the community" requires more than a series of games conducted in several months. Our goal requires year round effort and activity. Various year-round non-games related training/sports events are held for Delawareans 50 yrs of age and above. Many of these events are held in Sussex County. The sports are Pickleball, Softball and Volleyball.

For health and safety measures, we would like to have an AED and first aid kit at each venue. The Delaware Senior Olympics owns a few AEDs and first aid kits which are spread out across all three counties.

The Batteries and Pads for the AED units must be replaced every two years. This year is one of those years. Please consider a contribution to the Delaware Senior Olympics to help offset the cost of these replacements.

Please let me know if you need any additional information.

Respectfully,


Dee Carroll, Office Manager

January 22, 2015

Immanuel Shelter, Inc.,
PO Box 431
Nassau, DE 19969

Honorable George B. Cole
Councilman
P.O. Box 589
Georgetown, DE 19947

Dear Councilman Cole,

As I write this request to you, Mr. Cole, it was 26 degrees last night. At the Immanuel Shelter in Rehoboth Beach last night, we housed twenty three guests in our shelter. These men and woman experiencing homelessness are provided a warm respite from the harsh cold, a hot meal, fellowship and a place to sleep in the face of their life adversities. We pass no judgments on these individuals as our mission at Immanuel is to help those in need with embracing smiles, a non-judgmental caring environment and a safe place from the unforgiving life on the street.

So many in the community have stepped up to help, however we have not yet reached out goal for the winter and now we need your help.

As you are aware, many community resources are facing tough financial times in this economy. The local churches are feeling the pinch and they help as much as they can, but they are often limited by the sheer number of requests they receive on a daily basis. The requests for funding from local and state resources is highly competitive and often non-existent for organizations such as ours sitting under the parent 501 (c) 3 of Epworth United Methodist Church. Local individuals, businesses and faith-based communities cannot meet the needs alone, which is why we are asking you to help.

The County Council's support of the Community Resource Center in Rehoboth Beach is important, however it only serves this population from 8:00 a.m. - 4:00 p.m. leaving our community homeless to face harsh

weather conditions during the evening and nights. This is where Immanuel Shelter, Inc. steps up to meet the needs of this population and the needs of Sussex County by providing hot meals and a place to sleep - away from the wind and frigid temperatures of the night.

We are requesting a \$5,000.00 grant from your discretionary funds to help us meet this winter's expenses. It costs on average \$25-35.00 dollars per night in emergency shelters across the county. We are attempting to contain our costs at \$20.00 per night. As we see 25 individuals this is a cost of \$500 per night or \$ 60,000 for the season. We are still \$25,000 under budget. Your funds would help us to continue providing our existing services through the first week of April 2015, when the weather greatly improves.

Immanuel is recently incorporated in the state of Delaware and we are moving forward to submit our request for 501 (C) 3 status. This will greatly improve access to other available monies and future grants. However, the money from your discretionary fund will be used NOW to meet operational expenditures for this season. We are requesting immediate assistance for the shortest of our organizational goals, i.e. the ability to stay in operation to provide sanctuary for residents of Sussex County in great need.

Thank you for your time and consideration. We await your positive response to our request to keep Immanuel Shelter, Inc. a viable service to the community.

Sincerely,

Dale E. Smith

Advisory Board - Immanuel Shelter, Inc.

For Janet Idema

Board of Directors

PUBLIC HEARINGS

February 3, 2015

This is to certify that on January 8, 2015 the Sussex County Planning and Zoning Commission conducted a public hearing on the below listed application for a Change of Zone. At the conclusion of the public hearing, the Commission moved and passed that this application be forwarded to the Sussex County Council with the recommendations as stated.

Respectfully submitted:

COUNTY PLANNING AND ZONING

COMMISSION OF SUSSEX COUNTY

Lawrence B. Lank

Director of Planning and Zoning

The attached comments relating to the public hearing are findings of the Planning and Zoning Commission based on a summary of comments read into the record, and comments stated by interested parties during the public hearing.

Change of Zone #1759 Osprey Point D, LLC

Application of **OSPREY POINT D, LLC** to amend the Comprehensive Zoning Map of Sussex County, from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 126.8795 acres, more or less, land lying west of Old Landing Road (Road 274) 1.2 mile south of Warrington Road (Road 275) (911 Address: 20836 Old Landing Road, Rehoboth Beach, DE) (Tax Map I.D. #3-34-18.00-83.00).

The Commission found that this application was filed on July 17, 2014 with the necessary form and survey/site plan; that the Applicants provided an Exhibit Booklet on October 13, 2014 describing the application; and that the Applicants provided two (2) Exhibit Booklets for consideration of the Traffic Operational Analysis, dated October 22, 2014. The Exhibit Booklet contains: a Presentation Guideline; a Data Sheet; Preliminary Site Plans; and Map Exhibits showing a Location Aerial Map; a FEMA FIRM Map of the area; a copy of the Future Land Use Map of the area; a copy of the State Strategies Map of the area; a Zoning Map of the Area; Sewer District Maps of the area; a copy of the Preliminary Land Use Service (PLUS) application for the property, and the Applicants responses to the PLUS comments; the Applicants responses to the Technical Advisory Committee comments; the Applicants responses to standards of Chapter 99-9C of the Subdivision Ordinance; a Willing and Able to Serve letter from Tidewater Utilities, Inc.; and an Environmental Assessment and Public Facility Evaluation Report for consideration.

The Commission found that a letter was received from DelDOT, dated October 27, 2014, referencing that DelDOT received the Traffic Operational Analysis on October 22, 2014; that the Department understands that the Consulting Engineer for Davis, Bowen & Friedel, Inc. reports that the Traffic Operational Analysis recommends that DelDOT consider the installation of a traffic signal at the intersection of Old Landing Road, Warrington Road, and Strawberry Way; extension of the left turn lane on Warrington Road at Old Landing Road; and investigating as to whether additional auxiliary lanes are necessary or feasible; and that after DelDOT reviews the Traffic Operational Analysis they will provide recommendations on the Analysis.

Mr. Lank advised the Commission that this application was originally scheduled for public hearing on October 23, 2014 before the Commission and on December 2, 2014 before the Sussex County Council, and that there were issues reported that several property owners in the area did not receive public notices; that it was determined that the application would be re-advertised; and that tonight's date was the first available for consideration of this application.

Mr. Lank advised the Commission that 634 public notices were sent out and that 20 mail returns have been received to-date.

Mr. Lank advised the Commission that, to date, one email in support has been received and 143 letter/emails were received in opposition; that there are some duplications of letters and emails since some parties sent both an email or emails and a letter. Copies of the letters and emails would be made available later, since staff had problems with the copier. Some of the letters and emails included copies of photographs of the property during rainfalls and flooding tides.

The Commission found that Robert Marshall, the landowner, was present with James Fuqua, Jr., Esquire with Fuqua, Yori & Willard, P.A., Zac Crouch, Professional Engineer, and D.J. Hughes, Professional Engineer, both of Davis, Bowen & Friedel, Inc., and that they stated in their presentations and in response to questions raised by the Commission that the parcel contains approximately 126 acres of land and that they are proposing to develop the site with a 350 unit mix of single family dwellings and multi-family units; that there are no commercial uses intended; that the site has been utilized as a public golf course since the 1960s; that the site has been owned by the Marshall family for over a century; that to the south is Old Landing Subdivision; that to the north is the Woods at Old Landing; and that the east is Rehoboth Bay Manufactured Home Park and Sawgrass South Residential Planned Community; that the Sawgrass South community is developing with a mix of single family homes and multi-family units; that they are proposing to provide 50 foot wide buffers from all tidal waters and wetlands; that Federal wetland buffers are not required by Code; that the Sawgrass South project has some lots that are immediately adjacent to Federal wetlands; that the developer is voluntarily proposing 25 foot buffers from all Federal wetlands; that Tidewater Utilities will be providing central water for drinking and fire protection; that Sussex County will be providing central sewer; that sewer connection fees will exceed \$1,000,000.00; that sewer capacity is available to serve the project; that Delaware Electric Cooperative will provide electricity; that the site is in Cape Henlopen School District; that the site is located in the Rehoboth Beach Volunteer Fire Department service area; that no rare/endangered species are registered on this site; that the project meets the legal basis per the Sussex County Code and State regulations; that this

application is not a popularity contest; that it is established that the County must make a land use decision based on the County laws and ordinances; that the regulations fully support this application; that the State Quality of Life Act required that the County establish a Land Use Plan; that the developer must comply with said Land Use Plan and Map; that it has been estimated that 60% to 75% of the site is in the Mixed Residential Area; that the site is located in two growth areas according to the Land Use Plan, the Environmentally Sensitive Developing Area and the Mixed Residential Area; that the Future Land Use Plan is probably the most influential part of the Comprehensive Plan; that the County's Zoning regulations are intended to carry out the Future Land Use Plan; that the Future Land Use Plan also designates which parts of the County are to be considered growth areas; that the Land Use Plan references that permitted uses in an Environmentally Sensitive Developing Area allow for a range of housing types including single-family, townhouses, and multi-family units; that central water and sewer facilities are strongly encouraged, and that if central utilities are not possible, permitted densities should be limited to 2 units per acre; that the Land Use Plan references that permitted uses in a Mixed Residential Areas allow for a full range of housing types in these residential areas, including single-family homes, townhouses and multi-family units; that non-residential development is not encouraged; that the current densities in these areas range from a maximum of 4 homes per acre for single-family detached housing to a maximum of 12 dwelling units per acre for multi-family housing; that central water and sewer facilities are strongly encouraged in Mixed Residential Areas, and that if central utilities are not possible, densities should be limited to 2 units per acre; that the Purpose of the MR Medium Density Residential District references that the purpose of this District is to provide for medium-density residential development in areas which are or which are expected to become generally urban in character, but where sanitary sewers and public water supplies may or may not be available at the time of construction; that the area is urban in character with single-family homes, multi-family units, and townhouses; that the site is the only remaining large tract in the area; that the Purpose of the Residential Planned Community District references that in order to encourage large-scale developments as a means of creating a superior living environment through unified developments, and to provide for the application of design ingenuity while protecting existing and future developments and achieving the goals of the Land Use Plan, the Residential Planned Community District is hereby established; that this application is consistent with the intent of the Residential Planned Community District designation; that the density of this project is 2.67 units per acre gross, which is substantially less than that suggested in the Land Use Plan; that 403 units would be permitted by the Residential Planned Community calculation; that the site is surrounded by other MR Zoning classifications, and should be considered an MR infill in an MR area; that the Sawgrass South project was established in 2003 by obtaining a rezoning from AR-1 Agricultural Residential to MR-RPC Medium Density Residential District – Residential Planned Community; that this is the same type of request, a mixed use residential community; that by comparison Sawgrass South contains 282 units, 62% being townhouses; that this proposal is similar with 350 units, 51% being townhouses; that this request has a lower percentage of townhouses and a lower density of dwelling units; that the project is proposed to contain 170 single-family dwellings and 180 townhouses; that 43% open space is being provided; that 50 foot wide buffers are proposed along all State wetlands; that 25 foot wide buffers are proposed along all Federal wetlands; that 20 foot wide buffers are proposed

around the perimeter; that private streets, built to County specification, are proposed and will include sidewalks on both sides and street lighting; that two (2) access entrances are proposed along Old Landing Road; that the townhouses will be centrally located; that no single-family homes or townhouses will back up to Old Landing Road; that berms with landscaping are proposed to be installed along Old Landing Road; that a pool, clubhouse, tennis courts, game courts, and a dog park are proposed; that 24 boat slips are proposed to serve the community; that no boat launch area is proposed, only docking facilities; that they anticipate developing the project in three (3) phases, central, south, and north; that some flooding has occurred on the golf course during rains and storms; that the golf course started in the early 1960s with 9 holes, and then expanded in 1968 to 18 holes; that there is no stormwater management plan for the golf course since none was required when the golf course was built; that the developer will be required to design the project to DNREC and Sussex Conservation District requirements; that a hydrologic model is proposed with interconnecting ponds and other stormwater features; that soil borings will have to be performed; that a Traffic Impact Study was not required by DelDOT; that DelDOT did require a Traffic Operational Analysis, which is being reviewed by DelDOT; that the developer may contribute a fee to the area-wide study in lieu of a Traffic Impact Study; that townhouses generate less traffic than single-family homes; that the Traffic Operational Analysis included addressing eight (8) developments and a 10 year build out; that several developers are involved in establishing the necessary improvements to the intersection of Warrington Road and Old Landing Road; that a 12 hour traffic count was performed on June 20, 2014; that it has been determined that the left turn lane on Warrington Road is too short and needs to be extended; that additional turn lanes and bike lanes are needed; that local road improvements will include paved shoulders/bike lanes; and a shared use path; and that a traffic signal may be required; that in the last three (3) years there have been three (3) crashes along the site frontage, all being single vehicle crashes; that the application was rescheduled due to a mailing error; that all units will front onto an interior street; that due to setbacks, the road widths, the open space berm and landscaping the closest homes across Old Landing Road will be approximately 250 feet from another dwelling or unit; that there should not be any negative impact on the Sawgrass South project due to the similarity of the two projects; that the proposed density is basically the same as other projects in the area and complies with the Land Use Plan; that adequate sewer capacity is available for the project; that the Sawgrass South project has a greater density; that the opponents should be upfront and state that they prefer looking at and across a golf course and open space, rather than looking at a project that is similar; that there is no right of view or to impact the rights of a landowner to develop his property; that the site is located in a flood plain area, similar to the areas around it; that all developments in a flood plain have to comply with FEMA regulations that are enforced by the County; that stormwater management will be addressed and complied with; that the developers will have to pay for all infrastructure cost; that the stormwater management features will be subject to the review and approval of the Sussex Conservation District and the State DNREC; that the application complies with all statutory requirements; that the Marshall family has watched all of the projects develop along Old Landing Road; that setbacks/buffers are not required from Federal wetlands; that setbacks are subject to the discretion of the Planning and Zoning Commission; that the goal of a Residential Planned Community is to provide more open space than a standard subdivision; that there are two (2) out-

parcels on the site, one is the location of the Marshall dwelling, and one is the location of the landscaping business; that the superior living environment is created by the amount of open space, additional buffers, recreational amenities, the trail along Old Landing Road, and the lack of a cookie cutter design; that the application should be considered an infill since the site is surrounded by MR Zoning, and since central sewer and water are available; that several Residential Planned Communities exists along Old Landing Road, i.e. Sawgrass South, Sawgrass at White Oak Creek; the Villages at Old Landing, and others; that Redden Ridge, a cluster subdivision, was recently approved with Bonus Density provisions; that the developers will have to comply with all stormwater management regulations for activities during and after construction, along with all Inland Bays and State DNREC regulations; that a jurisdictional determination has been approved by the Army Corps. of Engineers; that there shall be no water runoff onto neighboring properties; that the proposed project will improve drainage in the area; that runoff will be contained on-site; and that the developers will have to comply with water quality and water quantity, and the runoff will be treated prior to discharge into wetlands.

Bill Brockenbrough and Marc Cote' of DelDOT came forward to respond to questions raised and advised the Commission that DelDOT have almost completed the review of the Traffic Operational Analysis; that over the last few years, developers along Old Landing Road have agreed to pay for the cost of improvements; and that four or five signal agreements have been signed for improvements along Old Landing Road.

The Commission found that the developers representatives continued to respond to questions raised by the Commission and stated that 20 foot wide buffers are intended; that the berms along Old Landing Road will be from 3 feet to 5 feet tall with landscaping; that the proposed entrances will line-up with existing entrances with other projects; that Phase 1 of the project will be the northern entrance, the clubhouse and amenities, and some single family dwellings and townhouses; that the site is a well head protection area because of the golf course well, and will be removed as a well head protection area once central water is provided; that they are proposing 24 boat slips/docks; that the majority will be leased to residents in the community; that they have met with the Sussex Conservation District and the project will be based on their old regulations; that a Nutrient Management Plan exists for the golf course, and that those plans will be updated for this project; and that it is not economically feasible to establish a commercial component in this project due to the location.

The Commission found that Mr. Fuqua provided 10 suggested proposed Findings for consideration which included the following:

1. The proposed MR/RPC development meets the purpose of the MR and RPC Zoning Designations since it provides medium-density residential development in a developed area where County sewer and central water is available by creating a superior living environment and development design.
2. The proposed MR/RPC development is in accordance with the Sussex County Comprehensive Plan in that it is located in designated "Growth Areas" where development is directed and planned.

3. The site is located in two “Growth Areas”, the Environmentally Sensitive Developing Area and the Mixed Residential Area where a full range of housing types are appropriate including single-family homes, townhouses, and multi-family units.
4. Approximately 60 to 75 percent of the site is located in a Mixed Residential Area. According to the Comprehensive Plan, current densities in the Mixed Residential Area range from a maximum of 4 homes per acre for single family housing and 12 units per acre for multi-family housing. The proposed gross density of 350 units on 126.8 acres is 2.76 units per acre, significantly less than the density deemed appropriate by the Comprehensive Plan.
5. Central sewer will be provided as part of Sussex County’s West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and adequate wastewater capacity is available.
6. Central water for domestic use and fire protection will be provided by Tidewater Utility, Inc.
7. The proposed development will comply with all DelDOT requirements including entrance locations, roadway improvements and contribution toward area wide study and intersection signalization.
8. The proposed development will provide buffers from Federal and State wetlands and will comply with the Inland Bays Pollution Control Strategy.
9. The proposed development is consistent with the nature of the area, which consists of a variety of residential developments including single-family, multi-family and manufactured home developments.
10. With the conditions placed on the development, the MR/RPC designation is appropriate and in accordance with the Comprehensive Plan since it creates a large scale development with a superior living environment and the use of design ingenuity at an appropriate density.

The Commission found that Mr. Fuqua provided suggested proposed Conditions of Approval for consideration which includes the following:

- A. The maximum number of dwelling units shall not exceed 350, comprising of 170 single family detached dwellings and 180 townhouse units.
- B. Site Plan review shall be required for each phase of development.
- C. All entrance, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT’s requirements, or in accordance with any further modifications required by DelDOT.
- D. The central recreational facilities and amenities shall be constructed and open to use by residents of the development no later than the issuance of the 100th Certificate of

Occupancy. These recreational facilities shall include a clubhouse, pool, tennis and basketball courts, a tot lot and a dog park.

- E. The development shall be served as part of the West Rehoboth Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.
- F. The development shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
- G. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs). The Final Site Plan shall contain the approval of the Sussex Conservation District.
- H. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. As proffered by the Applicant, the street design shall include sidewalks on both sides of the streets and street lighting. Owners of lots fronting on Fairway Drive shall contribute to the maintenance of Fairway Drive in a manner equal to other owners of other lots fronting on Fairway Drive.
- I. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed street and shrub landscape design.
- J. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.
- K. The Applicant shall cause to be formed a homeowners' or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
- L. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal and State permits. The wetland areas shall be clearly marked on the site with permanent markers. A voluntary 25 foot non-disturbance buffer shall be provided from all Federal Non-Tidal Wetlands and a 50 foot non-disturbance buffer shall be provided from all State Tidal Wetlands.
- M. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

The Commission found that there were no parties present in support of this application.

The Commission found William Dunne, Esquire, was present on behalf of himself and several individuals and families in opposition to this application; stated that he owns property in the Sawgrass South community; requested that the record be kept open for more time for area residents to review the record; and stated that area residents will be negatively affected by the application; that the residents request that the application should be denied; that the Commission,

at a minimum, should act to: strictly control density; preserve the character of the area; require adequate buffers; prevent flooding and adverse impacts on adjacent properties; minimize adverse environmental impacts; mitigate increased traffic and provide for community safety; that any proposed plans or construction should be subject to all requirements of Sussex County, State and Federal environmental laws, as well as all sediment and stormwater management regulations and best practices; that the Commission should require restrictive covenants and disclosures in accordance with applicable laws; that the residents are not opposed to development, if it is well planned; that the residents strongly object to this application; that they disagree with the Counsel of the Applicant that the application meets all legal requirements; that the PLUS Report notes many deficiencies and was incomplete; that the residents request that the Commission and the County Council protect this sensitive area by mandating a project designed with lower density, greater open space, appropriate stormwater management, consideration of environmental elements, and mitigation of traffic and safety concerns; that the residents have hired a geotechnical engineer to assess the stormwater management, flooding, and environmental problems with this site; that the proposed project is located in a Growth Area, the Environmentally Sensitive Developing Area and a Mixed Residential Area according to the Comprehensive Plan; that the proposed project is located in a Level 3 according to the Delaware Strategies for State Policies and Spending; that the County cannot expect the State to support development here with needed infrastructure spending in the near term; that special scrutiny should be applied to spending decisions and development proposals within these areas to assure these activities are consistent with State and local development and preservation policies; that a stormwater assessment study needs to be completed and submitted to the State DNREC; that the majority of the site is located in a flood plain; that the site is an excellent groundwater recharge area; that the project, which borders Arnell Creek, contains State and Federal wetlands; that under applicable laws, the goal is to protect critical natural resources, such as the Inland Bays, by guarding against over-development and permanently preserving selected lands; that the County should consider designating this parcel as a watershed stewardship area; that the increased density proposed has a very real potential to destroy the unique environmental value of the site; that the Applicant has yet to provide complete information and documentation pertaining to various issues concerning the flood plain, wetlands, buffer requirements, and other essential requirements: i.e. a summary of proposed deed restrictions; a buffer around the entire perimeter; stormwater and erosion and sedimentation maintenance restrictions; and wetlands disclosures; that the site plan is not in compliance since forested and/or landscape buffers are not depicted; that there is no soils report; that the soils are poorly drained; that the Applicant's response to the PLUS comments are inadequate; that the County should not continue the process without an adequate project plan; that traffic will increase on Old Landing Road and DelDOT should require a Traffic Impact Study since the last traffic report from 2011 is inadequate and outdated; that the Commission should: 1. Prohibit commercial uses; 2. Require design that actually results in permanent preservation of a substantial percentage of the site; 3. Limit dwellings to 100 single-family homes on one-half acre lots; 4. Prohibit townhouses, or alternatively, prohibit townhouses sited near Old Landing Road, limit the total number of townhouses, prohibit stacked townhouse rows, and increase green space between sections; 5. Require a 50-foot forested buffer around the entire perimeter; 6. Prohibit any construction of any improvements in any water resource

protection area and on any hydric soil; 7. Require a wetlands disclosure in deed restrictions; 8. Require a 100-foot buffer around wetlands as recommended by DNREC; 9. Require a recorded restrictive covenant to increase the amount of open space; 10. Require a limit to the number of deciduous trees that are removed; 11. Prohibit any parcels from facing Fairway Drive; 12. Realign site entrances to avoid creating dangerous intersections with Sawgrass South entrances; 13. Require the owner to assign ownership of Fairway Drive and Clubhouse Drive to existing residents; 14. Increase the buffer between Old Landing Road and site development to 50 feet; 15. Require application to FEMA requirements per FIRM effective March 16, 2015; 16. Require use of pervious surfaces for paving of all sidewalks, bike paths, driveways, nature trails, and parking areas; 17. Require walking, biking, and nature trails; 18. Require site improvements that do not increase the likelihood of stormwater breaching Old Landing Road, Arnell Road, Clubhouse Drive, or Fairway Drive; 19. Require Applicant to provide fully developed hydrologic and hydraulic engineering analyses for all phases of site improvements; and 20. Require the Applicant to provide a bond, admit liability, indemnify, and accept personal financial responsibility for any adverse impact on any adjacent property or any well in any adjacent property due to: construction activities, site improvements, including grading of lots or other areas on parcel, stormwater damage, and any alteration to a watercourse; that the residents ask that the application be reviewed on its own merits; that the County will need to weigh the need for tax revenue, the lack of available State funds for roads and other improvements, and the health and welfare of the residents; that the County should see the deficits of building 350 dwellings on an environmentally sensitive developing area; that the remedial action the residents seek recognizes the Applicant's right to develop his property, and balance that right with the rights of his neighbors to ensure that their property is not adversely impacted by uncontrolled flood waters, that the quality of their water is not affected; and that the environment they love is not despoiled and the wetlands are left undisturbed; and that the residents believe that restraining the density will put less strain on Old Landing Road and better protect the safety of the traveling public.

Bill Brockenbrough of DelDOT came forward at the request of the Commission and advised them that the 2011 Traffic Study was performed for the Hood property; that the Department did not see a need for additional studies; and that other developments have been included in the process.

The Commission found that George Barstar, Professional Engineer, was present and presented a Power Point presentation on this application by referencing the existing site; a project overview of the number of units and the open space acreage; allowable uses; allowable site development; the zoning change; environmental sensitive exclusions; wetlands; hydric soils; stormwater management; stormwater plan approval; stormwater project application meeting; DNREC Stormwater Assessment Report; soils; runoff potential; water resource protection; discharge points; and conclusions which reference that: the site's potential for development is limited by environmental constraints; that the proposed rezoning is incompatible with the environmental constraints and should be rejected; that a significant portion of the site may be suitable for development of single family units without a zoning change with approximately 100 units compatible with local lot sizes and existing development; that recommended geotechnical

investigation and soil surveys should be conducted to determine the full extent of hydric soils and infiltration in preparation of the Stormwater Assessment Study; and that prior to submission of the subdivision plan, a sediment and stormwater program project application meeting with the Sussex Conservation District is necessary; and that review of the Stormwater Assessment Report is required prior to subdivision or rezoning approval.

Mr. Crouch came forward at the request of the Commission to respond and advised the Commission that he can provide a letter from the Sussex Conservation District referencing that they will be permitted to submit the project under the old stormwater management regulations since they had already been working with the District on this project.

The Commission found that Richard Morgante, President of Old Landing Woods Owners Association, was present in opposition on behalf of the Board of Directors and stated that Old Landing Woods consist of 41 lots on two streets; that the streets surround a substantial portion of the golf course; that Old Landing Woods will be the one most directly impacted by the rezoning and development of the site; that the subdivision was established in the 1970s; that the residents request that the Commission closely examine this application; that the residents feel that the plans are seriously flawed and do not meet the Code requirements; that many of the residents reviewed the existing zoning prior to purchasing their lots; that increasing the density is contrary to the residents reasonable expectations for the development of the property, and should be rejected; that the residents urge the County to consider the character of the area; that this is not a rural, undeveloped landscape, rather it is a settled community; that it is not open farmland, it is a well-developed community surrounding a golf course; that AR-1 zoning is reasonable with respect to this land, and is in keeping with the character of the adjoining community; that the residents are concerned about environmental and flooding impacts, the density of the proposed community, the worsening of traffic congestion and safety, and the quality of life for the residents, and the surrounding community; the residents are concerned about adding 12 of the 350 homes onto Fairway Drive; that the 12 lots will be isolated from the rest of the proposed community; that there would be no buffer between these 12 lots and the existing lots along Fairway Drive; that the Code requires the inclusion of forested buffers or landscape buffers, which are not intended; that the proposal may destroy an existing forested buffer; that the lots will be out of character with the size of the lots and homes on Fairway Drive; that the Code requires proper alignment with the surrounding development; that Fairway Drive is a shared roadway with the Woods at Arnell Creek; that adding another development will impose further complications and hardship in determining control and maintenance of the narrow residential street; that they have not yet reached an agreement with the developer of the Woods at Arnell Creek; that complicating the roads management issue is the fact the Robert Marshall actually owns the roads, but does not maintain them, nor does he contribute to their upkeep; that the roads should be turned over to the Old Landing Woods Owners Association; that drainage problems already exist throughout much of the year and would be aggravated by the additional lots along Fairway Drive; that if the project is approved, the residents request that the Commission require the developer to leave the existing forested buffer along Fairway Drive and eliminate the 12 lots and avoid future problems for those 12 future homeowners and certainly the Old Landing Woods community; that eight of the proposed lots are in an area that frequently floods; that locating

homes in a flood prone area will exacerbate problems in an already poor drainage area and be contrary to the Code; that the addition of eight lots will prove problematic for not only those lots, but also the property owners that already reside there; that those lots should also be eliminated; that the residents request that this application be rejected, or at a minimum, postponed until the County is assured that the project meets Code, and that the developer should be required to provide the required investigations, studies and technical data, and makes critically needed adjustments to the plan. Mr. Morgante provided a copy of his testimony and two exhibit boards containing 28 photographs of existing conditions and flooding of the area. The photographs were reportedly taken during Hurricane Sandy and on December 9, 2014, which had a moderate rainfall.

The Commission found that Charlotte A. Reid was present in opposition and submitted and summarized comments relating to this application; that the comments include the character of the area; flood control; the Environmentally Sensitive Developing Area; special scrutiny; flood plains, wetlands, soils and the Inland Bays; new requirements concerning Flood Prone Districts; safety; that in conclusion, a decision by the Commission on this pending application and plan would be premature at this point, as there are many important open issues and unanswered questions presented by the Applicant's plan; that the Applicant's submissions fail to comply with various submission requirements under the Code; that the residents urge the Commission to strictly adhere to the PLUS review recommendations, in advance of commencing any development activity; that the Commission should delay this process long enough to extract the developer's concessions; that it is well to note that the Applicant has made no effort to discuss how to avoid inundating contiguous/nearby property with any of the neighbors whose properties would be affected by the construction of the dwellings and impervious surfaces inherent to the developer's plan; and that the Commission should require an independent geotechnical report on the effects of building on hydric soils, which do not have adequate bearing capacities to support such structures.

The Commission found that Sandra Oropel was present in opposition and submitted and summarized comments relating to this application referencing traffic and safety issues that will have a grave impact on all homeowners along Old Landing Road; that DelDOT has identified Old Landing Road as facing high volumes of traffic for over a decade; that headlines in the Cape Gazette in 2004 read "Old Landing Road Traffic A Big Concern"; that DelDOT had assigned the Old Landing Road, Warrington Road, and Strawberry Way intersection a Level of Service "F", which means that the traffic demand exceeds the design of the intersection and results in an average delay of more than 50 seconds per vehicle; that nothing has been done on the plans to improve the intersection; that vehicle traffic will only increase the traffic congestion at the intersection; that DelDOT permitted the Applicant to pay for a Traffic Operational Analysis report, a less detailed study, in lieu of DelDOT performing a new more intensive Traffic Impact Study; that the last Traffic Impact Study was performed in 2011 and is insufficient because it does not take into account the development off Old Landing Road since then; that the residents believe that the Traffic Impact Study should be mandated; that a Traffic Impact Study would have required improvement of Old Landing Road to meet State standards and would address the Traffic and Safety issues the residents will be faced with; that a review of the DelDOT Crash

Analysis Report from October 2009 to October 2014 indicates that 18 accidents have occurred on Old Landing Road; that seven of those accidents occurred along a stretch of road that runs parallel to the golf course with four of them occurring in 2014; that the creation of this project will create additional traffic and related safety issues for which the State Police will be unable to deliver quality and competent law enforcement services due to their already low staffing levels and will undoubtedly jeopardize public safety; that if there is an accident at the intersection of Old Landing Road, Warrington Road, and Strawberry Way that disrupted traffic flow and then there would be another emergency anywhere south of the intersection it would be almost impossible for EMTs or Fire apparatus to get to the second emergency; and that it is a great concern that Old Landing Road is the only outlet should there be an ordered evacuation in the case of a major storm event or flooding. Ms. Oropel submitted her testimony with related excerpts from the Delaware Annual Traffic Statistical Report and related links, the Delaware Crash Analysis Reporting System, the Delaware Department of Safety and Homeland Security Division of Police Strategic Plan for 2014 through 2018, a Memorandum from Gary J. Norris, AICP, and a copy of the referenced Cape Gazette 2004 headline.

The Commission found that Donna Voigt was present in opposition and submitted and summarized her testimony by stating that the site design is not aligned with the Code; that the County has a moral obligation to current and future residents to carefully consider the opposition arguments and reject this request; that the design is clearly not aligned with the Comprehensive Plan for Future Land Use, and falls short of addressing critical questions tied to the Code and concerns of existing landowners; that the rights of those living adjacent or nearby this property are as important as the Applicant's right to develop his land; that land is an investment asset as much as any other; that each of us makes decisions regarding investments with the desire to see that investment increase in value; that sometimes taking a "wait and see" approach pays off handsomely, and sometimes not; that the Applicant chose to retain his property as a golf course instead of seeking re-zoning and building prior to the Sawgrass and other developments; that all of the developments approved and built, or are building, has created significant challenges along Old Landing Road; and that assuming that another project can be built without consideration of the current situation is foolish. Ms. Voigt submitted her testimony, which included an aerial photograph, a conceptual site plan for the project, photographs of flooding on the site, and a promotional document relating to the Sawgrass South project.

The Commission found that Jeanne Goldy-Sanitate was present in opposition and stated that she has concerns about run-off from the berms proposed along Old Landing Road causing run-off onto Old Landing Road and into Sawgrass South; that paved roads are not open space; that she is a bicyclist that rides on Old Landing Road which needs improvements for bicyclist and pedestrian safety; and that she is opposed to stacked townhouses.

The Commission found that Deborah Qualey was present in opposition and stated that she has concerns that there are no townhouses along Old Landing Road in Sawgrass South; that the developers are proposing rows of townhouses along Old Landing Road which changes the appearance of Old Landing Road; that the project may impact the Inland Bays; and that roads and flooding are also a concern.

The Commission found that Evelyn Simmons was present in opposition and stated that she is concerned about flooding; that Mr. Marshall owns the roads and the existing marina in the Old Landing Development; that she is concerned about the boat docks; that the waters are muddy; that the existing boat ramp is also owned by Mr. Marshall; and that the Old Landing Development does not need any more traffic or parking along Arnell Road.

The Commission found that Henry Glowiak, Vice President of the Inland Bays Foundation, was present in opposition and stated that this project impacts negatively all of the past work performed by the Center for the Inland Bays, the State, and the County; that this area is one of the most stressed areas in the Inland Bays; that the quality of life in this area is deteriorating; that the Inland Bays Watershed drainage area contains approximately 300 square miles or 1/3 of the County, with approximately 80,000 residents; that impervious surfaces are a concern and are so noted in the Comprehensive Plan; that the application is not compliant with the Federal Clean Water Act; that nutrients will be going into the Inland Bays; that this property is a prime piece of property to preserve; that the State does not have the funds to purchase the property; that if the property is to be developed, it should be based on the current AR-1 zoning; and suggested that the application should be denied as submitted.

The Commission found that Steve Britz, a member of the Board for Webbs Landing and Vice Chair of the Citizens Advisory Committee for the Center for the Inland Bays; presented a Power Point presentation and testimony referencing the size of the project; that there is insufficient justification to change the zoning; that the project is out of character with the surrounding communities; that Old Landing Road is at a choke point for ingress/egress; that the land does not support high density development; expressed soils and stormwater concerns; expressed concerns about the cost of construction and insurance in a flood plain; that the soils are very limited for homes with basements; that the ground may be water saturated, has a high seasonal groundwater, is prone to ponding, is unstable for foundations, that impervious surfaces are exacerbated, that the soils are low-lying and difficult to remediate, and that there is a need to increase the buffers; that the Subdivision Ordinance references that lands compromised by improper drainage or flooding may pose significant threats to the safety and general welfare of residents and should not be developed; that the DNREC Watershed Assessment Section believes that permitting development on such soils would be inconsistent with the County Code; that the run-off generated by the project may cause run-off onto the Sawgrass South project; that the County should require the developer to contact a Certified and Licensed Soil Scientist to conduct a more thorough site-specific field delineation of the hydric soils on the site; and suggested that the County should deny this request pending a more environmentally responsible plan.

The Commission found that Ed Ryner was present in opposition and stated that he is concerned about traffic, that the roads in the area are inadequate for the possible traffic volume; and that the residents in the area are losing a public golf course.

The Commission found that Linda Frese was present in opposition and stated that the application is not a popularity contest as stated by the developers Attorney; that the residents in attendance are concerned citizens; that the residents live in the area; that the residents know the flooding issues; that the residents know traffic; that the residents are concerned about the environment and the area; that some of the residents are doctors and lawyers and are expressing concerns; that the residents are in attendance hoping for a better way of life for the area; that the residents are concerns about safety; that the residents are hoping for a future for their children in the area; and that the residents are only trying to express how they feel.

The Commission found that George Love, a resident of the Rehoboth Bay Manufactured Home Community, was present in opposition, submitted comments and expressed concerns that the developers have not responded to recommendations from science-based agencies, i.e. the recommended 100-foot buffering from wetlands; that the developers have stated that they will meet or exceed the recommendations of the Pollution Control Strategies; that the developers have not specifically referenced the treatment method, the plan for on-going maintenance, and/or the source of funding for the maintenance; that the plan should be incorporated into the covenants and/or permit conditions; that surface water runoff is affected by construction and re-contouring of land surfaces, and can adversely affect adjacent/downstream properties through flooding and erosion; that the natural soils are going to be impacted by the expansive impervious surfaces; that the facilities for runoff collection and treatment should be isolated from the shallow ground water table; that a schedule to routinely monitor the quality of the water impounded in the runoff retention ponds will demonstrate that no long-term chemical loading will impact groundwater, and that the water quality does not violate discharge quality conditions that may be imposed on any point discharge from the project into the tidal waters and/or Arnell Creek; that a study should be required to determine what, if any, impact the disturbance of the soils by re-grading and re-shaping will have on surrounding water wells; and that the study should include an inventory of all wells, both private and public, within a reasonable distance from all areas where the infiltration rate for groundwater discharge are modified. Mr. Love's comments included his text, and maps from the Delaware Geologic Information Resource referencing subsurface aquifer and water depth points results; an area map indicating wellhead protection areas, digital and aerial maps, a map of groundwater recharge potential areas, and an unconfined aquifer transmissivity map.

The Commission found that Josephine Hamilton was present in opposition, submitted comments and expressed concerns that there is a known archeological site on this parcel; that the Division of Historical & Cultural Affairs recommends that the developers have a qualified archaeological consultant investigate the project area to see if there is any unmarked cemetery, graves, or burial sites; that the Division also recommends that the plans be re-drawn to leave the full extent of the cemeteries or any burials on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with the landowner association or development; that the developer responded that the State Historical Preservation Office provided the developer with some information regarding a known archaeological site, and that Terrance Burns of the Bureau of Archaeology and Historic Preservation provided information determining that the sites are not located within the Osprey Point property.

The Commission found that a petition was submitted in opposition to this application containing signatures of approximately 140 residents of the area. The petition included a summary and background for the opposition, a copy of the PLUS application, a copy of the Conceptual Site Plan for Osprey Point, and color maps of the area indicating the boundaries of the State Strategies for Policies and Spending, and the land uses in the area.

The Commission found that Mr. Fuqua and Mr. Crouch responded to questions raised by the Commission by stating that the owners contribute to maintenance of Fairway Drive by deed restrictions; that the owners along the road contribute funding for maintenance; that there is no buffering proposed along Fairway Drive since Mr. Marshall owns the roadway.

The Commission found that Mr. Morgante stated that Mr. Marshall does not contribute to the maintenance of Fairway Drive or maintain Fairway Drive; and that the residents along Fairway Drive have not yet reached an agreement with the developer of the Woods of Arnell Creek for participation in the maintenance of Fairway Drive.

Prior to closing the public hearing, the Chairman asked for a show of hands and found that there were still 24 residents in opposition to the application present of the approximately 110 parties that were present at the start of the public hearing.

The Commission discussed the application.

Mr. Robertson stated that the record should be left open for at least the Sussex Conservation District comments about the appropriate regulations to apply to this application (i.e. whether it is grandfathered under the old regulations), and DelDOT comments relating to the Traffic Operational Analysis.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to defer action for further consideration and to leave the record open for the Sussex Conservation District reference to grandfathering of the project, and for DelDOT comments on the Traffic Operational Analysis, the applicants response to the DelDOT comments, and that public written comments relating to those comments will be accepted for 20 days after the announcement of receipt of those comments by the Planning and Zoning Commission. Motion carried 4 – 0.

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MEMO

TO: Lawrence Lank, Director of Planning and Zoning
Shane Abbott, Assistant Director of Planning and Zoning
J. Everett Moore, Esquire

FROM: Vincent G. Robertson, Esquire 

RE: Environmentally Sensitive Developing District Overlay Zone
Osprey Point MR-RPC Rezoning Application

DATE: January 30, 2015

During the Public Hearing before the Planning and Zoning Commission, a question arose about the appropriate designation for the lands of the Osprey Point MR-RPC Application under the Sussex County Comprehensive Development Plan (the "Plan"). By letter dated July 28, 2014, Mr. Lank advised Mr. Fuqua that the subject property located adjacent to Old Landing Road is located in the Environmentally Sensitive Developing Area (the "ESDDOZ") and partially within an area designated as Mixed Residential Area on the Future Land Use Map. According to the Future Land Use Map contained in the Plan, the site, like most all of eastern Sussex County, is covered with the cross-hatched area designation for the Environmentally Sensitive Developing Area. Beneath this cross-hatching is the light brown designation for "Mixed Residential Areas". Other designations under the cross-hatching of the ESDDOZ throughout the County include "Protected Lands", "Highway Commercial Areas", "Developing Areas", and even the white "Low Density Areas".

Mr. Fuqua has suggested that each of these area designations must be exclusive of one another. With regard to the Osprey Point Application in particular, he argues that it cannot be covered by both designations at the same time: it must be exclusively within either the Environmentally Sensitive Developing Area or the Mixed Residential Area. He argues that it cannot be both, or one area overlaid by another. Neither the Plan nor our Zoning Code support this argument.

First, the Plan itself states that the Overlays are not intended to be inflexible. It states that they are "helpful criteria but they are not meant to be inflexible standards that all growth areas must

fully meet.” The Plan also explains that the Areas are not intended to be zoning districts, and they may include more than one Zoning District. Finally, the Plan states that the ESDDOZ is indeed an “overlay” that is superimposed over several underlying zoning districts. These factors are important, because they suggest that the densities established in the ESDDOZ (2 units per acre, up to 4 units with bonus density) are not mandatory. Just like the ESDDOZ covers multiple zoning districts (and their respective densities—up to twelve units an acres in some cases), it also can cover other Areas of the Future Land Use Map as described above without creating any inconsistencies.

This is further confirmed by Ordinance No. 1645. That Ordinance established the Environmentally Sensitive Development District Overlay Zone within the County’s Zoning Code. New Section 115-194.3 of the Zoning Code specifically states that “uses permitted in the Environmentally Sensitive Developing District Overlay Zone will be those uses permitted in the underlying zoning category as established by the Sussex County Zoning Ordinance.” Likewise, “uses prohibited in the underlying zone are also prohibited in the overlay zone.” Finally, it states that “the maximum density shall be the allowable density of the underlying zoning district for developments....” All of these code provisions suggest that the ESDDOZ, as an overlay zone, does not set maximum densities. Instead, it defers to the underlying zoning district (or a change in the underlying zoning district as in the case here). If the ESDDOZ defers to the underlying zoning districts and their respective densities, it necessarily follows that the ESDDOZ also defers to other underlying Areas of the Plan and their recommended densities. But again, all of the designations in the Future Land Use Map are simply guidelines. The Zoning Code and the various zoning districts specifically dictate the land use and density of a given parcel.

Of course, whatever the underlying density permitted by the Zoning Code may be, any property developed within the ESDDOZ must comply with the other requirements set forth in Section 115-194.3.

In summary, Mr. Lank’s July 28, 2014 letter to Mr. Fuqua is correct. This project is entirely within the ESDDOZ, and is partially within the Mixed Residential Area as designated by the Plan. Because it is entirely within the ESDDOZ, it must comply with the requirements of Section 115-194.3, subject to the densities, uses, and prohibitions of the land’s zoning classification. In this case, that would include AR-1 Zoning under the current zoning or MR Zoning if County Council ultimately approves the rezoning of this property as requested in the pending application.

VGR:ssj

cc: Mr. Todd Lawson
Mr. Michael Vincent
Mr. Sam. Wilson
Mr. Rob Arlett
Mrs. Joan Deaver
Mrs. Robin Griffith
Mr. J. E. Moore, Esquire
Mr. James A. Fuqua, Esquire

Introduced 08/05/14

Council District: Cole – District 4

Tax I.D. No. 334-18.00-83.00

911 Address: 20836 Old Landing Road, Rehoboth Beach, DE

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 126.8795 ACRES, MORE OR LESS

WHEREAS, on the 17th day of July 2014, a zoning application denominated Change of Zone No. 1759 was filed on behalf of Osprey Point D, LLC; and

WHEREAS, on the ____ day of _____ 2014, 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. 1759 be _____; and

WHEREAS, on the ____ day of _____ 2014, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said Change of Zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County;

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying west of Old Landing Road (Road 274) 1.2 miles south of Warrington Road (Road 275) and being more particularly described per the attached legal description provided by Davis, Bowen & Friedel, Inc, said parcel containing 126.8795 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.

LEGAL DESCRIPTION

ROBERT A. MARSHALL

TAX PARCEL #3-34-18.00-83.00

July 14, 2014

ALL that piece or parcel of land, hereinafter described, situate, lying and being on the westerly side of County Road #274 (50 feet wide) and being located in Lewes and Rehoboth Hundred, Sussex County, Delaware; said piece or parcel of land being more particularly described as follows:

BEGINNING at an iron pipe found at a point formed by the intersection of the westerly right-of-way line of County Road #274 with the northerly line of Lot 2 of "Willowmere Subdivision", as recorded in the Office of the Recorder of Deeds in and for Sussex County and the State of Delaware in Plot Book 36, Page 129; said beginning point lying approximately 1,043 feet northerly from the centerline of Arnell Road, thence,

1) leaving said County Road #274 and running by and with said Lot 2, South 69 degrees 56 minutes 15 seconds West 150.00 feet to an iron pipe found at a point, thence,

2) leaving said Lot 2 and running a new line through the lands of Robert A. Marshall, South 74 degrees 59 minutes 41 seconds West 450.55 feet to a point at the northeasterly corner of Lot 1 of a plot of "Old Landing Woods Subdivision, Addition 1", as recorded in said Office of the Recorder of Deeds in Plot Book 28, Page 17, thence running,

3) by and with said Lot 1 of said plot of "Old Landing Woods Subdivision, Addition 1", South 51 degrees 54 minutes 12 seconds West 200.20 feet to an iron pipe found at a point on the easterly right-of-way line of Arnell Road, thence,

4) leaving said Lot 1 and running by and with said Arnell Road, the following two courses and distances, North 38 degrees 05 minutes 48 seconds West 82.58 feet to a point, thence running,

5) North 15 degrees 48 minutes 34 seconds East 118.94 feet to a point, thence,

6) continuing by and with said Arnell Road and also running by and with lands of, now or formerly, Rayburn H. and Madeline A. Nelson, as recorded in said Office of the Recorder

of Deeds in Deed Book D-956, Page 318 North 56 degrees 49 minutes 56 seconds West 197.29 feet to a point on the low water mark of Arnell Creek passing over an iron pipe found, 29 feet, more or less, reversely, from the end of said course, thence,

7) leaving said lands of Nelson and running by and with the low water line of said Arnell Creek, the following thirty-six courses and distances, North 02 degrees 56 minutes 03 seconds East 80.39 feet to a point,

- 8) North 20 degrees 50 minutes 48 seconds West 184.57 feet to a point, thence running,
- 9) North 65 degrees 40 minutes 20 seconds West 116.14 feet to a point, thence running,
- 10) North 11 degrees 23 minutes 18 seconds East 54.39 feet to a point, thence running,
- 11) North 30 degrees 26 minutes 07 seconds West 255.31 feet to a point, thence running,
- 12) North 89 degrees 48 minutes 15 seconds West 77.07 feet to a point, thence running,
- 13) North 27 degrees 04 minutes 54 seconds West 162.10 feet to a point, thence running,
- 14) North 50 degrees 03 minutes 59 seconds West 169.04 feet to a point, thence running,
- 15) North 08 degrees 54 minutes 07 seconds West 65.04 feet to a point, thence running,
- 16) North 54 degrees 10 minutes 58 seconds West 51.49 feet to a point, thence running,
- 17) North 86 degrees 45 minutes 54 seconds West 71.03 feet to a point, thence running,
- 18) South 68 degrees 05 minutes 54 seconds West 15.35 feet to a point, thence running,
- 19) North 69 degrees 08 minutes 58 seconds West 57.28 feet to a point, thence running,
- 20) North 39 degrees 26 minutes 17 seconds West 12.79 feet to a point, thence running,
- 21) North 74 degrees 05 minutes 51 seconds West 21.99 feet to a point, thence running,
- 22) North 14 degrees 02 minutes 38 seconds West 28.89 feet to a point, thence running,
- 23) North 21 degrees 14 minutes 48 seconds East 33.26 feet to a point, thence running,
- 24) North 45 degrees 23 minutes 08 seconds West 54.42 feet to a point, thence running,
- 25) North 14 degrees 43 minutes 31 seconds West 30.51 feet to a point, thence running,
- 26) North 81 degrees 51 minutes 55 seconds West 52.91 feet to a point, thence running,

- 27) North 33 degrees 25 minutes 51 seconds West 27.33 feet to a point, thence running,
- 28) North 44 degrees 38 minutes 53 seconds East 21.66 feet to a point, thence running,
- 29) North 79 degrees 00 minutes 14 seconds West 95.84 feet to a point, thence running,
- 30) North 52 degrees 18 minutes 31 seconds West 111.20 feet to a point, thence running,
- 31) North 27 degrees 20 minutes 54 seconds West 140.92 feet to a point, thence running,
- 32) North 15 degrees 00 minutes 51 seconds West 81.99 feet to a point, thence running,
- 33) North 06 degrees 13 minutes 03 seconds East 232.42 feet to a point, thence running,
- 34) North 34 degrees 28 minutes 36 seconds East 242.67 feet to a point, thence running,
- 35) North 11 degrees 12 minutes 30 seconds East 156.70 feet to a point, thence running,
- 36) North 24 degrees 05 minutes 48 seconds East 115.17 feet to a point, thence running,
- 37) North 10 degrees 36 minutes 11 seconds East 71.57 feet to a point, thence running,
- 38) North 09 degrees 20 minutes 06 seconds West 123.76 feet to a point, thence running,
- 39) North 18 degrees 35 minutes 07 seconds East 51.50 feet to a point, thence running,
- 40) North 35 degrees 27 minutes 12 seconds East 36.52 feet to a point, thence running,
- 41) North 18 degrees 28 minutes 33 seconds East 46.62 feet to a point, thence running,
- 42) North 12 degrees 44 minutes 06 seconds West 18.94 feet to a point on the southerly line of other lands of, now or formerly, Robert A. Marshall, as recorded in said Office of the Recorder of Deeds in Deed Book D-1788, Page 142, thence,
- 43) leaving said Arnell Creek and running by and with said Robert A. Marshall lands, the following four courses and distances, North 62 degrees 11 minutes 30 seconds East 285.00 feet to a point, thence,
- 44) continuing by and with said Robert A. Marshall lands, by and with a new line of division, the following three courses and distances, North 06 degrees 45 minutes 36 seconds East 176.94 feet to a point, thence running,
- 45) North 32 degrees 52 minutes 18 seconds West 405.85 feet to a point, thence running,
- 46) North 84 degrees 44 minutes 50 seconds West 36.39 feet to a point on the northerly right-of-way line of Clubhouse Drive, thence,

47) leaving said Robert A. Marshall lands and running by and with said Clubhouse Drive, the following six courses and distances, by and with a curve, deflecting to the left, having an arc length of 106.88 feet, a radius of 50.00 feet and a chord bearing and distance of North 85 degrees 19 minutes 22 seconds West 87.66 feet to an iron pipe found at a point of reverse curvature, thence running,

48) by and with a curve, deflecting to the right, having an arc length of 30.77 feet, a radius of 25.00 feet and a chord bearing and distance of South 68 degrees 42 minutes 11 seconds West 28.87 feet to a point, thence running,

49) North 76 degrees 01 minutes 57 seconds West 225.62 feet to a point of curvature, thence running,

50) by and with the arc of a curve, deflecting to the right, having an arc length of 41.13 feet, a radius of 26.78 feet and a chord bearing and distance of North 32 degrees 01 minutes 57 seconds West 37.21 feet to a point, thence running,

51) North 11 degrees 58 minutes 03 seconds East 83.21 feet to an iron pipe found at a point on the southerly line of Lot 5 of "Old Landing Woods Subdivision, Section E", as recorded in said Office of the Recorder of Deeds in Plot Book 8, Page 845, thence,

52) leaving said Clubhouse Drive and running by and with said Lot 5, the following five courses and distances, South 78 degrees 01 minutes 57 seconds East 104.29 feet to a point, thence running,

53) North 06 degrees 57 minutes 03 seconds East 35.00 feet to a point, thence running,

54) North 61 degrees 57 minutes 03 seconds East 68.00 feet to a point, thence running,

55) North 11 degrees 57 minutes 03 seconds East 46.00 feet to a point, thence running,

56) North 31 degrees 18 minutes 56 seconds East 82.03 feet to an iron pipe found at a point on the easterly line of Lot 4 of said "Old Landing Woods Subdivision, Section E", thence,

57) leaving said Lot 5 and running by and with said Lot 4, and also running by and with Lots 3, 2 and 1 of said "Old Landing Woods Subdivision, Section E", North 26 degrees 39 minutes 56 seconds West 305.00 feet to a point, thence,

58) continuing by and with said Lot 1, the following two courses and distances, North 56 degrees 49 minutes 39 seconds West 249.93 feet to a point, thence running,

59) South 62 degrees 08 minutes 35 seconds West 37.02 feet to a concrete monument found at a point on the aforementioned northerly right-of-way line of Clubhouse Drive, thence,

60) leaving said Lot 1 and running by and with said Clubhouse Drive, the following two courses and distances, North 27 degrees 53 minutes 08 seconds West 251.14 feet to a point curvature, thence running,

61) by and with the arc of a curve, deflecting to the left, having an arc length of 140.20 feet, a radius of 325.00 feet and a chord bearing and distance of North 40 degrees 14 minutes 37 seconds West 139.11 feet to a point on the easterly line of the lands of, now or formerly, Sussex County, as recorded in said Office of the Recorder of Deeds in Deed Book D-2229, Page 298, thence,

62) leaving said Clubhouse Drive and running by and with said Sussex County lands, the following two courses and distances, North 32 degrees 11 minutes 52 seconds East 51.36 feet to a concrete monument found at a point, thence running,

63) North 57 degrees 47 minutes 51 seconds West 30.15 feet to an iron pipe found at a point on the easterly line of Lot 6 of "Old Landing Woods Subdivision, Section B", as recorded in said Office of the Recorder of Deeds in Plot Book 8, Page 845, thence,

64) leaving said Sussex County lands and running by and with said Lot 6, North 21 degrees 44 minutes 38 seconds West 271.93 feet to an iron pipe found at a point on the southerly line of Lot 4 of said "Old Landing Woods Subdivision, Section B", thence,

65) leaving said Lot 6 and running by and with said Lot 4, North 32 degrees 05 minutes 44 seconds East 65.83 feet to an iron pipe found at a point on the southerly line of Lot 3, thence,

66) leaving said Lot 4 and running by and with said Lot 3, the following two courses and distances, South 57 degrees 47 minutes 25 seconds East 5.00 feet to an iron pipe found at a point, thence running,

67) North 37 degrees 35 minutes 25 seconds East 138.64 feet to a point on the westerly line of Lot 1 of said "Old Landing Woods Subdivision, Section B", thence,

68) leaving said Lot 3 and running by and with said Lot 1, the following two courses and distances, South 57 degrees 45 minutes 42 seconds East 106.98 feet to an iron rod found at a point, thence running,

69) North 42 degrees 30 minutes 28 seconds East 140.25 feet to an iron pipe found at a point on the southerly right-of-way line of Fairway Drive, thence,

70) leaving said Lot 3 and running by and with said Fairway Drive, South 57 degrees 49 minutes 33 seconds East 1451.37 feet to an iron pipe found at a point on the aforementioned westerly right-of-way line of County Road #274, thence,

71) leaving said Fairway Drive and running by and with said Country Road #274, the following seven courses and distances, South 13 degrees 13 minutes 14 seconds East 173.50 feet to a point of curvature, thence,

72) running by and with a curve, deflecting to the left, having an arc length of 380.48 feet, a radius of 1375.00 feet and a chord bearing and distance of South 21 degrees 12 minutes 16 seconds East 379.26 feet to an iron pipe found at a point, thence running,

73) South 28 degrees 39 minutes 26 seconds East 933.75 feet to an iron pipe found at a point of curvature, thence,

74) running by and with a curve deflecting to the right, having an arc length of 175.86 feet, a radius of 1295.00 feet and a chord bearing and distance of South 23 degrees 13 minutes 26 seconds East 175.72 feet to an iron pipe found at a point of compound curvature, thence,

75) running by and with a curve, deflecting to the right, having an arc length of 246.55 feet, a radius of 435.00 feet and a chord bearing and distance of South 03 degrees 06 minutes 17 seconds East 243.27 feet to an iron pipe found at a point, thence running,

76) South 13 degrees 06 minutes 20 seconds West 681.25 feet to an iron pipe found at a point of curvature, thence,

77) running by and with a curve deflecting to the left, having an arc length of 218.75 feet, a radius of 375.00 feet and a chord bearing and distance of South 03 degrees 40 minutes 46 seconds East 215.66 feet to a point, thence running,

78) South 20 degrees 17 minutes 55 seconds East 1342.86 feet to the point and place of beginning; **CONTAINING** 126.8795 acres of land, more or less.

