



Sussex County Council Public/Media Packet

**MEETING:
February 22, 2022**

****DISCLAIMER****

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

COUNTY COUNCIL

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



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

A G E N D A

FEBRUARY 22, 2022

10:00 A.M.

Call to Order

Approval of Agenda

Approval of Minutes – February 8, 2022

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

1. Discussion and possible action related to the disposition of County property
2. Administrator's Report

Grant Requests

1. ReTemp Development Center for Food/Outreach Program
2. Woodbridge High School Marine Corps JROTC Booster Club for a 5K/Walk & Fun Walk
3. Lewes Fire Department, Inc. for a Golf Tournament Fundraiser

Hans Medlarz, County Engineer

1. Delivery of Seed and Chemical, Project No. M19-31
 - A. Contract Extension



2. Property Site Maintenance Contracts

A. Western Sussex Change Order No. 1

B. Landfill Maintenance Change Order No. 1

C. Eastern Sussex Motion Clarification

3. Western Sussex Contract 5, Project No. S19-29

A. Recommendation to Award Segments A, B & D

B. Reject Bid Segment C

Jamie Whitehouse, Planning and Zoning Director

- 1. Conditional Use No. 2164 filed on behalf of Leanna and Hung Nguyen – request for an extension**

10:30 a.m. Public Hearings

- 1. Millville by the Sea Villages A-D Expansion of the Sussex County Unified Sanitary Sewer District (Millville Area)**
- 2. Continuance of “AN ORDINANCE TO AMEND CHAPTER 99, SECTIONS 99-5, 99-6, 99-7, 99- 23, 99-24, 99-26, AND 99-30, AND CHAPTER 115 SECTIONS 115-4, 115-25, 115-193, 115-220 AND 115-221 REGARDING CERTAIN DRAINAGE FEATURES, WETLAND AND WATER RESOURCES AND THE BUFFERS THERETO”**

Introduction of Proposed Zoning Ordinances

Council Members’ Comments

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

Possible action on Executive Session items

1:30 p.m. Public Hearings

Conditional Use No. 2297 filed on behalf of Schell Brothers, Inc.

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 2046 (ORDINANCE NO. 2479) RELATED TO PERMITTED HOURS OF CONSTRUCTION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 36.61 ACRES, MORE OR LESS” (property lying on the northeast side of Warrington Road [S.C.R. 275] approximately 0.25 mile southeast of John J. Williams Highway [Rt. 24]) (911 Address: N/A) (Tax Parcel: 334-12.00-127.02)

Change of Zone No. 1939 filed on behalf of Gerald R. & Valerie V. Campbell, Trustees

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 3.16 ACRES, MORE OR LESS” (property lying on the west side of Sussex Highway [Route 13] approximately 0.81 mile south of Adams Road [S.C.R. 583]) (911 Address: 9155 & 9167 Campbell Lane, Bridgeville) (Tax Parcel: 530-17.00-2.01)

Change of Zone No. 1960 filed on behalf of OA Oaks, LLC

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT- RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL OF CHANGE OF ZONE NO. 1858 (ORDINANCE NO. 2621) RELATING TO THE WORKFORCE HOUSING REQUIREMENTS, INTERNAL ROAD STANDARDS AND AMENITIES DEADLINES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.8455 ACRES, MORE OR LESS” (property lying on the northeast side of Zion Church Road [Rt. 20] approximately 0.27 mile northwest of Bayard Road [S.C.R. 384] (911 Address: N/A) (Tax Parcel: 533-11.00-82.00)

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on February 15, 2022 at 4:15 p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

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

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

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

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

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

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

#

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 8, 2022

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 8, 2022, at 10:00 a.m., in Council Chambers, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 059 22
Approve
Agenda**

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

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of the February 1, 2022 meeting were approved by consensus.

**Corres-
pondence**

There was no Correspondence.

**Public
Comment**

Mr. William Kinnick from Seaford spoke about manufactured housing, affordable housing, sewage and drinking water concerns in Sussex County.

Mr. George Schultz, 32480 West Haven Wood Drive, Frankford shared concerns about a parcel that is up for development behind where he resides. Mr. Schultz expressed his disapproval of the property that is being proposed for development.

**Recognition
of Retirees**

The Council recognized the following employees that are retiring:

Terri L. Dukes, Addressing Technician II, who is retiring after 18 years of service with the County.

Douglas J. Stoakley, Facilities Manager, who is retiring after 28 years of service with the County.

**Adminis-
trator's
Report**

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

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: The Villages at Red Pond South – Phase 2 (Construction Record) and Friendship Creek – Phase 1A (Construction Record) effective January 26th, Lands of High Tide Church, Inc. effective February 1st.

2. Council Meeting Schedule

A reminder that Council will not meet on Tuesday, February 15th. The next regularly scheduled Council meeting will be held on Tuesday, February 22nd, at 10:00 a.m.

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

**SCWRF &
RBWTP
General
Construc-
tion Project**

Mr. Hans Medlarz, County Engineer presented Change Order No. 19 to the South Coastal Wastewater Facility Treatment Process Upgrade No. 3 and Rehoboth Beach Wastewater Treatment Process Capital Improvement Program, Phase 2, General Construction, Project C19-11 for Council's consideration. This Change Order includes replacement of two (2) compromised pumps and rail systems in the existing filtrate pump system in the filter building. It was also requested for new fiberglass baffles and a guide bracket assembly to replace the original wooden baffle assembly located in the flow splitter box. In addition, it is being requested to purchase corrosion resistant heaters for a room that has high moisture and stainless steel fully enclosed electric enclosures for the operators on the values.

**M 060 22
Approve
Change
Order No.
19/Project
C19-11**

A Motion was made by Mr. Schaeffer seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 19 for Contract C19-11, South Coastal WRF Treatment Process Upgrade No. 3 & Rehoboth Beach WTP Capital Improvement Program, Phase 2 – General Construction, be approved, increasing the contract by \$109,630.10.

Motion Adopted: 5 Yeas.

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

**SCWRF &
RBWTP
Electrical
Construc-
tion Project**

Mr. Hans Medlarz, County Engineer presented Change Order No. 15 to the South Coastal Wastewater Facility Treatment Process Upgrade No. 3 and Rehoboth Beach Wastewater Treatment Process Capital Improvement Program, Phase 2, Electrical Construction, Project C19-17 for Council's consideration. The lighting in the headworks building and the panelboard in the chemical building are compromised by corrosion that need to be replaced. In addition, IT staff reanalyzed the facility's fiber optic cabling needs and requested inner duct modifications.

**M 061 22
Approve
Change
Order No.
15/Project
C19-17**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 15 for Contract C19-17, SCWRF Treatment Process Upgrade No. 3 & RBWTP Capital Improvement Program, Phase 2 – Electrical Construction, be approved, for an increase of \$28,119.42.

**Grant
Requests**

Mrs. Jennings presented grant request for Council's consideration.

**M 062 22
Lewes
Public
Library**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to give \$2,000.00 (\$1,500.00 from Mr. Schaeffer's Councilmanic Grant Account and \$500.00 from Mr. Rieley's Councilmanic Grant account) to Lewes Public Library for their Annual Shakespeare Festival.

Motion Adopted: 5 Yeas.

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

**M 063 22
Fraternal
Order of
Police – SC
Lodge No. 2**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to give \$2,000.00 (\$1,000.00 from Mr. Schaeffer's Councilmanic Grant account, \$500.00 Mr. Hudson's Councilmanic Grant Account & Mr. Rieley's Grant Councilmanic Account) to Fraternal Order of Police – Sussex County Lodge No. 2, Inc. for their Sharing a Thanksgiving Dinner and Christmas with a Needy Family.

Motion Adopted: 5 Yeas.

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

**M 064 22
Fort Miles
Historical
Association**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to give \$1,250.00 (\$250.00 from each Council members' Councilmanic Grant Account) to Fort Miles Historical Association, Inc. for a M10 Display at Fort Miles.

Motion Adopted: 5 Yeas.

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

**Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

M 065 22 **A Motion was made by Mr. Schaeffer, seconded by Mrs. Green, to give**
Delaware **\$1,250.00 (\$1,000 from Mr. Schaeffer's Councilmanic Grant Account and**
River & Bay **\$250.00 from Mrs. Green's Councilmanic Grant Account) to Delaware**
Lighthouse **River and Bay Lighthouse Foundation for Restoration and Volunteer**
Foundation **Support.**

Motion Adopted: 5 Yeas.

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

Introduction **Mr. Hudson introduced the Proposed Ordinance entitled "AN ORDINANCE**
of Proposed **TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL**
Ordinances **RESIDENTIAL DISTRICT FOR A TREEHOUSE AND YURT TO BE**
 UTILIZED FOR SHORT-TERM RENTALS TO BE LOCATED ON A CERTAIN
 PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED,
 SUSSEX COUNTY, CONTAINING 0.26 ACRES, MORE OR LESS"

Mr. Rieley introduced the Proposed Ordinance entitled "AN ORDINANCE TO
GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL
RESIDENTIAL DISTRICT FOR AN AUTOMOTIVE AND BOAT REPAIR
BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING
AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING
5.00 ACRES, MORE OR LESS"

Mr. Rieley introduced the Proposed Ordinance entitled "AN ORDINANCE TO
GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL
RESIDENTIAL DISTRICT FOR A CAMPGROUND TO BE LOCATED ON A
CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE
HUNDRED, SUSSEX COUNTY, CONTAINING 30.76 ACRES MORE OR
LESS"

The Proposed Ordinances will be advertised for Public Hearing.

Council
Members'
Comments

There were none.

M 066 22
Go Into
Executive
Session

At 10:24 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley
to recess the Regular Session, and go into Executive Session for the purpose
of discussing matters relating to pending/potential litigation, and land
acquisition.

Motion Adopted: 5 Yeas.

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

At 10:31 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matter relating to pending/potential litigation, and land acquisition. The Executive Session concluded at 11:50 a.m.

**M 067 22 At 11:56 a.m., a Motion was made by Mr. Hudson seconded by Mrs. Green
Reconvene to reconvene.**

Motion Adopted: 4 Yeas, 1 Absent

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

E/S Action There was no action on Executive Session matters.

**M 068 22 A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to adjourn
Adjourn at 11:58 a.m.**

Motion Adopted: 4 Yeas, 1 Absent

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

Respectfully submitted,

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

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

Council Grant Form

| | |
|---|---|
| Legal Name of Agency/Organization | ReTemp Development Center |
| Project Name | Food Program |
| Federal Tax ID | 31-1763077 |
| Non-Profit | Yes |
| Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.) | No |
| Organization's Mission | The mission of the ReTemp Development Center is to empower families in becoming self-sufficient, while providing educational training, food support, mentoring youth programs and drug support services in the community. |
| Address | 31824 Gordy Road |
| Address 2 | |
| City | Laurel |
| State | Delaware |
| Zip Code | 19956 |
| Contact Person | Leon Wilson |

| | |
|---|--|
| Contact Title | President |
| Contact Phone Number | 4103658639 |
| Contact Email Address | overseerL@aol.com |
| Total Funding Request | \$1,500.00 |
| Has your organization received other grant funds from Sussex County Government in the last year? | Yes |
| If YES, how much was received in the last 12 months? | 750.00 |
| Are you seeking other sources of funding other than Sussex County Council? | Yes |
| If YES, approximately what percentage of the project's funding does the Council grant represent? | 30 |
| Program Category (choose all that apply) | Other |
| Program Category Other | food support |

| | |
|--|---|
| Primary Beneficiary Category | Elderly Persons (62 +) |
| Beneficiary Category Other | |
| Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program | 315 |
| Scope | <p>Due to COVID ReTemp Development Center, Inc. (RTDC) has adopted as its purpose, to inspire and implement social action. The organization's quest is to champion community economic development strategies—coordinating individuals and organizations in the community to work together to change the lives of residents, regardless of status, one person at a time. RTDC provides services and programs to create and perpetuate healthy families and communities. These services include: food programs for families which the average ages are over 65, drug intervention, mentoring programs for youth felons.</p> |
| Religious Components | |
| Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) | 0.00 |
| Description | |

| | |
|--|---------------------------|
| Amount | 0.00 |
| Description | |
| Amount | 0.00 |
| Description | |
| Amount | |
| Description | |
| Amount | |
| Description | |
| Amount | |
| Description | |
| Amount | |
| Description | |
| Amount | |
| TOTAL EXPENDITURES | 0.00 |
| TOTAL DEFICIT FOR PROJECT OR ORGANIZATION | 0.00 |
| Name of Organization | ReTemp Development Center |

**Applicant/Authorized
Official** Leon Wilson

Date 01/24/2022

Affidavit Yes

Acknowledgement

Mark as Spam in D3 Forms. Please do not mark as spam in your email client, as it will result in you no longer receiving D3 Forms notifications. Feel free to email info@d3forms.com with any questions.



SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

SECTION 1 APPLICANT INFORMATION

ORGANIZATION NAME: Woodbridge High School Marine Corps JROTC Booster Club

PROJECT NAME: Operation Rabbit Run 5K/Walk & Fun Walk

FEDERAL TAX ID: 81-2007291 NON-PROFIT: ☒ YES ☐ NO

DOES YOUR ORGANIZATION OR ITS PARENT ORGANIZATION HAVE A RELIGIOUS AFFILIATION?

☐ YES ☒ NO *IF YES, FILL OUT SECTION 3B.

ORGANIZATION'S MISSION: The mission of the Woodbridge High School Marine Corps JROTC Booster Club is raising funds to help establish unique learning opportunities, equipment, field trips, food, and scholarships for these future leaders.

ADDRESS: Woodbridge High School
14712 Woodbridge Road
Greenwood DE 19950
(CITY) (STATE) (ZIP)

CONTACT PERSON: Regina Chillas
TITLE: President
PHONE: 302-265-9984 EMAIL: stv94gna@gmail.com

TOTAL FUNDING REQUEST: 3200.00

Has your organization received other grant funds from Sussex County Government in the last year? ☒ YES ☐ NO

If YES, how much was received in the last 12 months? 3000.00

If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for? ☐ YES ☐ NO

Are you seeking other sources of funding other than Sussex County Council? ☒ YES ☐ NO

If YES, approximately what percentage of the project's funding does the Council grant represent? 50%

SECTION 2: PROGRAM DESCRIPTION

PROGRAM CATEGORY (choose all that apply)

- | | | |
|--|--|---|
| <input type="checkbox"/> Fair Housing | <input type="checkbox"/> Health and Human Services | <input type="checkbox"/> Cultural |
| <input type="checkbox"/> Infrastructure ¹ | <input type="checkbox"/> Other | <input checked="" type="checkbox"/> Educational |

BENEFICIARY CATEGORY

- | | | |
|---|--|---|
| <input type="checkbox"/> Disability & Special Needs | <input type="checkbox"/> Victims of Domestic Violence | <input type="checkbox"/> Homeless |
| <input type="checkbox"/> Elderly Persons | <input type="checkbox"/> Low to Moderate Income ² | <input checked="" type="checkbox"/> Youth |
| <input type="checkbox"/> Minority | <input type="checkbox"/> Other | |

BENEFICIARY NUMBER

Approximately the total number of Sussex County Beneficiaries served annually by this program:

10,000

SECTION 3: PROGRAM SCOPE

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

The Woodbridge High School Marine Corps JROTC Booster Club is holding it's second "Operation Rabbit Run 5K Run/Walk & Fun Walk" on Saturday, April 9, 2022, at the Bridgeville Library, 600 S. Cannon St., Bridgeville, DE 19933. The proceeds from the event benefit the WHS MCJROTC program to help establish unique learning opportunities, equipment, field trips, food, and scholarships for these future leaders.

The mission of the Marine Corps JROTC Program is to instill in all cadets a sense of citizenship, community service, self-discipline, respect, personal responsibility, leadership, self-esteem, and service to the United States. The funding that we are requesting from Sussex County government will go toward operating expenses for the event. This along with sponsorships that we are seeking from local businesses will help us to fund trips, community support activities, training opportunities, and to purchase equipment for the 2022-2023 school year.

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

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

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

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

SECTION 4: BUDGET

| REVENUE | |
|--|-------------|
| Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) | |
| TOTAL REVENUES | 0.00 |
| EXPENDITURES | |
| Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative) | |
| TriSports Events set up and marketing fees | \$ 3,600.00 |
| Advertising | \$ 700.00 |
| Signage | \$ 200.00 |
| Food, Candy, Office Supplies, ect... | \$ 300.00 |
| | |
| | |
| | |
| | |
| TOTAL EXPENDITURES | \$ 4,800.00 |
| TOTAL DEFICIT FOR PROJECT OR ORGANIZATION | \$ 4,800.00 |

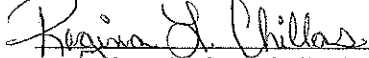
SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the Woodbridge High School Marine Corps JROTC Booster Club agrees that:
(Name of Organization)


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

SECTION 5: STATEMENT OF ASSURANCES (continued)

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


Applicant/Authorized Official Signature

2-10-22
Date


Witness Signature

2-10-22
Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

Mail: Sussex County Government
Attention: Gina Jennings
PO Box 589
Georgetown, DE 19947

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

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

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

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

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

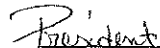
For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before funding is released. Grant is relinquished if supporting documentation is not provided within one year of County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

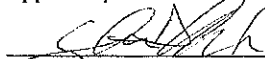
Certain programs are not eligible for funding pursuant to United States Constitution and State of Delaware Constitution. Those constitutional principles prohibit the use of funding to advance or inhibit religious activities. By signing below, the organization acknowledges that the funding shall be used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

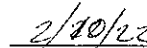
In the event that such funding is used in violation of the requirements and assurances contained in this grant application, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.

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


Applicant/Authorized Official Signature


Title


Witness Signature


Date

Council Grant Form

| | |
|---|---|
| Legal Name of Agency/Organization | LEWES FIRE DPEARTMENT, INC |
| Project Name | FIRST ANNUAL GOLF TOURNAMENT |
| Federal Tax ID | 237216619 |
| Non-Profit | Yes |
| Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.) | No |
| Organization's Mission | TO PROVIDE THE BEST FIRE, RESCUE AND EMS SERVICE TO OUR COMMUNITY |
| Address | P O BOX 225 |
| Address 2 | 24987 Dupont Blvd |
| City | LEWES |
| State | DE |
| Zip Code | 19958 |
| Contact Person | BRYAN PEPPER |
| Contact Title | TREASURER |

Contact Phone Number 3028413401

Contact Email Address bpepper@pepupinc.com

Total Funding Request 1500.00

Has your organization received other grant funds from Sussex County Government in the last year? No

If YES, how much was received in the last 12 months? N/A

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

If YES, approximately what percentage of the project's funding does the Council grant represent? 5

Program Category (choose all that apply) Health and Human Services, Infrastructure

Program Category Other

| | |
|--|--|
| Primary Beneficiary Category | Other |
| Beneficiary Category Other | ALL RESIDENTS |
| Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program | 20000 |
| Scope | WE ARE RAISING MONEY TO SUPPORT OUR ONGOING OPERATIONS FOR AMBULANCE SERVICE EXPANSION |
| Religious Components | |
| Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) | 0.00 |
| Description | FUND RAISER COSTS |
| Amount | 7,500.00 |
| Description | |
| Amount | |

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

TOTAL EXPENDITURES 7,500.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -7,500.00

Name of Organization LEWES FIRE DEPARTMENT, INC

**Applicant/Authorized
Official** BRYAN W. PEPPER, TERASURER

Date 02/11/2022

Affidavit

Yes

Acknowledgement

Mark as Spam in D3 Forms. Please do not mark as spam in your email client, as it will result in you no longer receiving D3 Forms notifications. Feel free to email info@d3forms.com with any questions.

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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

hans.medlarz@sussexcountysde.gov



Sussex County

DELAWARE
sussexcountysde.gov

Memorandum

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

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

RE: ***Delivery of Seed and Chemical, Project No. M19-31
A. Contract Extension***

DATE: February 22, 2022

The County continues to successfully perform agricultural activities at the Wolfe Neck & Inland Bays Regional Wastewater Facilities' irrigated lands with in-house staff. This approach has significantly reduced the loss of irrigation days due to scheduling conflicts with agricultural activities.

Costs for the purchase and delivery of seed and chemicals associated with farming rises to the procurement threshold for material purchases. Therefore, a two (2) year contract was first publicly advertised for bids in 2017. On September 19, 2017, Council awarded the contract to the low bidder, Growmark FS, LLC, in the first year FY18 amount of \$81,766.46.00.

On June 4, 2019, Council approved re-establishing a base contract for FY20 & 21 with Growmark FS, LLC for bid items 1,2 & 4-6 in the aggregate amount of \$77,150.50 per year.

On February 2, 2021, a change order was presented for the Environmental Services Division to perform farming operations at the Inland Bays Facility. Change Order No. 1 in the amount of \$111, 828.80 was approved by Council for a new contract total of \$188,979.30 per year for the remainder of the contract term.

The contract with Growmark FS, LLC ends June 30, 2022, at which time we would need to re-advertise. However, a changeover in chemical and seed vendors mid-growing season is detrimental to farming operations. Therefore, the Engineering Department recommends extending the contract through December 31, 2022, to allow for the new contract bid to be advertised during the off season and to establish calendar year contracts in the future.



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Memorandum

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

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

RE: *Property Site Maintenance Contracts*
A. Western Sussex Change Order No. 1
B. Landfill Maintenance Change Order No. 1
C. Eastern Sussex Motion Clarification

DATE: February 22, 2022

At the August 10, 2021 meeting the Department detailed a history of property site maintenance contracts and the challenges experienced in securing services. The Department recommended Council authorize the contracts be modified to performance-based, year over year, continual contracts with consumer price index (CPI) adjustments starting in 2022.

The Western Sussex Contract addresses the routine maintenance of the Woodland Park Site, the Woodland Dredge Site and the Consalo Site next to the Bridgeville Landfill. It was originally awarded to William F. Betts II on August 29, 2017, renewed annually under contract terms, and renewed for 2022 with CPI adjustment based on the August 10, 2021 Council motion.

However, damage from the recent winter storms in the form of broken and downed tree limbs must be considered **beyond** the regular maintenance contract scope. Therefore, the Engineering Department requests Change Order No. 1 of the 2022 contract year be authorized for inclusion of a \$5,000.00 not-to-exceed amount for time & material hourly services related to storm cleanup at the Western Sussex contract sites.

The Landfill Maintenance contract includes a spring and fall accessway cutting and clearing to allow for the required inspection and sampling of monitoring wells at the six (6) County owned legacy landfills under the respective DNREC approved O&M Plans. It was originally awarded to William F. Betts II on March 7, 2017, renewed annually under contract terms, and



renewed for 2022 with CPI adjustment based on the August 10, 2021 Council motion. The Department is aware of numerous downed trees, limbs and foliage from the winter storms which is blocking access in several locations. The extent of cutting and clearing work necessary to reestablish the accessways is considered **well beyond** the maintenance contract scope. Therefore, the Engineering Department requests Change Order No. 1 of the 2022 contract year be authorized for inclusion of a \$15,000.00 not-to-exceed amount for time & material for additional hourly services related to storm cleanup at the landfill contract sites.

The Eastern Sussex Maintenance Contract proved to be the most challenging, as two contract awards had to be cancelled through Council action because awarded contractors did not have the capacity to perform in accordance with contract documents. An updated RFP included minimum equipment requirements necessary to properly maintain the Delaware Coastal Airport and Business Park properties. On March 26, 2019, Council successfully awarded a contract to Jakor Enterprises, LLC in the amount of \$55,035.00, with a renewal option based on satisfactory performance.

As noted, the August 10, 2021 meeting included a Department recommendation to modify maintenance contracts to year over year, continual contracts with CPI adjustment. The Department further described and requested a contract value increase to \$57,660.00 for inclusion of Downs Property maintenance under the contract scope. The motion provided and approved by Council was intended to address these recommendations however the motion acknowledged Western Sussex and Landfill maintenance contracts only.

To affirm these matters, the Engineering Department recommends Council issue a clarifying motion, for the increase in Eastern Sussex Maintenance Contract value to \$57,660.00 for inclusion of the Downs Property, and to modify the contract to a performance-based, year over year, continual contract with CPI adjustment starting 2022.

ENGINEERING DEPARTMENT

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Sussex County

DELAWARE
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Memorandum

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

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

RE: ***Western Sussex Unified Sewer District:
Contract 5, Project S19-29
A. Recommendation to Award Segments A, B & D
B. Reject all Bids Segment C
C. Authorize 2nd Supplemental Funding Request***

DATE: February 22, 2022

In February 2017, the municipal councils of Bridgeville and Greenwood requested investigation of an alternate County Sewer District based scenario. Upon review of the findings both municipal Councils requested formation of a County sewer district pursuant to Title 9 Del. Code § 6501, and on August 22, 2017, County Council adopted a resolution establishing the Western Sussex Area of the Unified Sanitary Sewer District.

The County requested funding consideration under the Clean Water State Revolving Fund and on August 14, 2018, the State issued a binding commitment offer in the overall amount of \$16,634,748 to be repaid within 30-years with 2.5% interest. On November 27, 2018, Council accepted the offer and approved the associated borrowing ordinance. After project completion, \$3,200,000 will be applied in principle forgiveness reducing the overall borrowing. On May 15, 2020 the County filed a supplemental CWSRF funding request in the amount of \$850,000 to cover unanticipated change orders associated with the DelDOT restoration on RT-13. The County's request was approved by the Water Infrastructure Advisory Council during their July 15, 2020 meeting in the form of "Loan Forgiveness."

The project has three (3) components; transmission under Contracts 1-4, treatment plant demolition/system rehabilitation Contract 5, maintenance garage under Contract 6 and the Bridgeville Branch restoration under a "green" project funding scenario spearheaded by the Sussex Conservation District.



The construction of the transmission project was further broken down in the following four (4) individual contracts based on DelDOT's schedule requirements:

- Contract No.1 to A-Del Construction Co, Inc. in the amount of \$3,224,820.00, for the force main work in the RT-13 rights-of-way. Awarded by Council on May 14, 2019.
- Contract No.2 to Pact One LLC in the amount of \$2,063,255.00, for the gravity sewer upgrades. Awarded by Council on May 14, 2019.
- Contract No.3 to A-Del Construction Co, Inc. in the amount of \$2,980,602.00, for the force main work in the RT-13 Alternate and Herring Road rights-of-way. Awarded by Council on January 7, 2020.
- Contract No.4 to Zack's Excavating, Inc. in the amount of \$3,236,939.00, for gravity sewer equalization chambers and two (2) pump stations. Awarded by Council on November 12, 2019.
- Contract No. 6 to GGI, Inc. in the amount of \$410,525.00, for construction of a new Office/Garage Building. Awarded by Council on June 23, 2020.

During the construction of Contract No.1 awarded to A-Del Construction Co, Inc., DelDOT did not allow the reuse of most of the excavated trench material and required Type C Borrow instead. Therefore, this unit price item went considerably above the bid quantity. In addition, a wider concrete base course was encountered under the Cannon Road crossing. Rather than using hot-mix for restoration, DelDOT required reinstallation of the concrete base course adding 25% to the cost of this lump sum item. On February 4, 2020, Council approved the associated Change Order No.1 in the amount of \$254,188.92. During the final restoration phase DelDOT required additional matting and utility adjustments resulting in a final balancing Change Order No. 2 in the amount of \$26,486.65. Council issued Change Order No.2 and granted final project completion on June 2, 2020.

The award of Contract No.2 to Pact One, LLC included the base bid and two alternate bid items. At the time of award, the Alternate Bid Item D5 was not awarded due its significantly higher than anticipated cost. In subsequent discussions, Pact One LLC realized they had misinterpreted the scope for Item D5 and submitted an alternate proposal at approximately 16% of the original bid. On September 10, 2019 Council awarded Change Order No. 1 in the amount of \$96,840.00 to cover item D5. On June 2, 2020 Council approved a final balancing Change Order No. 2 in the credit amount of (\$128,708.70) and granted final project completion.

Contract No.3 awarded to A-Del Construction Co, Inc. encountered no issues and on June 15, 2021 Council approved the balancing Change Order No. 1 in the credit amount of \$643,915.22 together with final project completion as of April 7, 2021.

During the construction of Contract No. 4 awarded to Zack's Excavating, Inc. a groundwater contamination was encountered, in addition to a construction sequencing issue at the Bridgeville site. In response, the Department developed a value engineering approach

approved by Council on June 2, 2020 under Change Order No.1 in the amount of \$40,045.00. The north Seaford pump station included RT-13 entrance improvements which required a more substantial reconstruction due to lack of an existing base course as well as a compromised subbase. In response Council approved Change Order No. 2 in the amount of \$22,642.78 on July 28, 2020. On September 30, 2020 Zack's Excavating, Inc. encountered a previously unknown ductile iron water pipe within the area of the deep excavation of the Bridgeville pump station structures. On November 10, 2020 Council approved Change Order No. 3 in the total amount of \$32,644.19 for the time and material relocation effort.

On February 3, 2021, Delmarva Power and Light contacted the Sussex County with an opportunity for net schedule and cost savings by adjusting the transformer type from pad mount to a pole mounted system. While this decreased the charges from Delmarva Power and Light, it actually increases the work for Zack's Excavating Inc.'s electrical subcontractor by \$5,504.87. However, the coordination with DP&L did affect the critical schedule and caused a two-week delay. In addition, the Environmental Services team did additional assessments of the Heritage Shores Pump Station pre-existing conditions and recommended additional upgrades to the existing SCADA system to bring it up to the current county standard exceeding the stipulated contract allowance by \$16,000.00. On March 9, 2021 Council approved Change Order No. 4 in the amount of \$21,504.87 and the associated two-week contract time extension.

The final gravity sewer line to transferred to the new Bridgeville pump station had significant, previously unknown, infiltration. The Department requested a change order for the necessary repairs but Zack's Excavating, Inc. declined any further change orders. Subsequently, after receiving concurrence from the funding agency, the Engineering Department mobilized the County's General Labor & Equipment contractor to the site. Furthermore, the Department suggested to transition Zack's contract to a lump sum approach, requesting credit proposals for several remaining incidental work items and allowances. On May 25, 2022 Council issued the close out credit Change Order No. 5 in the amount of (\$92,704.30) as well as the granting of substantial project completion.

The Invitation to Bid for the last remaining Western Sussex Unified Sewer District, Contract 5, Project S19-29 was advertised on January 12, 19 & 26, 2022, in the local newspaper, and available to view on the County website. In addition, the information was directly forwarded to a number of contractors. Nine (9) contractors attended the pre-bid meeting held on January 26, 2022 and on February 9, 2022, seven (7) bids were received. Summary attached.

The Engineering Department recommends award of Segment A to A-Del Construction Co., Inc. in the total amount of \$427,000.00, Segment B to Richard E. Pierson Construction Co., Inc. in the total amount of \$920,800.00 and Segment D to Standard Pipe Services, LLC in the total amount of \$525,100.00, contingent upon SRF concurrence. Three (3) bids were received for Segment C, however, there were irregularities in the low bid. The Engineering Department recommends Council to reject all bids for Segment C and authorize an immediate re-bid.

Approximately half of the award amount is covered with existing SRF funding. However, additional funds will be needed for the completion detailed in the attached summary cost sheet. Therefore, the Finance and Engineering Departments seek Council's authorization to request a 2nd supplemental funding amount for the Western Sussex District Area Expansion

Project through the CWSRF in the amount of \$1,336,315.00. Once an offer is received, an associated debt ordinance would be introduced and voted on by Council after a public hearing. Since the project is already at the affordability limits an offer in the form of mostly “Loan Forgiveness” is expected.



SUSSEX COUNTY

BID RESULTS

Project: Western Sussex Contract 5

Project No.: S19-29

| Bidder | Part A | Part B | Part C | Part D |
|-----------------------|--------------|----------------|--------------|--------------|
| A-Del Construction | \$427,000.00 | \$1,194,000.00 | \$573,900.00 | No Bid |
| Standard Pipe Service | No Bid | No Bid | No Bid | \$525,100.00 |
| George & Lynch | No Bid | \$2,330,611.00 | No Bid | No Bid |
| Richard E. Pierson | No Bid | \$920,800.00 | No Bid | No Bid |
| Zack Excavating | No Bid | \$3,999,745.00 | \$492,975.00 | No Bid |
| JJID | No Bid | \$1,568,000.00 | No Bid | No Bid |
| Chesapeake Turf | No Bid | No Bid | \$679,440.00 | No Bid |

Western Sussex Summary

*Budget Status as of 2.09.2022

| | Award | Original Budget | Revised Budget | Spent to Date | Seaford Reimbursements S1801.ARSEA.CON | Contract Payment Adj's *See Notes Below | ADJUSTED Spent to Date | Obligated Funds | Available Funding |
|--|--------------|-----------------|----------------|---------------|---|--|---------------------------|-----------------|-------------------|
| Legal and Admin | | 56,000.00 | 56,000.00 | 14,592.25 | - | - | 14,592.25 | - | 41,407.75 |
| Land and ROW | | 54,000.00 | 55,650.00 | 55,650.00 | - | - | 55,650.00 | - | - |
| Engineering | | | | | | | | | |
| GMB 92018030 | | 1,302,178.00 | 1,253,996.88 | 1,363,507.85 | - | (109,510.97) | 1,253,996.88 | - | - |
| GMB 92019048 | | - | 24,982.65 | 3,670.15 | - | 21,312.50 | 24,982.65 | - | - |
| DBF 92018032 | | 266,000.00 | 267,282.50 | 275,420.99 | - | (11,217.50) | 264,203.49 | 3,079.01 | - |
| DBF 92022010 (*On-Call Contract) | | - | 940.00 | 940.00 | - | - | 940.00 | - | - |
| DBF PO#20220388 *Survey Services Heritage Shores | | - | 3,591.62 | 3,591.62 | - | - | 3,591.62 | - | - |
| RK&K 92019042 | | - | 122,277.02 | 75,832.53 | - | 46,444.49 | 122,277.02 | - | - |
| Beacon | | - | 3,999.90 | 3,999.90 | - | - | 3,999.90 | - | - |
| Rauch | | - | 4,320.00 | 4,320.00 | - | - | 4,320.00 | - | - |
| Hillis Carnes | | - | 6,350.00 | 6,350.00 | - | - | 6,350.00 | - | - |
| City of Seaford | | - | 43,587.31 | 43,587.31 | - | - | 43,587.31 | - | - |
| Sussex Environmental Health (Asbestos Survey) | | - | 675.00 | 675.00 | - | - | 675.00 | - | - |
| Unallocated Engineering Budget \$'s Transferred from COG | | - | 11,175.12 | - | - | - | - | - | 11,175.12 |
| Construction | | | | | | | | | |
| Contract 1 - A-Del (92020020) | 3,505,495.57 | 3,194,085.00 | 3,505,495.57 | 3,505,495.57 | - | - | 3,505,495.57 | - | - |
| Contract 2 - Pact One (92020015) | 2,031,386.30 | 950,983.00 | 1,882,069.25 | 2,031,386.30 | (149,317.05) | - | 1,882,069.25 | - | - |
| Contract 3 - A-Del (92020046) | 2,336,686.78 | - | 2,336,686.78 | 2,336,686.78 | - | - | 2,336,686.78 | - | - |
| Contract 4 - Zack Excavating (92020036) | 3,261,071.54 | 2,456,422.00 | 3,261,071.54 | 3,261,071.54 | - | - | 3,261,071.54 | - | - |
| Contract 6 - GGI Builders (92021015) | 400,529.99 | 3,448,000.00 | 400,529.99 | 400,529.99 | - | - | 400,529.99 | - | - |
| G&L - T&M Contract Work | - | - | 364,762.99 | 364,762.99 | - | - | 364,762.99 | - | - |
| Clean Delaware - Sludge Removal | - | - | 21,108.00 | 21,108.00 | - | - | 21,108.00 | - | - |
| Chesapeake Utilities | - | - | 10,300.00 | 10,300.00 | - | - | 10,300.00 | - | - |
| Penn Del Lock | - | - | 2,483.70 | 2,483.70 | - | - | 2,483.70 | - | - |
| Graybar Electric | - | - | 1,375.59 | 1,375.59 | - | - | 1,375.59 | - | - |
| Town of Bridgeville | - | - | 10,225.00 | 10,225.00 | - | - | 10,225.00 | - | - |
| Contingencies | - | 1,409,791.00 | 263,897.14 | - | - | - | - | - | 263,897.14 |
| Bridgeville Outstanding Debt | - | 3,497,289.00 | 2,719,914.45 | 2,719,914.45 | - | - | 2,719,914.45 | - | - |
| Green Project | - | - | - | - | - | - | - | - | - |
| Additional Projects | - | - | - | - | - | - | - | - | - |
| Seaford Reimbursement *See Pact One Contract Adj. | - | - | - | - | - | - | - | - | - |
| | | 16,634,748.00 | 16,634,748.00 | 16,517,477.51 | (149,317.05) | (52,971.48) | 16,315,188.98 | 3,079.01 | 316,480.01 |

Total Obligated and Eligible Funds Remaining as of 2-09-2022: **319,559.02**

ADD:

Supplemental Funds Approved 8-21-2020, but not yet closed: **850,000.00**

Current Available Funds: **1,169,559.02**

LESS:

Construction Contract #5: **(2,365,875.00)**

Additional Engineering/Inspection Cost: **(40,000.00)**

Additional Unit Price Contingency Cost: **(100,000.00)**

NET PROJECTED FUNDING DEFICIT: **(1,336,315.98)**



Memorandum

To: Sussex County Council Members

From: Jamie Whitehouse, AICP, Planning & Zoning Director

CC: Everett Moore, County Attorney

Date: February 04, 2022

RE: County Council Report for Leanna & Hung Nguyen – Request for extension of Conditional Use (CU 2164)

On December 14, 2021, the Planning and Zoning Department received a request for an extension of the Conditional Use (CU 2164) for a multifamily residential use on the lands of Leanna & Hung Nguyen. The Conditional Use was approved by Sussex County Council on April 16, 2019. The applicant indicates that construction was delayed due to reasons outside of their reasonable control. The applicant is seeking an extension on these grounds and has provided materials to demonstrate that the project will meet the “substantially underway” threshold required if County Council were to grant an extension under the provisions of (§99-40) in Sussex County Code. Under (§115-174) the Conditional Use approval is valid for a period of three years and will expire on April 16, 2022 unless “construction or use” is “substantially underway.” The property is located on the north east corner of Old Landing Road (SCR 274) and Marina Drive.

The applicant filed this request with the Planning & Zoning Department in writing on December 14, 2021. The request for extension has been submitted under the sunset provision of (§99-40(C)) which allow an applicant to request up to a six-month extension of the Conditional Use approval. The Council may grant a time extension for up to six (6) months pursuant to (§99-40 based on the following:

1. Prior to the expiration of its current approval, any applicant holding a currently valid approval as set forth in this § 99-40C may request an extension up to six months for the validity of said approval. The six-month period shall commence upon the date of expiration of the current approval. Such a request must be in writing and delivered to the Director on or before the expiration date of its current approval. At a minimum, the written request must include the following information:
 - (a) A schedule or plan for the project describing the steps that have been completed through the date of the extension request and describing the remaining steps to be completed. For any steps that remain outstanding, the applicant is to provide the anticipated time frame for completing those remaining steps.
 - (b) A detailed explanation of the reasons in support of the applicant's request for the time extension. The applicant is to include an explanation of whether such reasons were within



the applicant's reasonable control. Examples of reasons beyond the applicant's reasonable control include, but are not limited to, undue delays in receiving regulatory approvals, litigation affecting the progression of the project, third-party economic restrictions of an extraordinary or unreasonable nature, or delays caused by significant medical or health issues impacting the applicant's key stakeholders.

- (d) For conditional uses, a specific schedule and plan demonstrating that the construction or use will be substantially underway within six months of the expiration of the current approval.

On December 14, 2021 the Planning & Zoning Department received both the initial request for extension letter as well as a revised preliminary site plan. After receipt of the applicant's request for extension, the Planning and Zoning Department directed the applicant to requirements of the written request under (§99-40). The applicant's representative responded with another letter detailing the hardships and circumstances prompting the construction delay as well as an update on the status of the required agency approvals.

The following is the status of agency approvals. The applicant's representative at Pennoni Engineering indicates that the Record and Entrance Plan Packages were submitted to DelDOT on January 29, 2021, and that approval is expected by March or April of 2022. The applicant also notes in the revised letter that approval from Sussex Conservation District (SCD) was obtained on December 15, 2021, noting that the applicant is currently determining a contractor in order to begin onsite construction per SCD approval. The application with the Fire Marshal is on hold until an updated flow test can be completed, which cannot occur until March as it requires warmer weather. The applicant's letter also includes details on the progress of other related agencies not part of required county approval including both public utility connection with Tidewater as well as the Sussex County Engineering Department.

It may be difficult for the site to be under substantial construction; however, the Council may grant a time extension for an additional six (6) months so that the project can proceed with construction and establishing that they have substantially constructed the project prior to the termination of the six (6) month time extension, if granted.

If the Council agrees, there should be a motion that based upon the authority granted to the Council under (§99-40(C)), and based upon compliance with the requirements of the referenced Ordinance, supporting documentation, and the recommendation of the Director of Planning and Zoning that Leanna & Hung Nguyen (CU 2164) shall be granted a six (6) month time extension until October 16, 2022, which is six (6) months from April 16, 2022, the original expiration date for the Conditional Use.

December 13, 2021
LBNGU21001

Ms. Lauren DeVore
Sussex County Planning and Zoning
2 The Circle
Georgetown, DE 19947

**RE: Conditional Use Request for Extension
Lands of Leanna & Brian Nguyen
Tax Map # 334-19.00-1.06
Lewes & Rehoboth Hundred
Rehoboth Beach, DE 19971**

Dear Ms. DeVore:

On behalf of Mr. and Mrs. Nguyen., Pennoni Associates Inc. (Pennoni) is submitting a request for extension of the project. The Nguyen's proposed multi-family dwelling project obtained Condition Use (CU2164) approval on April 16, 2019, from Sussex County Council. Per the CU approval, it states the Conditional Use shall be substantially underway within three (3) years of the County Council approval otherwise the Conditional Use shall expire. The expiration date is April 16, 2022. Over the last two years, due to COVID and medical issues with their family, they had to return to Vietnam for an extended stay and they have recently resumed the project and are ready to complete the process. Pennoni is finalizing all construction documents and will be submitting them to all delegated agencies within the next month with hopefulness of returning to the County for Final Approval in the April/May timeframe. The project will move forward into construction thereafter with having the project close to completion in Spring 2023.

Respectfully Submitted,
PENNONI



Alan Decktor, PE, ENV SP
Senior Engineer



Mark H. Davidson, Vice President
Principal Land Planner

U:\Accounts\LBNGU\LBNGU21001 - Nguyen Family Home\DELIVERABLES\PZ\2021-12-13 Nguyen Family House Extension Letter.docx

RECEIVED

DEC 14 2021

SUSSEX COUNTY
PLANNING & ZONING



18072 Davidson Drive
Milton, DE 19968
T: 302-684-8030
F: 302-684-8054

www.pennoni.com

December 13, 2021, Revised January 25, 2022
LBNGU21001

Mr. Michael Lowrey
Sussex County Planning and Zoning
2 The Circle
Georgetown, DE 19947

**RE: Conditional Use Request for Extension
Lands of Leanna & Brian Nguyen
Tax Map # 334-19.00-1.06
Lewes & Rehoboth Hundred
Rehoboth Beach, DE 19971**

Dear Mr. Lowrey:

On behalf of Mr. and Mrs. Nguyen., Pennoni Associates Inc. (Pennoni) is submitting a request for extension of the project. The Nguyen's proposed multi-family dwelling project obtained Condition Use (CU2164) approval on April 16, 2019, from Sussex County Council. Per the CU approval, it states the Conditional Use shall be substantially underway within three (3) years of the County Council approval otherwise the Conditional Use shall expire. The expiration date is April 16, 2022. Pennoni is finalizing all construction documents and will be submitting them to all delegated agencies within the next month with hopefulness of returning to the County for Final Approval in the April/May timeframe. The project will move forward into construction thereafter with having the project close to completion in Spring 2023.

Over the last two years, due to COVID and medical issues with their family, they had to return to Vietnam for an extended stay and they have recently resumed the project and are ready to complete the process. At the end of 2019, Mrs. Nguyen's mother in Vietnam was diagnosed with liver problems and her health started failing. So, at that time, they stopped all work on this project in the United States, went back to Vietnam to bring her mother back to the US to get another opinion for her health. Upon returning, the Coronavirus (Covid-19) pandemic was starting its outbreak, and with the Nguyen's being self-employed, all their businesses were shut down by government restrictions and impacted them financially. Due to this, they didn't have any funds to pick back up the project until fall-2021, when they were financially sound to start again.

Project Schedule – Pending Approval Expiration on April 24, 2022

1. Revised Preliminary Approval Submitted to PZ on December 13, 2021.
2. Request for Extension submitted to PZ on December 13, 2021
3. Obtained Sussex Conservation District Approval on December 15, 2021
4. Record and Entrance Plan Packages Submitted to DelDOT on January 14, 2022; expected approval on these in March/April timeframe if not sooner.
5. Fire Marshal Application on Hold until Updated Flow Test is Provided by Tidewater, per their company policy, they must wait until warmer weather. It was requested on December 29, 2021. See attached email correspondence. Once we have Flow test, we are ready to submit and obtain approval. Assuming March will offer warmer weather and FM approval to follow a few weeks later.
6. Tidewater Package is being finalized but not part of County approval process. This will be submitted in February and finalized in April.
7. Sussex County Engineering Department – We confirmed with John Ashman on October 19, 2021, that a SSCE is not required due to it being a lateral connection off an existing stub. We are coordinating with their office, but no formal approval is required.
8. Our goal is to submit final site plans back to County for approval with April timeframe.
9. Building Plans are being finalized by Fisher Architecture and will be ready to submit once Final Site Plan approval is granted.
10. We will move forward on specific construction action items as allowable to expedite the overall process of the project. We are currently finding a Site Contractor to begin onsite construction per SCD approval.

Respectfully Submitted,
PENNONI



Alan Decktor, PE, ENV SP
Senior Engineer



Mark H. Davidson, Vice President
Principal Land Planner

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
sussexcountype.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Millville by the Sea, Villages A-D Expansion of the Sussex County Unified Sanitary Sewer District

PUBLIC HEARING FACT SHEET

- Permission to prepare and post notices was granted on January 11, 2022, for the expansion of the Sussex County Unified Sanitary Sewer District (Millville Area)
- The Engineering Department had received several requests from GMB, LLC on behalf of their client ASF MBTS, LLC, Inc. the owners/developers of a project to be known as Millville by the Sea.
- The requests include parcels 134-15.00-91.01, 134-15.00-16.00, 134-15.00-19.00 & 134-15.00-18.00.
- These (4) parcels will make up Villages A thru D and are proposed at (601) EDUS.
- The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates.
- The Engineering Department advertised the proposed annexation, posted on the county website and posted notices on February 3rd.
- To date we have had no correspondence either in support or opposition to the annexation.



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

RESOLUTION

A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) MILLVILLE AREA, TO INCLUDE THE MILLVILLE BY THE SEA, VILLAGES A – D, PROJECT LOCATED IN THE BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE.

WHEREAS, Sussex County has established the Sussex County Unified Sanitary Sewer Sanitary Sewer District (SCUSSD); and

WHEREAS, in the best interests of the present district and to enhance the general health and welfare of that portion of Sussex County in the vicinity of the Millville By The Sea, Villages A – D project, the inclusion of this area will be beneficial; and

WHEREAS, in accordance with 9 Del.C., Section 6502 (a), the Sussex County Council may, upon request of the County Engineer, revise the boundary of an established sewer district when 50 or more houses have been connected by posting a public notice in four public places in the district describing the new or revised boundary; and

WHEREAS, the Sussex County Council has caused to be posted a public notice in at least four public places in the district, as verified by the affidavit of Phillip Calio, a copy of which affidavit and public notice is attached hereto and made a part hereof; and

WHEREAS, in accordance with 9 Del.C., Section 6502 (b), the Sussex County Council shall, within ninety days after posting the public notices pass a formal resolution establishing the new boundary of the district;

NOW, THEREFORE,

BE IT RESOLVED the Sussex County Council hereby revises the boundary of the SCUSSD to encompass the lands mentioned above in the Millville By The Sea, Villages A – D project and further described as follows:

Beginning at a point, said point being on the SCUSSD boundary, said point also being on the southerly Right-of-Way (ROW) of Burton Farm Road, said point further being on the northerly property line of lands Now or Formerly (N/F) of ASF MBTS LLC; thence proceeding by and with said southerly ROW of Burton Farm Road in a northeasterly direction a distance of 638'± to a point, said point being the intersection of the southerly ROW of Burton Farm Road and the westerly ROW of Powell Farm Road; thence proceeding by and with said westerly ROW of Powell Farm Road in a southerly direction a distance of 2855'± to a point, said point being on the intersection of the westerly ROW of Powell Farm Road and the northwesterly ROW of Roxana Road; thence proceeding by and with said northwesterly ROW of Roxana Road in a southwesterly direction a distance of 841'± to a point, said point being on the Town of Millville Municipal Boundary; thence proceeding by and with said Millville boundary in a generally northwesterly, southwesterly, northwesterly direction a total distance of 4,339'± to a point, said point being the southerly ROW of Burton Farm Road; thence continuing with said Millville boundary in a northwesterly direction a distance of 50'± to a point, said point being on the northerly ROW of Burton Farm Road; thence continuing with said Millville boundary in a northwesterly, northeasterly, southwesterly direction a total distance of 1,931'± to a point, said point being on the northerly ROW of Burton Farm Road; thence continuing with said Millville boundary in a southwesterly direction a distance of 50'± to a point, said point being on the southerly ROW of Burton Farm Road; thence continuing with said Millville boundary in a southwesterly and generally northeasterly direction a total distance of 1,555'± to a point, said point being on the southerly ROW of Burton Farm Road; thence continuing with said Millville boundary and proceeding with said ROW in a northeasterly direction a distance of 360'± to a point, said point being that of the **BEGINNING**.

NOTE: The above description has been prepared using Sussex County Tax Map 134-15.00 and Sussex County property assessment records.

A map outlining and describing the extension of the SCUSSD is attached. The area involved is crosshatched.

BE IT FURTHER RESOLVED that the Sussex County Council directs the County Engineer and the Attorney for the County Council to procure the necessary lands and right-of-way by purchase, agreement, or condemnation in accordance with the existing statutes; and

BE IT FURTHER RESOLVED that the County Engineer is hereby authorized to prepare maps, plans, specifications, and estimates, let contracts for and supervise the construction and maintenance of, or enlarging and remodeling of, any and all structures required to provide for the safe disposal of sewage in the sanitary sewer district, as amended.

SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT
MILLVILLE BY THE SEA, VILLAGES A - D
AFFIDAVIT FOR PUBLIC NOTICE

STATE OF DELAWARE)(

COUNTY OF SUSSEX)(

BE IT REMEMBERED That the subscriber, PHILLIP C. CALIO, personally appeared before me and known to me personally to be such, who being by me duly sworn to law did depose and say as follows:

- A. On February 3, 2022 he was a Utility Planner for the Sussex County Engineering Department, Sussex County, State of Delaware; and
- B. On February 3, 2022 he did post the attached "Public Notice," prepared by the Sussex County Engineering Department, at the following locations:

1. On a post in front of a yield sign at the intersection of Blackwater Road and Powell Farm Road,
2. On a post in front of DEC Pole 20476 in the southeasterly ROW of Burton Farm Road,
3. On a post in front of a stop sign in the northeasterly ROW of Powell Farm Road at the intersection with Roxana Road (Rt. 17),
4. On a post in the northwesterly ROW of Roxana Road (Rt. 17) in front of DEC Pole 215501,
5. On a post in front of a stop sign in the easterly ROW of Substation Road at the intersection with Burbage Road,
6. On a post in front of a Pedestrian crossing sign in the westerly ROW of Substation Road at the intersection with Beaver Dam Road,
7. On a post in front of a stop sign in the northerly ROW of Beaver Dam Road at the intersection with Substation Road,
8. On a post in front of a stop sign in the southerly ROW of Beaver Dam Road at the intersection with Peppers Corner Road.


PHILLIP C. CALIO

SWORN TO AND SUBSCRIBED before me on this 4th day of Feb. A.D., 2022


NOTARY PUBLIC

SHARON E. SMITH
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires on 6/14/22

My Commission Expires

6/14/22

For more information please visit: <https://www.sussexcountyde.gov/legal-notice/sewer-water>
Or call Sussex County Utility Planning at 302-855-1299

PUBLIC NOTICE

PROPOSED MILLVILLE BY THE SEA VILLAGES A-D EXPANSION OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (MILLVILLE AREA)

NOTICE IS HEREBY GIVEN that the Sussex County Council voted on **January 11, 2022** to consider extending the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD), Millville Area, to include the Millville By The Sea Villages A-D subdivision on Burton Farm Road, Powell Farm Road and Roxana Road, being situate in Baltimore Hundred, Sussex County, Delaware.

This action is in conformity with 9 Del.C §6502.

A description of the area, which is contiguous to and to be added to the SCUSSD is described as follows:

Beginning at a point, said point being on the SCUSSD boundary, said point also being on the southerly Right-of-Way (ROW) of Burton Farm Road, said point further being on the northerly property line of lands Now or Formerly (N/F) of ASF MBTS LLC; thence proceeding by and with said southerly ROW of Burton Farm Road in a northeasterly direction a distance of 638'± to a point, said point being the intersection of the southerly ROW of Burton Farm Road and the westerly ROW of Powell Farm Road; thence proceeding by and with said westerly ROW of Powell Farm Road in a southerly direction a distance of 2855'± to a point, said point being on the intersection of the westerly ROW of Powell Farm Road and the northwesterly ROW of Roxana Road; thence proceeding by and with said northwesterly ROW of Roxana Road in a southwesterly direction a distance of 841'± to a point, said point being on the Town of Millville Municipal Boundary; thence proceeding by and with said Millville boundary in a generally northwesterly, southwesterly, northwesterly direction a total distance of 4,339'± to a point, said point being the southerly ROW of Burton Farm Road; thence continuing with said Millville boundary in a northwesterly direction a distance of 50'± to a point, said point being on the northerly ROW of Burton Farm Road; thence continuing with said Millville boundary in a northwesterly, northeasterly, southwesterly direction a total distance of 1,931'± to a point, said point being on the northerly ROW of Burton Farm Road; thence continuing with said Millville boundary in a southwesterly direction a distance of 50'± to a point, said point being on the southerly ROW of Burton Farm Road; thence continuing with said Millville boundary in a southwesterly and generally northeasterly direction a total distance of 1,555'± to a point, said point being on the southerly ROW of Burton Farm Road; thence continuing with said Millville boundary and proceeding with said ROW in a northeasterly direction a distance of 360'± to a point, said point being that of the **BEGINNING**.

NOTE: The above description has been prepared using Sussex County Tax Map 134-15.00 and Sussex County property assessment records. The annexation contains 148 acres more or less.

A map outlining and describing the extension of the SCUSSD is attached. The area involved is crosshatched.

The public hearing will be held on this issue at 10:30 a.m. on February 22, 2022 in the Sussex County Council Chambers, 2 The Circle, Georgetown, Delaware 19947. All interested persons, officials, residents, voters, taxpayers, property owners, or corporations in any way affected by this boundary extension are welcome to attend. There will be an opportunity for questions and answers. The Sussex County Council following the hearing, at one of their regularly scheduled meetings, will make the final decision on the boundary extension.

For further information, please call or write the Sussex County Engineering Department, 2 The Circle, Post Office Box 589, Georgetown, DE 19947 – (302) 855-8384.

Hans M. Medlarz, P.E.
County Engineer



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: February 16, 2022

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

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

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

The County Council held a public hearing on the Ordinance at its meeting of January 11, 2022. At the conclusion of the meeting, a motion was made, and adopted to suspend the Public Hearing and continue the Public Hearing at its meeting of February 22, 2022. It was clarified that the suspension of the public hearing would mean that the hearing would continue on at the future date and that, if someone had spoken at the meeting of January 11, 2022, they would not get the opportunity to speak again.

The press notices for the continuation of the Public Hearing on February 22, 2022 were run between January 20, 2022 and January 21, 2022.

Below are the approved minutes from the Planning & Zoning Commission meeting of November 4, 2021 and the approved minutes of the Planning & Zoning Commission meeting of December 16, 2021. The approved County Council meeting minutes of the meeting of January 11, 2022 can be found at the link below:

[Link to Sussex County Council Meeting Minutes of January 11, 2022](#)



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

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

Mr. Whitehouse advised the Commission that since the notice of the Ordinance, the Planning & Zoning Department has received a total of five written responses; that these responses were received after the circulation of the paperless packet and the responses have been printed and circulated to the Commission; that of those five responses, none are in opposition to the Ordinance; that all of the responses offer constructive comments on the content to the Ordinance and there is an additional public hearing scheduled before the Sussex County Council for December 7, 2021, at 1:30 pm.

The Commission found present were Mr. Vincent Robertson, Assistant County Attorney, to speak on behalf of the Ordinance to amend chapters of the Sussex County Code regarding drainage features, wetlands, water resources and buffers; that also present were Mr. Jamie Whitehouse, Sussex County Director of Planning Zoning, Mr. Todd Lawson, Sussex County Administrator, and Mr. Hans Medlarz, Sussex County Director of Engineering; that this started during 2018 Comprehensive Land Use Plan; that there are references all throughout the plan; that the reference make their way into the Ordinance, as a lot of the whereas clauses that are in the Ordinance; that there is a basis for that; that there was recognition of which the Sussex County Code needed updating; that there are undefined terms and some ambiguities which led to enforcement issues; that there are problems in that it places potential buffer requirements on properties that are currently used for agricultural purposes; that this was something that has never been enforced but has been stated in Sussex County Code; that what was in the Sussex County Code did not do anything to deal with the resources themselves, such as the rivers, streams and tidal bodies of water; that they chose that to be a goal moving forward; that the General Assembly as adopted Senate joint resolution 2; that this directs the Delaware Department of Natural Resources and Environmental Control to begin coordinating with federal agencies to carry out permitting authority for certain State non-tidal wetlands or create a statement on the non-tidal wetlands program; that this would be for the purpose of shifting permitting authority from the Federal level to the State; that the desire is to keep that control within Sussex County; that the new present Ordinance is 34 pages which amend parts of Chapter 99 and Chapter 115; that presented are two pages of whereas clauses, five pages of definitions which were required to be repeated for Chapter 99 and Chapter 115 and four pages of verbiage from the old Code which was deleted; that this Ordinance will not apply to undeveloped land; that this Ordinance is only triggered for residential land use permits; that this Ordinance will not apply to land that does not have a resource upon it; that there have been a lot of sensitive discussions to avoid the Ordinance becoming a back door to address density; that density should be addressed head on or not; that he requested to make it clear that to the fullest extent possible the Ordinance should be neutral in regards to density on a property as one goes to seek development on it; that it is not to say there may not be a swing of a lot or two, based on geometry and things of that nature; that there were multiple discussions within the working group to make sure everyone was comfortable with that; that they tried to avoid arbitrary lines drawn on a piece of paper; that to accomplish this there are methods of averaging the buffers; that the line will be drawn where it makes sense; that there are also incentives in the Ordinance; that this is an incentive to protect

things that are worthwhile rather than another arbitrary line on a piece of paper; that for example, if there is a forest which could be preserved versus an open area of land that has no environmental significance, the desire is for the forest to be preserved; that this is an opportunity, through the Ordinance, to provide a mechanism to maintain the resource; that there are a few ways to do this; that one way is to require easements to get to the resource; that there were several people within the working group pointed out from their own personal experience; that if you have an issue and some kind of resource, you know it requires action to be fixed, but often takes a lot of hassle to get to the resource, that one of things the Ordinance will provide is easements to provide access to the resources; that if there is a problem which is causing issues upstream, one will now be able to have access to the resource to address any issues; that currently when land use Applications are presented, buffers are addressed but often times not the resource itself; that the Ordinance frontloads the look at the resource; that this will allow reaction to anything that needs to be addressed; that this will allow these issues to be addressed at the time the land use Application comes through and during the time site work will be occurring; that it is a lot easier to fix an issue during these times than post development; that he presented the goals, objectives and strategies from the 2018 Comprehensive Land Use Plan that deal with or support the initiative of the current Ordinance; that this also gives rise to the whereas clauses within the Ordinance; that this was not something that was drummed up by staff; that this was derived directly from the 2018 Comprehensive Plan; that a working group was created approximately a year and a half ago; that he presented the names of the people within the working group; that the working group consisted of 13 members; that it is a wide range of people; that the working group contained people from Sussex Conservation District, The University of Delaware; Sussex County Engineering Department, as well as public representatives, environmental scientist, the Delaware Center for Inland Bays, land owners, farmers and Planning & Zoning staff; that there was a consultant, that acted as a facilitator, who also had an environmental background; that this helped everyone speak the right language and focus on what was relevant; that it was a very good working group; that there were a lot of different viewpoints; that there were a lot of conversations that occurred; that the working group participated in nine, three hour meetings; that these meetings took place between February 2019 to August 2019; that this was aside from subject matter presentations that were provided from members who were experts in the field; that the working group members did have homework assignments; that a lot of time and energy was spent constructing a draft Ordinance, which led to what was introduced; that the goal of the Ordinance was to provide recommendation to Sussex County Council for updating the buffer Ordinance as it applies to development projects; that this is what led to the origins of the working group based upon the Comprehensive Plan; that he presented the initiative details; that these are the goals, established by the working group, from the beginning; that General, Water Quality, Habitat and Flood Mitigation and Drainage initiatives were presented; that these four items make it into the definition of the buffer within the Ordinance; that these are the guiding principles; that there was a lot of conversation to construct the initiatives; that there are 13 sections of the Ordinance; that there is some repetition within the 13 sections, as things must be restated between Section 99 to 115; that the first section is the definitions; that the definitions currently within the Sussex Code were not all that great; that there were some terms that were not defined at all; that it took the group three to four meetings to come up with the definitions; that defined are femoral streams, intermittent streams, non-tidal wetlands, the ordinary high watermark delineation, perineal non-tidal rivers and streams, resource buffer, major subdivision and minor subdivision and tax ditches; that the group did not create a buffer from the tax ditch, but were required to define a tax

ditch to better explain how buffers do not necessarily apply to tax ditches; that these definitions are spelled out very clearly in terms that can be uniformly applied; that the second section is the general requirements and restrictions; that this section requires resources and resource buffers to be depicted on the preliminary and final plot plans for each major subdivision of land; that the third section is a technical one; that there currently is a preliminary conference requirement for all subdivisions; that it took out a reference to major and minor subdivisions; that this is now addressed in the definition of the terms of Section 99-4; that the fourth section deals with information to be shown; that currently Section 99-23 has a checklist of items that need to be shown on a preliminary site plan; that it does add the additional items that need to be added to the preliminary site plan regarding the resources and the resource buffers; that the Applicant will have to show the resources and the resource's buffers; that the boundary and type of any tidal and non-tidal wetlands must be shown; that all existing native forest and non-forest meadows must be shown with the future resource buffer; that this Ordinance seeks to maintain existing forests and meadows within the buffer area; that the desire is to avoid clear cutting of trees and meadows and then going back and planting things; that they desire to keep them in their natural state; that to use the calculations for buffer averaging or incentives a proposed access easement must be shown and a reference to the drainage assessment report; that the fifth section requires a resource and resource buffer management plan to be recorded as part of the subdivision; that this is currently a requirement; that the buffer management plan must be within the restrictive covenants as a method for providing for the perpetual maintenance of streets, roads, drainage, stormwater management facilities, open spaces and common areas; that the group is only adding to that requirement the maintenance and management of the buffers and the resources; that the sixth section is the same as section four; that this section recalls the checklist items for Preliminary Site Plans; that the sixth section stated the same checklist of items is required to be shown on the Final Site Plan; that the seventh section deals with construction plans which is currently within the Sussex County Code; that it states the public access easement needs to be shown on the construction plans; that the eighth section which is restatement of the same definitions stated in Chapter 99; that the group chose to put them in both places to stay consistent and avoid having to flip back and forth; that the ninth section is one the group picked up; that the Applicant would now have to comply with the buffer requirements which apply for all subdivisions; that this was to avoid any inconsistencies between the two places; that the tenth section establishes the heart of the Ordinance; that the group deleted what was currently within the Ordinance; that it was up to four pages of verbiage deleted; that it now jumps right into the requirements; that subsection A of the requirements addresses the resource buffer width, that the width must be established in accordance with Table I; that Zone A being the closest to the resource; that there was discussions among the working group about that the numbers should be; that as a result of the conversations, the group came up with tidal waters having a full buffer width of 100-ft. in Zone A; that there are two buffer zones – Zone A and Zone B; that Zone A is the area located the closest to the resource and beyond that is Zone B; that there are different things you can do within Zone B which is not permitted in Zone A in some situations; that for tidal waters it is a 100-ft. of total buffer width; that this is comprised of 50-ft. in both Zone A and Zone B; that tidal wetlands is also a 100-ft. of total buffer width, which is made up of 50-ft. in Zone A and 50-ft. in Zone B; that perennial non-tidal rivers and streams the total buffer width is 50-ft.; that this is broken down of 25-ft. in Zone A and 25-ft. in Zone B; that non-tidal wetlands and intermittent streams both have a total buffer width of 30-ft.; that this is broken down with 15-ft. in Zone A and 15-ft. in Zone B; that ephemeral streams are streams that do not exist very often but sometimes show up after a rain

event; that the group chose not to require a buffer from ephemeral streams; that Section B deals with resource buffer width averaging; that the group wanted to make it so there was some flexibility, in regard to the Zone B buffer; that Applicant's will be able to average that Zone B buffer within the boundaries of the development; that averaging is not available within Zone A; that the averaging cannot exceed double the width of what Zone B would be; that an Applicant could not have a large arm of Zone B located on one corner of the property and have no Zone B located everywhere else; that this allows for averaging but not manipulation of the averaging to create it to be practically non-existent; that Section 10C deals with the permitted activities for Zones A and B; that this was another section the group spent a lot of time on; that if it is not listed on the chart presented, it is therefore not permitted; that the chart spells out all the different types of uses that can be permitted within the buffer areas; that stormwater management water quality BPMs is permitted but had a limitation; that the chart is to make permitted uses within the buffer areas clear to everyone; that an Applicant cannot subdivide the buffers, unless it is a phase line; that this means there can be no lots located within Zone A and Zone B; that all lots have to be separate and outside of the buffer zones; that Section 10D addresses the buffer standards; that if an area is an existing forest or meadow, it is encouraged to maintain the existing forest or meadow, subject to selective cutting; that if the area is neither an existing forest or meadow, it is encouraged the Applicant establish it in either forest or meadow; that there are definitions for what a forest and non-forest meadow would be; that Section 10E defines the definition for Selective Cutting; that the group recognized the Applicant should be permitted to remove brush or forest understory; that selective cutting does not mean clear cutting; that it does not mean the use of heavy machinery to remove stumps and other things of that nature; that Section 10F is the maintenance of drainage conveyances; that this is the section that establishes easements; that this is the section that addresses taking action on any problems that may exist on the resource before development; that Section 10G addresses resource buffer options; that this is the section addressing incentives; that the group added this to deal with ways to protect other areas that may be offset within the buffers that are required by the rest of the section; that for example, if an Applicant is preserving the forest within the resource buffer, that has been in existence for at least five years prior to the date of the application; the Applicant can receive a corresponding area reduction in the resource buffer Zone B or the Applicant can receive a corresponding reduction in the perimeter landscape buffer; that the idea is, it is more important to preserve existing forest than it may be to preserve an area with no value or environmental importance; that there is also a credit to preserve offsite lands to perpetual conservation easements; that this would allow the Applicant to reduced Zone A and/or Zone B, depending on the credit in corresponding amount or percentage amount based on the land the Applicant is preserving offsite; that if an Applicant were to preserve land on the opposite side of a stream from where the property is located, creating buffers on both sides of the stream; with a conservation easement on the other side of the stream, the Applicant will receive a credit on the Applicant's side of the property; that the group looked at this as a positive for other land owners and farmers; that now value has been created where it did not previously exist on the adjacent property; that this will encourage the developer to go out and acquire a conservation easement on the property across the stream, which the Applicant can then use to their benefit within the subdivision; that the group does recognize they do need to make some minor textual changes to provide some clarity; that this would be brought back to the Commission in a recommendation should the Commission act favorably upon the Ordinance; that subsection H address resource and resource buffer management maintenance; that this is along the same lines discussed previously; that this encourages to get issues

fixed at the time the development is occurring; that this would be facilitated through the Planning & Zoning staff, as well as the Sussex County Engineering as they review the condition of the resources, what is shown on the plan and look at ways to improve the resources through the construction process on the site itself; that Section 10I addresses modifications and exceptions; that the current buffer ordinance has this; that the group wanted a safety valve on it; that if there were conditions which are special and unique to the property, not created by the actions of the Applicant; or the exceptions will not adversely affect the functions or the resource or the buffers, there should be the ability to grant some relief by the Planning & Zoning Commission; that one thing stated is if the Commission should grant that relief it should not be something, that could otherwise be resolved through buffer averaging; that the group provided that flexibility with the intension the Applicant use it; that it is discouraged the Applicant come back in requesting modifications, when there is design flexibility; that this does allow the Commission some leeway within certain guidelines to grant modifications to the buffer requirements; that Section 11 and Section 12 restates the Preliminary and Final Site Plan requirements; that the last section is the effective date and when the Ordinance was introduced by Sussex County Council; the Sussex County Council introduced the Ordinance with a six month lead time; that the Ordinance will not take effect until six months after the date of adoption and there is a map included in the presentation that offer examples of what the buffers would be and how they would work.

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

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

Mr. Medlarz stated that once the project is accepted the entire responsibility shifts to the future owner; that in regards to residential development would be an HOA Homeowners Association; that the enforcement of whatever the interpretation of the density is, would shift to that entity; that if there

were a major storm prior to the transition, the Sussex County Engineering Department would be making the requirement for the final acceptance of the plans and in the end, he would like it to be very clear, neither the Planning & Zoning Department nor the Sussex County Engineering Department is the enforcing agents after the project is complete.

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

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

Mr. Medlarz stated the buffers cannot be subdivided, which make the buffers, not private property; that this creates property owners to be taking the law into their own hands and would be subject to enforcement actions; that clear-cutting the buffers prior to development is not, not prohibited and the incentive options speak to that, trying to incentivize it to not happen.

The Commission found that Mr. Rich Borrasso provided comment on the Ordinance; that his interest and knowledge of the topic runs deep because of his heavy engagement in the Comprehensive Plan process, as well as being a participant in the Wetland Buffer Working Group; that the latter was a great experience in an open forum which allowed for the free expression of points of view, exchange of ideas and spirited dialogue; that subject matter experts brought their experiences; that it was a learning experience that enabled him to gain a broader perspective on what he considers to be one of the most critical conservation decisions in County history; that it has been over 30 years since current wetland buffers have been deliberated; that a lot has happened in Sussex County over the last three decades; that one of his biggest takeaways from the group was that updating buffer regulations is not a property rights issue, but one of, striking a balance between private and public need; that to better reinforce this point, he reads an abstract from The Public/Private Balance In Land Use Regulation by Stanford Professor Mark W. Cordes; Private land ownership in America has always involved a balance between private and public interest; that protection of private interest is necessary to encourage investments to improve property, essential to meeting critical needs, such as housing and providing for personal autonomy and privacy; that private property has long been limited by implied public interest; that investment expectations regarding future uses of undeveloped land should include the possibility of regulation to protect public interests; that much of the value in private property has been added by government “giving’s”; that it cannot be viewed as unfair when government regulations for important purposes diminish some of that value; that fairness concerns must be evaluated from a broader perspective of “reciprocity”; that this will recognize although a landowner might be adversely affected by some regulatory actions, the same person is often benefitted by other regulatory actions; that overall a general adjustment of benefits and burdens occur; that he is pleased to see Sussex County Council exercise its authority to regulate land use; that he is more grateful the actions are aligned to goals and objectives outlined in the Sussex County Comprehensive Plan; that the public wants to see Sussex County Council priorities guided by strategies laid out in the plan, that it is a good example; that the public expects better alignment in the amending of existing codes and introduction of new ordinances in the future; that this Ordinance seeks to, consider strategies for preserving environmental areas from development and the protection of wetlands and waterways; that it recognizes the Inland Bays, their tributaries and other waterbodies as valuable open space area of ecological importance; that it determines if amendments are needed which will better help protect groundwater, waterways, sensitive

habitat areas and other critical natural lands; that it calls for the protection of the natural functions and quality of Sussex County's surface waters, groundwaters, wetlands and floodplains; that it identifies an appropriate range of wetland buffer distances based upon location and context; that it balances the protection of land equity with the protection of the resources defined in the Ordinance and their associated functions; that it works to establish a framework under which future property owners and Owners Associations will maintain the resources, resource buffers, and properties adjacent to, the systems that they are a part of in the future to ensure the ongoing positive conveyance of drainage features; that the Ordinance promotes and protects the health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex County; that according to The State of Delaware 2018 Combined Watershed Assessment Report (305(b)) and Determination for the Clean Water Act, Section 303(d) List of Waters needing TMDLs and the Center for the Inland Bays research shows our area has lost about half of its original wetlands due to drainage, conversion to other land uses, and sea level rise; that Wetlands and their beneficial functions continue to be lost; that 1,434 acres of Sussex County's wetlands were lost between 1992 and 2007 and 1,147 acres of wetlands were lost between 2007 and 2019; that saltmarshes continue to disappear and have decreased around the Inland Bays from a total of 10,838 acres in 1938 to 7,300 acres in 2007; that this is a 32% decrease; that many of the wetlands that remain are in poor condition; that an example of this is the health of streamside wetlands and saltmarshes in the Inland Bays watershed have received a grade of D; that in a most recent DNREC assessment of water pollution found that 87% of streams, ponds and bay within Sussex County were polluted due to high bacteria levels, high levels of nutrients or low dissolved oxygen levels; that in the Inland Bays Watershed, all assessed waters were found to be polluted by excess nutrients, 50% by bacteria, and 11% had low dissolved oxygen; that while significant improvements to the water quality of the Inland Bays have been realized, measured pollutant loads from the watershed to the Bays have not decreased; that many of the tributaries of the Inland Bays have very high pollutant levels and very poor water quality; that flooding which decades ago usually happened only during a powerful or localized storm, now happen frequently; that Lewes recorded an average number of four flood days in 2000; that in 2017, there were 15 flood days recorded; that in 2030, between 15-30 high tide flood days are projected; that from 2008-2015 over 13,500 building permits were issued; that a significant portion of this development has been in areas at risk of flooding; that from 2010 to 2017, Sussex County had the third highest number of homes, which was 1,233 homes, built in a 10-year flood risk zone of any county in the United States; that sea levels have been rising off the coast of Delaware for more than a century; that they will continue to do so at about twice the global average; that this is because of a geological phenomenon known as "subsidence"; that this means the section of the earth's crust beneath the Mid-Atlantic states is sinking at a rate slightly greater than one inch per decade, or about one foot per century; that Delaware's coastal communities already experience several days of high-tide flooding annually; that the problem is forecasted to grow; that the National Oceanic and Atmospheric Administration (NOAA) predicts that Lewes could see upwards of 30 high-tide flooding days annually by 2030 and as many as 135 by 2050; that Sussex County roads and bridges have the highest risk of inundation due to the sea level rise in the state; that this is according to DNREC's Sea Level Rise Vulnerability Assessment; that Sea Level Rise directly affects travel on roadways as a result of flooding, inundation, erosion of road bases, removal of sediment around bridges abutments or piers and reduced bridge clearance; that in Sussex County approximately 357 miles of roads and bridges that lie in the path of sea level rise may be adversely impacted; that according to the 2016 State of Delaware Inland Bays, from 1992 to 2012 upland forest decreased by

14 square miles in the Inland Bays watershed; that the existing water resource and buffer regulations are inadequate and failing to protect groundwater, waterways, sensitive habitat area and other critical natural lands in Sussex County; that regarding the proposed Ordinance Amendment, SARG has read, understands and is in agreement with the Wetland Buffer Workgroup regarding definitions, resources subject to the Ordinance, buffer purpose, buffer widths, two-zone buffer approach, buffer activities permitted and restricted, buffer averaging, buffers and lot lines, and resource management requirements; that however there are provision in the proposed Ordinance amendments that were altered or added post workgroup recommendations; that there was either no or limited debate on these provisions except one off with Sussex County officials in recent months; that personally he spent three hours with two other colleagues earlier in the week; that he feels strongly that this alone does not constitute an implied workgroup recommendation; that there are most likely modifications to the Buffer Ordinance Introduction dated October 21, 2021 in front of the Commission currently; that he has no objection and he looks forward to the potential modifications; that it is unrealistic to expect the public to be able to review and consider on the day of the public hearing; that he requested a motion to keep the record open to allow for future public comment; that he feels selective cutting should be removed; that he references Line 705 D. regarding the Resource Buffer Standards; that in the January 9, 2020 Ordinance draft, it was defined as “Selective Clearing”; that this was defined as the removal or limbing of trees greater than two inches in diameter measure at breast height which does not change the areal extent of the forest boundary by concentrated removal of trees in one specific area; that based on the March 4, 2020 draft, which was shared with Sussex County Council, it is defined as “Selective Cutting” to be forest management activities; that includes the removal of trees less than three inches in diameter at breast height and the removal of understory vegetation less than three inches DBH and “Selective Cutting” shall not alter the canopy extent of the Resource by impacting an area more than 30 feet wide or one third the width of the Resource Buffer, which is less; that however in the proposed Ordinance Amendment it states “Selective Cutting” is defined as the removal or limbing of trees greater than three inches in diameter at breast height and no disruption of a contiguous forest canopy for a width greater than thirty feet; that it is apparent the “selective clearing” or “cutting” is a contradiction with the aforementioned overarching Buffer Standard; that it is vague and open for interpretation by developers; that more importantly the future caretakers of the Standards, that being the ability for HOA’s to govern their residents; that the most difficult to understand are the provisions in Section G.; that he does understand that any improvements to the resource water and wetland buffers are not intended to reduce density; that in the Agricultural Residential Zone up to two dwellings per acre is permitted today and will be with the proposed increases in the buffer widths outlined in the proposed amendment; that sometimes boundary irregularities present site plan design challenges; that for this reason there was a consensus from the work group to include the buffer averaging tool to provide flexibility to developers in unique situations; that some believe that the Buffer Averaging provisions more than sufficiently provide for flexibility; that there continues to be this desire for more flexibility; that depending on who you speak with “flexibility” to some is evading the proposed buffer width guidelines in order to respond to consumer demand for greater access and or proximity to the water resources; that also the belief some buffer options provide superior benefit via conservation and preservation easements in exchange for buffer reductions; that whichever the case each must scientifically demonstrate their ability to protect the resources and their associated functions; that they should do this by improving and protecting water quality via sediment filtration, reduce impact of nutrient loading on resources, moderate water

temperature and enhance infiltration and stabilization of channel banks; that provide wildlife habitat via nesting, breeding, and feeding opportunities provide sanctuary and refuge during high water events; protect critical water's edge habitat and protect rare, threatened and endangered species associated with each resource and its upland edge; that it should enhance and/or maintain the flood plain storage functionality via reduction 158 of flood conveyance velocities and dissipation of stormwater discharge; that each must demonstrate functional equivalency, both in terms of timing, protection, enforcement and ongoing maintenance and remediation; that at no time shall any incentives allow for the resource Buffer Zone A reductions and at no time reduce the buffer widths or permitted uses to less than the current Resource Buffer regulations; that specifically regarding G.1. which proffers "incentivizing the retention of forests", he believe this is a band aid on a much more critical wound in Sussex County; that he believes this issue goes way beyond forest preservation in resource buffer areas alone; that if the County is serious about addressing the vast decimation of forests and trees there must be a separate study with solutions that encompass tree conservation throughout all of Sussex County; that there are countless examples in neighboring jurisdictions where tree conservation is a priority; that it is working; that present is a distraction, especially when G.1 (a), (b), and (c) considers allowing the encroachment on the existing Forest and/or Landscape Buffers on the same property; that forest and/or landscape buffers intended purpose is to provide screening and open space between major subdivision; that allowing the reduction and/or elimination of the forest and/or landscape buffer has no relevance and provides no substitute or remedy for protecting the buffer resource; that this option must be removed; that regard H. Resource and Resource Buffer Maintenance and Management, he believes this is a long time in coming; that it will help to ensure that the resource buffers will continue to perform their intended purpose; that there needs to be a language included that any and all measure for access easement have minimal to no effect on disrupting the normal purpose and function of the buffers up to and including the width and number of access points; that he would like to make reference to Aesop's Fables of The Hare and the Tortoise, The Ant and the Grasshopper, The Fox and the Crow and most specifically The Goose that Laid the Golden Egg; that metaphorically the goose represents the world class water resources in Sussex County; that depending on your perspective the golden egg represents the benefits the public derives from their grandeur and indirect value derived from the ability for economic gain; that the golden egg is finite; that we are not creating more of these resources and we must work together to not kill the goose that laid the golden egg.

The Commission found that Dr. Edward Launay provided comment on the proposed Ordinance; that he is a professional wetland scientist and environmental consultant with Environmental Resources; that he was also a member of the Wetland Buffer Workgroup; that he supports the Ordinance as currently written, with one notable exception; that he has understanding and hope, that with a new section of the Ordinance, Section G. Resource Buffer Options, become more refined and better articulated as the Ordinance moves through the approval process; that he wishes to speak in the "Selective Clearing"; that Selective Clearing is the Resource Buffer Standards at Section 10.D2, Lines 705-707, which states that forest subject to the proposed Ordinance, all existing trees and understory shall be preserved and maintained in their natural state; that allowing Selective Cutting within a forested resource buffer does not constitute maintaining the resource buffer in a natural state; that as specified in the definition of Resource Buffers, which is Lines 145-159, resource buffers under the proposed ordinance are intended to provide resource protection, water quality protection, protection in conservation of wildlife habitats, and flood plain functions; that it is his personal and professional

opinion that the provision allowing for Selective Cutting within resource buffers severely diminishes the functional values of proposed resource buffers; that allowing the removal of an entire natural forest understory, including shrubs, trees smaller than 3-in. in diameter, compounding that adverse impact by allowing the intensive select removal of large caliber trees; that as written, the Selective Cutting definition allows for the potential removal of essentially every other large tree in a forest stand; that in his opinion it is nearly equal to essentially having no buffer at all; that this is his interpretation as to what it is meant under Selective Cutting; that he feels the Commission might find it of interest, that he was the person that suggested the use of those words; that as a group there were individuals with the ability to do things to manipulate within the buffers was an essential item to the exercise of constructing the buffer Ordinance; that the reasons given were it may be tough to enforce and there must be ways to get into and around the buffers; that he states these things have been addressed; that he is requesting all references to selective cutting be removed from the Ordinance; that this will keep forested resource buffers truly protected in their natural state; that many provisions are included in the Ordinance which already allow for a wide variety of activities within the resource buffer; that these include walking trails, gaining access to the water front, a variety of water related projects along the waterfront; that these projects include the removal of any invasive species, or individual trees that pose a safety hazard to public or private property; that these are all included on the list of activities permitted within the resource buffer; that there is no need for selective cutting; that including selective cutting within the document, the way it is currently written only serves to give the developer a blueprint for how to adversely impact and disturb the resource buffer prior to turning it over to a homeowners association; that he feels it is best to not say anything at all; that the County can decide where something happens or how forcefully they choose to control situations after the homeowners association owns the property; that in his experiences there will always be a homeowner that tries to encroach the buffer to make their backyard bigger, but most of the time, there are always other members of that HOA community which are quick to enforce the provisions; that he feels there is often times a good deal of self-enforcement; that he feels this is a good mechanism that we can rely on; that currently the document is acting as a blueprint for a developer to maximize his return while disturbing the buffer; that before the Buffer Workgroup was constructed, himself, Mr. Chris Bason and another environmental consultant were asked to make a presentation in front of Sussex County Council; that Mr. Bason presented a slide of a project on Whites Creek; that the slide presented a before slide with many mature pine trees and after slide with the majority of the mature pine trees removed; that several Commissioners questioned how that could happen; that he explained to Council the way the current buffer Ordinance is written and the way it has been enforced over the previous years, a person could pretty much do what they wanted and plant along the way; that is essentially what had happened in that situation on the slide; that currently that is what the Buffer Ordinance currently allows; that he believed the goal of the new Buffer Ordinance was to prevent situations like that from happening; that if the Ordinance should be approved with Selective Clearing the way it is currently written, developers will be back to doing the same thing again; that the Resource Buffer Options section is a more recently developed part of the proposed Ordinance; that it was largely composed after the involvement of the wetland workgroup; that over the past few weeks he has been able to review and discuss Section 10.G, Lines 782-859, with other members of the workgroup and County staff; that there are many questions about the intent, as well as how this section of the Ordinance would be applied have been answered in his mind; that many needed improvements to the text have been made in order to better define the intent; that improvements were being made up to

the date of the public hearing; that he does support the goals and intentions outlined in the Buffer Options section; that he appreciated the opportunity to better understand the options, while providing input on them; that he believes this section of the Ordinance will require some additional work as the Ordinance moves forward to County Council; that he plans to continue working the Sussex County staff on this part of the document; that there are topics such as developing suitable templates for future conservation easements to protect offsite resource buffers; that his is already currently proposed; that the future conservation easement document needs to be worked out and truly understood; that the document does not yet exist; that it is his personal and professional opinion that the Ordinance does offer adequate flexibility through buffer averaging and other measure to ensure flexibility and enhance design project it applies to without the Resource Buffer section; that after his most recent review of this section and consultations with the staff, he is in support of the Resource Buffer section; that as intended he believes it will offer a positive impact to the goals and resource protection and provide incentives for the retention of existing forest prior to future development; that the ongoing refinement of the section will undoubtedly need further effort; that if the proposed Buffer Ordinance did not move forward, he does believe there should be some incentive to ensure no clearing of the buffer from the moment they present an Application; that he makes the suggestion to construct a third Resource Buffer Table; that the table could reduce some of the buffer widths with the provision of demonstrating the future resource buffers on the project would not have been disturbed for five years advance of the project; that this would qualify the Applicant for buffer that are less than those proposed in Table A; that he would like the Commission to understand, often times, a tax ditch is a perennial stream; that currently buffers are required from tax ditches; that he believes Mr. Medlarz meant to say we are applying resource buffers, but are not being applied to the tax ditch buffer that applies to the tax ditch; that tax ditches already require a maintenance buffer; that often times the tax ditch buffer may be wider than the resource buffer; that his interpretation is if the resource buffer would be wider than the tax ditch buffer, the resource buffer would extend past the tax ditch buffer, within a Zone B, which allow certain activities, and extend beyond the tax ditch right-of-way; that saying we will not regulate a tax ditch is wrong; that he may be wrong in his interpretation; that there is no need to provide an easement to get into a tax ditch; that the easement already exists and is controlled by the State of Delaware; that anytime any maintenance is needed regarding tax ditches, an approval is required from DNREC and Army Corp of Engineers and if an Applicant receives the approvals, they would be exempt from the Buffer Ordinance.

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

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

The Commission found that Mr. Chris Bason, Executive Director for Delaware Center for the Inland Bays; that Mr. Bason presented a PowerPoint presentation to the Commission; that the presentation

discussed the importance of Wetlands and Buffers to Inland Bays Comprehensive Conservation & Management Plan, the relevant water quality and land use trends in the Inland Bays, over comparison of the proposed Ordinance to those of nearby jurisdictions and recommended amendments to the proposed Ordinance; that the first iteration of the Inland Bays Comprehensive Conservation & Management Plan was in 1995; that it was amended in 2012 and again in 2021; that it has seven signatories; that the County is one of the signatories; that the mission is to bring back the water quality to the Inland Bays by reducing nutrient pollution and restoring ecosystems, education and mediating flooding and adapting to climate change; that the buffer action is within the Inland Bays Management Plan; that the idea is to take the bays we currently have, which is a system dominated by algae due to excessive nutrients, and restore the system by reducing the nutrients; that this will allow sunrays to get to the bottom of the bay floor; that they have had success with wastewater and reducing the nutrients going into the bay; that they have had little success, over the past 30 years, controlling the nutrients coming off of the land; that they have seen no reduction in this source since the 1980's; that in the Little Assawoman Bay they have recently seen an increase in the nutrients, that we are backsliding on Delmarva and Sussex County in regards to water quality; that excessive algae growth often creates zero oxygen at night; that this leads to the death of our fish, shellfish and plant life; that this past year there were 15 fish kills recorded within the Inland Bays; that this is the largest recording of fish kills since 1985; that buffers are very important to water quality; that buffers can be the solution to these issues; that land use has changed dramatically of the last 25 years; that between 1992 -2017 we have had 30 sq. miles of development; that we have lost almost four square miles of wetlands; that we have lost 10 square miles of upland forest; that we have lost 22 sq. miles of agriculture; that there has been an 18% decrease in the upland forest cover from 1992-2017; that all forests are important to the watershed, but those closest to the resources are the most important; that we are also losing our saltmarshes; that we have lost over 3,600 acres of salt marsh since the 1930's; that the saltmarshes are now drowning due to sea level rise; that the only way to protect the marshes is to provide a buffer to the marshes to move into; that most development is taking place around the bays; that flooding is on the rise; that in 2020 there were eight High Tide Flood Days; that NOAA projects by 2030 there will be between 15-30 High Tide Flood Days; that we are building within flood prone areas; that from 2010-2017 Sussex County had the highest number of homes built within the 10-year flood risk zone of any ocean coastal county in the United States; that he presented a Wetland and Waterways Buffer Policy Comparison chart; that Sussex County's does not come close in many areas to what other jurisdictions are requiring; that achievements of the Ordinance includes the consensus points of the buffer workgroup on features, widths, activities, site design and flexibility with buffer averaging, the specific purposes of the buffer, requiring a Management Plan and including access through easements; that his recommendation for the Ordinance are the requirement for protecting and restoring the forest, restriction of selective cutting to small lengths of buffers on only tidal wetlands, waters and freshwater ponds, removal of the Resource Buffer Options section and clarification to Maintenance of Drainage Conveyance; that he would like to see existing forests being preserved from the time the Application is submitted; that forested buffers are more beneficial than grass buffers as they provide 36% more nitrogen; that a forest is an assemblage of different trees and different layers; that selective cutting currently does not have a defined purpose within the proposed Ordinance; that it does not seem to serve the purpose of the Ordinance over all; that he feels Selective Cutting is for the purpose of views capes; that these situations should be made specific within the Ordinance; that he recommends Selective Cutting should only be permitted for 20% of the buffer feature length; that this

should only apply to buffers on tidal waters, wetlands and freshwater ponds were views area commonly desired; that he believes flexibility for site design is addressed through buffer averaging; and options should not reduce the width of a buffer; that any options should not reduce the effectiveness of another part of the Ordinance with a separate purpose; that he feels incentives should be, if an Applicant increased the width of their buffer, maybe they would be granted a few additional lots and he feels there should be clarification on the definition of “positive conveyance.”

The Commission found that Mr. Preston Schell with Ocean Atlantic Companies spoke in favor to the Ordinance; that he stated he is heavily in favor of the Ordinance; that he feels it was a long time coming; that he was not part of the working group but is thankful for their hard work; that he feels the working group came to a lot of solutions that he had not even thought of; that he likes the idea over the averaging; that the options for developers are a great idea; that what he appreciates the most is the guidance it offers the Commission; that proposed Applications, especially for cluster subdivisions, it is a guessing game as to what level of buffer the Commission or County Council will be satisfied by; that sometimes developers will come in and do the minimum; that he has always tried to exceed the requirement; that sometimes in doing so, it seems like you give an inch and they take a mile type of situation; that he feels the proposed Ordinance is very detailed and outlined well; that it allows everyone to see the Ordinance in more black and white; that it allows all developers to be on the same playing field and will be treated equally; that he agrees with Mr. Basons previous comments and recommendations; that he does not agree with Mr. Launay in regards to the Selective Cutting and he does not feel the developers will be the issue; that the issue will be with the homeowners and stated anyone can see an example of this within Coastal Club at how well homeowners obey the fact that they are prohibited from clearing trees within the buffer.

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

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

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

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

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

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

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

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

1. The current language in our Code regarding wetland buffers needs to be updated. It has ambiguities and it has not been applied uniformly over the years. It also contains regulations for agricultural drainage ditches which the County needs to remove.
2. The 2018 Comprehensive Plan contains many Goals, Objectives, and Strategies calling for Code improvements that protect waterways and wetlands, which are recognized as valuable open space of ecological importance. These are spelled out in detail in several of the “Whereas” clauses of the Ordinance. This Ordinance follows the direction of our Comprehensive Plan and all of the thoughtful work that went into drafting and adopting that Plan.
3. The Ordinance follows the efforts of a diverse and dedicated “Working Group” that was convened over many months to establish the framework for amending Chapters 99 and 115 of the Code of Sussex County regarding resource protection, buffers, and the maintenance of waterways and drainage areas. This ordinance is the result of that effort along with input from County staff.
4. The ordinance clearly details what is permitted and what is not permitted within the buffer areas.
5. The ordinance provides flexibility instead of a more arbitrary “one line fits all” requirement. The flexibility includes buffer width averaging within a development. It also includes several incentives with the intent to preserve and protect the existing resources such as forested areas or both sides of a waterway when that is most beneficial.
6. There was a lot of very valuable public input through the hearing process. A majority of the information given to the Commission was in favor of this Ordinance, but with constructive suggestions for improving it. For instance, there appears to be a strong desire to eliminate “selective cutting” from the buffer areas, since that could be detrimental to several of the goals of having the buffer areas in the first place.
7. This Ordinance also strikes a proper balance between the protection of land values and the protection of the Resources defined in the Ordinance. For instance, this Ordinance protects these Resources in way that should result in better residential development plans without affecting the density of the residential development.

8. This Ordinance will promote and protect the health, safety, convenience, orderly growth, and welfare of the inhabitants of Sussex County.
9. The Ordinance can be improved with several changes based upon information provided in the public record and by staff, listed by Section and Line Numbers, as follows:
 - a. Section 1, Line 76 and Section 8, Lines 380 regarding the definition of “Ephemeral Streams”: After “A feature”, add “, excluding laterals draining agricultural fields,”. This will confirm that ephemeral streams do not include ag ditches within farmland.
 - b. Section 1, Line 87 and Section 8, Line 391 regarding the definition of “Intermittent Streams”: After “A well-defined channel”, add “, excluding laterals draining agricultural fields,”. This will confirm that intermittent streams do not include ag ditches within farmland.
 - c. Section 1, Line 118 and Section 8 Line 403 regarding the definition of “non-Tidal Wetlands”: After “adjacent Wetlands”, add “and ultimately downstream navigable waters”. This clarifies that Non-Tidal Wetlands do not include isolated wetlands.
 - d. Section 1, Line 184 and Section 8, Line 469: Delete “tidal datum” at the end of the definition of “Tidal Waters (Mean High Water Line)”.
 - e. Section 4, Line 279: Revise this line so that it now states “(2) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
 - f. Section 4, after §99-23T.(7) after Line 292, add a new subsection (8) as follows: “(8) Any walking trails, including the method of construction and the materials used to establish the trails.”
 - g. Section 6, Line 319: Revise this line so that it now states “(b) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
 - h. Section 6, after §99-26A.(21) after Line 334, add a new subsection (22) as follows: “(22) Any walking trails, including the method of construction and the materials used to establish the trails.”
 - i. Section 10, “Table 2: Resource Buffer Activities by Zone”, amend Item #17 regarding “Walking Trails” so that it now states, “Walking Trails where any impervious area runoff is managed under a Sussex Conservation District Permit.”
 - j. Section 10, Line 702, replace the word “native” with “natural” in the reference to forests.
 - k. Section 10, Line 707: Delete the sentence “‘Selective Cutting’ (Subsection E) activities may be implemented.”
 - l. Section 10, Line 725: Replace “Selective Cutting” with “Removal of Invasive Species” as the heading for Subsection E, and delete lines 727 through 733 regarding “Selective Cutting”. At line 735, re-number subsection (2) as subsection (1), and replace lines 735 through 737 as follows to permit the removal of invasive species: “Invasive species control shall be completed under the guidance and approval of a Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or Qualified Resource Buffer Professional.”
 - m. Section 10, Line 797, regarding incentives, insert the word “natural” before the word “forest”. At Line 799, after the word “achieved”, insert the words “by adding the area to Zone B,”.
 - n. Section 10, Line 804, regarding incentives, replace the word “widths” with “area”.
 - o. Section 10, Line 813 through 819 regarding incentives, replace the current language so that it is clarified and restated as follows:

“(a)(i) When the creation of an off-site Resource Buffer is protected under a perpetual conservation easement, then a 75 percent corresponding area reduction of the Resource Buffer Zones A and/or B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County, and it must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development.”

- p. Section 10, Line 821 through 827 regarding incentives, replace the current language so that it is clarified and restated as follows:

“(a)(ii) When the creation of an off-site Resource Buffer for forest preservation is protected under a perpetual conservation easement, then a 125 percent corresponding area reduction of the Resource Buffer Zones A and/or B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County, and it must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development.”

- q. Section 10, Line 832 regarding incentives, after “Sussex County” insert “prior to final acceptance of the first phase of the proposed development by the Sussex County Engineering Department”. At Line 835, after “Resource Buffer area”, insert “on that same resource”.

- r. Section 10, Line 838 through 844 regarding incentives, replace the current language so that it is clarified and restated as follows:

“(c)(i) When a proposed development has a pre-existing property boundary that is located in the center of an Intermittent or Perennial Stream and the entire Resource (including the off-site portion of it) including an off-site Resource Buffer Zone A is protected under a perpetual conservation easement, then a corresponding area reduction of the Resource Buffer Zones B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer Zone A and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County.”

- s. Section 10, Line 846 through 852 regarding incentives, replace the current language so that it is clarified and restated as follows:

“(ii) When a proposed development has a pre-existing property boundary that is located in the center of an Intermittent or Perennial Stream and the entire Resource (including the off-site portion of it) including an off-site Resource Buffer Zone A in the form of a natural forest is protected under a perpetual conservation easement, then a corresponding 125% area reduction of the Resource Buffer Zones B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer Zone A and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource

- Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County.”
- t. Section 11, Line 946: Revise this line so that it now states “(b) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
 - u. Section 11, after §115-220B(17)(g) after Line 959, add a new subsection (h) as follows: “(h) Any walking trails, including the method of construction and the materials used to establish the trails.”
 - v. Section 12, Line 974: Revise this line so that it now states “(b) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
 - w. Section 12, after §115-221B(19)(h) after Line 989, add a new subsection (g) as follows: “(g) Any walking trails, including the method of construction and the materials used to establish the trails.”

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

To Be Re-Introduced: 2/22/22

Council District 3: Mr. Schaeffer
Tax I.D. No. 335-8.00-37.00 (portion of)
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS

WHEREAS, on the 5th day of January 2022, a zoning application, denominated Change of Zone No. 1968 was filed on behalf of Henlopen Properties, LLC; and

WHEREAS, on the ____ day of ____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1968 be ____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation C-2 Medium Commercial District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the southeast side of Kings Highway (Rt. 9) approximately 0.11-mile northeast of the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 3.041 ac., more or less.

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

Council District: Mr. Schaeffer
Tax I.D. Nos: 335-8.00-37.00 (portion of)
911 Address: 1005 Kings Highway, Lewes, DE

ORDINANCE NO. ____

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

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

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

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the east side of Kings Highway (Rt. 9), approximately 0.36-miles northeast of the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267)

, being more particularly described in the attached legal description prepared by Davis Bowen & Friedel, Inc. said parcel containing 1.23 acres, more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: February 16, 2022

RE: County Council Report for C/U 2297 filed on behalf of Schell Brothers, Inc.

The Planning and Zoning Department received an application (C/U 2297 filed on behalf of Schell Brothers, Inc.) for a Conditional Use for parcel 334-12.00-127.02 for an amendment of conditions of approval for Conditional Use No. 2046 (Ordinance No. 2479) related to permitted hours of construction. The property is within the Medium Residential (MR) Zoning District and is located on the northeast side of Warrington Road (SCR 275), approximately 0.25 mile southeast of John J. Williams Hwy (Rt. 24). The parcel size is 36.61 acres +/-.

The application seeks to amend the permitted hours of construction for the Arbor Lynn development so that construction may commence at 7:00 am instead of 8:00 am from Monday through Saturday.

The Planning & Zoning Commission held a Public Hearing on the application on January 13, 2022. At the meeting of January 13, 2022, the Planning & Zoning Commission recommended approval of the application subject to reasons stated and subject to the recommended revised condition wording as outlined within the motion (copied below).

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

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

C/U 2297 Schell Brothers, Inc.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 2046 (ORDINANCE NO. 2479) RELATED TO PERMITTED HOURS OF CONSTRUCTION TO BE LOCATED ON A CERTAIN



PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 36.61 ACRES, MORE OR LESS. The property is lying on the northeast side of Warrington Road (S.C.R. 275) approximately 0.25 mile southeast of John J. Williams Highway (Rt. 24). 911 Address: N/A. Tax Parcel: 334-12.00-127.02

Mr. Whitehouse advised the Commission submitted into the record is a copy of Ordinance No. 2479 from C/U 2046 dated December 13, 2016, a copy of a letter from the Applicant, a copy of the DelDOT Service Level Evaluation Response, the staff analysis, zero comments in support or opposition and one mail return.

The Commission found that Mr. Jon Horner, Esq. spoke on behalf of the Applicant, Schell Brothers, Inc.; that he is the general counsel for Schell Brothers, Inc.; that the Application is a request to change the working hours in the community known as Arbor Lynn to be consistent with the other Schell Brother communities; that Arbor Lynn currently has an 8:00 am start time; that every other Schell Brother community has a 7:00 am start time; that they have found allowing the contractors to arrive at the site earlier has a positive impact on traffic, as well as the ability to construct the homes; that most people are up by 7:00 am and Arbor Lynn is a bit isolated from other residential communities which would have noise impacts from the proposed time.

Mr. Hopkins questioned if Saturdays were the day the Commission moved the start time back to 8:00 am; that he questioned why the Commission chose an 8:00 am start time and he stated 8:00 am is when school bus traffic becomes an issue.

Mr. Robertson mentioned the start time has been staying at 7:00 am on Saturdays but often has an earlier end time; that the 8:00 am start time may have been derived by what was previously proffered; that the original Application predated the Commission's current practice; that he believes the Commission's current practice may have originated from past Schell projects; that he suggests if the Condition were amended, it should be amended to also include the signage in English and Spanish and this will make it clear to all contractors coming to the site what the approved hours of construction are.

Ms. Stevenson questioned if the previous Application had a clear stop time; that she believed it may have been 5:00 pm; that she would like to see construction stop on Saturdays due to the number of people in the area during the summer.

Mr. Mears stated he felt it is better to get construction done earlier but allow hours on Saturdays than to by removing 52 workdays from the year.

Ms. Wingate stated by allowing Saturdays, it provides contractors to make up their pay from any missed hours due to inclement weather.

Mr. Horner stated he also believed the stop time to be at 5:00 pm; that he is not requesting any relief to the stop time and only requesting a start time at 7:00 am.

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

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

At the end of the public hearing, the Commission discussed the Application.

Mr. Robertson clarified the only requested change would be the change in the hours of operation from 8:00 am to 7:00 am and adding the language regarding the sign; that the 6:00 pm being the end of operation and Rt. 24 being the only point of construction access was listed in the prior Ordinance.

Mr. Mears moved that the Commission recommend approval of C/U 2297 for Schell Brothers, Inc. to amend the hours of operation for the development known as Arbor Lynn (C/U 2046 and Ordinance No. 2479) so that Condition K of that approval now states:

- K. “Construction, site work, grading and deliveries of construction material, landscaping material and fill on, off or to the property shall occur from Monday through Saturday, between the hours of 7:00 am and 6:00 pm, no Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign, in English and in Spanish, confirming these hours shall be prominently displayed at the entrance to the site during construction. Route 24 shall be the only point of construction access to the site.”

Motion by Mr. Mears, seconded by Mr. Hopkins and carried unanimously to recommend approval for C/U 2297 Schell Brothers, Inc. for the reasons and conditions stated in the motion. Motion carried 5-0.

JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
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jamie.whitehouse@sussexcountye.gov



Sussex County

DELAWARE
sussexcountye.gov

Memorandum

To: Sussex County Planning Commission Members
From: Christin Scott, Planner I
CC: Vince Robertson, Assistant County Attorney and Applicant
Date: January 6, 2022
RE: Staff Analysis for CU 2297 Schell Brothers, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2297 Schell Brothers, LLC to be reviewed during the January 13, 2021 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 334-12.00-127.02 to amend Conditional Use No. 2046 (Ordinance No. 2479, condition "K" relating to permitted hours of construction. The parcel is lying on the northeast side of Warrington Road (S.C.R. 275), approximately 0.25 mile southeast of John J. Williams Highway (Rt. 24). The parcel consists of 36.61 acres +/-.

The parcel has a previously approved Conditional Use Application. The parcel is subject to a Conditional Use Application (Conditional Use No. 2046) to allow for 202 multi-family units. The Conditional Use was approved by the Sussex County Council at their meeting of Tuesday, December 13, 2016 and the change was adopted through Ordinance No. 2479.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the parcel has a designation of "Coastal Area." The surrounding and adjacent properties located to the north, south, east and west of the subject property also lie within the "Coastal Area" Future Land Use Map designation as well as the "Commercial" Area.

As outlined within the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided that special environmental concerns are addressed. A range of housing types should be permitted in Coastal Areas, including single-family homes, townhomes, and multi-family units. Retail and office uses are appropriate, but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-use development should also be allowed.

The subject property is zoned Medium Residential (MR). The adjacent properties to the north, south, east, and west of the subject sites are also zoned Agricultural Residential (AR-1). One adjacent property to the west is zoned Institutional (I-1), while another parcel to the east is zoned High-Density Residential (HR-2).



Based on the analysis of the land use, surrounding zoning and uses, the Conditional use to amend Conditional Use No. 1920 (Ordinance No. 2240) to allow for office space, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

PLANNING & ZONING COMMISSION

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



Sussex County

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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: January 13th, 2022

Application: CU 2297 Schell Brothers, LLC

Applicant: Schell Brothers LLC
20184 Phillips Street
Rehoboth Beach, DE 19971

Owner: Arbor Lyn Rehoboth Beach, LLC
26412 Broadkill Road
Milton, DE 19968

Site Location: Lying on north side of Warrington Road (S.C.R. 275) approximately
.35 miles west of the 4-way intersection of Old Landing Road (S.C.R.
274), Strawberry Way, and Warrington Road.

Current Zoning: Medium Residential (MR-1) Zoning District

Proposed Zoning: Medium Residential (MR) Zoning District

Comprehensive Land
Use Plan Reference: Coastal Area

Councilmanic
District: Mr. Hudson

School District: Cape Henlopen School District

Fire District: Rehoboth Beach Fire Department

Sewer: Sussex County

Water: Tidewater Utilities

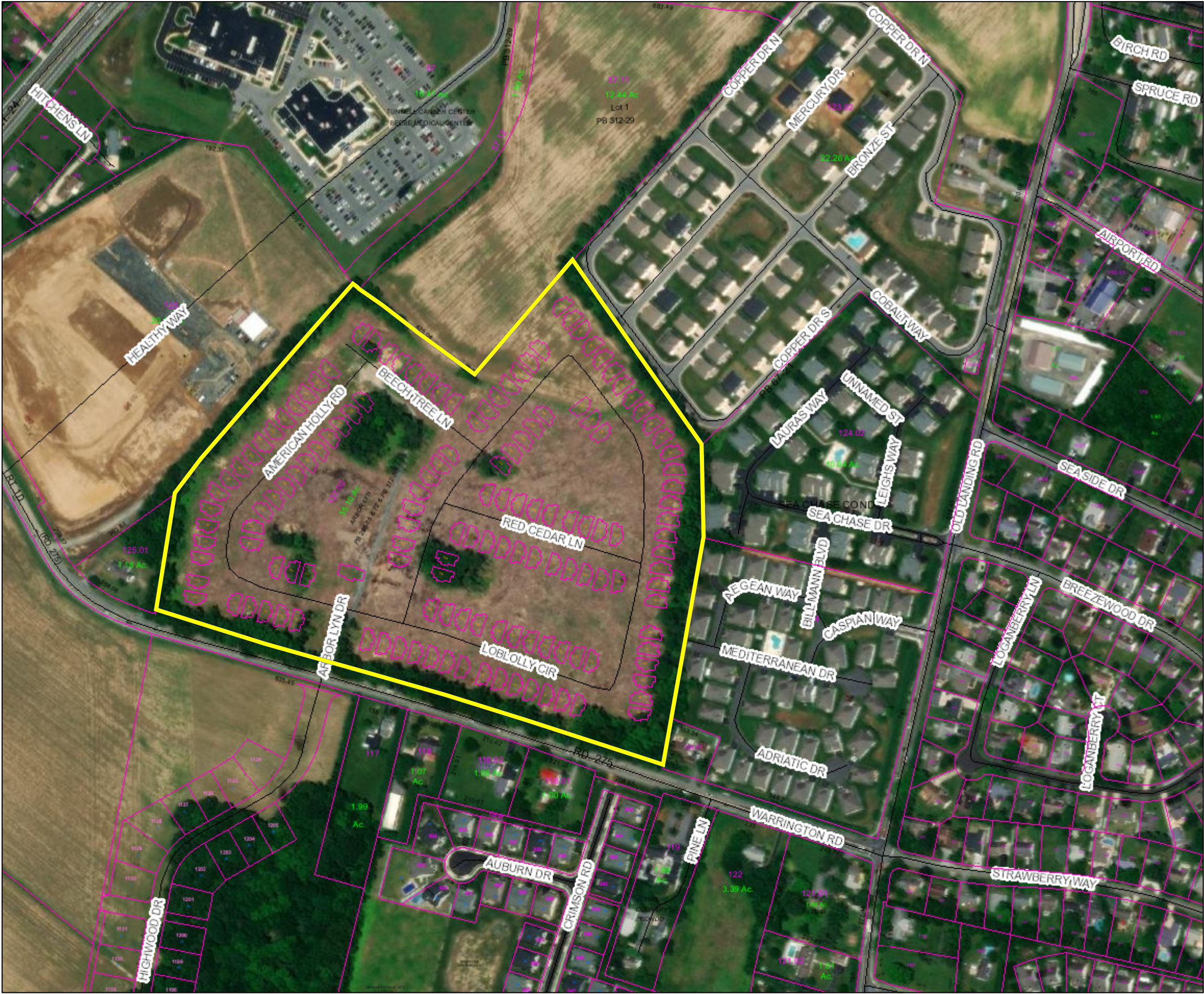
Site Area: 36.61 acres +/-

Tax Map ID.: 334-12.00-127.02





Sussex County



| | | |
|-----------------|----------------------|-----------|
| PIN: | 334-12.00-127.02 | |
| Owner Name | ARBOR REHOBOTH LLC | LYN BEACH |
| Book | 4812 | |
| Mailing Address | 26412 BROADKILL RD | |
| City | MILTON | |
| State | DE | |
| Description | ARBOR LYN REHOBOTH B | |
| Description 2 | LLC CONDOMINIUM | |
| Description 3 | N/A | |
| Land Code | | |

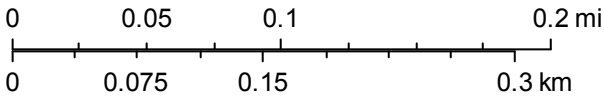
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Override 1
- Tax Parcels
- Streets
- County Boundaries
- Public Schools

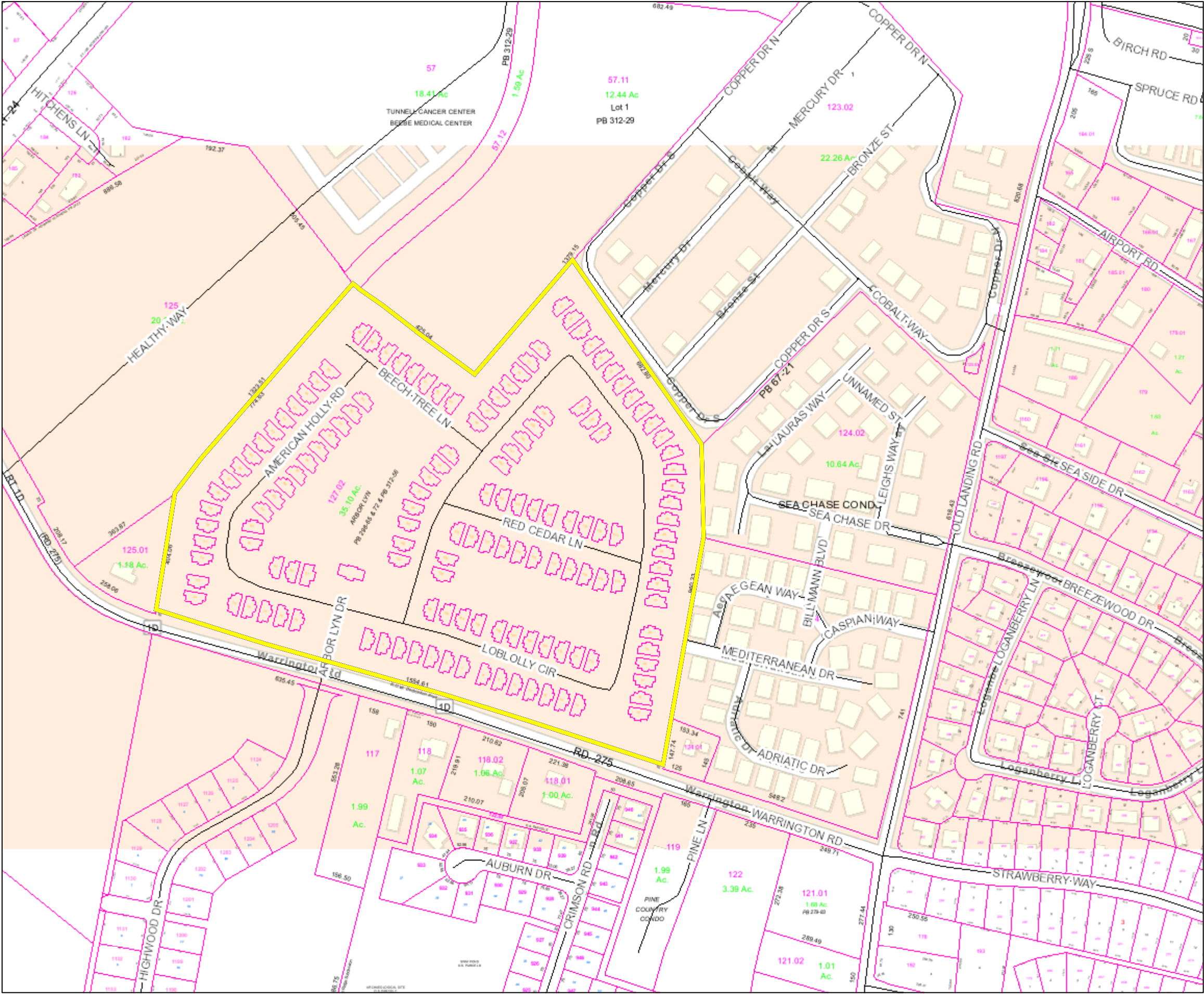
Adult
- Elementary School
- Early Childhood Center
- Elementary - High School
- Elementary - Middle School
- High School
- Intensive Learning Center
- Middle School
- Middle - High School
- Administrative
- DE Adolescent Program Inc. (DAPI)
- Centers
- Alternative Schools

1:4,514





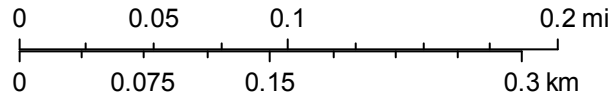
Sussex County

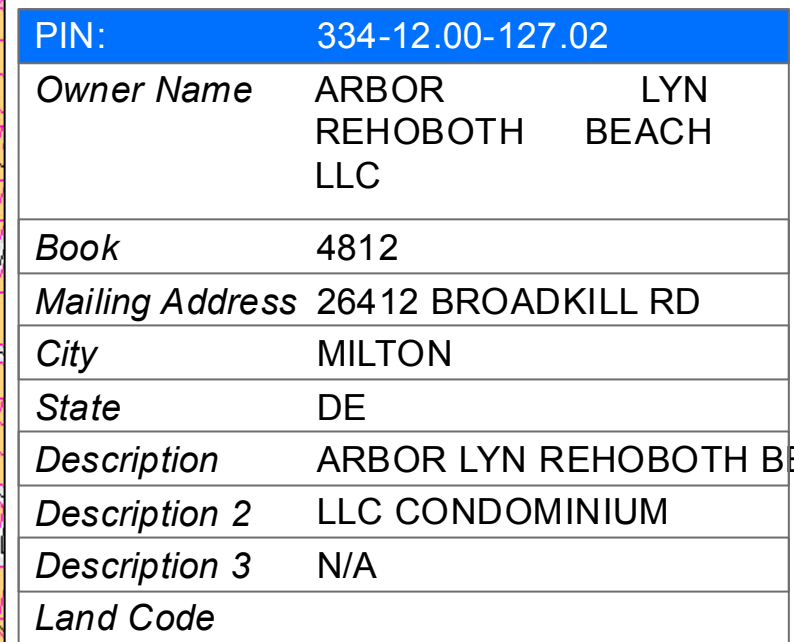


| | | |
|------------------------|----------------------|-----------|
| PIN: | 334-12.00-127.02 | |
| Owner Name | ARBOR REHOBOTH LLC | LYN BEACH |
| Book | 4812 | |
| Mailing Address | 26412 BROADKILL RD | |
| City | MILTON | |
| State | DE | |
| Description | ARBOR LYN REHOBOTH B | |
| Description 2 | LLC CONDOMINIUM | |
| Description 3 | N/A | |
| Land Code | | |

- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
 - Tax Parcels
 - Streets
 - County Boundaries
- Public Schools**
- Adult
 - Elementary School
 - Early Childhood Center
 - Elementary - High School
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 - Middle - High School
 - Administrative
 - DE Adolescent Program Inc. (DAPI)
 - Centers
 - Alternative Schools

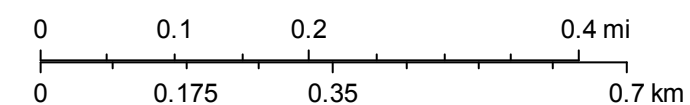
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polygonLayer Override 1
polygonLayer Override 1
⋮ Tax Parcels
— Streets

1:9,028



Introduced 08/24/21

**Council District 4 - Hudson
Tax I.D. No. 334-12.00-127.02
911 Address: None Available**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 2046 (ORDINANCE NO. 2479) RELATED TO PERMITTED HOURS OF CONSTRUCTION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 36.61 ACRES, MORE OR LESS

WHEREAS, on the 2nd day of July 2021, a conditional use application, denominated Conditional Use No. 2297 was filed on behalf of Schell Brothers, LLC; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2297 be _____; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County 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 V, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2297 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the northeast side of Warrington Road (S.C.R. 275), approximately 0.25 mile southeast of John J. Williams Highway (Route 24) and being more particularly described in the attached legal description prepared by The Malmberg Firm, LLC, said parcel containing 36.61 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.



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: February 16, 2022

RE: County Council Report for C/Z 1939 filed on behalf of Gerald R. & Valerie V. Campbell, Trustees

The Planning and Zoning Department received an application (C/Z 1939 filed on behalf of Gerald R. & Valerie V. Campbell Trustees) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a B-2 Business Community District. The property is located at 9155 & 9167 Campbell Lane, Bridgeville. The change of zone is for 3.16 acres, more or less.

The Planning and Zoning Commission held a public hearing on January 13, 2022. At the meeting of January 27, 2022, the Commission recommended approval of the application for the 9 reasons as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meeting of January 13, 2022 and the minutes of the Planning & Zoning Commission meeting of January 27, 2022.

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

C/Z 1939 Gerald R. & Valerie V. Campbell, Trustees

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 3.16 ACRES, MORE OR LESS. The property is lying on the west side of Sussex Highway (Route 13), approximately 0.81 mile south of Adams Road (S.C.R. 583). 911 Addresses: 9155 & 9167 Campbell Lane, Bridgeville. Tax Parcel: 530-17.00-2.01.



Mr. Whitehouse advised the Commission submitted into the record is a copy of the staff analysis, a copy of the Applicant's conceptual site plan, a copy of the DelDOT Service Level Evaluation Response, a copy of the Applicant's exhibits and Applicant's exhibit booklet and zero comments in support or opposition.

The Commission found that Mr. John Sergovic, Esq. spoke on behalf of the Application, C/Z 1939 Gerald R. & Valerie V. Campbell, Trustees; that also present is the Applicant's daughter, Ms. Pam Washington Hermann; that she grew up on the property; that the conditional use for a cabinetry shop was granted in 1973; that this business is currently still in use and has been for almost 49 years; that with Mr. Campbell's increasing age he would like to ensure if something should happen to him, the property could be used for general business use in the future, rather than limited to a cabinetry shop; that he did provide a written submission of compliance with the 2018 Comprehensive Plan; that the area is located within a low density area; that the Comprehensive Plan states that business within the area should be largely confined to addressing the needs of agricultural activities and homes; that cabinetry does address both needs; that since the property has served as a cabinetry shop for the last 48 years, it would appear this use has been in support of agricultural activities and homes; that if this were not true, the business would not have been able to operate in its existing location; that the current business use has not had any adverse effects to adjacent neighbors; that he did read the staff report; that the business operation has been low impact, and under the radar; that the neighborhood is made up of mixed uses; that there is the Applicant's cabinetry shop, All-Span, a large Delaware Electric Coop facility, and there used to be a realtor office nearby as well; that there are one to two other commercial uses in the nearby area and the request is to bring update the zoning map to conform the business use of the property.

The Commission found that Ms. Pam Washington Hermann spoke on behalf of the Application; that the property is currently operated as a custom cabinet shop; that there are three showrooms on the site; that this allows customers to come in to see in person the different cabinet styles and finishes; that customers work with designers to choose cabinets; that the designer designs the cabinets to fit exactly to the specifications of the customers' kitchen; that her father has been a cabinet maker his whole life and he is very good at his profession; that the cabinets are manufactured onsite; that the raw materials are delivered; that the cabinets are constructed by hand; that they service most of Delaware and southern Maryland for her father's whole life; that there are currently four full-time employees and one part-time employee; that her father is consulting in addition to the employees.

Mr. Hopkins states he feels the request is good housekeeping; that it is a reasonable request and within 600-ft. of a main highway should be considered business or commercial almost by default.

Mr. Mears stated he agreed with Mr. Hopkins, and he stated he has seen the company's cabinetry work, which is excellent.

Chairman Wheatley stated he is very familiar with the cabinetry use, and he agrees with both Mr. Hopkins and Mr. Mears.

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

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

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

In relation to Application C/Z 1939 Gerald R. & Valerie V. Campbell, Trustees. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

Minutes of the January 27, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since January 13, 2022.

Mr. Hopkins moved that the Commission recommend approval of C/Z 1939 Gerald R. and Valerie V. Campbell Trustees for a Change in Zone from AR-1 to B-2 “Business Community” based upon the record made during the public hearing and for the following reasons:

1. B-2 Business Community Zoning is designed to allow office, retail shopping, and personal service uses that serve a relatively small area, including low density and medium density neighborhoods.
2. The site has been used as a cabinet shop for decades. Although not discussed in detail during the public hearing, this use may have been in existence long enough for the property to be considered legally non-conforming. Rezoning the property to B-2 is appropriate so that the zoning classification matches the historical use of the property.
3. This property is near other properties that are zoned C-1, which allows more intensive uses than what is permitted within the B-2 zoning sought by the Applicants. The property is also relatively near the boundary of the Town of Greenwood and the business and commercial uses that exist there. B-2 Zoning is appropriate in this location under these circumstances.
4. This location is along Route 13, which is a major arterial roadway in Sussex County. B-2 zoning is appropriate along this section of Route 13 near Greenwood in the vicinity of other Commercial Zoning.
5. The rezoning will not adversely affect area roadways or traffic.
6. The rezoning will also not adversely affect nearby properties or property values.
7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
8. No parties appeared in opposition to the application.
9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Hopkins, seconded by Mr. Mears, and carried unanimously to recommend approval of C/U 1939 Gerald R. & Valerie V. Campbell, Trustees for the reasons and conditions stated in the Motion. Motion carried 4-0.

PLANNING & ZONING COMMISSION

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



Sussex County

DELAWARE
sussexcountyde.gov
302-855-7878 T
302-854-5079 F
JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: January 13th, 2022

Application: CZ 1939 Gerald R. & Valerie V. Campbell, Trustees

Applicant: Gerald R. & Valerie V. Campbell
P.O. Box 2
Greenwood, DE 19950

Owner: Gerald R. & Valerie V. Campbell
P.O. Box 2
Greenwood, DE 19950

Site Location: 9155 & 9167 Sussex Highway (Route 13).

Current Zoning: Agricultural Residential (AR-1) Zoning District

Proposed Zoning: Business Community (B-2) Zoning District

Comprehensive Land
Use Plan Reference: Low Density

Councilmanic
District: Ms. Green

School District: Indian River School District

Fire District: Georgetown Fire Department

Sewer: Private (On-Site Septic)

Water: Private (On-Site Well)

Site Area: 3.16 acres +/-

Tax Map ID.: 530-17.00-2.01



JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
(302) 854-5079 F
jamie.whitehouse@sussexcountye.gov



Sussex County

DELAWARE
sussexcountye.gov

Memorandum

To: Sussex County Planning Commission Members
From: Chase Phillips, Planner II. Primary Contact - Lauren DeVore, Planner III
CC: Vince Robertson, Assistant County Attorney
Date: January 7th, 2022
RE: Staff Analysis for CZ 1939 Gerald and Valerie Campbell

This memo provides background and an analysis for the Planning Commission to consider as a part of Change of Zone No. 1939 which has been filed on behalf of applicants Gerald R. and Valerie Campbell. This analysis has been completed for the January 13th, 2022 Planning and Zoning Commission meeting, and it should be included in the record. This analysis is subject to comments and information that may be presented during the public hearing.

The request is for Tax Parcel 530-17.00-2.01 to allow for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Business Community (B-2) Zoning District. The property is on the west side of Sussex Highway (Rt. 13), approximately 0.81 of a mile south of Adams Road (S.C.R. 583). The entire parcel is proposed to be rezoned, and the area of this property is 3.16 acres +/-.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) includes a Future Land Use Map that helps determine how land uses should change over time. The Future Land Use Map in the plan indicates that the subject property has a land use designation of "Low Density." The properties to the north, south, east, and west also have the land use designation of "Low Density."

As outlined in the 2018 Sussex County Comprehensive Plan, land designated as Low Density is most suited to accommodate low density, single family housing and to support various agricultural uses. The Comprehensive Plan states that land uses in Low Density areas should either maintain or improve the rural landscape as well as retain open space.

Zoning

The parcel is currently within the Agricultural Residential (AR-1) Zoning District. Each parcel to the north, south, east and west is also within the AR-1 Zoning District.

The 2018 Sussex County Comprehensive Plan organizes zoning districts by their applicability to each Future Land Use category through Table 4.5-2. This table establishes that the Business Community (B-2) Zoning District is an applicable zoning district in the Low Density Area.



Existing Conditional Use and Historical Zoning Map Amendments

This parcel of land received a Conditional Use for a cabinet shop by the Sussex County Council on April 3rd, 1973. This is Conditional Use No. 115. Despite its relatively significant age, staff have no information to suggest that the Conditional Use has ceased or lapsed. Additionally, there is no record of zoning violations associated with the Conditional Use. Lastly, there have been no zoning map amendments within a one-mile radius in the past 10 years.

Transportation

The Delaware Department of Transportation (DelDOT) has completed a Service Level Evaluation Response (SLER) for this proposal. SLERs provide DelDOT with the opportunity to analyze the ways in which traffic may change given a potential change in zoning districts. SLERs, in general, also determine if a Traffic Impact Study (TIS) is required. The SLER for this application was completed on January 21st, 2021 and is attached in the published packet.

Based on the analysis provided, a change from an Agricultural Residential (AR-1) Zoning District to a Business Community (B-2) Zoning District could be considered as consistent with the surrounding land uses and zoning.



Sussex County



| | |
|-----------------|-------------------------------|
| PIN: | 530-17.00-2.01 |
| Owner Name | CAMPBELL GERALD R & VALERIE V |
| Book | 3707 |
| Mailing Address | PO BOX 2 |
| City | GREENWOOD |
| State | DE |
| Description | W/RT 13 |
| Description 2 | 4300'S/RT 583 |
| Description 3 | N/A |
| Land Code | |

polygonLayer

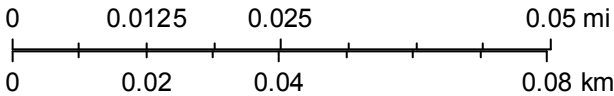
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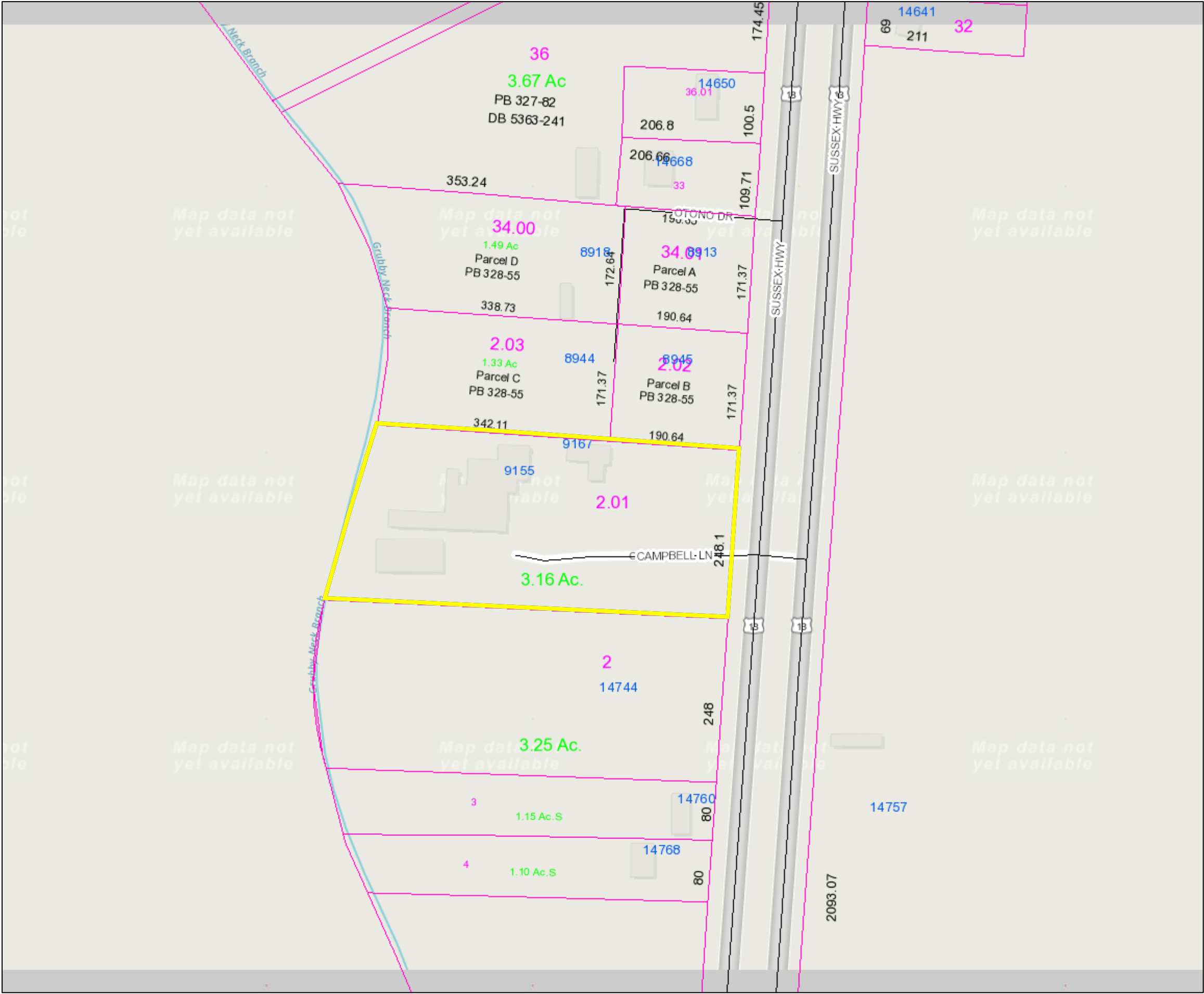
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- 911 Address
- Streets
- County Boundaries

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Sussex County

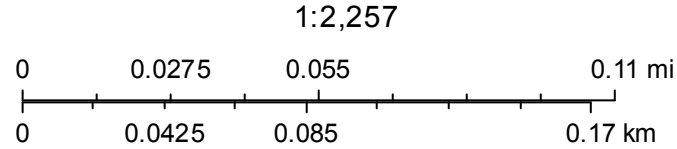


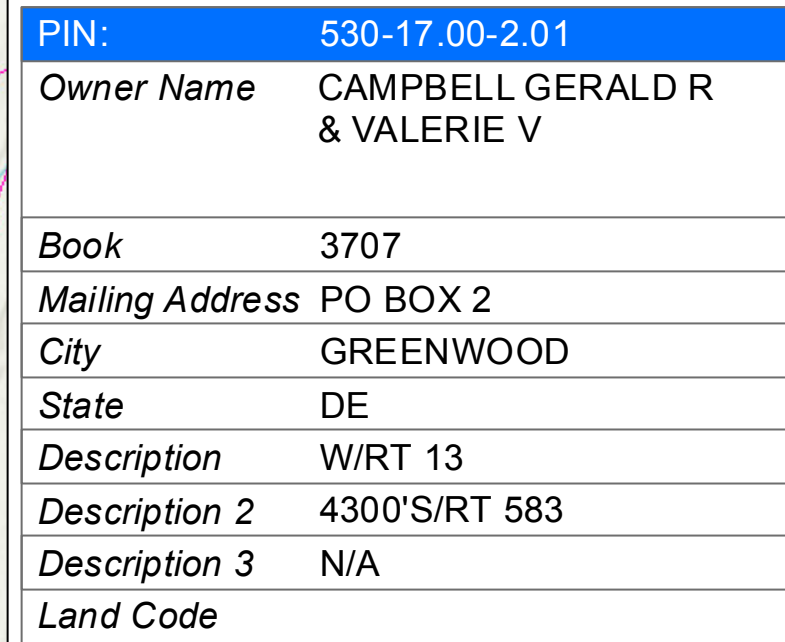
| | |
|-----------------|-------------------------------|
| PIN: | 530-17.00-2.01 |
| Owner Name | CAMPBELL GERALD R & VALERIE V |
| Book | 3707 |
| Mailing Address | PO BOX 2 |
| City | GREENWOOD |
| State | DE |
| Description | W/RT 13 |
| Description 2 | 4300'S/RT 583 |
| Description 3 | N/A |
| Land Code | |

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- polygonLayer

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- Tax Parcels
- 911 Address
- Streets
- County Boundaries





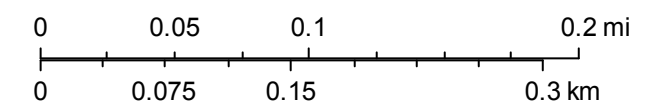
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■ ■ ■ Tax Parcels

— Streets

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ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RECEPTION USE, I.E. WEDDINGS, BIRTHDAYS, RETIREMENTS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 6.59 ACRES, MORE OR LESS (Tax Map I.D. 2-32-10.00-8.02)

WHEREAS, on the 29th day of May 2012, a conditional use application, denominated Conditional Use No. 1939 was filed on behalf of Jacqueline Tyson - Hope; and

WHEREAS, on the ____ day of _____ 2012, 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. 1939 be _____; and

WHEREAS, on the ____ day of _____ 2012, 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. 1939 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Broad Creek Hundred, Sussex County, Delaware, and lying south of Bailey's Landing Drive, 0.6 mile west of Road 487A (Beagle Club Road) and being more particularly described in Deed Book 3945, Page 201, in the Office of the Recorder of Deeds in and for Sussex County, said parcel containing 6.59 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.



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: February 16, 2022

RE: County Council Report for C/Z 1960 filed on behalf of OA Oaks, LLC

The Planning and Zoning Department received an application (C/Z 1939 filed on behalf of OA Oaks, LLC) to amend the Comprehensive Zoning Map of Sussex County from a HR-1/RPC High Density Residential District – Residential Planned Community to a HR-1/RPC High Density Residential District - Residential Planned Community to amend Conditions of Approval of Change of Zone No. 1858 (Ordinance No. 2621) relating to the workforce housing requirements, internal road standards and amenities deadlines. The property is located on the northeast side of Zion Church Road (Rt. 20) approximately 0.27 mile northwest of Bayard Road (S.C.R. 384). The change of zone is for 14.84 acres, more or less.

The Planning and Zoning Commission held a public hearing on January 13, 2022. At the meeting of February 10, 2022, the Commission recommended approval of the application for the 7 reasons and subject to the recommended revised condition wording as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meeting of January 13, 2022 and the draft minutes of the Planning & Zoning Commission meeting of February 10, 2022.

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

C/Z 1960 OA Oaks, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY TO AMEND



CONDITIONS OF APPROVAL OF CHANGE OF ZONE NO. 1858 (ORDINANCE NO. 2621) RELATING TO THE WORKFORCE HOUSING REQUIREMENTS, INTERNAL ROAD STANDARDS AND AMENITIES DEADLINES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.8455 ACRES, MORE OR LESS. The property is lying on the northeast side of Zion Church Road (Rt. 20) approximately 0.27 mile northwest of Bayard Road (S.C.R. 384). 911 Address: N/A. Tax Parcel: 533-11.00-82.00

Mr. Whitehouse advised the Commission submitted into the record is a copy of Ordinance 2621 for C/Z 1858 from December 11, 2018, a copy of a letter received from the Applicant, a copy of the staff analysis and Department of Staff memo, DelDOT Service Level Evaluation Response, a copy of the Applicant exhibits including suggested revisions to the Conditions, which include proposed clean copy to the Conditions of Approval, zero comments in support and opposition.

The Commission found that Mr. Jim Fuqua, Esq. spoke on behalf of the Applicant, C/Z 1960 OA Oaks, LLC; that also present was Mr. Preston Schell; that the Application requests amending certain Conditions of Approval to C/Z 1858; that the original Application requested a change of zone to HR-1 RPC High Density Residential, Residential Planned Community for a 14.8-acre parcel located on the northeast side of Zion Church Rd.; that the proposed used was for 178 unit rental apartment development; that 36 of the apartment sites having income qualifications in order to create a workforce housing opportunity; that the workforce housing opportunity is geared for the moderate to lower income residences within Sussex County; that the need for workforce housing within Sussex County was documented in and designated as a goal within Sussex County's Comprehensive Plan; that in 2008 the County enacted an Ordinance called Sussex County Rental Program to encourage development of affordable rental housing; that unfortunately as of 2018, when the original Application was filed there had been no rental projects proposed under the terms of the Ordinance; that this was due to the requirements of the Ordinance; that it did not seem to working in attracting anyone to make a proposal; that in 2018 the Applicant proposed the Ashton Oaks development; that it is a market rate development but would have the workforce housing component to it; that the Applicant proposed Conditions for the workforce qualifications which were based on the County's requirements, but were different; that they were modified from the County's requirements to allow it to be more economically feasible for the project to work; that the original Application was approved by County Council in December 2018; that it was approved subject to Conditions A through Condition S; that the Applicant is currently requesting to modify Condition B, G and I; that Condition B addressed the operation and tenant qualifications, regarding income, for the 36 workforce housing units; that the current request is not a land use request the Commission typically handles; that the request is more of an economic and housing formula; that Mr. Schell will explain the need and reasoning for the change request; that Condition G addressed the development, streets and parking area; that what is currently being requested is a clarification of the requirements; that Condition I addresses the time for completion of the recreational amenities; that typically on subdivisions, the amenities are tied to a building permit; that in this Application's case, it is an apartment building complex which calls for a different type of construction than building individual homes and none of the Conditions in any way are intended, nor do they interfere with the goal of providing 36 workforce housing units as part of the development complex.

The Commission found Mr. Preston Schell spoke on behalf of the Application; that he has previously submitted a letter for the record; that he feels some people might say nothing was changed to Condition B; that the previous errors were made by the Applicant; that the previous language came from the Applicant and they are attempting to create their mistakes; that they are attempting to lease 36-units, at set prices, to households making 70% area median income (AMI); that they are still proposing this; that the problem lies within the original language provided by the Applicant, which allowed the rent to be a moving target; that they have since spoken with their affordable housing professionals; that the professionals stated the original language proposes something which would be impossible to manage; that with the original wording, it targets people at a certain rent level; that as soon as the tenants make more than 70% of AMI the lease can no longer be renewed; that this would create tons of turnover within the affordable units; that it is structured similar to the County's new rental program; that the first requested change to Condition B, they took a provision of the 30 year restriction, which was in B1 called "Restricted Units" and is now called "Rent" and moved it up; that it is still 30 years; that it still remains at 36 units; that the rent will now be set; that this allows it to be an identifiable rent; that it will change as AMI changes with the County; that all three bedroom units restricted within the project will have the same rent; that all two bedroom units restricted within the project will have the same rent; that the rent will be set according to United States Department of Housing and Urban Development (HUD) standards for households in Sussex County making 70% of AMI; that the biggest change made is they no longer have to deny the renewal of a lease as soon as they make above 70% AMI; that if you look at the eligible income level within the County's new proposed program it goes from 50% to 100% of AMI; that when they spoke with some of the affordable housing professionals in the County, they stated they are not required to go to 100%; that it was recommended to go to 80%; that there are plenty of households which would qualify; that there is plenty of need in the County; that if a household comes into the project making 68% AMI, their rent is set assuming they make 70% AMI; that if the household were to do better, making 71% AMI, the lease will still be able to be renewed; that tenants are required to reapply every year; that once tenants make 81% AMI the lease would no longer be renewed; that inclusive housing is where market rate units are located next to subsidized units; that if the lease was not able to be renewed, what typically happens is the tenant gets moved to a market rate unit; that the tenant isn't required to move at all; that the unit they live in then becomes a market rate unit, requiring the next available unit to be an affordable unit; that the problem was caused by the Applicant's relative ignorance, due to having never done this before; that the Applicant is requesting to fix the problem before having a built project; that after speaking with members of the Delaware Housing Coalition and Milford Housing Corporation it was mentioned the higher demand will be for the three bedroom affordable units, rather than the one and two bedroom units; that they have requested to allow a change to Section 5, Unit Integration, allowing more three affordable bedroom units; that it would only allow one to two extra three affordable bedroom units; that within Condition G of the original Ordinance, they would be required to place a sidewalk to the far side of the road, which most likely no one would use; that also the buildings in the back, which back up to the wetlands, a sidewalk would be required right next to the multimodal path; that they spoke to Mr. Hanz Medlarz, Sussex County Engineer, who agreed it made no sense; that Mr. Medlarz did suggest there be more interconnectivity between the sidewalks and trails proposed; that the change to Condition G came directly from Mr. Hanz Medlarz; that the amenities take about six months to build; that when constructing the buildings, they try to get their contractors to get as much done before leaving the site; that once contractors leave the site, it is difficult to get them back; that once a contractor is done the first building, they have them move on to the second building; that apartment complexes, unlike condos, are built all at

once; that buildings are not built, then wait for the building to sell, before moving on to building the next; that with apartment complexes the goal is to construct the building as fast as possible; that they try to shoot for four weeks, but realistically it is closer to six weeks between building starts; that the issue is, if they begin the first building and the amenities at the same time, they will begin the second building six weeks later, building three at 12 weeks and building four at 18 weeks; that the issue is the buildings could be built in four and a half months, but the amenities will not be completed; that they will not be allowed to pull building permits for building four because the amenities will not be completed; that when projects are stalled, the chances of losing subcontractors increase; that to avoid this happening the Applicant request the building permit be tied to building six; that the Applicant is not going to not build a 24 to 32 unit building in order to slow play the amenities; that the Applicant would still be invested in completing the amenities as soon as possible; that with what is requested the project would still be tied to a permit and will accommodate the Applicant's timeline of construction.

Ms. Stevenson questioned if it was typical for the Applicant to begin construction of buildings at the same time as the amenities.

Mr. Schell stated it is typical they build both at the same time, as they use the building as their leasing office; that leasing is a lot easier to have a physical leasing office where people can come to get a feel for interior and things, than it is out of a trailer or offsite; that occasionally they have began amenities three to six months after the start of the first building; that they do not intend to do that for the proposed project; that the back up at the commercial permitting office is far greater than the timeline it takes to get a residential building permit; that they have submitted their commercial building permit, and at times have had to wait three months to receive permits from the County on the clubhouses; that at times this has caused a delay to the start of the clubhouses; that this issue is anticipated with Ashton Oaks; that when they are ready to submit the final site plan to the Commission, they will also be ready to submit to the County for the commercial building permit, for the amenities and the clubhouse and they are attempting to get ahead of it as much as they can.

Mr. Robertson mentioned this proposed project is a different project being a rental versus a subdivision; that the Condition was placed on amenities for a subdivision, just as subdivisions are bonded, avoiding third-party people who purchase a lot, waiting on amenities which never come; that in the proposed Application the developer owns everything; that it would be in the developers best interested to complete the amenities; that before the Applicant applied, there was a good conversation which was had between Mr. Schell, his group and the County Community and Housing people to understand what was being requested; that one concern from changing it from 50% to 80% AMI, the Applicant will not be pegged at 70% AMI for people coming in the door and if someone applied at 71% or 72% AMI, the Applicant would have an opportunity to lease to them, as well as offset it with someone who may be a 68% or 69% AMI.

Mr. Schell stated if a household is making 75% of AMI, he will still lease to them at a rate set to 70%; that it is a fixed rate; that in that situation the resident would, in a sense, get a discount; that he agreed with what Mr. Robertson stated was correct; that the way it was previously structured, he was incentivized to grab residents as close to 70% AMI as he could; that if he were to do that, he would be setting himself up for a lot of turnovers due to the likelihood of the tenant surpassing the 70% AMI is higher and this would cause him the inability to renew the tenant's lease.

Mr. Robertson stated the County was concerned since the average would be at 70% AMI, the Applicant could potentially rent to multiple 75% tenants and no tenants who were at 60 to 65% AMI; that the County suggested a line, which was in the memo and it would still balance out at 70% to the tenants within the 36 units.

Mr. Schell stated it would not matter any longer due to the rent being fixed and the reality is if 36 people walk in the door, who qualify at 51% of AMI we would be required to lease to them.

Mr. Robertson stated the County's concern, would be the flip side of the situation; that if 36 people were to walk in making 78% of AMI, they would be leased to and no one in the '50s or '60s would have the ability to lease.

Mr. Schell stated they will have a third party consultant advise them, particularly through the first two to three years, on how to proceed with the project; that if tenants are between 50 and 80%, they do not care where the tenant is within that range; that if they begin to realize all tenants walking in the door are at 78% and they realize they are missing the lower end of the qualifying household, they will turn to Milford Housing Development Corp. for guidance on how to market to the lower-income households and they legally cannot discriminate.

Mr. Robertson stated it was not meant to discriminate and there was just concern for all 36 units being used for households closer to 80% which would then not leave availability for households under the 70% which was originally contemplated.

Mr. Schell stated that is true, but if they were to do that, they would have to be playing games with the applicants in the sense they would be prioritizing someone with a higher percentage of AMI.

Chairman Wheatley questioned if there is an average set, would it take care of the issue.

Mr. Schell stated they can do that, but there will be scenarios where it may average to 71% and when a household walks in making 75%, he will have to deny them.

Mr. Robertson stated the question is whether the County is comfortable changing from the 70% threshold to the 80% threshold.

Ms. Schell stated the County's new proposed program goes to 100%; that the County's existing program with Coastal Tide is 50 to 100%; that he felt they were pulling the requirement down; that they did this after speaking with Milford Housing Development Corp; that they stated they did not have to worry because there are plenty of households between 50 to 80% in the market; that there was no need to go to 100% to ensure the units are always full; that they are proposing 20% below the 70% of AMI and only 10% above the 70% of AMI; that this provides some room for flexibility and unless there is an administrative reason they cannot, he would agree to a clause stating that at all times the Applicant will Area Median Income of the initial income of tenants moving into the project, on average are at or below 70% of AMI.

The Commission found that Mr. Russell Huxtable spoke in support of the Application; that he is the Vice President for the Milford Housing Development Corporation; that Milford Housing Development Corporation is a private, nonprofit affordable housing developer; that they offer affordable home ownership and home repair programs throughout the states; that they are also owners and managers for multifamily housing developments; that they own about 1,600 units of affordable rental housing; that

they manage about 2,200 units of affordable rental housing; that they are in support of the Application because there is an affordable housing crisis within our communities, county and state; that the proposed Application is a way to address the crisis in one small way; that regarding Section B, what is proposed does provide a bit more consistency in operations; that it allows for the development to happen more consistently; that this is how tax credits are done; that they own some tax credit units; that some units are set at 40%, some at 50%, and some units at 60%; that it is a bit more complicated than the proposed Application; that they are not concerned of households renting at 78%; that there is fair housing concerns; that there are a lot of households in need of affordable housing; that these people will be making less than 80% of AMI; that whomever comes in first, is who needs to be served; that they cannot pick and choose; that once a household meets the qualification, they are required to serve them; that this is the law; that is why there is no concern of steering only toward those making 78%; that there are waiting list at all complexes; that there will be stats kept and accountability toward what is being put out there; that the believes there will not be a great issue of an influx of clients making 78% and above renting the units and if all 36 units were filled with people making 75% with moderate income, they would very quickly hit the 80% threshold, creating availability for the next person.

Mr. Hopkins questioned how people are held accountable and questioned if there was a monthly certified list provided, which is maintained on record; that if someone were to have applied three years ago and questioned if they had not yet been selected, there would be a record to reference in that regard.

Mr. Huxtable stated there are waiting lists, which every complex has; that the lists could be 10 households long to 100 households long; that the property managers will call the first person on the list to inquire if the household is still in need; that if they are in need they are then asked to submit the required documentation to get them qualified; that if a household is no longer in need they continue to go down the waitlist.

Mr. Robertson stated there is a report and annual audit, which is required to be provided by a CPA Certified Public Accountant who is independent of the developer, which would state the developer is complying with all requirements and provided statistics; that this was a previous Condition of Approval, and this would allow the County to verify the Conditions were being met.

Ms. Stevenson questioned within the 36 units, would the one-bedroom, two-bedroom, three-bedroom units be divided evenly, only altering if there is a greater need for a three-bedroom unit.

Mr. Schell stated the way the Ordinance is currently written they must offer the 36 units in the exact proportion to the total number of units within the entire project; that of the 178 units, if approximately 25% of the units are one-bedroom, they are required to offer exactly eight one-bedroom units as affordable; that only 20% of the units are three-bedrooms; that would require them offering six to seven three-bedroom units; that after speaking with Mr. Huxtable; that the Delaware Housing Coalition, it was recommended to have more three-bedroom units and this is the reason they have requested the change and they would proportionately decrease the one and two-bedroom units.

Mr. Robertson stated there were no concerns to the type of units; that offering more three-bedroom units made sense as it provides more flexibility; that he reminded members of the public the current Application is requesting to modify the Conditions of Approval which were imposed on the original approval; that the Commission will not take comment suggesting the original approval should be undone or objections

to the development, as the original Application was already approved and the Ordinance is already in effect.

The Commission found Mr. Jack Cain spoke in opposition to the Application; that he is the President of Batson Creek Estates Homeowners Association; that back in 2018 he appeared for the public hearing when it was voted the original project not be approved to move forward; that there are many members with him who were also at the previous hearing, also in opposition to the Application; that OA Oaks has failed to comply with the specific terms of Section R of Ordinance 2621 which was approved on December 11, 2018; that it stated a deed restriction should be approved by the office of Planning & Zoning, and should be recorded with the Recorder of Deeds office for Sussex County within 30 days of the Ordinance approval; that it was not until November 2, 2021 that OA Oaks recorded the restriction in Deed Book 5582, Page 337; that the developer drafted the proposed conditions of approval which were adopted, it seems unreasonable the developer was unaware of the Condition for the required recordation within 30 days of the Ordinance approval; that the litigation challenging the results concluded on May 7, 2020; that this was 18 months prior to the recordation of the deed restriction; that Section 16 of the Ordinance addresses the reason for the required deed restriction; that there were also concerns if the RPC is not built or expires the area could be developed as a high-density subdivision; that Sections 115 – 125 of County Code states the County where applicable shall require the appropriate deed restriction be filed to ensure compliance with the developers plan limiting the density if the approval should be voided for any reason; that the developer violated the terms of Ordinance 2621 and should be declared null and void and the density of 2.178 units per acre should be re-established.

There were 18 members present in the room who affirmed the statements made by Mr. Cain.

The Commission found Ms. Sheri Kastner spoke in opposition to the Application; that she questioned when trip patterns are conducted with existing and proposed developments; that she questioned what the rent schedule would be; that she questioned what the current market rate is.

Chairman Wheatley stated the current public hearing is to discuss the affordable housing piece of the previously approved Application; that it is not a re-hearing on the merits of the project; that trip patterns are conducted when DelDOT schedules them to be done; that the rent scheduled is not a subject of the current public hearing; that Ms. Kastner would have to call to inquire what the current market rate is as it is not a land-use issue, but an economic issue.

Mr. Robertson stated they have been speaking about the rent schedule and whether it would be 70% of AMI; that the regular apartments would be at market rate; that the County does not set market-rate values

The Commission found Ms. Diana Huber spoke in opposition to the Application; that she is the daughter of Ms. Nellie Brasure who owns the property adjacent to the project site; that she questioned if the buildings were proposed to be three stories rather than four stories and she questioned if the setback of 10-ft. is correct.

Chairman Wheatley stated the original approval was not based on stories; that as long as the building conforms to the height regulations of the County Code, it is the number of units that are regulated, and he stated the subject of the current public hearing was the affordable housing rental structure and the entrance and sidewalks.

Mr. Whitehouse stated the rear property setback is 10-ft. for the particular zoning district; that this requires the buildings to be located a minimum of 10-ft from the outbound of the property and the site plan also contains a buffer which is greater than 10-ft.

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

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

In relation to Application C/Z 1960 OA Oaks, LLC. Motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

Minutes of the February 10, 2022 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since January 13, 2022.

Ms. Wingate moved that the Commission recommend approval of C/Z 1960 for OA Oaks, LLC, which seeks to amend certain conditions of approval imposed as part of C/Z 1858 and Ordinance No. 2621 for the Residential Planned Community known as Ashton Oaks based upon the record made during the public hearing and for the following reasons:

1. The Applicant seeks to amend Condition B regarding the income eligibility and rent standards for the affordably-priced units within Ashton Oaks; Condition G regarding entrance road and sidewalk requirements; and Condition I regarding the timeframe for completing the recreational amenities.
2. According to the Applicant, these amendments are minor in nature, and primarily seek to clarify the requirements imposed upon the project. In the case of the amendment to the income eligibility standards for the affordably-priced units, the Applicant seeks to broaden the income range so that this project can serve a greater number of lower-income families in Sussex County.
3. These amendments will not affect the Findings contained in Ordinance No. 2621 stating that this project will create modern, safe affordable and fair housing options for residents of Sussex County, including specifically housing for the Sussex County workforce. These amendments will allow the Applicant to continue to help address the rental housing needs of Sussex County's low and moderate income workforce in a location that is in close proximity to employment and town centers.
4. The amendment to Condition B regarding income eligibility is reasonable in that it adds clarity to the requirements, while providing some flexibility so that the restricted units are rented to as many qualified tenants as possible. However, the average household income for all of the restricted units within the RPC must still remain at or below 70% AMI on an annual basis. Such an average will ensure that this project is available to a more diverse applicant pool, which is an important aspect of fair housing and was a fundamental part of the Applicant's stated intention to include workforce housing within the RPC based upon income eligibility.
5. The Amendment to Condition G regarding entrance road and sidewalk requirements is reasonable. Because this will be a rental project with parking lots, it is appropriate to seek relief from certain design requirements that are primarily applicable to single family subdivisions.
6. The amendment to Condition I regarding the timeframe for completion of recreational amenities is also appropriate. The original approval stated that the recreational amenities

must be completed by the issuance of the building permit for the 4th apartment building. These timing requirements are generally used to ensure that recreational amenities are open and available to third-party purchasers of homes. In this case, the Applicant will be the developer and owner of all of the rental units within the project, so there are no third-party property owners to protect. However, it is appropriate to ensure the completion of these amenities within a reasonable time.

7. These changes do not affect the substance, density or appearance of the RPC. As a result, they have no impact on the community, neighboring properties or area roadways.
8. For all of these reasons, it is appropriate to modify Conditions B, G and I of Ordinance No. 2621 so that they now state as follows:

CONDITION B:

- B. As offered by the Applicant, 36 of the units shall be designated as “Restricted Units” for the purpose of providing “workforce housing” for a period of 30 years following the date the first building receives its Certificate of Occupancy, subject to the following terms and conditions:

1. Rent -- The rent for the Restricted Units shall be established based upon 30% of gross household income for 70% of the Area Median Income (“AMI”) for Sussex County as established by the U.S. Department of Housing and Urban Development (“HUD”) and updated annually and as adjusted for household and unit size.
2. Eligible Income – Eligible income is 50% to 80% of the area median income for Sussex County adjusted for household size and as updated annually by HUD, provided that the average household income for all of the Restricted Units within the RPC is at or below 70% AMI on an annual basis.
3. Vacant Units – During lease-up and for a period of 2 years, the Applicant must actively seek to lease available units to Qualifying Tenants at a rate equal to or greater than the ratio of Restricted Units to market rate units. Post lease-up, any vacant units for which the Applicant is actively seeking tenants must first be offered to Qualifying Tenants if the total number of leased Restricted Units is less than the targeted amount (36). If no Qualifying Tenants are available at the time a unit becomes vacant that unit may be leased at market rates to any tenant. At all times in which the number of Restricted Units is less than 36, the next available unit(s) must be offered for lease to any known and available Qualified Tenant(s), until such time as the 36-unit target for Restricted Units is achieved.
4. Qualifying Tenants – Eligible tenants for the Restricted Units must:
 - a. Provide proof of citizenship.
 - b. Be of eligible income as defined in “2”, above.
 - c. Be employed and live in Sussex County for at least one year preceding the date of application.
 - d. Occupy of Restricted Unit as the tenant’s principal residence during the lease period. Each eligible tenant must certify before taking occupancy that the tenant will occupy the unit as the tenant’s principal residence. Any tenant who violates occupancy requirements will be subject to eviction procedures.
 - e. Comply with other requirements that apply to tenants of Non-Restricted Units.
5. Unit Integration – Restricted Units must be fully integrated into the community and

shall not be substantially different in external or internal appearance and fit out from market-rate units. Restricted Units shall be equipped with the same basic appliances as the market rate units, such as an oven, refrigerator, dishwasher, and washer and dryer. At all times, the number of type of Restricted Units shall remain in proportion to the number of the same type of Market Rate Unit with the exception that the Applicant may have up to 10% more 3 – Bedroom Restricted Units, and therefore fewer 1- and 2-Bedroom Units in proportion to the total number of apartment units. For example, if 25% of the units are 3-Bedroom Units, then between 25% and 35% of the Restricted Units must be 3-Bedroom Units.

Conditions B.5. through B.7 are unchanged from Ordinance No. 2621, and are renumbered as B.6 through B.8.

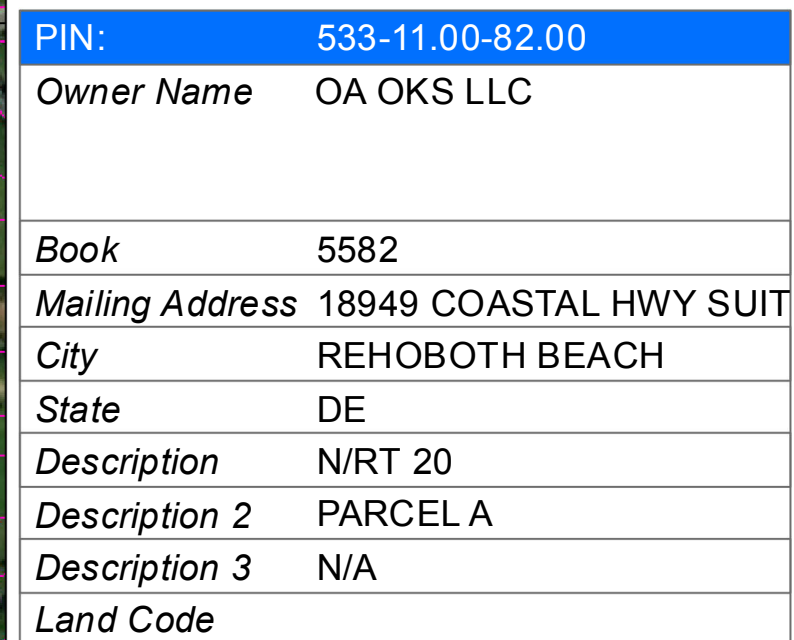
CONDITION G:

- G. The entrance road up to and including the first intersection must meet or exceed the street design requirements contained in Section 99-18 of the Sussex County Code. There shall be a fully-connected, ADA compliant internal sidewalk and multi-modal path pedestrian system serving all buildings. This internal sidewalk and pathway system shall extend to the public right-of-way. The location and type of construction of the sidewalk and pathway system shall be shown on the Final Site Plan.

CONDITION I:

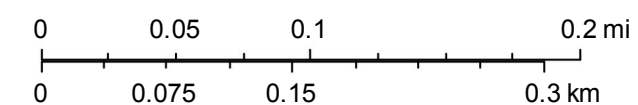
- I. Recreational amenities, including the clubhouse, outdoor swimming pool and deck, playground, walking trail and enclosed dog park shall be completed prior to the issuance of the Building Permit for the sixth multi-family building.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval for C/Z 1960 OA Oaks, LLC for the reasons and conditions stated in the motion. Motion carried 5-0.



- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- Streets
- County Boundaries
- Public Schools**
- Adult
- Elementary School
- Early Childhood Center
- Elementary - High School
- Elementary - Middle School
- High School
- Intensive Learning Center
- Middle School
- Middle - High School
- Administrative
- DE Adolescent Program Inc. (DAPI)
- Centers
- Alternative Schools

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PLANNING & ZONING COMMISSION

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DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: January 13th, 2022

Application: CZ 1960 Ashton Oaks

Applicant: Schell Brothers LLC
20184 Phillips Street
Rehoboth Beach, DE 19971

Owner: Arbor Lyn Rehoboth Beach, LLC
26412 Broadkill Road
Milton, DE 19968

Site Location: Lying on north side of Zion Church Road (Rt. 20) approximately .25 miles northwest of the 4-way intersection of Bayard Road (S.C.R. 384), Johnson Road (S.C.R. 389), and Zion Church Road.

Current Zoning: High Density Residential (HR-1/RPC) Zoning District

Proposed Zoning: High Density Residential (HR-1/RPC) Zoning District

Comprehensive Land
Use Plan Reference: Coastal Area

Councilmanic
District: Mr. Reiley

School District: Indian River School District

Fire District: Roxana Fire Department

Sewer: Sussex County

Water: Artesian Water Company Inc.

Site Area: 14.8455 acres +/-

Tax Map ID.: 533-11.00-82.00



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Sussex County

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Memorandum

To: Sussex County Planning Commission Members
From: Elliott Young, Planner I
CC: Vince Robertson, Assistant County Attorney and Applicant
Date: January 5, 2022
RE: Staff Analysis for CZ 1960 OA-Oaks, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1960 OA-Oaks, LLC to be reviewed during the January 13, 2022 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcel 533-11.00-82.00 to allow for a change of zone from a High-Density Residential District – Residential Planned Community (HR-1/RPC) Zoning District to a High-Density Residential District – Residential Planned Community (HR-1/RPC) Zoning District. The parcel is located on the northeast side of Zion Church Road (Route 20) approximately 0.27 miles northwest of the intersection of Bayard Rd (S.C.R. 384). The change of zone is for an amendment to the Conditions of Approval set forth in CZ 1858, approved by County Council on December 11, 2018.

The requested amendment affects Condition “B” (Clarification of terms regarding restricted units and eligible income), condition “G” (Clarification of entrance road and internal sidewalk improvements) and Condition “I” (Clarification of time for completion of recreational amenities). All other conditions of approval are unaffected.

The applicant seeks to modify condition B. Related to the 36 restricted units providing workforce housing. Condition B (1) seeks the ability to set rental rates based on 30% of 70% of the Area Median Income (AMI) for Sussex County adjusted for household and unit size. This modification allows for fixed rental rates, based on unit size, and offers a predictable income amount for each unit available. Condition B (2) seeks to provide a definition of eligible income for the Restricted Units as households with incomes between 50 and 80% AMI. The original approved condition stated that Restricted Units, “shall be rented to tenant with gross household incomes equal to or less than 70% AMI”. Understandably, it is difficult to find tenants with household incomes precisely at 70% AMI and the request for flexibility is reasonable. However, to align with the original intent, it is suggested that the definition be expanded upon to include the following language: provided that the annual household income average for the Restricted Units is at or below 70% AMI. Condition B (5) seeks leasing flexibly.

In relation to Condition “G” the condition of approval states, “Interior street design shall meet or exceed Sussex County’s street design requirements. There shall also be sidewalks on both sides of the streets within the RPC”. The applicant is seeking to change the condition in such

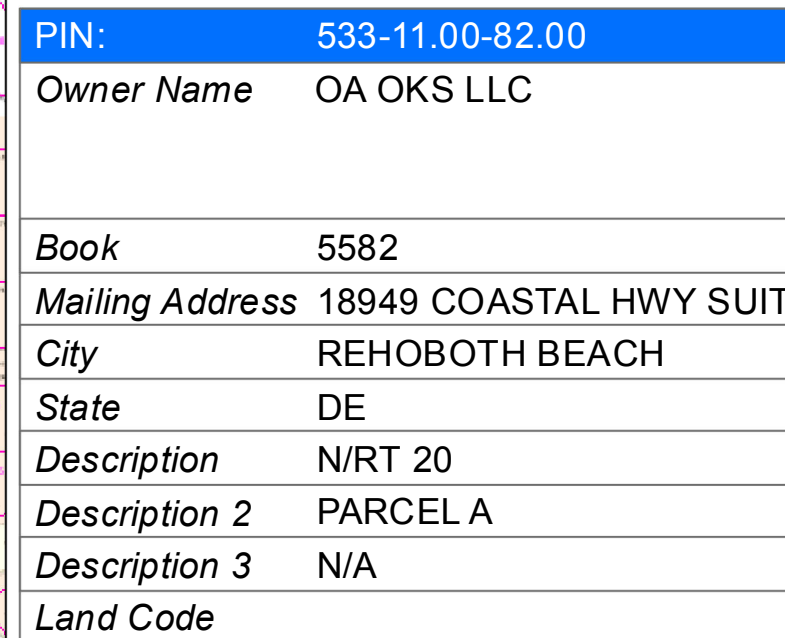


that the entrance road and up to the first intersection must meet or exceed Sussex County Code 99-18- street design standards. The amendment also states that there shall be a fully interconnected, ADA compliant, internal sidewalk and multimodal path pedestrian system serving all buildings. There shall also be an extension of the internal pedestrian system to the public right-of-way.

Condition “I” states, “Recreational amenities, including the clubhouse, outdoor swimming pool and deck, playground, walking trail and enclosed dog park, shall be completed prior to issuance of a building permit for the fourth multi-family building. The applicant wishes to amend the condition in that the amenities listed be completed prior to the issuance of a Certificate of Occupancy for the fourth multi-family building. Staff would note that recent coordination efforts with DelDOT have led to the use of Building Permits as the trigger for implementing deliverables. The request to use Certificates of Occupancy would be contrary to this approach.

A staff analysis on the surrounding parcels zoning and future land use designations was completed prior to the approval of CZ 1858. As there are no proposed changes in density or access, the analysis has not been repeated for the current application.

Based on the previous analysis of the land use, surrounding zoning and uses, and the future land use map amendment, the changes requested could be considered as being consistent with the land use, area zoning and surrounding uses.



polygon Override 1

polygonLayer Override 1

Tax Parcels

Streets

County Boundaries

Public Schools

Adult

Elementary School

Early Childhood Center

Elementary - High School

Elementary - Middle School

High School

Intensive Learning Center

Middle School

Middle - High School

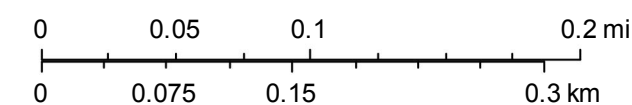
Administrative

DE Adolescent Program Inc. (DAPI)

Centers

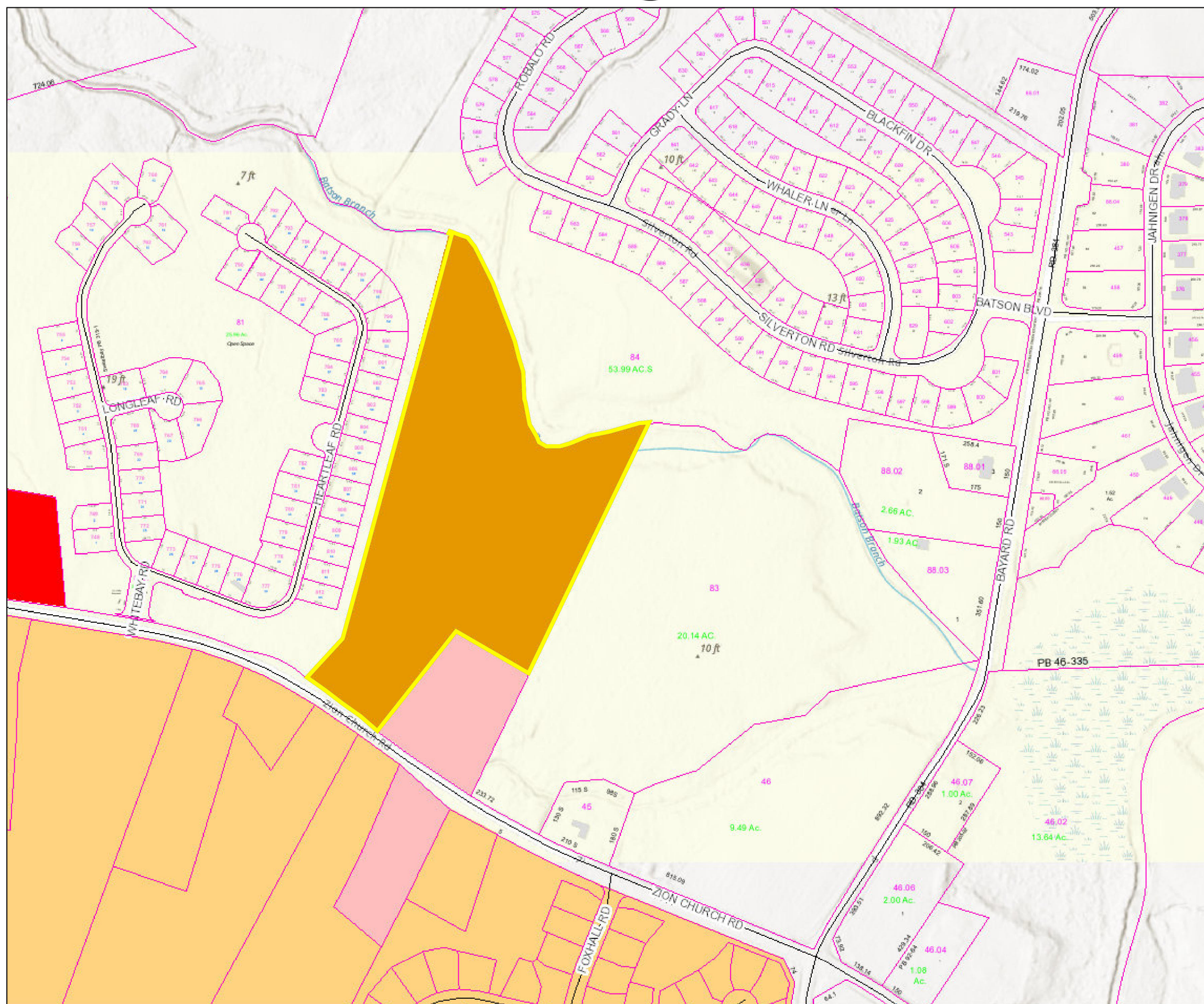
Alternative Schools

1:4,514





Sussex County



| | |
|------------------------|------------------------|
| PIN: | 533-11.00-82.00 |
| Owner Name | OA OKS LLC |
| Book | 5582 |
| Mailing Address | 18949 COASTAL HWY SUIT |
| City | REHOBOTH BEACH |
| State | DE |
| Description | N/RT 20 |
| Description 2 | PARCEL A |
| Description 3 | N/A |
| Land Code | |

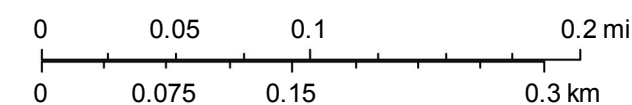
polygonLayer
Override 1

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Override 1

..... Tax Parcels

— Streets

1:4,514



ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO MODIFY THE BOUNDARIES OF EXISTING CONDITIONAL USE NO. 1699 (ORDINANCE NO. 1936) FOR A GO-KART TRACK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 3.24 ACRES, MORE OR LESS (Tax Map I.D. 2-35-6.00-10.00 & 10.05)

WHEREAS, on the 5th day of March 2013, a conditional use application, denominated Conditional Use No. 1960 was filed on behalf of Harry H. Isaacs, Jr./Farm Boys, LLC; and

WHEREAS, on the ____ day of _____ 2013, 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. 1960 be _____; and

WHEREAS, on the ____ day of _____ 2013, 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. 1960 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 Reynolds Pond Road (Road 231) and 520 feet west of Route 30 and being more particularly described as follows:

BEGINNING, at an iron pipe on the northerly right-of-way of Reynolds Pond Road, a corner for these lands and lands, now or formerly, of Farm Boys, LLC; thence north 07°50'26" east 193.06 feet along said Farm Boys, LLC lands to an iron pipe; thence north 77°50'41" west 200.02 feet along said Farm Boys, LLC lands to a point; thence north 12°09'19" east 210.48 feet and south 77°51'49" east 390.52 feet along lands of Harry H. Isaacs, Jr. to a tree; thence easterly and southerly along lands of Farm Boys, LLC the following six (6)

courses: south 77°51'49" east 70.15 feet, south 02°37'00" west 95.48 feet, south 07°55'49" west 77.27 feet, south 09°51'02" west 133.35 feet, south 77°41'22" east 20.21 feet, and south 12°18'38" west 98.61 feet to a point on the northerly right-of-way of Reynolds Pond Road; and thence north 77°50'41" west 220.94 feet along Reynolds Pond Road to the point and place of beginning, said parcel containing 3.24 acres, more or less, as plotted by Adams-Kemp Associates, Inc.

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