

Sussex County Council Public/Media Packet

**MEETING:
April 20, 2021**

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**Sussex County Council
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(302) 855-7743**

COUNTY COUNCIL

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



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

A G E N D A

APRIL 20, 2021

10:00 A.M.

PLEASE NOTE THAT THE MEETING WILL BE HELD AT THE FOLLOWING LOCATION: ROOM 540, CARTER PARTNERSHIP CENTER AT DELAWARE TECHNICAL COMMUNITY COLLEGE, 21179 COLLEGE DRIVE, GEORGETOWN

PLEASE REVIEW MEETING INSTRUCTIONS AND PARTICIPATION INSTRUCTIONS AT THE BOTTOM OF THE AGENDA

Call to Order

Approval of Agenda

Approval of Minutes – April 13, 2021

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

- 1. Board of Adjustment Appointment**
- 2. Administrator’s Report**

Old Business

“AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-13.00-29.00, 235-13.00-29.01 & 235-14.00-570.00”



Old Business (continued)

Change of Zone No. 1923 filed on behalf of Reed Farms, LLC

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 67.31 ACRES, MORE OR LESS” (property lying on the west side of Gravel Hill Road (Route 30) approximately 309 feet south of Milton-Ellendale Highway (Route 16) (Tax I.D. No. 235-13.00-29.00, 29.01 and 235-14.00-570.00) (911 Address: 14888, 14866 & 14742 Gravel Hill Road, Milton)

Conditional Use No. 2258 filed on behalf of Bioenergy Development Group, LLC

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 1314 (ORDINANCE NO. 1354) (AS AMENDED BY CONDITIONAL USE NO. 1691 (ORDINANCE NO. 1865) AND CONDITIONAL USE NO. 1962 (ORDINANCE NO. 2311)) TO PERMIT THE PROCESSING AND HANDLING OF POULTRY LITTER TO INCLUDE NUTRIENT RECOVERY FOR NATURAL GAS AND ELECTRICAL GENERATION, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 228.88 ACRES, MORE OR LESS” (lying on the west side of Seaford Road (Route 13A) approximately 0.2 mile north of Oneals Road (S.C.R. 485) (Tax I.D. Nos. 132-6.00-88.01 and 95.00, and 132-11.00-41.00 and 41.02) (911 Address: 28338 Enviro Way, Seaford)

Introduction of Proposed Zoning Ordinances

Public Hearings

Change of Zone No. 1911 filed on behalf of Schiff Land Development Co., LLC (Patriots Glen Phase 2)

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MEDIUM DENSITY RESIDENTIAL DISTRICT AND A CR-1 COMMERCIAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 43.463 ACRES, MORE OR LESS” (property being a landlocked parcel lying on the south side of John J. Williams Highway (Route 24) approximately 0.92 mile southwest of Oak Orchard Road (Route 5) (Tax I.D. No. 234-29.00-67.00) (911 Address: None Available)

Recess

Public Hearings (continued)

Conditional Use No. 2206 filed on behalf of Linder & Company, Inc. (Evans Farm)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (200 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 50.62 ACRES, MORE OR LESS” (lying on the north corner of the intersection of Railway Road (S.C.R. 350) and Old Mill Road (S.C.R. 349) and also being on the south side of Railway Road (S.C.R. 350) approximately 696 feet northeast of Old Mill Road (S.C.R. 349) (Tax I.D. No. 134-12.00-74.00) (911 Address: 31434 Railway Road, Ocean View)

Council Members’ Comments

Adjourn

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on April 13, 2021 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.

Further meeting access instructions are listed below.

-MEETING INSTRUCTIONS-

The Sussex County Council is holding this meeting under the authority issued by Governor John C. Carney through Proclamation No. 17-3292.

PLEASE NOTE: The meeting is to be held at the following location: **Room 540, Carter Partnership Center at Delaware Technical Community College, 21179 College Drive, Georgetown.**

The public is encouraged to view the meeting on-line. Any person attending in-person will be required to go through a wellness and security screening, including a no-touch temperature check. The public will be required to wear a facial mask.

Seating capacity is limited and seating assignments will be enforced.

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

The County is required to provide a dial-in telephone number for the public to comment during the appropriate time of the meeting. **Note, the on-line stream experiences a 30-second delay.** Any person who dials in should listen to the teleconference audio to avoid the on-line stream delay.

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

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

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

If any member of the public would like to submit comments electronically, please feel free to send them to rgriffith@sussexcountyde.gov. All comments shall be submitted by 4:30 P.M. on Monday, April 19, 2021.

####

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 13, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 13, 2021, at 9:00 a.m., in the Carter Partnership Center at Delaware Technical Community College, Georgetown, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 115 21
Approve
Agenda**

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

Motion Adopted: 5 Yeas.

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

**M 116 21
Go Into
Executive
Session**

At 9:03 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley, to recess the Regular Session and go into Executive Session to discuss matters relating to pending 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**

**Executive
Session**

At 9:05 a.m., an Executive Session of the Sussex County Council was held in the Carter Partnership Center at Delaware Technical Community College, Georgetown, to discuss matters relating to pending litigation and land acquisition. The Executive Session concluded at 9:38 a.m.

**M 117 21
Reconvene**

At 9:42 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley, to come out of Executive Session and reconvene the Regular Meeting.

**M 117 21
(continued)**

Motion Adopted: 5 Yeas.

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

**Executive
Session
Action/
Settlement
Agreement/
Reassess-
ment
Litigation**

Mr. Lawson summarized a Settlement Agreement in regards to the Case known as Delawareans for Educational Opportunity and the NAACP Delaware State Conference of Branches v. Sussex County Finance Director Gina Jennings (Reassessment Litigation). In the liability phase of the Case, the Court said that the County did not comply with the True Value Statute in Delaware Code nor the Tax Uniformity Clause in the Delaware Constitution. The County then entered the remedy phase of the Case and, on this date, the County is considering the settlement in that Remedy Phase. Mr. Lawson noted that Kent County and New Castle County have agreed to the terms of settlement; Sussex County was last and was last on purpose to see the results of the pending RFP for reassessments. Mr. Lawson stated that the County Council reviewed the terms of the Settlement Agreement with the County's Legal Counsel in Executive Session. Mr. Lawson reviewed some of the terms of the Agreement under consideration by the Council: In order to comply with the True Value Statute and the Tax Uniformity Clause, the County will complete a general reassessment of all real property in the County and cause the reassessed values to be placed on the assessment roll used to issue property tax bills in Fiscal Year 2025, or July 1, 2024 which is known as the completion date. The County may seek an extension of the completion date and the Plaintiffs cannot unreasonably withhold that request. The Plaintiffs may seek to enforce this stipulation if the County fails to undertake a good faith effort to complete a general reassessment. The Defendant does not admit liability to the Plaintiffs. The pending Hearing is not required now if this Settlement Agreement is signed and the pending Hearing can be cancelled. The Court retains jurisdiction over these terms and the Defendant must provide quarterly updates beginning in September 2021 to the Plaintiffs.

**M 118 21
Approve
Settlement
Agreement/
Reassess-
ment
Litigation**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that Sussex County Council approves the Stipulation and Proposed Order summarized and discussed in the record and authorizes the appropriate officials to execute the same (Delawareans for Educational Opportunity and the NAACP Delaware State Conference of Branches v. Sussex County Finance Director Gina Jennings).

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 March 23, 2021 were approved by consent.

**M 119 21
Approve
Consent
Agenda**

A Motion was made by Mr. Schaeffer, seconded by Mrs. Green, to approve the following items listed under the Consent Agenda:

- 1. Use of Existing Wastewater Infrastructure Agreement, IUA-1103
Sweetbay Project, Johnson's Corner Area**
- 2. Use of Existing Wastewater Infrastructure Agreement, IUA-820-18
Destiny Apartments Project, West Rehoboth Area**
- 3. Use of Existing Wastewater Infrastructure Agreement, IUA-HMC1
Hosmane Medical Center Project, West Rehoboth Area**

Motion Adopted: 5 Yeas.

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

**Council
Members'
Comments**

Council Members' Comments

John Rieley regrettably recognized the loss of Laura Madara, Ladies Auxiliary Member and Fire Police Member of the Selbyville Fire Company, who was fatally injured while operating on the scene of a vehicle crash on Friday, April 9, 2021.

**Adminis-
trator's
Report**

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

1. DelDOT 2023-2028 Capital Transportation Program

Sussex County invites the public to offer suggestions for the upcoming 2023-2028 Capital Transportation Program request, which the County Council will submit to the Delaware Department of Transportation later this spring. Residents and property owners with ideas for improving local roads, pedestrian walkways, public transportation, and other related infrastructure and services can log onto the County's website to submit their suggestions.

Please visit www.sussexcountyde.gov and click the 'Sussex County wants your transportation ideas' announcement on the main page to fill out a suggestion form.

Submissions will be accepted through April 30. County staff will review all suggestions and forward those comments to DelDOT as part of the County's annual request for funding and prioritization of transportation projects here in Sussex County.

2. Projects Receiving Substantial Completion

**Adminis-
trator's
Report
(continued)**

The following projects have received Substantial Completion: Stingray Harbor, effective March 25th; Lewes Crest, effective March 30th and Fox Haven II, Phase 2A (Plan Approval & Construction Record), effective April 1st.

3. Norma Talley

It is with sadness that we note the passing of County pensioner Norma Talley on Thursday, March 18th. Mrs. Talley began her career with Sussex County in May 1971 and retired from the Planning & Zoning Department in July 1999. We would like to extend our condolences to the Talley family.

**Proposed
Roxana
Apartment
Annexation/
Request to
Post
Notices**

John Ashman, Director of Utility Planning and Design Review, presented a request to prepare and post notices for the Roxanna Apartments Expansion of the Millville Area of the Sussex County Unified Sanitary Sewer District. The proposed expansion includes Parcel 134-12.00-330.00 located along Roxana Road (Route 17). The Engineering Department received a request from Morris & Ritchie Associates, Inc. on behalf of their client, Peak Management, LLC, the owners/developers of the proposed Roxana Apartments. The Roxana Apartments is a proposed 126-unit apartment complex with a pool and pool house.

**M 120 21
Authorize
Posting of
Notices/
Proposed
Roxana
Apartment
Annexation**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that the Sussex County Engineering Department is authorized to prepare and post notices for the Roxana Apartments Expansion of the Sussex County Unified Sanitary Sewer District to include Parcel 134-12.00-330.00 located along Roxana Road (Route 17), 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**

**Herring
Creek SSD
Project
S20-07**

Hans Medlarz, County Engineer, presented Change Orders for the Herring Creek Sanitary Sewer District - North Gravity Sewer and Force Main Project (Project S20-07).

**M 121 21
Approve
Change
Orders/
Herring
Creek SSD/
Project
S20-07**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 2 for Contract S20-07, Herring Creek Sanitary Sewer District: North Gravity Sewer and Force Main, be approved, increasing the Contract amount by \$2,273.11 and that Time and Materials Change Order No. 3 be approved, increasing the Contract in the not to exceed amount of \$7,200.00.

Motion Adopted: 5 Yeas.

M 121 21
(continued) **Vote by Roll Call:** **Mrs. Green, Yea; Mr. Schaeffer, Yea;**
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

EMS 200/
Medic 110
Station/
Project
C19-08 **Hans Medlarz, County Engineer, reported on the EMS 200/Medic 110 Station, Project C19-08. The Contract time on this project ends on April 16, 2021 and it is believed that the deadline will be met. Mr. Medlarz presented a Substantial Completion request for the project and Contract Amendment (No. 3) for Council’s consideration.**

M 122 21
Approve
Contract
Amend-
ment/
EMS 200/
Medic 110
Station/
Project
C19-08 **A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that Amendment No. 3 to the Architectural Services Contract with George Miles & Buhr be approved in the amount not to exceed \$21,500.00 for additional construction phase services reflecting actual construction time.**

Motion Adopted: **5 Yeas.**

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

M 123 21
Grant
Substantial
Completion/
EMS 200/
Medic 110
Station/
Project
C19-08 **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Substantial Completion for Contract C19-08, EMS 200/Medic Station 110, be granted, effective April 13, 2021, with any held retainage released in accordance with Contract documents.**

Motion Adopted: **5 Yeas.**

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

Hollyville
Road
DelDOT
Easement
Request **Hans Medlarz, County Engineer, presented for Council’s consideration a DelDOT easement request for Hollyville Road. DelDOT required drainage improvements along Hollyville Road as part of their approval of the entrance to the Liberty Subdivision. Part of these improvements affect a County-owned parcel. The proposed Easement Agreement delineates the requested area for the construction of the improvements totaling 1,612 square feet. The Engineering Department recommends the granting of the easement to the State of Delaware in exchange for payment of \$600.00 which has been paid by the Developer.**

M 124 21
Approve
Hollyville
Road
Easement **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the granting of a Permanent Easement to the State of Delaware for Tax Parcel No. 234-16.00-28.00, in the amount of \$600.00, for drainage improvements along Hollyville Road.**

**M 124 21
(continued)**

Motion Adopted: 5 Yeas.

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

**Agricultural
Farm Lease/
Bridgeville**

Hans Medlarz, County Engineer, presented for Council's consideration a recommendation for an Agricultural Farm Lease for farmland known as Parcel No. 430-16.00-31.00 located off of Oak Road in Bridgeville. The Engineering Department publicly advertised the Lease under a Request for Proposals (RFP) for a five (5) crop season term beginning on the date of execution on December 15, 2025. Five bids were received. The Engineering Department recommends awarding the Lease to the highest lease offer which was submitted by Hill Farms, Inc. It was noted that the County controls this farmland as per a Transition Agreement with the Town of Bridgeville.

**M 125 21
Approve
Award of
Agricultural
Farm Lease/
Bridgeville**

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the award of the Agricultural Farm Lease for Parcel No. 430-16.00-31.00 to Hill Farms, Inc. in the aggregate amount of \$129,485.00 for the five-year lease.

Motion Adopted: 5 Yeas.

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

**Delaware
Coastal
Business
Park Leases**

William Pfaff, Economic Development Director, presented for Council's consideration, three Delaware Coastal Business Park leases:

- Michael D. Rhodes and Ethan M. Rhodes, Builder Supply of Delmarva – this is a Lease Addendum for an extension of their current lease as they plan on putting up a third building in order to conduct distribution of their products.**
- PATS Aircraft, LLC, d/b/a ALOFT AeroArchitects – this is a Lease for Lot 10 (two hangars)**
- Great Outdoor Cottages, LLC – this is a Lease for 7 acres in the new Business Park**

**M 126 21
Approve
Lease
Addendum/
Rhodes/
Builder
Supply of
Delmarva**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to approve the Lease Addendum with Michael Rhodes and Ethan Rhodes (Builder Supply of Delmarva) located in the Delaware Coastal Business Park at 21528 Baltimore Avenue, Georgetown; the term of the Addendum shall have the option to renew the current lease with four (4) additional five (5) year terms; since this option doesn't kick in until 2034, Sussex County shall conduct a market rent analysis at that time to establish the rental value per acre at the Delaware Coastal Business Park.

**M 126 21
(continued)**

Motion Adopted: 5 Yeas.

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

**M 127 21
Approve
Lease
Agreement/
PATS
Aircraft,
LLC
d/b/a
ALOFT**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to approve the Lease Agreement with PATS Aircraft, LLC, d/b/a ALOFT, in the Delaware Coastal Business Park, located at 21652 Nanticoke Avenue, Georgetown; the term of the Lease shall be five (5) years with two (2) additional five (5) year renewals, with a CPI rent adjustment every five (5) years.

Motion Adopted: 5 Yeas.

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

**M 128 21
Approve
Lease
Agreement/
Great
Outdoor
Cottages,
LLC**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to approve the Lease Agreement with Great Outdoor Cottages, LLC, consisting of 7 acres, at the Delaware Coastal Business Park, located at 12498 Baltimore Avenue, Georgetown; the term of the Lease shall be for thirty (30) years with four (4) additional five (5) year renewals, with a CPI rent adjustment every five (5) years.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
Woodlands
II Expansion
into the
SCUSSD/
Miller
Creek
Area**

A Public Hearing was held to consider extending the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD), Miller Creek Area, to include the Woodlands II Subdivision. John Ashman, Director of Utility Planning & Design, reported that the Engineering Department received a request for this extension from Civil Engineering Associates on behalf of their client, Gulfstream Development, LLC, the owners/developers of the proposed Woodlands II Subdivision. The original Woodlands was annexed in February 2008 as part of the Bayard Expansion. Woodlands II is a proposed 33-lot subdivision connecting into the existing Woodlands. The proposed expansion would include Parcel No. 134-19.00-23.00. Mr. Ashman noted that, to date, the Engineering Department has not received any comments regarding this proposal.

There were no public comments.

The Public Hearing and public record were closed.

**M 129 21
Adopt
R 006 21**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Resolution No. R 006 21 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) MILLER CREEK AREA, TO INCLUDE ONE PARCEL OF LAND ALONG THE EAST SIDE OF BAYARD ROAD LOCATED IN THE OFFICE OF THE RECORDER OF DEEDS IN AND FOR SUSSEX COUNTY, DELAWARE” (WOODLANDS II EXPANSION).

Motion Adopted: 5 Years.

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

Rules

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

**Public
Hearing/
CU 2251**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A 35.4 ACRE SOLAR FIELD TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 142.80 ACRES, MORE OR LESS” (Conditional Use No. 2251) filed on behalf of Heimlich Solar Partners, LLC (Tax I.D. No. 530-13.00-10.00) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on March 11, 2021 at which time action was deferred. On March 25, 2021, the Commission recommended approval with the following conditions:

- a. No storage facilities shall be constructed on the site.**
- b. Lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- c. One unlighted sign, not to exceed 32 square feet in size, shall be permitted.**
- d. The site shall be secured by fencing with a gate with “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.**
- e. Any transformers or similar equipment shall be centrally located on the site away from any nearby residential uses.**
- f. All of the grounds, including the area outside of the fence, shall be maintained so that they do not become overgrown.**
- g. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**Public
Hearing/
CU 2251
(continued)**

(See the minutes of the Planning and Zoning Commission dated March 11 and 25, 2021.)

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

The Council found that Mark Neilson, Vice President, South Services for Delaware Electric Cooperative (DEC), and Jeff Machiran of EDF were present on behalf of the application.

Mr. Neilson stated that DEC is headquartered in Greenwood and that the proposed project sits approximately one mile from the DEC office and that the Council approved a similar project for DEC in 2012 (solar farm on East Trap Pond Road). Mr. Neilson explained the partnership between EDF and Old Dominion Electric Cooperative (ODEC); DEC is a part owner of ODEC. He noted that EDF is proposing to build solar projects for DEC in DEC's service territory; that this is one of multiple projects that they will be undertaking in DEC's service area in Kent and Sussex counties; and that ODEC is a non-profit cooperative headquartered in Richmond, Virginia. He also stated that the capacity of this particular project is about 4.5 megawatts; that the power generated will go to DEC's local customers in the Greenwood-Bridgeville-North Seaford area; and that all the power goes directly to the membership.

Mr. Machiran stated that solar panels provide clean, renewable electricity without using water, creating emissions or producing waste; that its low visual profile and quiet operations make for a great neighbor; that it places little to no demand on County infrastructure; that the project area is currently an open agricultural field with no structures; that the anticipated project footprint will be less than 40 acres; that the site will contain rows of connected solar panels installed on racking systems, a transformer skid, interconnection equipment, and a weather station; that there will be a 100 foot buffer to onsite wetland areas; that wetlands have been mapped and avoided and given appropriate buffers; that no substation will be constructed; that the project will tie into an existing substation; that there will be fencing around the solar panel arrays; that no grading is proposed; and that construction should take approximately five months and the site should be operational by 2022.

Public comments were heard.

Christopher Edginton (member of Delaware Interfaith Power & Light) spoke in support of the application and in support of renewable green power.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 130 21
Adopt
Ordinance
No. 2767/
CU 2251**

A Motion was made by Mrs. Green, seconded by Mr. Hudson, to Adopt Ordinance No. 2767 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A 35.4 ACRE SOLAR FIELD TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 142.80 ACRES, MORE OR LESS” (Conditional Use No. 2251) filed on behalf of Heimlich Solar Partners, LLC, with the following conditions:

- a. No storage facilities shall be constructed on the site.**
- b. Lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- c. One unlighted sign, not to exceed 32 square feet in size, shall be permitted.**
- d. The site shall be secured by fencing with a gate with a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.**
- e. Any transformers or similar equipment shall be centrally located on the site away from any nearby residential uses.**
- f. All of the grounds, including the area outside of the fence, shall be maintained so that they do not become overgrown.**
- g. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
CU 2208**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR- 1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN EXPANSION OF AND AMEND CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 1724 TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 127.37 ACRES, MORE OR LESS” (Conditional Use No. 2208) filed on behalf of Artesian Wastewater Management, Inc. (Tax I.D. No. 235-6.00-28.00 & 28.09) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on March 11, 2021 at which time action was deferred. On March 25, 2021, the Commission recommended approval with the following conditions:

**Public
Hearing/
CU 2208
(continued)**

- a. **The regional Sewage Treatment Plant and its accompanying systems and facilities for the collection, storage, treatment and disposal of waste shall continue to operate with all changes or modifications to those systems and facilities being reviewed and approved by DNREC and they shall be operated, designed and constructed in accordance with all other applicable Federal, State and County requirements including those mandated by DNREC and other agencies having jurisdiction over same.**
- b. **The water treatment plant shall be subject to the conditions imposed on December 2, 2008 when Sussex County Council adopted Ordinance No. 2013 approving Conditional Use No. 1810.**
- c. **Any buildings constructed on the site shall be constructed with an agricultural appearance.**
- d. **There shall be a medium density landscaped buffer twenty feet (20') in width adjacent to the storage lagoons along Isaacs Road (Del. Route 30) and along the back of the properties along the northern boundary of the property with the exception of where the structures are located too close to the northern boundary line for the location of the buffer (being within Tax Parcel No. 235-6.00-28.01). The density and location of these landscaped buffers shall be shown on the Final Site Plan. These buffer areas and the plantings within them must be maintained by the property owner at all times. For example, if a tree or shrub that is part of the landscaped buffer dies, it must be replanted with a similar tree or shrub.**
- e. **Any lagoons, Rapid Infiltration Basins or similar structures shall be located at least 100 feet from any dwellings.**
- f. **One lighted sign shall be permitted along Isaacs Road (Del. Route 30) not to exceed 32 square feet in size per side.**
- g. **Any motorized, non-vehicular equipment utilized in the operation of the facility within 600 feet of a dwelling shall be located indoors.**
- h. **Any security lighting shall be fully screened so that it does not shine onto neighboring properties or County roads.**
- i. **The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated March 11 and 25, 2021.)

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

The Council found that David Hutt, Attorney, was present on behalf of Artesian Wastewater Management, Inc., the Applicant/Owner. Mr. Hutt noted that also in attendance were David Spacht, President of Artesian Wastewater Management, Inc.; Rodney Wyatt, Vice President of Artesian Wastewater Management, Inc.; Daniel Konstanski, Principal Engineer with Artesian; Bruce Bagley, Soil Scientist; Peter Demicco, Hydrogeologist with Demicco & Associates, and Lee Bridgman, Landscape Architect with Solutions.

**Public
Hearing/
CU 2208
(continued)**

Mr. Hutt stated that the application is for the processing of wastewater; that this application relates to Artesian’s Southern Regional Recharge Facility (SRRF); that SRRF exists and is being constructed to serve a broad area of Sussex County; that Artesian seeks to include the adjacent 52.76 acres to the existing 74.61 acres and to also make some amendments to the conditions on the original Conditional Use No. 1724; that there are three existing conditional uses for this project (Conditional Use Nos. 1724, 1725 and 1810); that this is an agricultural area and Route 30 is a truck route; that the proposal will not generate any additional noise than is already there; that DelDOT did not require a Traffic Impact Study; that in regard to excellent recharge areas or wellhead protection areas, there is no impact on this application; that DNREC will review and address wellhead protection areas and groundwater recharge areas; that wellhead protection areas and groundwater recharge are found in Chapter 89 of the Sussex County Code and known as the Sourcewater Protection Chapter of the Code and in this Chapter, the County adopted DNREC’s sourcewater maps; that no impervious surface is proposed; that the 52 acres is in Zone X on the FEMA maps and is outside of the 500-year flood plain; that there was a preliminary soils report performed on the 52 acre site to establish what the disposal could be; that there was a hydrogeologic suitability report which is part of the DNREC approval process; that there are no wellhead protection areas in close proximity to this site; that there is an excellent recharge area throughout most of the site; that the additional 52 acres is almost comprised entirely of areas within an excellent recharge area; that the spray fields are also in excellent recharge areas; that the application seeks to modify the buffer to a 20 foot wide medium density landscaped buffers along a portion of Isaacs Road and the properties along Reynolds Pond Road that exists between Reynolds Pond Road and Artesian’s property boundary lines; and that the applicant/application provides an essential service to Sussex County.

Mr. Hutt highlighted the communities that will be served by this facility, stating that this is a broad area of Sussex County which will be assisted with wastewater management. He noted that Artesian works in tandem with Sussex County for wastewater treatment in this area.

Mr. Hutt reviewed the site plan for the application site and the original 74.61 acres and reviewed a diagram of the transmission of wastewater. Off-site treated effluent will be ready to be sprayed; raw wastewater will be sent to the wastewater treatment plant, then to the storage lagoon and then to the spray fields. Mr. Hutt noted that the wastewater treatment plant has already been approved and that the application to be considered today is only for the 52 acres of spray fields.

Mr. Hutt summarized the requested changes to the conditions of approval for Conditional Use No. 1724, as follows:

- Condition 1: add the words “storage” and “treatment” to better describe and encompass the entire process (Planning and Zoning Commission’s recommended Condition a)**

**Public
Hearing/
CU 2208
(continued)**

- **Condition 1:** add the information about Conditional Use No. 1810 (Planning and Zoning Commission's recommended Condition b)
- **Condition 3:** modify the term "treatment plant building" to include "any buildings" (Planning and Zoning Commission's recommended Condition c)
- **Condition 4:** remove the Sussex County Engineering Department as this is regulated by DNREC (Planning and Zoning Commission recommended deletion of Condition 4 as it is duplicative of Condition 1)
- **Condition 5:** clarify the location and density of the buffer with the landscaping plan (Planning and Zoning Commission's recommended Condition d)
- **Condition 5:** make the second (last) sentence a separate condition (Planning and Zoning Commission's recommended Condition e)
- **Condition 6:** identify that the signage would go on Isaacs Road (Planning and Zoning Commission's recommended Condition f)
- **Condition 7:** modify to specify equipment location (Planning and Zoning Commission's recommended Condition g)

Mr. Hutt noted that all of the other conditions for Ordinance No. 1922 (Conditional Use No. 1724) from 2007 would remain the same, except for being extended across the additional acreage. He further noted that the primary change to Conditional Use No. 1724 is to add 52.76± acres for a total acreage of 127.37± acres. He further noted that the conditions would apply to the entirety of the 127.37± acres.

Mr. Hutt stated that the Applicant agrees to the conditions recommended by the Planning and Zoning Commission.

Public comments were heard.

Christopher Edginton commented on the application and questioned if the proposed site will be a future spray field and if the treated wastewater from the Allen Harim chicken processing plant will be co-mingled in the lagoon with the wastewater from the treatment plant.

Mr. Hutt stated that the 52 acres is a disposal area and the science is being done to determine the type of disposal.

Mr. Konstanski responded yes to both questions and he stated that they are currently looking into disposal options (spray field or rapid infiltration basins). He also stated that there would be treated effluent coming into the lagoon from Allen Harim directly and the treated effluent from the proposed wastewater treatment plant would also come into the same lagoon, and both of them would be below the levels as required by DNREC and therefore, it is acceptable to co-mingle them.

There were no public comments in support of the application.

**Public
Hearing/
CU 2208
(continued)**

Stephanie Coulbourne (speaking as a resident and not in a professional manner) spoke in opposition to the application. She stated that she lives on Reynolds Pond Road which is contiguous to this project; that this project affects her property directly; that in reviewing the application, she has noticed that there is information missing that is critical to the application; that she agrees there is a need for this service in the area but she wants to make sure it is done correctly and does not compromise any neighborhood properties; that she has concern about their own water supply and quality of living at their own property; that the elevation map that shows the drainage to the property shows the direction towards the wells and the residents' area and potentially toward the aquifer; that her well is not noted on the map at all and she questions how it is being protected; that in a letter dated February 23, 2021 from the Senior Hydrologist, it stated that the investigations were not complete – that the HSR Report has not been completed; that the quantity of treated effluent that can be discharged to the site is not known; that there are seven reports that have not been done to figure out what can be discharged and she understands this is a DNREC issue; that she questions why the application is being considered without answers to these reports; that she is concerned about wastewater from Allen Harim because of the company's track record; that Allen Harim has had multiple violations and heavy fines for not following regulations; that she would like to know how those issues will be regulated; that she has not seen a nutrient management study done and she has not seen a report about the groundwater recharge; that there is already 1,700 acres that are being used for the spray fields; that she agrees with the forested buffer they are installing and that there is not a need for one adjacent to the spray fields next to them; that she asked that the land developer continue to be responsible for the health of the buffer for the life of the project and not just the two years referenced in the maintenance responsibilities for the plant; and she asks that all HSR reports be completed prior to approval.

Keith Steck (speaking as a resident and as Vice President of Delaware Coalition for Open Government) spoke in opposition to the application. He stated that he does not believe that the Council has complete and accurate information; that in regards to the combined lots, the second lot that they identified on the application is wrong – it is two miles away and owned by the Nature Conservancy; that discussions have been on three ordinances that are intertwined now; that there is a parcel (235-6.00-11.01) that is included in spray fields that was never approved for inclusion in this project; that Conditional Use 1725 (Ordinance 1923) identifies the parcel; that he has raised this issue previously with Artesian and DNREC; that Artesian has failed to comply with all conditions; that Artesian does not have a CPCN from the Public Service Commission for most of the spray fields but it does show up for this particular parcel; that the sourcewater protection ordinance is not being followed by Artesian; that this is critical to protect drinking water supplies; that the County cannot pass this off to DNREC because relying on DNREC is not an option and this sets a dangerous precedent; that another important issue is the Artesian and Allen Harim deal and the large amount of wastewater that is going to this location to be sprayed; that he

**Public
Hearing/
CU 2208
(continued)**

questions how much of that water the plants can take up; that spray irrigation cannot be sprayed all the time year-round and he questions what happens on days when spraying cannot take place; that he questions how much sewage they plan to bring in and is it more than this facility can handle; and that he asks the Council to defer its decision until all the questions have been answered and the necessary documents/reports submitted.

There were no additional public comments.

Mr. Vincent questioned if the record should remain open for the purpose of answering questions raised by the opposition.

Mr. Whitehouse addressed the questions that pertained to this application.

It was noted that Ms. Coulbourne's landscaping question was answered.

It was also noted that the other questions are for DNREC.

The Public Hearing and public record were closed.

**M 131 21
Amend
Condition/
CU 2208**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to amend the third sentence of Condition 11d recommended by the Planning and Zoning Commission to read as follows: "These buffer areas and the plantings within them must be maintained by the property owner during the lifetime of this permitted use."

Motion Adopted: 5 Yeas.

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

**M 132 21
Amend
Condition/
CU 2208**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to amend the last sentence of Condition 11d recommended by the Planning and Zoning Commission to read as follows: "For example, if a tree or shrub that is part of the landscaped buffer dies, it must be replanted with a similar tree or shrub in a timely manner."

Motion Adopted: 5 Yeas.

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

**M 133 21
Adopt
Ordinance
No. 2768/
CU 2208**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to Adopt Ordinance No. 2768 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN EXPANSION OF AND AMEND CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO.

**M 133 21
Adopt
Ordinance
No. 2768/
CU 2208
(continued)**

1724 TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 127.37 ACRES, MORE OR LESS” (Conditional Use No. 2208) filed on behalf of Artesian Wastewater Management, Inc., with the following conditions, as amended:

- a. The regional Sewage Treatment Plant and its accompanying systems and facilities for the collection, storage, treatment and disposal of waste shall continue to operate with all changes or modifications to those systems and facilities being reviewed and approved by DNREC and they shall be operated, designed and constructed in accordance with all other applicable Federal, State and County requirements including those mandated by DNREC and other agencies having jurisdiction over same.**
- b. The water treatment plant shall be subject to the conditions imposed on December 2, 2008 when Sussex County Council adopted Ordinance No. 2013 approving Conditional Use No. 1810.**
- c. Any buildings constructed on the site shall be constructed with an agricultural appearance.**
- d. There shall be a medium density landscaped buffer twenty feet (20’) in width adjacent to the storage lagoons along Isaacs Road (Del. Route 30) and along the back of the properties along the northern boundary of the property with the exception of where the structures are located too close to the northern boundary line for the location of the buffer (being within Tax Parcel No. 235-6.00-28.01). The density and location of these landscaped buffers shall be shown on the Final Site Plan. These buffer areas and the plantings within them must be maintained by the property owner during the lifetime of this permitted use. For example, if a tree or shrub that is part of the landscaped buffer dies, it must be replanted with a similar tree or shrub in a timely manner.**
- e. Any lagoons, Rapid Infiltration Basins or similar structures shall be located at least 100 feet from any dwellings.**
- f. One lighted sign shall be permitted along Isaacs Road (Del. Route 30) not to exceed 32 square feet in size per side.**
- g. Any motorized, non-vehicular equipment utilized in the operation of the facility within 600 feet of a dwelling shall be located indoors.**
- h. Any security lighting shall be fully screened so that it does not shine onto neighboring properties or County roads.**
- i. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Grant
Requests**

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

M 134 21 Councilmanic Grant **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to give \$1,500.00 from Mr. Hudson's Councilmanic Grant Account to the Village Improvement Association for snow fence replacement along beach dunes.**

Motion Adopted: 5 Yeas.

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

M 135 21 Councilmanic Grant **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to give \$1,000.00 from Mr. Hudson's Councilmanic Grant Account to Rehoboth Beach Main Street to defray costs associated with sidewalk dining and retail.**

Motion Adopted: 5 Yeas.

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

M 136 21 Councilmanic Grant **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to give \$2,000.00 (\$500.00 each from Mr. Hudson's, Mr. Rieley's, Mr. Schaeffer's and Mr. Vincent's Councilmanic Grant Accounts) to the Fraternal Order of Police, Sussex County Lodge No. 2, for programs supporting disadvantaged youth, needy families, police officers, veterans, etc.**

Motion Adopted: 5 Yeas.

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

M 137 21 Councilmanic Grant **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to give \$500.00 from Mr. Hudson's Councilmanic Grant Account to Stronger After Cancer for personal training for cancer survivors.**

Motion Adopted: 5 Yeas.

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

M 138 21 Councilmanic Grant **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to give \$2,000.00 (\$1,000.00 each from Mr. Hudson's and Mr. Rieley's Councilmanic Grant Accounts) to the Diocesan Council for Camp Arrowhead for construction of a dining hall and community center.**

Motion Adopted: 5 Yeas.

**M 138 21
(continued)**

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

**M 139 21
Council-
manic
Grant**

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer, to give \$2,000.00 (\$1,000.00 from Mrs. Green's Councilmanic Grant Account, \$250.00 from Mr. Schaeffer's Councilmanic Grant Account, \$500.00 from Mr. Rieley's Councilmanic Grant Account and \$250.00 from Mr. Hudson's Councilmanic Grant Account) to Delmarva Clergy United in Social Action Foundation for The Griffin Place.

Motion Adopted: 5 Yeas.

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

**M 140 21
Adjourn**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to adjourn at 12:09 p.m.

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

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

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

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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: April 15, 2021

RE: County Council Report for Ord 20-07 Relating to the Future Land Use Map

The Planning and Zoning Department received an application (CZ 1923 on behalf of Reed Farms, LLC) for a Change of Zone of Tax Parcels: 235-13.00-29.00, 235-13.00-29.01, & 235-14.00-570.00 from Agricultural Residential Zoning District (AR-1) to Heavy Industrial Zoning District (HI-1). The area of the parcels is 67.31 acres +/-.

As the Future Land Use Map within the adopted 2019 Comprehensive Plan designates the parcels as being within the Low Density Area, which does not permit such HI-1 zoning, an Ordinance was introduced to enable County Council to consider the potential revision of the Future Land Use Map to change the designation of the parcels to the Developing Area.

The potential revision was submitted to the Office of State Planning Coordination for PLUS review at the meeting of December 16, 2020. The written comments of that meeting are included in the paperless packet.

The Planning and Zoning Commission held a public hearing on December 17, 2020. At the meeting of February 25, 2021, the Commission recommended that County Council adopt the Ordinance for the 8 reasons outlined within the motion (included below).

County Council held a public hearing on the Ordinance at its meeting of March 2, 2021. At that meeting, action was deferred for further consideration.

Below are the minutes from the Planning & Zoning Commission meetings of December 17, 2020 and February 25, 2021.



Copy of Minutes of the December 17, 2020 Planning & Zoning Commission Meeting

Ord. 20-07 - Future Land Use Map

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-13.00-29.00, 29.01 & 235-14.00-570.00

Mr. Whitehouse advised the Commission that submitted into the record for Ord. 20-07 is a copy of the submission to the State's PLUS review service, a copy of the ordinance and a copy of the exhibit map; that the written response has not yet been received from PLUS review but the State did not raise any objection to the Ordinance and noted that it is contained within Level 4 in terms of the States Spending Strategies; that written comments will be available over the next few weeks; and that in relation to C/Z 1923 submitted into the record is a copy of the Applicant's site plan, a copy of the Applicant's exhibit book, comments from the Sussex County Engineering Department Utility Planning Division, a letter from Delmarva Central Railroad, a copy of the Applicant's DelDOT Service Level Evaluation response. Mr. Whitehouse noted that the Office of Planning and Zoning received three comments in opposition to the Application.

Mr. Robertson asked for clarification regarding the PLUS response. Mr. Whitehouse stated that the PLUS response is only for the Ordinance because it is a Comprehensive Plan Amendment.

The Commission found that Mr. David Hutt was present on behalf of the Applicant, Reed Farms, LLC, that also present are Mr. Richard Reed, Mr. Jim Reed, and Ms. Beverly White, principals in the ownership of the subject properties, Mr. Mark Davidson, principal land planner with Pennoni Group; that many of the factors that apply to the change in the land use map also apply to the change of zone application; that and exhibit notebook was submitted as part of the record; that the properties are located between the Milton Ellendale Highway (Rt. 16) and Gravel Hill Road (Rt. 30); that the presentation is divided into two parts; that the first part will focus on the amendment to the Future Land Use Map and the second part on the rezoning request; that section 4.4 of the 2019 Comprehensive Plan states that Future Land Use Plan is the most influential part of this Comprehensive and goes on to describe the basis for the Future Land Use Plan with seven bullet points; that the fourth bullet point states "to encourage tourism and other responsible commercial and industrial job providers to locate and invest in the County."; that as the Future Land Use Plan seeks to encourage commercial and industrial jobs, it is important to look at other sections of the Plan that also speak to those aspects in Sussex County; that Chapter 9 speaks to the four industrial parks and states "while there are some vacancies in some of these business and industrial parks that should be markets to new employers, the County should also continue to look for new business and industrial sites attractive to businesses looking to locate to the County. Sites that will be most attractive to new businesses are those that have access to utilities (natural gas, fiber optic, etc.) as well as low electric rates."; that the subject property has access to utilities including natural gas which is to the south; that this site sites in close proximity to the waste water treatment operated by Artesian; that Chapter 13 is the mobility element in the Comprehensive Plan and section 13.2 describes the County's freight network as being an important part of the County's transportation network as well as the County's economy; that the subject properties have extensive frontage onto roadways which are designated by DelDOT as major collectors; that there is room for an entrance on Route 16 and possibly two entrances on Route 30 in the future; that in addition to having frontage on two collector roads, the southern boundary of the property is adjacent to the Delmarva Central Railroad line; that is mentioned in section 13.2 of the Comprehensive Plan about reducing truck impacts by shifting freight to rail; that

Delmarva Central Railroad has submitted a letter of support for the Application; that Ord.20-07 seeks to change the designation of these three properties on the Future Land Use Map from Low-Density to a Developing Area, which is one of the County's seven Growth Areas; that there are ten factors to consider when deciding if a property should be in a Growth Area; that these factors apply equally to Ord. 20-07 and to the Change of Zone application; that the first factor is proximity to an incorporated municipality; that these three properties are located within one mile of the Town of Milton; that this property is across the street from a Growth Area within the Town of Milton boundary; that properties to the north and to the south are currently designated as being in the growth area on the existing Future Land Use Map of Sussex County; that these properties are also located approximately one half mile from the Town Center Area on the Future Land Use Map and is consistent with properties set forth in the Comprehensive Plan for Developing Areas; that developing areas in the Plan are described as being adjacent to municipal areas; that in the developing area of the Comprehensive Plan it states that portions of the developing area with good road access and few nearby homes should allow for business and industrial parks; that the nearby homes are mostly located on the eastern side of Gravel Hill Road (Rt. 30); that the second factor to consider to designate a property as being in a Growth Area is the presence of public water and public sewer nearby, that the subject properties are in close proximity to the regional sewer treatment plant; that Artesian has an easement across the subject property so connection would be a simple process; that the third factor for consideration is that public sewer will be available within five years, and this is not applicable as Artesian is already providing public sewer in the area; that the fourth factor is location near a major road or intersection which has been previously addressed; that the fifth factor is the character and intensity of surrounding development including proposed development; that there are a number of commercial businesses in the area; that the sixth factor is location relative to major preserved lands; that adjacent to the north of these properties is a tract of land of more than 500 acres which is in an agricultural easement and serves as part of the waste water disposal for Artesian and homes will not be built on this site in the future; that the seventh factor for consideration for a growth area is the location of water bodies and these properties are not adjacent to water bodies; that the eighth factor for consideration is the location of Agricultural and other protected easements which is similar to the sixth factor which has been addressed; that the ninth factor is the area's environmental character and on these properties there are no wetlands, it is not in an excellent recharge area and it is not in a flood plain; that the tenth factor is how the area ranks according to the Delaware's Strategies for State Policies and Spending Document, Level I, II, III, or IV; that the property is identified as being in Investment IV and the Applicant would submit that because the County designated it as being a Low-Density Area; that adjacent to these properties are areas designated as being in Investment Level II and III; that the consideration of these ten factors supports the placement of these properties in a Growth Area; that it also makes sense because immediately to the south is an Industrial Area and to the north and east is also in a Growth Area as is proposed for this property; that the characteristics that apply to the properties in the Growth Area also apply to the subject properties; that many of the same characteristics will apply to the requested change in zone for the property; that the parcels comprise of 67.31 acres and are currently zoned AR-1 and that the application seeks to change the zone to HI-1; that two of the parcels are unimproved and currently used for agricultural purposes and the third parcel is improved with a residence which would be repurposed or removed from the site depending on the future uses; that these properties can comply with the County Code requirements for the HI-1 zoning district; that the property to the south is zoned LI-2 and to the north properties are zoned C-1; that the properties are surrounded by various zoning categories; that close to these properties the Town of Milton has designated some areas as being in the light industrial area which further demonstrates the nature of this area; that another element for consideration for any change of zone is traffic and when a Service Level Evaluation request is sent to DelDOT for a rezoning, DelDOT will often indicate that at Traffic

Impact Study (TIS) is not required until a subdivision or land development plan is proposed; that many of the letters in opposition stated traffic concerns and Mr. Mark Davidson, Principal Land Planner will address those issues.

Mr. Davidson stated DelDOT will require a TIS when the site plan is submitted for the uses within the property; that DelDOT will require additional right-of-way dedication, 15-foot permanent easement and shared use path on both road frontages; that because these roads are major collector roads, the Applicant will have to bring the roads up to major collector standards; that additional expansion of the roads to include right turn lanes and left turn lanes would be required; that some of the letters of opposition had concerns about the entrance being directly opposite to the entrance to the Pemberton Development: that Section 5.2.2 (D) of the DelDOT Coordination Manual it states that all entrances should be located directly across from an entrance on the opposite side of the roadways; that it goes on to mention sight distances and that entrances are at the discretion of DelDOT and distance from adjacent streets; that there were some concerns about the curve in the road which is close to the proposed entrance; and that DelDOT will require that sight distance is maintained so the shrubbery will have to be cleared and possible some additional right-of-way dedication.

Mr. Hutt stated that there is the opportunity for interconnectivity with other properties; that the purpose statement for HI-1 in the Sussex County Code states that the “purpose of this district is to provide for a variety of industrial operations but to restrict or prohibit those industries which have characteristics likely to produce serious adverse effects within or beyond the limits of the district”; that this is significant because a concern raised was about the nature of commercial and industrial uses but the purpose specifically states to restrict or prohibit those industries likely to produce serious adverse effects and provides a list of approximately 45 uses or categories of uses that are potentially hazardous and these would require a public hearing before the Board of Adjustment prior to a person getting a site plan approved by the Commission; that one of the benefits of changes to the Future Land Use Map and the change of zone is job creation and specifically jobs beyond the tourism that Sussex County is renowned for located along the Eastern Side of the County; that the tourism jobs are seasonal in nature; that the nature of jobs related to industry are full-time year round jobs; that it is expected that the use created on these properties will require a workforce; that the proximity to the Town of Milton should supply the workforce and create a short commute for workers on this site in the future; that the County has a continual demand to build more homes and workspaces and as development occurs there is less vacant land and less industrial area for that land; that development needs to occur in a way that the County grows in a sustainable manner which is the purpose of the Comprehensive Land Use Plan; that often the word industrial makes people think of a low value area, dirty area, noisy area or some other nuisance type factor, however, there are many new innovations that have created industry that can help grow an area in an economical and green manner; that one example would be distribution warehousing which can be done in green and clean environments; that based upon the Application’s consistency with the properties proximity to industrial and commercial areas both existing and proposed, along with the location along two major roadways and adjacent to a rail line and the other features and characteristics set forth in the presentation, the Applicants asks that the Commission recommend approval of the amendment to the Future Land Use Map as well as the change of zone designation from AR-1 to HI-1; and that the Applicant has proposed Findings of Fact which will be submitted to Staff.

Ms. Stevenson asked if there was a letter from Artesian confirming that they will supply water and sewer to the site.

Mr. Hutt stated that there is not a letter from Artesian.

Mr. Hopkins stated that he thinks it is an ideal location for an industrial site.

Ms. Wingate stated that one of the opposition letters asked about landscaping on Route 30 to eliminate some of the noise and lighting and asked if that is something the Applicant would be willing to accommodate.

Mr. Hutt that there would be room to accommodate screening and other types of landscaping devices to assist in that process and that the HI-1 zoning district has a large front yard setback.

Mr. Mears agreed with Mr. Hopkins that the subject properties is an ideal location for this type of use.

Ms. Stevenson asked if this could be done as a conditional use instead of change of zone.

Mr. Robertson stated that it is difficult to say that because it would depend on what the individual uses would be but it would not be the best way to go as you would have a number of conditional uses that are not related to each other on the property.

Chairman Wheatley stated that there are not many applications for HI-1 zoning; that the most hazardous use on the list is probably the asphalt plant; that it is on the list of things that could go there; that it is also on the list of things that would require Board of Adjustment approval; that HI-1 zoning is being requested for the entire parcel but portions of the site are being designated for light industrial and questioned why HI-1 is being selected for the entire parcel.

Mr. Hutt stated that HI-1 was being requested because of the features on the property and the proximity to the rail access; that the heavier uses would remain close to the rail line and as you get closer to Route 30 there would be the lighter uses.

Chairman Wheatley asked if the Applicant has had conversations with Artesian about the plans for the site.

Mr. Davidson stated that there are easements on the subject properties and the existing force main is already on the property; that access to that line is granted by Artesian and they will allow the future sewer to be connected to the force main.

Chairman Wheatley asked if LI-1 and LI-2 are permitted in the HI-1 district.

Mr. Robertson stated that both categories are permitted in the HI-1 district.

The Commission found that Mr. Keith Steck spoke in opposition to the Application. Mr. Steck stated that he is not opposed to the Applicant using the land; that heavy industry is not appropriate from a safety perspective or from a development perspective; that they should consider a medical facility, grocery store or other services; that jobs are needed in the area which would come with a medical facility; that an industrial operation is a particular concern due to the proximity to Bakers; that putting

an industrial site is not consistent with the preserved lands in the area; and that it is not consistent with the long-term growth according to the Comprehensive Plan.

The Commission found that Helen Ralston spoke by teleconference in opposition to the Application. Ms. Ralston stated that it was not known about the change to the Future Land Use Map.

Chairman Wheatley explained that it was correctly advertised and that it is procedural that if the zone is changed it is necessary to also change the map as the two things work together.

Ms. Ralston stated that changing this parcel of land to Heavy Industrial would create a substantial change to the rural, agricultural and residential character of this area; that changes to the roadway would require major construction; that it would be extremely disruptive; that it may be a number of years before sewer service will be available; that she objects to the Railroad Spur unloading from Railroad lines as it is a noisy and messy process as it requires heavy equipment and more trucks; and ask the Commission to consider if this operation were to be placed across the street from their property.

The Commission found that Bob Valihura, Esq. spoke by teleconference in opposition to the Application. Mr. Valihura stated that he represents the Pemberton Property Owners Association; that he was prepared to present an argument for his client; that his client has not had the time to go back and speak with the homeowners to decide how they want to proceed; that the Department of Planning and Zoning recommendation changed on December 8 and did not allow him the time to prepare for tonight; that he opposes the Application because he does not know what the position of the Community is; and that a letter was submitted outlining how the change impacts his clients.

Chairman Wheatley asked Mr. Valihura to detail the change that he is referencing.

Mr. Valihura stated that the original staff analysis stated that “it could be considered to be consistent with the land use area, zoning and surrounding uses” to “it could be considered to having a degree of consistency with the land use area, zoning and surrounding uses”.

Chairman Wheatley asked the Director of Planning and Zoning to respond to Mr. Valihura’s statement.

Mr. Whitehouse responded that Staff do not make a recommendation but do include a helpful analysis; that different staff members use slightly different wording to convey the same meaning; that there was no intent to change any meaning or analysis to the Application.

Mr. Valihura stated that the language that was chosen alerted him and his clients that there was a change; that he will accept the representation of Mr. Whitehouse as he is the author of the staff analysis; that this does not change the fact that the clients believed that there was a change; and that he would request that the record be held open so he can present his clients position now that he understands that there is not a change in the Department’s position on this Application and would ask for 30 days.

Mr. Robertson stated that the underlying application has not changed; that it has always been HI-1; that it was introduced as an ordinance to HI-1; that it went through PLUS for the rezoning as HI-1; that it was advertised as HI-1; that the notices were mailed out as HI-1; that it was placed on the agenda as HI-1; that there was no fundamental change in circumstances; that just like Mr. Hutt has to make a case that HI-1 is appropriate anyone who has concerns about this must make their best case as to why HI-1 is inappropriate if they are in opposition; that a turn of phrase in a staff report does not affect the fundamental issue at hand; that the record will have to be kept open for the PLUS report for the Future Land Use Map; and that it will be up to the Commission if it is limited to just that or to the rezoning also.

Mr. Robertson reminded those present and those listening online that there will be another public hearing in front of County Council so there will be another opportunity for the public to speak regarding this Application.

Mr. Valihura stated that his client thought there was a change in the Application; that now he understands there was no change; and that he would like the opportunity to be able to submit their position in writing as they are a neighboring community.

The Commission found that Anthony Scarpa spoke by teleconference in opposition to the Application. Mr. Scarpa addressed the comment from Mr. Hutt regarding the utilities on the property; that neither well or sewer is available for this property at this time; that the Artesian wastewater system is not yet constructed; that there are a number of water contamination issues with wells in the area; that if the Applicant plans to use a well and septic system to service this property, that will increase the negative impact existing in the area; that he understands the need for jobs in Sussex County and supports agriculture but the health and well-being of the Pemberton residents should take precedence over industrial development where it can impact the neighborhood; that there was a proposed high density development in the area but it was abandoned when the developer could not get a public water and sewer connection to the site; that he has concerns about the safety of children getting off the bus in proximity to the subject property; that this may cause a precedent and there may be others who will also ask for heavy industry; and that for all these reasons he opposes the rezoning.

The Commission found that Larry DiSabatino spoke by teleconference in support to the Application. Mr. DiSabatino stated that he owns the property zoned high-density that the previous caller referenced; that his development has languished; that jobs are very important to the community and believes that if this Application is approved it will bring jobs to the area; and that there will be restrictions on what can be placed at this site; and that it will bring opportunity to the area and mixed uses to the area.

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

At the conclusion of the Public Hearings, the Commission discussed Ord. 20-07. Motion by Mr. Hopkins, second by Ms. Stevenson, to leave the record open to receive PLUS comments and to allow 15 days for the receipt of public comments relating to the PLUS comments following the

announcement of receipt (Receipt of comments will be announced at a future meeting). Motion carried 5-0.

The Commission discussed C/Z 1923. Motion by Ms. Stevenson, seconded by Mr. Hopkins, to defer action for further consideration. Motion carried 5-0.

Mr. Robertson stated that C/Z 1923 will not appear on a future agenda until the record is completely closed for Ord. 20-07.

Copy of Minutes of the February 25, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since January 21, 2021.

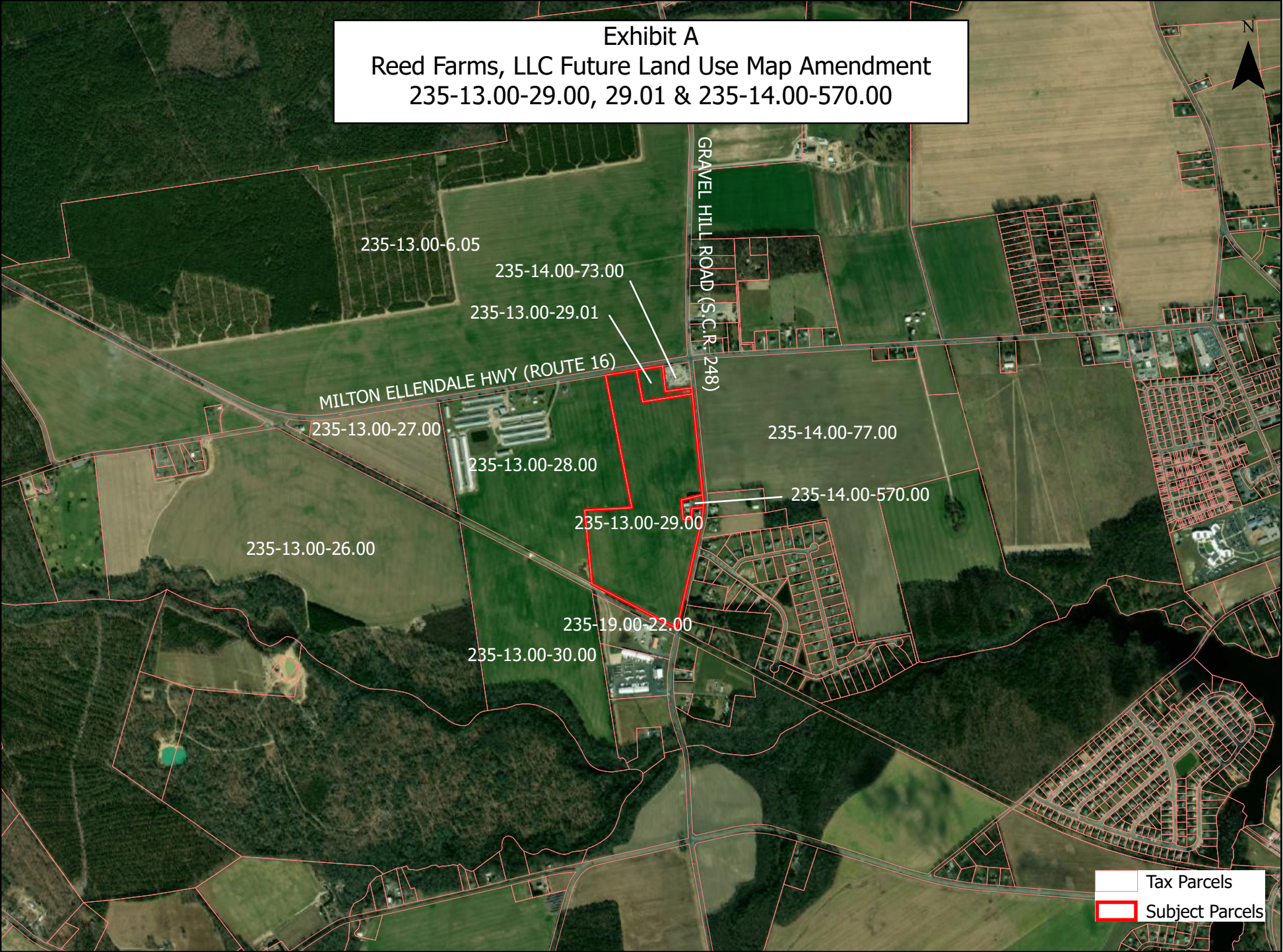
Ms. Stevenson moved that the Commission recommend approval of Ordinance # 20-07 to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for Parcels 235-13.00-29.00 and 29.01 and 235-14.00-570.00 from a Low Density Area to a Developing Area based on the record made during the public hearing and for the following reasons:

1. The parcel is 67.31 acres of land. The property is currently zoned AR-1.
2. The parcel is designated as being in the Low-Density Area according to the Future Land Use Map.
3. Properties to the east of this Parcel are entirely within the Developing Area. Properties to the south of this Parcel are designated as "Industrial". This revision to a Developing Area on the Future Land Use Map is consistent with the surrounding Map designations.
4. The property has extensive frontage on Route 30, which is designated as a truck route by the State.
5. This revision to the Future Land Use Map will not adversely affect neighboring properties, area roadways or future land-use planning in the area.
6. The Parcel is in close proximity to the intersection of Routes 30 and 16. Given its proximity to this intersection and other properties that have the Developing Area or Industrial classification already, this Map amendment is appropriate.
7. This property has railroad service available to it. This Map amendment promotes the transportation goals in the Sussex County Land Use Plan, which states in Section 13.2.2 that "The County's goods movement (freight) network is an integral component of the transportation network as well as the economy. The main element of the freight network is the roadway system, which carries trucks (motor freight)." The Plan also states that one way of reducing truck impacts on area roadways is to shift more freight to rail, although opportunities to do that are limited. This site presents an opportunity to achieve this goal. This is also supported in the Comprehensive Plan by Goal 13.5, Objective 13.5.1 and the Strategies attached to this Goal and Objective.
8. This revision of the Future Land Use Map is appropriate given the particular circumstances involved at this location. When several factors like these exist, the consideration and approval of an amendment to the Future Land Use Map is appropriate.

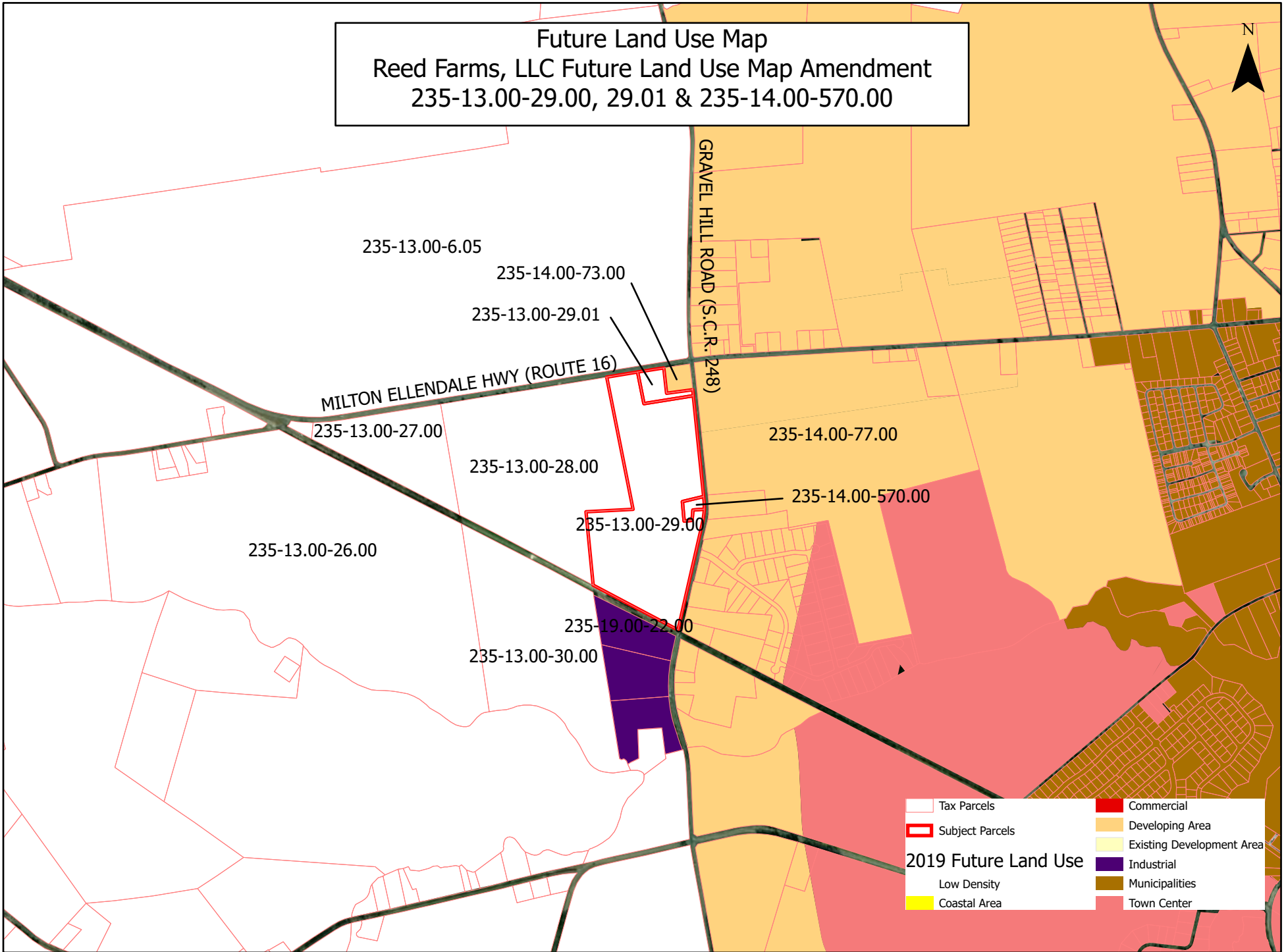
Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval

of Ord. 20-07 Future Land Use Map Amendment for the reasons and conditions stated in the motion.
Motion carried 4 – 0.

Exhibit A
Reed Farms, LLC Future Land Use Map Amendment
235-13.00-29.00, 29.01 & 235-14.00-570.00



Future Land Use Map
Reed Farms, LLC Future Land Use Map Amendment
235-13.00-29.00, 29.01 & 235-14.00-570.00

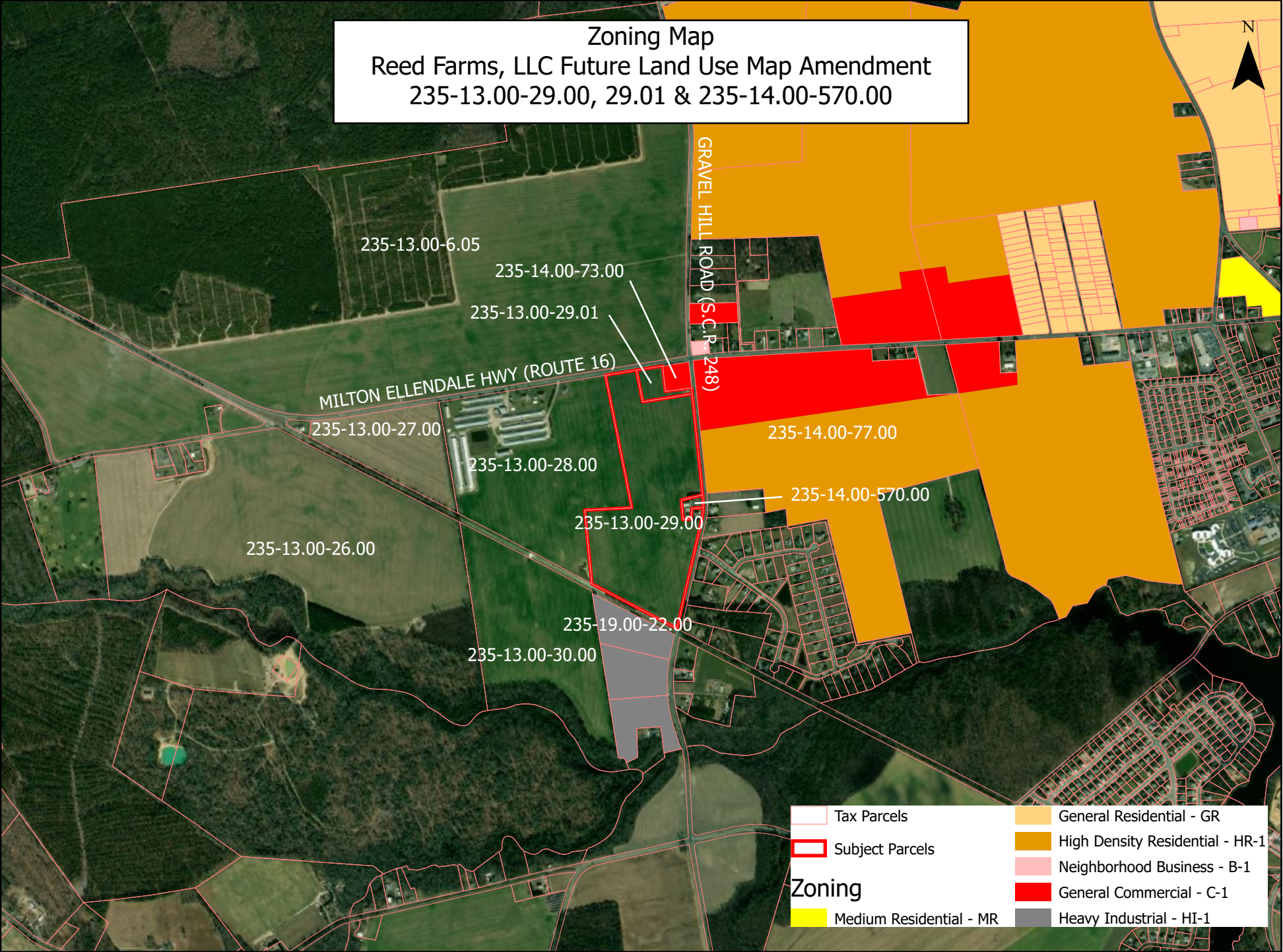










	Tax Parcels		Commercial
	Subject Parcels		Developing Area
			Existing Development Area
			Industrial
			Municipalities
			Town Center
	Coastal Area		

2019 Future Land Use

- Low Density

Zoning Map
Reed Farms, LLC Future Land Use Map Amendment
235-13.00-29.00, 29.01 & 235-14.00-570.00



	Tax Parcels		General Residential - GR
	Subject Parcels		High Density Residential - HR-1
Zoning			Neighborhood Business - B-1
			General Commercial - C-1
	Medium Residential - MR		Heavy Industrial - HI-1

Introduced 11/17/20

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-13.00-29.00, 235-13.00-29.01 & 235-14.00-570.00

WHEREAS, on March 16th, 2020, the Sussex County Planning and Zoning Office received an application for Change of Zone No. 1923; and

WHEREAS, the Sussex County Council will consider Change of Zone No. 1923 from an AR-1 Agricultural Residential District to a HI-1 Heavy Industrial District for certain parcels of land lying and being in Broadkill Hundred, Sussex County, containing 67.31 acres, more or less (the entirety of Tax Parcel No. 235-13.00-29.00, 235-13.00-29.01 & 235-14.00-570.00) (the “Property”); and

WHEREAS, the Property is designated as being within the Low Density Area as set forth in the Future Land Use Map identified as Figure 4.5-1 in the Plan, and the Low Density does not permit such HI-1 Zoning; and

WHEREAS, Sussex County Council desires to adopt this Ordinance amending the Future Land Use Map of the Plan with minor amendments; and

WHEREAS, in accordance with the required process for public hearings on ordinances such as this one, both Sussex County Council and the Sussex County Planning and Zoning Commission will hold public hearings on this Ordinance, but limited in scope to this specific proposed amendment to the Future Land Use Map contained in the Plan.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan is hereby amended to change the Area designation of Sussex County Parcel Nos. 235-13.00-29.00, 235-13.00-29.01 & 235-14.00-570.00 from the Low Density Area to the Developing Area. The Sussex County Parcel Nos. 235-13.00-29.00, 235-13.00-29.01 & 235-14.00-570.00 so changed is identified in Exhibit A, attached hereto and incorporated herein.

Section 2. This Ordinance shall also take effect following its adoption by majority vote of all members of the County Council of Sussex County, Delaware, and upon certification by the State of Delaware.

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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: April 15, 2021

RE: County Council Report for CZ 1923 filed on behalf of Reed Farms, LLC

The Planning and Zoning Department received an application (CZ 1923 filed on behalf of Reed Farms, LLC) for a Change of Zone of parcels 235-13.00-29.00, 29.01 & 235-14.00-570.00 from Agricultural Residential Zoning District (AR-1) to Heavy Industrial Zoning District (HI-1). The parcel is located at 14888, 14866 & 14742 Gravel Hill Rd, Milton. The change of zone is for 67.31 acres, more or less.

There is a separate Ordinance for a potential change of the Future Land Use Map of the Comprehensive Plan.

The Planning and Zoning Commission held a public hearing on December 17, 2020. At the meeting of February 25, 2021, the Commission recommended approval of the application for the 10 reasons within the motion (included below).

The County Council held a public hearing on the Change of Zone application at its meeting of March 2, 2021. At the meeting, action on the application was deferred for further consideration.

Below are the minutes from the Planning & Zoning Commission meeting of December 17, 2020 and the minutes of the Planning & Zoning Commission meeting of February 25, 2021.

[Copy of Minutes of the December 17, 2020 Planning & Zoning Commission Meeting](#)

C/Z 1923 Reed Farms, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a HI-1 Heavy Industrial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 67.31 acres, more or less. The



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

property is lying on the west side of Gravel Hill Rd. (Rt. 30) approximately 309 feet south of Milton-Ellendale Hwy. (Rt. 16). 911 Address: 14888, 14866 & 14742 Gravel Hill Rd., Milton. Tax Parcels: 235-13.00-29.00, 29.01 & 235-14.00-570.00

Mr. Whitehouse advised the Commission that submitted into the record for Ord. 20-07 is a copy of the submission to the State's PLUS review service, a copy of the ordinance and a copy of the exhibit map; that the written response has not yet been received from PLUS review but the State did not raise any objection to the Ordinance and noted that it is contained within Level 4 in terms of the States Spending Strategies; that written comments will be available over the next few weeks; and that in relation to C/Z 1923 submitted into the record is a copy of the Applicant's site plan, a copy of the Applicant's exhibit book, comments from the Sussex County Engineering Department Utility Planning Division, a letter from Delmarva Central Railroad, a copy of the Applicant's DelDOT Service Level Evaluation response. Mr. Whitehouse noted that the Office of Planning and Zoning received three comments in opposition to the Application.

Mr. Robertson asked for clarification regarding the PLUS response. Mr. Whitehouse stated that the PLUS response is only for the Ordinance because it is a Comprehensive Plan Amendment.

The Commission found that Mr. David Hutt was present on behalf of the Applicant, Reed Farms, LLC, that also present are Mr. Richard Reed, Mr. Jim Reed, and Ms. Beverly White, principals in the ownership of the subject properties, Mr. Mark Davidson, principal land planner with Pennoni Group; that many of the factors that apply to the change in the land use map also apply to the change of zone application; that an exhibit notebook was submitted as part of the record; that the properties are located between the Milton Ellendale Highway (Rt. 16) and Gravel Hill Road (Rt. 30); that the presentation is divided into two parts; that the first part will focus on the amendment to the Future Land Use Map and the second part on the rezoning request; that section 4.4 of the 2019 Comprehensive Plan states that Future Land Use Plan is the most influential part of this Comprehensive and goes on to describe the basis for the Future Land Use Plan with seven bullet points; that the fourth bullet point states "to encourage tourism and other responsible commercial and industrial job providers to locate and invest in the County."; that as the Future Land Use Plan seeks to encourage commercial and industrial jobs, it is important to look at other sections of the Plan that also speak to those aspects in Sussex County; that Chapter 9 speaks to the four industrial parks and states "while there are some vacancies in some of these business and industrial parks that should be markets to new employers, the County should also continue to look for new business and industrial sites attractive to businesses looking to locate to the County. Sites that will be most attractive to new businesses are those that have access to utilities (natural gas, fiber optic, etc.) as well as low electric rates."; that the subject property has access to utilities including natural gas which is to the south; that this site is in close proximity to the waste water treatment operated by Artesian; that Chapter 13 is the mobility element in the Comprehensive Plan and section 13.2 describes the County's freight network as being an important part of the County's transportation network as well as the County's economy; that the subject properties have extensive frontage onto roadways which are designated by DelDOT as major collectors; that there is room for an entrance on Route 16 and possibly two entrances on Route 30 in the future; that in addition to having frontage on two collector roads, the southern boundary of the property is adjacent to the Delmarva Central Railroad line; that is mentioned in section 13.2 of the Comprehensive Plan about reducing truck impacts by shifting freight to rail; that Delmarva Central Railroad has submitted a letter of support for the Application; that Ord.20-07 seeks to change the designation of these three properties on the Future Land Use Map from Low-Density to a Developing Area, which is one of the County's seven Growth Areas; that there are ten factors to consider when deciding if a property should be in a Growth Area; that these factors apply equally to

Ord. 20-07 and to the Change of Zone application; that the first factor is proximity to an incorporated municipality; that these three properties are located within one mile of the Town of Milton; that this property is across the street from a Growth Area within the Town of Milton boundary; that properties to the north and to the south are currently designated as being in the growth area on the existing Future Land Use Map of Sussex County; that these properties are also located approximately one half mile from the Town Center Area on the Future Land Use Map and is consistent with properties set forth in the Comprehensive Plan for Developing Areas; that developing areas in the Plan are described as being adjacent to municipal areas; that in the developing area of the Comprehensive Plan it states that portions of the developing area with good road access and few nearby homes should allow for business and industrial parks; that the nearby homes are mostly located on the eastern side of Gravel Hill Road (Rt. 30); that the second factor to consider to designate a property as being in a Growth Area is the presence of public water and public sewer nearby, that the subject properties are in close proximity to the regional sewer treatment plant; that Artesian has an easement across the subject property so connection would be a simple process; that the third factor for consideration is that public sewer will be available within five years, and this is not applicable as Artesian is already providing public sewer in the area; that the fourth factor is location near a major road or intersection which has been previously addressed; that the fifth factor is the character and intensity of surrounding development including proposed development; that there are a number of commercial businesses in the area; that the sixth factor is location relative to major preserved lands; that adjacent to the north of these properties is a tract of land of more than 500 acres which is in an agricultural easement and serves as part of the waste water disposal for Artesian and homes will not be built on this site in the future; that the seventh factor for consideration for a growth area is the location of water bodies and these properties are not adjacent to water bodies; that the eighth factor for consideration is the location of Agricultural and other protected easements which is similar to the sixth factor which has been addressed; that the ninth factor is the area's environmental character and on these properties there are no wetlands, it is not in an excellent recharge area and it is not in a flood plain; that the tenth factor is how the area ranks according to the Delaware's Strategies for State Policies and Spending Document, Level I, II, III, or IV; that the property is identified as being in Investment IV and the Applicant would submit that because the County designated it as being a Low-Density Area; that adjacent to these properties are areas designated as being in Investment Level II and III; that the consideration of these ten factors supports the placement of these properties in a Growth Area; that it also makes sense because immediately to the south is an Industrial Area and to the north and east is also in a Growth Area as is proposed for this property; that the characteristics that apply to the properties in the Growth Area also apply to the subject properties; that many of the same characteristics will apply to the requested change in zone for the property; that the parcels comprise of 67.31 acres and are currently zoned AR-1 and that the application seeks to change the zone to HI-1; that two of the parcels are unimproved and currently used for agricultural purposes and the third parcel is improved with a residence which would be repurposed or removed from the site depending on the future uses; that these properties can comply with the County Code requirements for the HI-1 zoning district; that the property to the south is zoned LI-2 and to the north properties are zoned C-1; that the properties are surrounded by various zoning categories; that close to these properties the Town of Milton has designated some areas as being in the light industrial area which further demonstrates the nature of this area; that another element for consideration for any change of zone is traffic and when a Service Level Evaluation request is sent to DelDOT for a rezoning, DelDOT will often indicate that a Traffic Impact Study (TIS) is not required until a subdivision or land development plan is proposed; that many of the letters in opposition stated traffic concerns and Mr. Mark Davidson, Principal Land Planner will address those issues.

Mr. Davidson stated DelDOT will require a TIS when the site plan is submitted for the uses within

the property; that DelDOT will require additional right-of-way dedication, 15-foot permanent easement and shared use path on both road frontages; that because these roads are major collector roads, the Applicant will have to bring the roads up to major collector standards; that additional expansion of the roads to include right turn lanes and left turn lanes would be required; that some of the letters of opposition had concerns about the entrance being directly opposite to the entrance to the Pemberton Development: that Section 5.2.2 (D) of the DelDOT Coordination Manual it states that all entrances should be located directly across from an entrance on the opposite side of the roadways; that it goes on to mention sight distances and that entrances are at the discretion of DelDOT and distance from adjacent streets; that there were some concerns about the curve in the road which is close to the proposed entrance; and that DelDOT will require that sight distance is maintained so the shrubbery will have to be cleared and possible some additional right-of-way dedication.

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Chairman Wheatley asked if LI-1 and LI-2 are permitted in the HI-1 district.

Mr. Robertson stated that both categories are permitted in the HI-1 district.

The Commission found that Mr. Keith Steck spoke in opposition to the Application. Mr. Steck stated that he is not opposed to the Applicant using the land; that heavy industry is not appropriate from a safety perspective or from a development perspective; that they should consider a medical facility, grocery store or other services; that jobs are needed in the area which would come with a medical facility; that an industrial operation is a particular concern due to the proximity to Bakers; that putting an industrial site is not consistent with the preserved lands in the area; and that it is not consistent with the long-term growth according to the Comprehensive Plan.

The Commission found that Helen Ralston spoke by teleconference in opposition to the Application. Ms. Ralston stated that it was not known about the change to the Future Land Use Map.

Chairman Wheatley explained that it was correctly advertised and that it is procedural that if the zone is changed it is necessary to also change the map as the two things work together.

Ms. Ralston stated that changing this parcel of land to Heavy Industrial would create a substantial change to the rural, agricultural and residential character of this area; that changes to the roadway would require major construction; that it would be extremely disruptive; that it may be a number of years before sewer service will be available; that she objects to the Railroad Spur unloading from Railroad lines as it is a noisy and messy process as it requires heavy equipment and more trucks; and ask the Commission to consider if this operation were to be placed across the street from their property.

The Commission found that Bob Valihura, Esq. spoke by teleconference in opposition to the Application. Mr. Valihura stated that he represents the Pemberton Property Owners Association; that he was prepared to present an argument for his client; that his client has not had the time to go back and speak with the homeowners to decide how they want to proceed; that the Department of Planning and Zoning recommendation changed on December 8 and did not allow him the time to prepare for tonight; that he opposes the Application because he does not know what the position of the Community is; and that a letter was submitted outlining how the change impacts his clients. Chairman Wheatley asked Mr. Valihura to detail the change that he is referencing.

Mr. Valihura stated that the original staff analysis stated that “it could be considered to be consistent with the land use area, zoning and surrounding uses” to “it could be considered to having a degree of consistency with the land use area, zoning and surrounding uses”.

Chairman Wheatley asked the Director of Planning and Zoning to respond to Mr. Vilihura’s statement.

Mr. Whitehouse responded that Staff do not make a recommendation but do include a helpful analysis; that different staff members use slightly different wording to convey the same meaning; that there was no intent to change any meaning or analysis to the Application.

Mr. Valihura stated that the language that was chosen alerted him and his clients that there was a change; that he will accept the representation of Mr. Whitehouse as he is the author of the staff analysis; that this does not change the fact that the clients believed that there was a change; and that he would request that the record be held open so he can present his clients position now that he understands that there is not a change in the Department’s position on this Application and would ask for 30 days.

Mr. Robertson stated that the underlying application has not changed; that it has always been HI-1; that it was introduced as an ordinance to HI-1; that it went through PLUS for the rezoning as HI-1; that it was advertised as HI-1; that the notices were mailed out as HI-1; that it was placed on the agenda as HI-1; that there was no fundamental change in circumstances; that just like Mr. Hutt has to make a case that HI-1 is appropriate anyone who has concerns about this must make their best case as to why HI-1 is inappropriate if they are in opposition; that a turn of phrase in a staff report does not affect the fundamental issue at hand; that the record will have to be kept open for the PLUS report for the Future Land Use Map; and that it will be up to the Commission if it is limited to just that or to the rezoning also.

Mr. Robertson reminded those present and those listening online that there will be another public hearing in front of County Council so there will be another opportunity for the public to speak regarding this Application.

Mr. Valihura stated that his client thought there was a change in the Application; that now he understands there was no change; and that he would like the opportunity to be able to submit their position in writing as they are a neighboring community.

The Commission found that Anthony Scarpa spoke by teleconference in opposition to the Application. Mr. Scarpa addressed the comment from Mr. Hutt regarding the utilities on the property; that neither well or sewer is available for this property at this time; that the Artesian wastewater system is not yet constructed; that there are a number of water contamination issues with wells in the area; that if the Applicant plans to use a well and septic system to service this property, that will increase the negative impact existing in the area; that he understands the need for jobs in Sussex County and supports agriculture but the health and well-being of the Pemberton residents should take precedence over industrial development where it can impact the neighborhood; that there was a proposed high density development in the area but it was abandoned when the developer could not get a public water and sewer connection to the site; that he has concerns about the safety of children getting off the bus in proximity to the subject property; that this may cause a precedent and there may be others who will also ask for heavy industry; and that for all these reasons he opposes the rezoning.

The Commission found that Larry DiSabatino spoke by teleconference in support to the Application. Mr. DiSabatino stated that he owns the property zoned high-density that the previous caller referenced; that his development has languished; that jobs are very important to the community and believes that if this Application is approved it will bring jobs to the area; and that there will be restrictions on what can be placed at this site; and that it will bring opportunity to the area and mixed uses to the area.

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

At the conclusion of the Public Hearings, the Commission discussed Ord. 20-07. Motion by Mr. Hopkins, second by Ms. Stevenson, to leave the record open to receive PLUS comments and to allow 15 days for the receipt of public comments relating to the PLUS comments following the announcement of receipt (Receipt of comments will be announced at a future meeting). Motion carried 5-0.

The Commission discussed C/Z 1923. Motion by Ms. Stevenson, seconded by Mr. Hopkins, to defer action for further consideration. Motion carried 5-0.

Mr. Robertson stated that C/Z 1923 will not appear on a future agenda until the record is completely closed for Ord. 20-07.

Copy of Minutes of the February 25, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since December 17, 2020.

Ms. Stevenson moved that the Commission recommend approval of C/Z 1923 for Reed Farms, LLC for a change in zone from AR-1 Agricultural Residential District to a HI-1 Heavy Industrial District based upon the record made during the public hearing and for the following reasons:

1. The location is appropriate for HI zoning. With the amendment to the Future Land Use Map in the Comprehensive Plan, the property is in a Developing Area and it is adjacent to an Industrial Area according to the Map.
2. The properties to the north and east of the site are currently zoned C-1 and HR and the property to the south is zoned LI-2.
3. This site is near the intersection of Routes 30 and 16. Route 30 is designated as a Truck Route and Route 16 is a major collector. This is an appropriate location for HI zoning.
4. The site is adjacent to an existing rail line accessing the property. This makes this location appropriate for industrial zoning. The rezoning also promotes the transportation goals in the Sussex County Land Use Plan. The Plan states that truck traffic on area roads can be reduced by shifting more freight to rail, although opportunities to do that are limited. This use of rail service for the movement of freight is supported and encouraged by the Goals, Objectives and Strategies of The Mobility Element of the Comprehensive Plan.
5. HI zoning is appropriate, since the Zoning Code states that the purpose of the district is “to provide for a variety of industrial operations, but to restrict or prohibit those industries which have characteristics likely to produce serious adverse effects within or beyond the limits of the district.”
6. The rezoning will promote the local economy and will create jobs in the area for Sussex County residents.
7. While a HI zone has many possible uses, there are only a limited number of uses that are permissible without a further hearing in front of the County Board of Adjustment.
8. Under the HI zoning, if a possible use is “potentially hazardous” or if there is any doubt as to whether it is potentially hazardous, there will be another public hearing on the particular use before the Board of Adjustment. The Board of Adjustment cannot approve the particular use unless it finds that the public’s health and welfare will be protected and that there are safeguards to protect area waters, property and people.
9. The HI zoning, with the safeguard of having further hearings limiting potential uses, will not adversely affect the neighboring or adjacent properties.
10. Any future use and development of the property will be subject to site plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/Z 1923 Reed Farms, LLC for the reasons and conditions stated in the motion. Motion carried 5 – 0.

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: December 17, 2020

Application: CZ 1923 Reed Farms, LLC

Applicant: Reed Farms, LLC
12270 Rock Switch Road
Milton, DE 19968

Owner: Reed Farms, LLC
12270 Rock Switch Road
Milton, DE 19968

Site Location: The west side of Gravel Hill Rd. (Rt. 30) approximately 309 ft. south of Milton Ellendale Hwy. (Rt. 16), on the south side of Milton Ellendale Hwy. (Rt. 16) approximately 313 ft. west of Gravel Hill Rd. (Rt. 30), and on the west side of Gravel Hill Rd. (Rt. 30) approximately 1,596 ft. south of Milton Ellendale Hwy. (Rt. 16)

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

Proposed Zoning: HI-1 (Heavy Industrial Zoning District)

Comprehensive Land Use Plan Reference: Low Density

Councilmanic District: Mr. Burton

School District: Cape Henlopen School District

Fire District: Milton Fire Department

Sewer: Private

Water: Private

Site Area: 67.31 acres +/-

Tax Map ID.: 235-13.00-29.00, 235-13.00-29.01, & 235-14.00-570.00



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Sussex County

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Memorandum

To: Sussex County Planning Commission Members
From: Jamie Whitehouse, AICP, Planning & Zoning Director
CC: Vince Robertson, Assistant County Attorney and applicant
Date: December 8, 2020
RE: Staff Analysis for CZ 1923 Reed Farms, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1923 Reed Farms, LLC to be reviewed during the December 17, 2020 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 Parcels 235-13.00-29.00, 235-13.00-29.01 and 235-14.00-570.00 to allow for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Heavy Industrial (HI-1) District. The properties are lying on the west side of Gravel Hill Rd. (Rt. 30) and south side of Milton-Ellendale Hwy. (Rt. 16) in Milton DE. The size of the properties are approximately 63.25 acres +/-, 2.99 acres +/- and 1.06 acres +/- respectively.

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 subject properties 235-13.00-29.00, 235-13.00-29.01 & 235-14.00-570.00 have the land use designation of "Low Density." Each property to the north and west also has the "Low Density" designation. Properties to the east are designated "Developing Area". Properties to the south are designated "Industrial". The uses that the Low-Density Area land use designation recognizes are primarily agricultural activities and homes. Business development should be largely confined to businesses addressing the needs of these two uses. Industrial and agribusiness uses that support or depend on agriculture should be permitted. The focus of retail and office uses in Low Density should be providing convenience goods and services to nearby residents. Commercial uses in these residential areas should be limited in their location, size and hours of operation. More intense commercial uses should be avoided in these areas.

The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 "Zoning Districts Applicable to Future Land Use Categories", the Heavy Industrial (HI-1) Zoning District is not listed as an applicable zoning district the "Low Density" area.

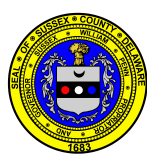
Additionally, the subject property is currently within an Agricultural Residential (AR-1) Zoning District. Parcels to the north and west are also located within an Agricultural Residential (AR-1) Zoning District. Parcels to the north and east are located in a Commercial (C-1) Zoning District and High Density (HR-1) Residential Zoning District. Properties to the south are located in a Light Industrial (LI-2) Zoning District.



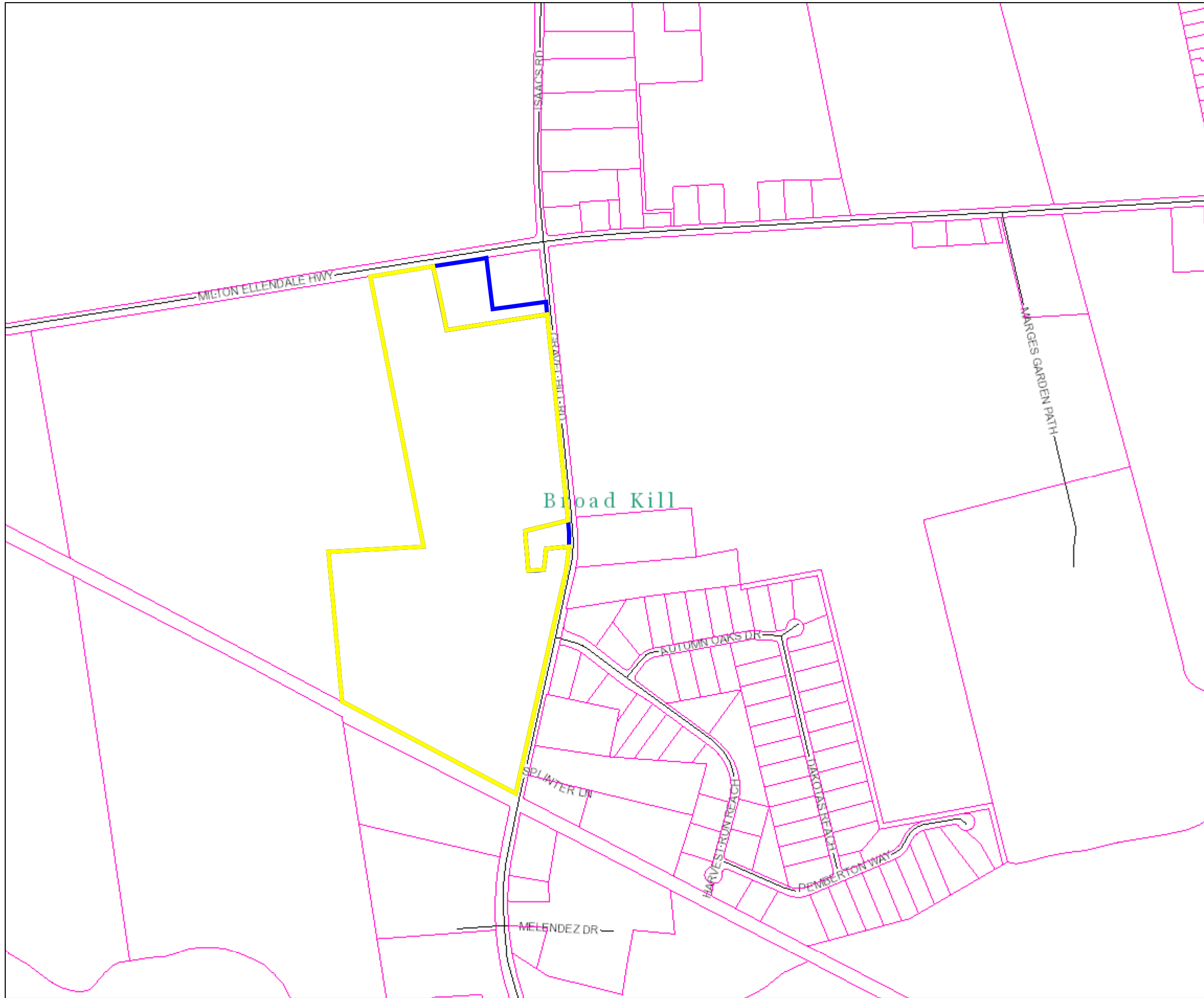
Since 2011, there have been no Change of Zone applications within a one-mile radius of the application site.

Based on the analysis of the surrounding zoning and uses, a Change of Zone to a Heavy Industrial (HI-1) Zoning District could be considered as having a degree of consistency with the land use, area zoning and surrounding uses.

However, as the Heavy Industrial Zoning District was not envisaged within areas designated as Low-Density on the Future Land Use Map of Sussex County, the Change of Zone application is accompanied by a separate request to amend the Future Land Use Map designation from Low-Density to the Developing Area.



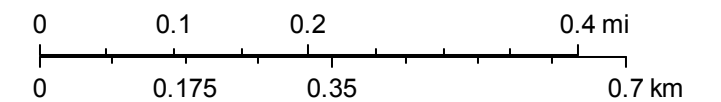
Sussex County



PIN:	235-13.00-29.00
Owner Name	REED FARMS LLC
Book	3754
Mailing Address	12270 ROCK SWITCH ST
City	MILTON
State	DE
Description	S/RT 16
Description 2	W/RT 30
Description 3	FX
Land Code	

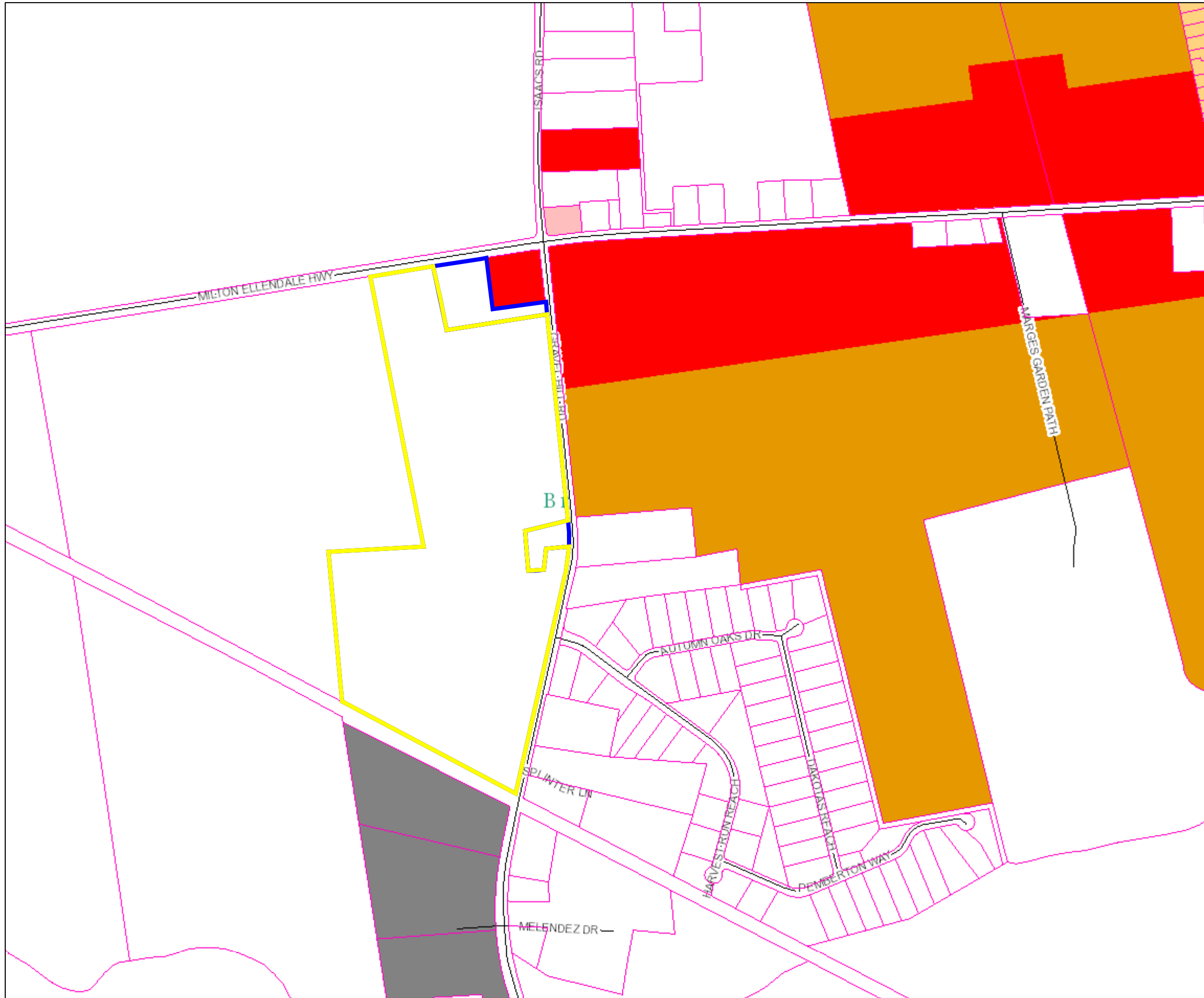
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Override 1
- Tax Parcels
- Streets
- Hundred Boundaries
- County Boundaries
- Tax Ditch Segments**
- Tax Ditch Channel
- Pond Feature
- Special Access ROW
- Extent of Right-of-Way
- Municipal Boundaries

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Sussex County



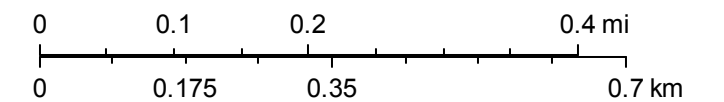
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- polygonLayer**

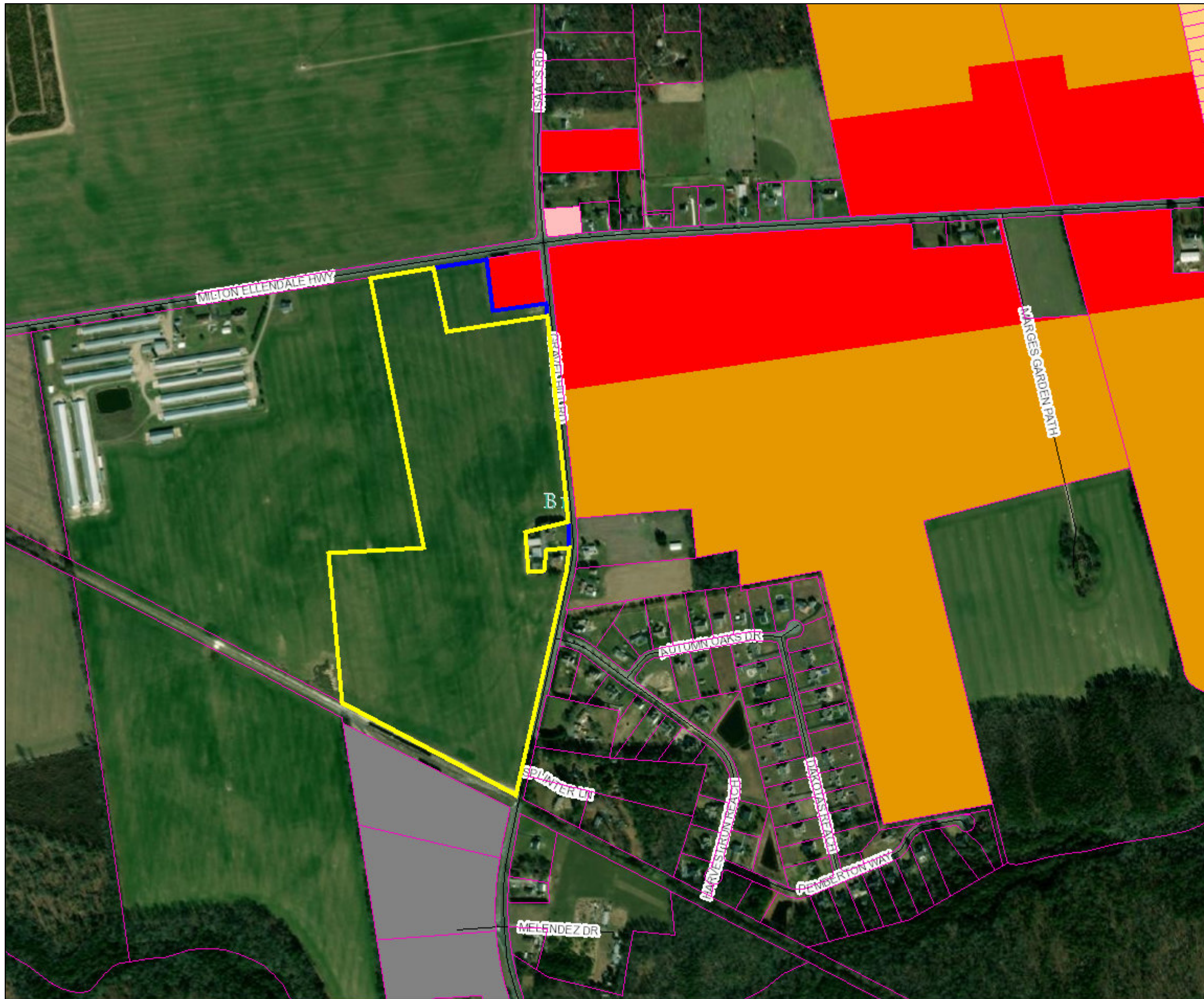
 - Override 1
- Tax Parcels
- Streets

1:9,028





Sussex County



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polygonLayer

Override 1

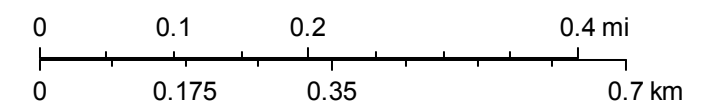
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Override 1

Tax Parcels

Streets

1:9,028



Introduced 07/14/20

Council District No. 3 – Burton

Tax I.D. No. 235-13.00-29.00, 29.01 and 235-14.00-570.00

911 Address: 14888, 14866 & 14742 Gravel Hill Road, Milton

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 67.31 ACRES, MORE OR LESS

WHEREAS, on the 16th day of March 2020, a zoning application, denominated Change of Zone No. 1923, was filed on behalf of Reed Farms, LLC; and

WHEREAS, on the ____ day of _____ 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1923 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying on the west side of Gravel Hill Road (Route 30) approximately 309 feet south of Milton Ellendale Highway (Route 16), on the south side of Milton Ellendale Highway (Route 16) approximately 313 feet west of Gravel Hill Road (Route 30), and on the west side of Gravel Hill Road (Route 30) approximately 1,596 feet south of Milton Ellendale Highway (Route 16) and being more

particularly described in the attached legal description prepared by Pennoni Associates, Inc., said parcel containing 67.31 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.

PROPOSED

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Memorandum

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

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

CC: Everett Moore, County Attorney

Date: April 15, 2021

RE: County Council Report for CU 2258 filed on behalf of Bioenergy Development Group, LLC

The Planning and Zoning Department received an application (CU 2258 filed on behalf of Bioenergy Development Group, LLC for a Conditional Use for parcels 132-6.00-88.01 and 95.00 and 132-11.00-41.00 and 41.02 to amend Conditional Use No. 1314 (Ordinance No. 1354) (as amended by Conditional Use No. 1691 (Ordinance No. 1865) and Conditional Use No. 1962 (Ordinance No. 2311)) to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation at 28338 Enviro Way, Seaford. The property is within the Agricultural Residential (AR-1) Zoning District. The parcel size is 228.88 acres +/-.

The Planning and Zoning Commission held a public hearing on February 11, 2021. At the meeting of March 11, 2021, the Commission recommended approval of the application for the 15 reasons and 12 recommended conditions outlined within the motion (included below).

County Council held a public hearing at their meeting of March 16, 2021. The public hearing and the public record were closed. A motion was adopted to defer action on the application for further consideration.

Below are the approved minutes from the Planning & Zoning Commission meeting of February 11, 2021 and the approved minutes of the Planning & Zoning Commission meeting of March 11, 2021.

Approved Minutes of the February 11, 2021 Planning & Zoning Commission Meeting

C/U 2258 Bioenergy Development Group, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District to amend Conditional Use No. 1314 (Ordinance No. 1354) (as amended by Conditional Use No. 1691 (Ordinance No. 1865) and Conditional Use No. 1962 (Ordinance No. 2311)) to permit the



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

processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation, to be located on a certain parcel of land lying and being in Broad Creek hundred, Sussex County, containing 228.88 acres, more or less. The property is lying on the west side of Seaford Rd. (Rt. 13A) approximately 0.2 mile north of Oneals Rd. (S.C.R. 485). 911 Address: 28338 Enviro Way, Seaford. Tax Parcels: 132-6.00-88.01 & 95.00, 132-11.00-41.00 & 41.02.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the legal description of the lands, a copy of the Applicant's conceptual site plan, a copy of the Applicant's exhibit book, a copy of the previous ordinances for the site; a copy of comments from the Sussex County Engineering Department Utility Planning Division a copy of the PLUS response, a copy of the DelDOT service level evaluation response dated January 16, 2020 and a letter received from DelDOT. Mr. Whitehouse noted that Staff have received 113 letters in opposition and 10 letters in support of the Application.

The Commission found that Mr. Denis Schrader, Esq. was present on behalf of the Applicant, Bioenergy Development Group, LLC; that also present are Mr. Peter Ettinger of Bioenergy, and Mr. Jeffrey Bross of Duffield along with other team members who will address questions that the Commission may have. Mr. Schrader stated that there will be a lot of scientific matters introduced today by both the Applicant and the opposition; that a lot of these items will be regulated by DNREC, DelDOT and other State agencies; that the Application today is for the land use; that an exhibit book has been submitted including proposed findings of fact; that this property is operating under a Conditional Use that began in 1995 as a pellet plant; that since that time, there have been two amendments to the Conditional Use; and that it is an active site that has been used for the poultry industry since the original Application.

The Commission found that Mr. Peter Ettinger was present on behalf of the Application. Mr. Ettinger stated that Bioenergy is looking forward to being a part of the Sussex County Community; that they plan to build a anaerobic digester; that they have been in business for approximately 22 years, have built 220 plants throughout the world and are currently building 3 plants in the United States; that Bioenergy owns its own microbiology lab; that it is important to know how to use microbials to produce a renewable natural gas product and create a digest aid that can be used as a compost; that they believe in the reuse, recycling and repurpose of materials; that anaerobic digestion is economically smart and an environmentally savvy alternative to land application, overcrowded landfill use, and pollution-causing incineration; that it is important to manage this waste in a manner that does not involve trucking it hundreds of miles; that they take organic inputs and put them through a completely enclosed process transforms organic residuals into renewable energy and a nutrient-rich compost; that anaerobic is not new to the area as it is used on a smaller basis by five or six locations in Delaware; that this site will be named the Bioenergy Innovation Center (BIC); that it will be located in on a 228 acre parcel of land in Seaford and they will work with the University of Delaware and Del Tech; that the digester will sit behind the old Perdue pelletizing plant and will work with the composting plant already on site; that this will be a single campus and the different sections will be integrated; that the facility is approximately 1.5 miles from any residential property; that they will be able to process 210,000 tons of excess organics from the poultry industry; that the goals are to become a member of the community, to combine the existing composting facility with the process of the anaerobic digestion to address the challenges of disposal of organic residuals, to create a new source of renewable, sustainable and clean energy for the continued economic growth of Sussex County, to market sell the digestate to farmers and gardeners to improve their soil, and to reduce greenhouse gas; that there are three key points to keep in mind, healthy soils, clean air and water; that there will be a

waste water facility will be onsite; that community engagement is important and as such BIC has donated to the Spade and Trowel Garden Club, the Delaware Food Bank and other local organizations; that there was a discovery day to give the Community the opportunity either in person or virtually to see what takes place on the site; that there will be the creation of 30 jobs onsite with a number of other indirect jobs; that digestate improves the soil health of farms and communities by recycling nutrients and carbon in organic waste back into the soil; that digestate can be used as livestock bedding; that digestate can be used as a plant nutrient source instead of synthetic fertilizers; that they are taking materials that are waste and looking at them as opportunity by using technology to transform that waste into two new products of great value to the community; that this will reduce odors, pathogens, greenhouse gases at a six-day week facility that will have tremendous impact in Sussex County.

The Commission found that Ms. Christine McKiernan, Head of Engineering and Construction for Bioenergy Development Group was present on behalf of the Application. Ms. McKiernan stated that safety in design, construction and operation is important; that understanding what happens at these plants is also important so that local, state and federal regulations are adhered to; that Bioenergy Development Group has been in business for a long time and they will partner with Chesapeake Utilities Corporation which has an incredible safety record; that Chesapeake Utilities Corporation will take the biogas produced at this site and they will create the renewable natural gas and bring it approximately one mile and inject it into the pipeline; and that this is energy to fuel houses and businesses that is not petrol derived but green energy.

Mr. Schrader stated that Route 13A is quite a distance from the activity on the subject property; that the railway line runs between Route 13A and the property; that there is screening and protection from adjacent properties by the wooded area onsite; and that there is a private road leading to the facility.

The Commission found that Mr. Jeffrey Bross, Professional Engineer with Duffield Associates, was present on behalf of the Application. Mr. Bross introduced his colleagues from Duffield Associates also in attendance, Scott Hoffman, Steve Gorski, Steve Cahill, Brian Lyncha and David Small. Mr. Bross stated that the site is comprised of four parcels totaling 228 acres; that the site includes an access road, scales, the former pelletizing plant, office, mixing building for the compost operation, compost piles, an existing stormwater water and a location for the anaerobic digester; that the existing pelletizing plant would be repurposed to receive feedstock, have an odor control system, a control room and an electrical distribution for the site; that the site will include four anaerobic digesters and pre-tanks which are shown as circles on the site-plan; that also shown on the site plan is the relocated stormwater pond and a wastewater pretreatment plant; that the total of this project will be approximately 11 acres of the total 228 acres; that there will not be a change to the wooded cover and will create an additional 2.78 acres of impervious cover which is 1.2% of the entire site; that there will be two landscaped buffers to the east

of the site; that the site is subject to permitting and regulations from DelDOT, Fire Marshal, Sussex Conservation District and multiple divisions of DNREC; that no Traffic Impact Study is required as the

use is consistent with the current Conditional Use permit; that the project has received a letter of no objection from DelDOT; that the project has received entrance improvements approval from DelDOT; that the State Fire Marshal has issued approval for the site plan and the additional approval for buildings and tanks is pending; that wastewater from the Anaerobic Digester (AD) process will be treated onsite; that effluent quality from on-site treatment will me Sussex County Public Sewer

Discharge Standards; that much of the effluent will be recycled back into the AD process; that at full capacity wastewater will be less than 60,000 gallons per day; that wastewater is proposed to be trucked to a facility operated by Sussex County for discharge; that options for connection to local municipal systems is being evaluated; that the facility is expected to meet potable and emergency water needs with existing on-site wells and a water storage tank; that the AD process does require water which is provided through recycling of treated wastewater generated by the AD process; that the goal for managing stormwater is to have zero discharge to surface waters; the existing stormwater pond for the compost area is being upgraded by installing aeration to enhance evaporation, raising the weir to enhance storage capacity, exploring offsets for potential discharge from the pond, and the industrial stormwater plan to be updated after construction under NPDES; that the existing stormwater pond will be relocated to accommodate the new infrastructure and has received an approved Sediment and Stormwater Management Plan from Sussex Conservation District; that this project does not result in feedstock or product being exposed to weather conditions as it is a fully enclosed system; that there are several emission sources on the site, a thermal oxidizer for treatment of waste gases from biogas processing, a flare to serve as emergency backup treatment for waste gases and a standby generator for use when electricity from the grid is not available; that all units are considered minor sources under DNREC regulations; that all permit applications are currently under review by DNREC; that recently BIC has added a scrubber that will require an emissions permit and will be processed by DNREC; that the project will also require a resource recovery permit that will apply to both the AD and composting operations, this permit has been submitted to DNREC and is under review; that in summary, all the DelDOT permitting is completed, all site permitting with the Fire Marshal is completed, the Resource Recovery and Air permits have been submitted to DNREC and are under review, Sussex Conservation District permitting is completed, the existing on-site wells are adequate for water supply and the Applicant is working with Sussex County on wastewater discharge.

Mr. Schrader stated that this site has had a Conditional Use since the 1990's and has had that permit revised four times over the history of the site; that this conditional use falls under 115-22 of the Code; that the Conditional Use before the Commission meets the requirement of the Statute because the use is public or semi-public in nature, it is desirable for the convenience and well-being of the community; that letters of support have been received from state representatives and senators who are familiar with this site; that the project relates to the Comprehensive Plan as it is an industrial site; that there will be minimal effect on the adjacent properties as there is a distance from the activities on site to the nearest residential properties; that there are a number of letters in opposition to the Application; that this is a 228-acre property with a very small area of the property to be used and that this is not a refinery as stated in some of the opposition letters; that this use is environmentally sound and will be monitored by DNREC and other agencies; that this use is good for the poultry industry; that it allows for farmers not to use their own waste from their farms as fertilizer; that it allows for that waste to be recycled and to be used for the good of the public; and that if this Application receives approval of Council, the Applicant will have to comply with all local, state and federal regulations.

Ms. Wingate asked if the process of trucking in material is the same for this Application as it was for the Pellet operation.

Mr. Ettinger stated that the materials will be trucked into the site and there will be no real change in the number of trucks entering the site.

Ms. Wingate asked if water is necessary for operations would be available onsite.

Mr. Ettinger clarified that there is a minimal amount of water used in this process as it is not a litter plant; that litter is a very dry product and requires large quantities of water to moisten it; that the Dissolved Air Flotation (DAF) waste used in this process has a 10-12 % solid content and is very moist; and will have little impact on the water supply.

Ms. Wingate asked if there would be safety training with local agencies and fire departments.

Mr. Ettinger stated that safety training of staff has already begun; that the facility is fully alarmed and there is security staff onsite.

Ms. Stevenson asked where the litter and DAF coming from.

Mr. Ettinger stated that the DAF would primarily be from Delaware and some that would come up Route 13.

Ms. Stevenson asked what happens to all the waste if it did not come to this site.

Mr. Ettinger stated that the poultry industry may move to other states where rules are less stringent; that the alternative is leeching and influencing the Chesapeake Bay and the Nanticoke; that when the material is in the AD it is being changed and being combined with carbon sources to make it a cleaner and safer product for the environment.

Ms. Stevenson asked if there is a market for the by-product.

Mr. Ettinger responded in the affirmative.

Mr. Hopkins asked why this is a conditional use and not industrial.

Mr. Schrader stated that this site has had a conditional use for approximately 25 years; that the conditional use and the industrial use operate in similar ways; that with the Conditional Use permit, the Council can place conditions that will protect the community; that if the Applicant applied for the industrial use, the Applicant would still have to come back with a final site plan and again, Council could place conditions on the use.

Mr. Hopkins asked how the material coming to the site is measured.

Mr. Schrader stated that the material is weighed; that the trucks coming in are weighed and again when they leave the site.

Ms. Wingate asked what is happening to the DAF currently.

Mr. Ettinger stated that it is used in land application and stored in large tanks to be used for land application; that Councils are getting complaints because of the odor when it is land applied; that most of what will be used is DAF or the "pieces and parts"; that not so much litter will be used in the digester; that blood is a commodity; and that they are permitted for 220,000 tons of DAF / year.

Mr. Hopkins stated that this will be a real service to the community.

Mr. John Rebar from DNREC was available by teleconference to answer questions from the Commission and stated that he had no prepared comments.

There were no questions from the Commission members.

Mr. Bill Brockenbrough from DelDOT was available by teleconference to answer questions from the Commission and stated that he had no prepared comments but had submitted a letter to Staff.

There were no questions from the Commission members.

Chairman Wheatley asked if offal is the same as DAF and could it be used in the anaerobic process.

Mr. Ettinger stated that the composition of offal is challenging but they are considering a pilot program to see what could be done with offal.

The Commission found that Mr. Keith Steck spoke in opposition to the Application. Mr. Steck stated that he sees holes in this Application; that there is no PLUS review of the Application; that the last review for this site was completed in 2012 and was only completed for one of the four parcels of this Application; that the fire marshal report is incomplete as it did not mention anything about the methane gas that will be produced at this site; that methane gas is an explosive or combustible; that DNREC also needs to address the methane or compressed natural gas; and that there was no discussion from DelDOT regarding truck traffic.

The Commission found that Ms. Maria Payan spoke in opposition to the Application. Ms. Payan stated that the Application is deficient because of the confusion about DAF and litter; that the amendment lists litter, and this caused the confusion; that this use would be water intensive; that the Application should be more complete, and Chesapeake Utilities should be part of the Application; that a request was made that this hearing be postponed as the Bioenergy Development Group, LLC has different names on different Applications; that the use will increase traffic; that it is the responsibility of Sussex County to protect the health and welfare of the citizens; that more waste will be brought into Delaware from other states does not make sense for safety or to benefit Sussex County; that there are manufactured home communities within two miles of this site; that this area is already overburdened with pollution; and that there is a limited market for composting products. Ms. Payan submitted exhibits.

Mr. Wheatley stated that the responsibility of the Commission is to decide if the use is appropriate on the parcel of land indicated on the Application; that the questions regarding the names of the companies in not under consideration of the Commission; and that it is not unusual for company names to change as they evolve and change.

Mr. Wheatley asked Mr. Schrader to respond to the questions from Ms. Payan regarding pollution, the market for the composting material and the range of jobs that will be created.

Mr. Hopkins stated that from what he heard the Applicant testify to, that there will be less truck traffic with this use than with the prior use on the site.

Mr. Schrader stated that Bioenergy Development Group is the land holder and is a party to any application for this site and that the engineers for the project will address the questions.

Mr. Bross stated this this will not be a polluting activity; that DNREC require several permits and that DNREC is rigorous with regulations; that this use will not injure the health or welfare of the citizens of Delaware; and that the Applicant has already made improvements to the current composting operations and to stormwater management.

The Commission found that Mr. Steve Gorski, Duffield Associates addressed the traffic concerns; that the number of trucks is like the previous use; that the only increase in traffic will be the number of employees driving to and from the site; and that all truck traffic is counted the same way.

Mr. Ettinger stated that the jobs will range from simple vehicle operators to researchers and scientists that the salary range is \$15 - \$27 per hour starting out and there will be a number of managers under contract and not under an hourly wage; that there are benefits such as hospitals and a 401K; that they have a market for the compost produced onsite; and that they sold more compost in 1 year than Perdue sold in 4-5 years.

The Commission found that Mr. Dustin Thompson spoke by teleconference in opposition to the Application. Mr. Thompson stated that the Application does refer to poultry litter; that he has concerns about gases that will be produced on site but the major concern is the poultry litter contributing towards pollution in Sussex County; that he has concerns about the effect to the Gum Branch Wetlands behind this facility from the increased impermeable surface on this site; that he has concerns about air quality since biogas will be produced on this property; that no explanation was given about how the impurities would be removed from the biogas before it is injected into the natural gas line; and that the Application does not reflect the presentation that was given this evening.

Mr. Schrader stated that the Application this evening is to expand the previous Conditional Uses on the property; that the ordinances for the prior three Conditional Uses were for the processing and handling of poultry litter and had to be referenced in the title for this Application.

Mr. Bross stated that there is a tax ditch at the rear of the property but there are no wetlands on the property; that the stormwater pond will not impact the tax ditch; that the stormwater pond will not be lined; and that Sussex Conservation District have reviewed and approved the stormwater management plan.

The Commission found that Mr. Tyler Lobdell spoke by teleconference in opposition to the Application. Mr. Lobdell stated that he is an attorney with Food and Water Watch; that the description should be more defined than poultry litter; that poultry litter is a very broad term and the Applicant could bring in whatever waste they think is appropriate in the future; that there is a discrepancy between the paperwork filed with DNREC and the Application before the Commission; that it should be clear what will be introduced into the digester; that while feedstock may be used in the digester, it is important to know how this will operate; that it is important to know what pollution will be created by this site; that there is a difference between compost with poultry litter and a gas production facility without poultry litter; that he would like Bioenergy to explain exactly what this site will handle, exactly what will be put into the digester and how the waste will be handled; and that he recommends denial.

The Commission found that Ms. Cheryl Siskin spoke by teleconference in opposition to the Application. Mr. Siskin stated that she is the chair of Conservation for the Sierra Club; that this road is a concentration of residential uses; that because a certain land use was appropriate in 1995 does not mean that it would be appropriate today; that this application is a significant capacity increase; that

while the site does sit back from the road the concern is that if you allow an industrial use so far into the wooded area, then you are creating a precedent for industrial uses all the way to the street; that air quality monitoring has to be at least a condition if this is approved; that as the notice referenced poultry litter and seems inadequate; that there are concerns that the traffic will be increased in the area; and that she questions that this is appropriate use for this area.

The Commission found that Mr. Chris Bason spoke by teleconference in support to the Application. Mr. Bason stated that he is the executive director for Delaware Center for Inland Bays; that, although this project is located outside of the inland bays watershed, it would provide significant water quality, climate change and mitigation benefits to the inland bays and is consistent with the master plan; that this project will transport significant amounts of excess nutrients out of polluted watershed; that both inland bays and Nanticoke River are State of Delaware designated waters with exceptional recreational and ecological significance that are polluted by persistently high nutrient volume; that almost all inland bays have phosphorous levels that exceed healthy limits; that particularly in the Indian River the pollution is so high that sometimes the oxygen level is zero; that the amount of chicken litter produced on Delmarva has increased significantly in the past years; that this waste is often applied to land that is already phosphorous saturated; that this digestion facility in conjunction with two other facilities could possibly accept half of the litter produced on Delmarva; that AD could be an important part of the solution in managing poultry processing facility waste and poultry litter resource for healthy quality in Sussex County; that the facility will also produce sustainable renewable natural gas which will reduce the need to produce nonrenewable gas and thus reduce greenhouse gases; that this will serve as an important contribution to climate change and is a highly beneficial project; that this should be closely inspected and regulated due to its close proximity to sensitive waterways; that this is an appropriate use for the property and ask that while you support the Application that you request that DNREC closely monitor the facility to ensure the successful and publicly accepted project which will set an example of the beneficial use of large scale of anaerobic digestion.

At the conclusion of the Public Hearings, the Commission discussed the Applications.

In relation to Application C/U 2258 Bioenergy Development Group, LLC., motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

Approved Minutes of the March 11, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since February 11, 2021.

Mr. Mears was not-present on February 11, 2021. He stated that he had viewed the tape of the public hearing and was prepared to vote.

Ms. Wingate moved that the Commission recommend approval of C/U 2258 for Bioenergy Development Group, LLC for a Conditional Use to amend Conditional Use No. 1314 (Ordinance No. 1354) (as amended by Conditional Use No. 1691 (Ordinance No. 1865) and Conditional Use No. 1962 (Ordinance No. 2311) to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation based upon the record made during the public hearing and for the following reasons:

1. The property is a large parcel consisting of approximately 228.88 acres more or less and is located in the AR-1 Agricultural Residential District, which allows for a full range of agricultural activities, and is designated in the County's Comprehensive Land Use Plan as an Industrial Area, allowing land to be devoted to concentrations of larger industrial uses including heavier industrial, light industry, warehousing, and flex space.
2. The site was originally approved in 1999 for a conditional use and has been in operating since then for the receipt of poultry waste to be converted to fertilizers. The site is currently operated by the Applicant as a micro-nutrient plant with related truck entrance and rail spur for the processing and handling of poultry waste and litter. These historic uses have been approved by regulatory agencies, including DNREC air and water quality agencies.
3. The present use was originally granted by Conditional Use No. 1314 and has been amended by Conditional Use Nos. 1691 and 1962. These conditions, as amended, will continue to apply to the site.
4. This proposed extension to the existing conditional use enlarges the use to include nutrient recovery and conversion for natural gas and electrical generation. As part of this expansion, the Applicant intends to construct a facility with tanks and anaerobic digesters which will recycle poultry byproducts and create renewable natural gas. The Applicant intends to use dissolved air flotation sludge ("DAF") which is derived from the poultry industry in this process. Microorganisms within contained tanks will be used to extract energy from poultry residuals. The other structures currently existing on the site will remain.
5. The proposed change is consistent with and is a reasonable expansion of the current use and is essential and desirable for the general convenience and welfare of Sussex County residents and the agribusiness community.
6. The proposed use will require regulatory review by State agencies, including DNREC, relating to air and water quality controls, the State Fire Marshal, and DelDOT. New approvals for the proposed use will be required.
7. The granting of this application benefits the environment by providing a clean and efficient method for the conversion of poultry litter and DAF to renewable energy and by serving the community with natural gas and electricity.
8. As proposed by the Applicant, the total area of disturbance from the proposed use will be 11.22 acres, more or less, and there will be no change to the wooded cover on the property.
9. The proposed facility will be located adjacent to the existing compost facility and behind the pelletizing facility and will be designed to blend into the site.
10. The Applicant will accept poultry litter and DAF from area poultry producers and the proposed use will reduce the amount of DAF land application on area farms which would benefit area soils and waterways.
11. The anaerobic digester system proposed by the Applicant will utilize existing stormwater and the Applicant intends to recycle treated wastewater as well to minimize the need for other water sources in this process. The Applicant also aims to have a 0% discharge of surface water from the site.
12. There were concerns raised through written comments and at the public hearing about the environmental effect of the project but the Applicant will be subject to regular permitting requirements imposed by DNREC and will have to comply with DNREC's requirements.

13. The use, if in compliance with DNREC regulations, will not likely have any adverse impact upon the area or neighboring or adjacent properties.
14. The use, as amended, will not generate a significant amount of traffic, or otherwise have an adverse effect on traffic or area roadways. DelDOT has submitted a letter that DelDOT considers the traffic impacts from the proposed use to be diminutive.
15. The use is of a public or semi-public character that will be a benefit to Sussex County and will promote the health, safety, and welfare of the inhabitants of Sussex County.
16. This use is subject to the following conditions:
 - a. Except as otherwise amended by this grant of conditional use, the conditions imposed by Conditional Use No. 1314 as amended by Conditional Use Nos. 1691 and 1962 shall remain in effect.
 - b. The proposed facility shall be subject to DNREC and other state and federal regulatory approvals.
 - c. The proposed facility shall only accept, process, and handle poultry litter and DAF.
 - d. There shall not be any stockpiling of DAF, poultry litter, or wastewater on site.
 - e. This conditional use shall be valid concurrent with DNREC's permits for this use. If the DNREC permits shall be terminated or expire, this conditional use shall also terminate and expire.
 - f. The proposed facility, anaerobic digesters, pretanks, and other equipment and structures related to this use shall be located behind the site of the existing pelletizing facility and the area of disturbance related to this new use shall be no greater than 11.3 acres.
 - g. As proposed by the Applicant, there will be no change to the wooded coverage on the property.
 - h. All stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of the stormwater management areas.
 - i. Prior to the submission of the Final Site Plan, the Applicant must provide copies of all active permits from DNREC demonstrating that the Applicant has received all necessary approvals and permits from DNREC to operate the proposed facility.
 - j. As proffered by the Applicant, a landscape buffer shall be installed at the front of the site. A landscape buffer plan shall be included as part of the Final Site Plan for the project.
 - k. The failure to abide by these conditions shall result in the termination of the conditional use approval.
 - l. The Applicant shall submit a Final Site Plan, which shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears, and carried unanimously to recommend approval of C/U 2258 Bioenergy Development Group, LLC 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

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JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date February 11th, 2020.

Application: CU 2258 Bioenergy Development Group, LLC

Applicant: Bioenergy Development Group, LLC
50 State Circle
Annapolis, MD 21401

Owner: BDG DE LLC
50 State Circle
Annapolis, MD 21401

Site Location: Lying on the west side of Seaford Road (Route 13A), approximately 0.2 mile north of Oneals Road (S.C.R. 485)

Current Zoning: AR-1 Agricultural Residential Zoning District

Proposed Use: Amend CU 1314 (as amended by CU’s 1691 and 1692) to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation

Comprehensive Land Use Plan Reference: Industrial

Councilmatic District: Mr. Vincent

School District: Seaford School District

Fire District: Blades Fire District

Sewer: Private, On-Site

Water: Private, On-Site

Site Area: 228.88 acres +/-

Tax Map ID.: 132-6.00-88.01, 95.00 & 132-11.00-41.00, 41.02



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Sussex County

DELAWARE
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Memorandum

To: Sussex County Planning Commission Members
From: Christin Scott, Planner I
CC: Vince Robertson, Assistant County Attorney and applicant
Date: February 5, 2021
RE: Staff Analysis for CU 2258 Bioenergy Development Group, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2258 Bioenergy Development Group, LLC to be reviewed during the February 11, 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 Parcels 132-6.00-88.01, 95.00 & 132-11.00-41.00, 41.02 to amend CU 1314 (as amended by CU's 1691 and 1692) to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation to be located at 28338 Enviro Way, Seaford. The parcels are located on the west side of Seaford Rd. (Rt. 13A), approximately 0.2 mile north of Oneals Rd. (S.C.R. 485). Each separate parcel combines for a total acreage of 228.88 acres +/- the Applicant has submitted a Conceptual Site Plan showing the additional buildings and structures associated with the proposed use, and the floor areas associated with the additional buildings. The existing floor area of 69,120 sf. is proposed to be increased to 72,620 sf.

There are 3 related Conditional Use Applications for the parcels, CU 1314, CU 1691 & CU 1692. CU 1314 requested a micro-nutrient plant for poultry litter and was approved by the Sussex County Council on December 21, 1999 through Ordinance No. 1354. CU 1691 was a request to amend CU 1314 to a micro-nutrient plant with related truck entrance and rail spur for the processing and handling of poultry litter and was approved by the Sussex County Council on July 25, 2006 through Ordinance No. 1865. CU 1692 was a request to amend the conditions of approval of CU 1691 and CU 1314 and was approved by the Sussex County Council on August 1, 2006 through Ordinance No. 1866.

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 parcels have a designation of "Industrial." The surrounding and adjacent properties located to the north, south, east, and west of the subject properties lie within the "Low Density" Future Land Use Map designation.

As outlined within the 2018 Sussex County Comprehensive Plan, Industrial Areas are lands devoted to concentrations of larger industrial uses including heavier industry, light industry, warehousing, and flex space. Appropriate development in these areas could take the form of conventional



industrial parks or planned business parks with a unified design that incorporate a combination of light industry and other business uses. Large, more intensive stand-alone industrial uses should also be directed to these areas.

The subject properties are zoned Agricultural Residential (AR-1). The adjoining parcels to the north, south, east and west are all zoned Agricultural Residential (AR-1). The properties to the south along Seaford Rd. (Rt. 13A) are zoned General Commercial (C-1).

Since 2011, there has been one additional Conditional Use application, as well as the applications mentioned above, within a 1-mile radius of the application site. Conditional Use No. 1940 to allow for a physical training studio and gym. This application was approved by the Sussex County Council on September 11, 2012 through Ordinance No. 2276-A



Based on the analysis of the land use, surrounding zoning and uses, the Conditional use to amend CU 1314 (as amended by CU's 1691 and 1692) to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.



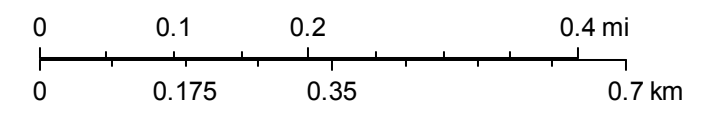
Sussex County



PIN:	132-11.00-41.00
Owner Name	BDG DE LLC
Book	5195
Mailing Address	50 STATE CIR
City	ANNAPOLIS
State	MD
Description	NW/RT 487
Description 2	1555'NE/RT 487 SW/50
Description 3	EASEMENT ENVIRO WAY
Land Code	

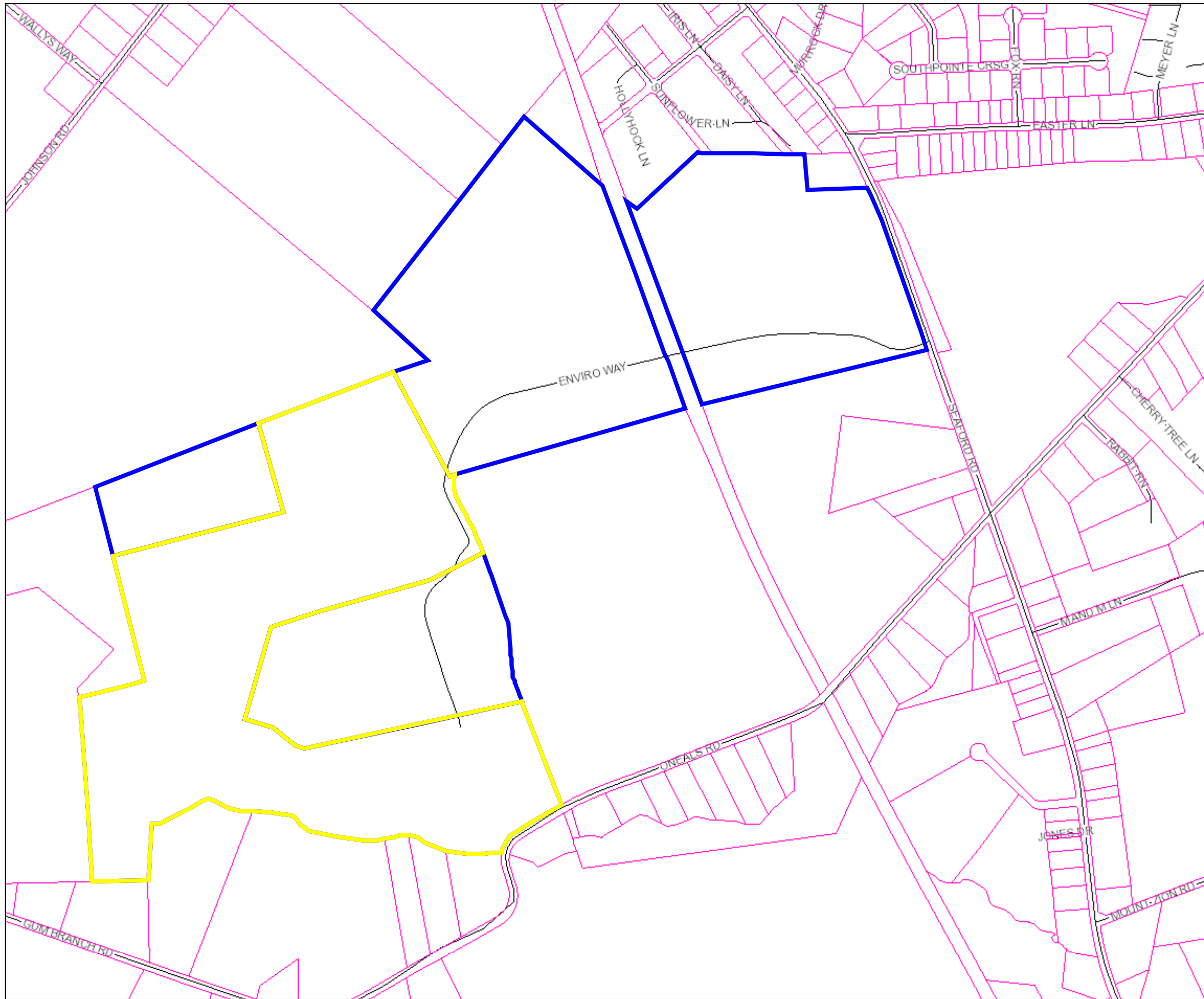
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- Override 1
-  Tax Parcels
-  Streets

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Sussex County



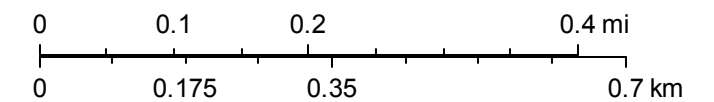
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Override 1
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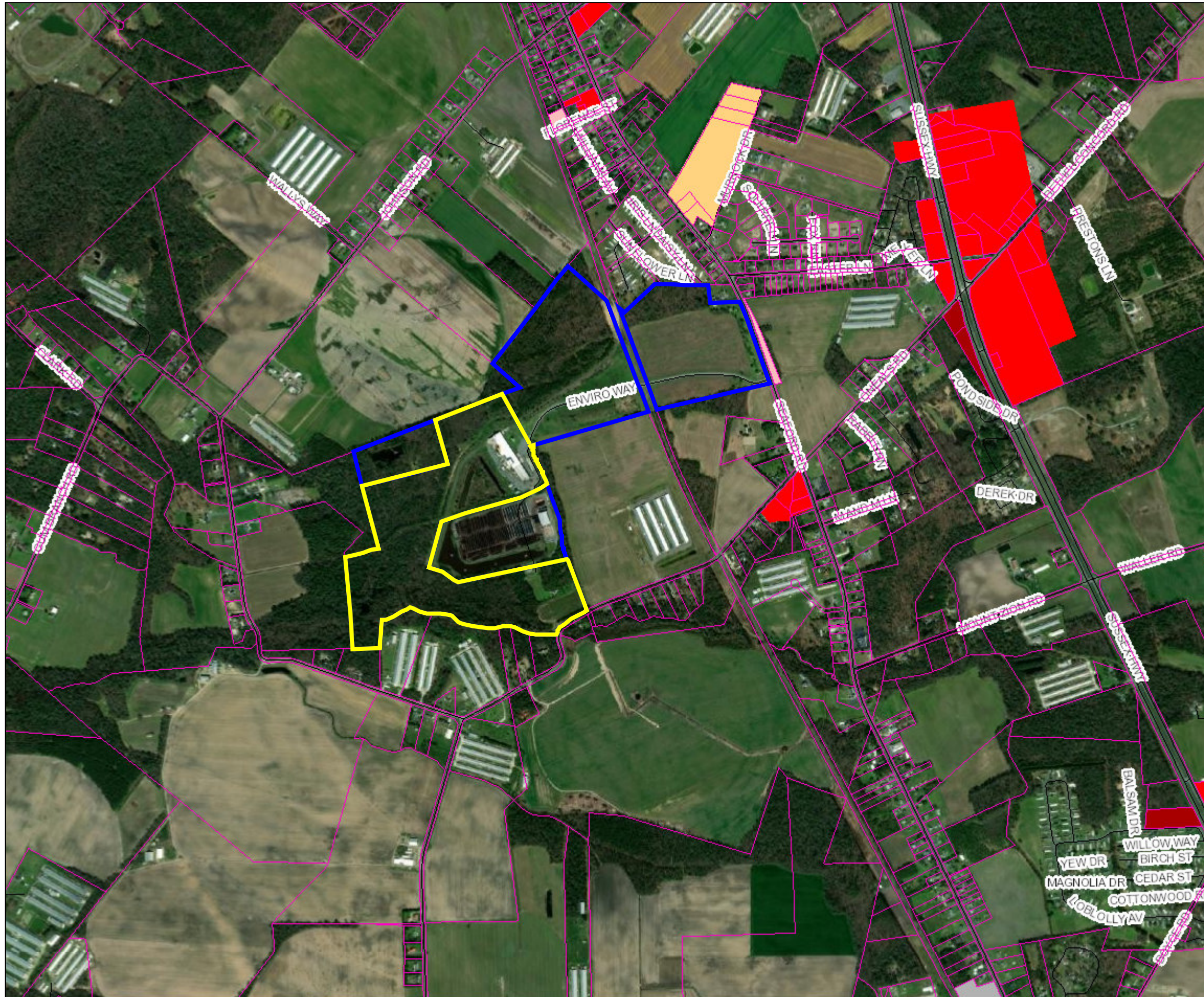
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- Tax Parcels
- Streets
- County Boundaries
- Municipal Boundaries

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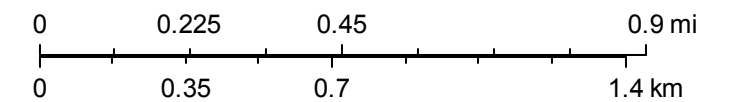
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- polygonLayer**
Override 1
- polygonLayer**
Override 1
- Tax Parcels
- Streets

1:18,056



Council District 1 - Vincent

Tax I.D. Nos. 132-6.00-88.01 and 95.00, and 132-11.00-41.00 and 41.02

911 Address: 28338 Enviro Way, Seaford

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 1314 (ORDINANCE NO. 1354) (AS AMENDED BY CONDITIONAL USE NO. 1691 (ORDINANCE NO. 1865) AND CONDITIONAL USE NO. 1962 (ORDINANCE NO. 2311)) TO PERMIT THE PROCESSING AND HANDLING OF POULTRY LITTER TO INCLUDE NUTRIENT RECOVERY FOR NATURAL GAS AND ELECTRICAL GENERATION, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 228.88 ACRES, MORE OR LESS

WHEREAS, on the 22nd day of December 2020, a conditional use application, denominated Conditional Use No. 2258 was filed on behalf of Bioenergy Development Group, 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. 2258 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 has 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. 2258 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Broad Creek Hundred, Sussex County, Delaware, and lying on the west side of Seaford Road (Route 13A) approximately 0.2 mile north of Oneals Road (S.C.R. 485), and being more particularly described in the attached legal description prepared by Parkowski, Guerke & Swayze, P.A., said parcel containing 228.88 acres, more or less.

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

To Be Introduced 04/20/21

**Council District: Schaeffer
Tax I.D. No. 334-6.00-686.00
911 Address: 34360 Postal Lane, Lewes**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (4 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.25 ACRES, MORE OR LESS

WHEREAS, on the 11th day of January 2021, a conditional use application, denominated Conditional Use No. 2262 was filed on behalf of Matthew Hete; 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. 2262 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 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2262 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 southeast side of Postal Lane, approximately 0.22 mile northeast of Plantation Road and being more particularly described in the attached legal description prepared by Hudson, Jones, Jaywork & Fisher, said parcel containing 1.25 acres, more or less.

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

To Be Introduced 04/20/21

**Council District: Schaeffer
Tax I.D. No. 234-21.00-189.00
911 Address: 26315 Miller Street, Millsboro**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CARPET BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.52 ACRE, MORE OR LESS

WHEREAS, on the 2nd day of February 2021, a conditional use application, denominated Conditional Use No. 2265 was filed on behalf of Pro Carpet, 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. 2265 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 IV, Subsections 115-22, of the Code of Sussex County, be amended by adding the designation of Conditional Use No. 2265 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on east side of Miller Street, approximately 0.16 mile north of Mount Joy Road (S.C.R. 297) and being more particularly described in the attached legal description prepared by Hudson, Jones, Jaywork & Fisher, said parcel containing 0.52 acre, more or less.

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

To Be Introduced 04/20/21

**Council District: Hudson
Tax I.D. No. 134-11.00-191.00
911 Address: 34464 Atlantic Ave, Ocean View**

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HR-2 HIGH-DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.91 ACRES, MORE OR LESS

WHEREAS, on the 11th day of February 2021, a zoning application, denominated Change of Zone No. 1938 was filed on behalf of MARS-RE, 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 Change of Zone No. 1938 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 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 HR-2 High-Density Residential District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the south side of Atlantic Avenue (Route 26) approximately 475 feet east of Powell Farm Road (S.C.R 365) and being more particularly described in the attached legal description prepared by Bonnie M. Benson, P.A, said parcel containing 3.91 acres, more or less.

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

To Be Introduced 04/20/21

**Council District 2 - Green
Tax I.D. No. 231-9.00-5.00 & 5.01
911 Address 22382 Coverdale Road, Seaford**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO OPERATE AN OUTDOOR RACETRACK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 27.81 ACRES, MORE OR LESS

WHEREAS, on the 22nd day of February 2021, a conditional use application, denominated Conditional Use No. 2270 was filed on behalf of Gregory P. Mitchell.; 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. 2270 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 IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2270 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 Nanticoke Hundred, Sussex County, Delaware, and lying on the northwest side of the intersection of Hasting Farm Road (S.C.R. 526) and Coverdale Road (S.C.R. 525) and being more particularly described in the attached legal description prepared by D. Stephen Parsons P.A., said parcel containing 27.81 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.

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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: April 16, 2021

RE: County Council Report for CZ 1911 filed on behalf of Schiff Land Development Co., LLC

The Planning and Zoning Department received an application (CZ 1911 filed on behalf of Schiff Land Development Co., LLC (Patriots Glen Phase 2)) for a Change of Zone of parcel 234-29.00-67.00 from Medium Density Residential Zoning District (MR) and Commercial Residential Zoning District (CR-1) to a Medium Density Residential Zoning District – Residential Planned Community MR-RPC. The parcel is located on the south side of John J Williams Highway (Rt.24) approximately 0.92 mile south of Oak Orchard Rd (Rt. 5). The change of zone is for 43.463 acres, more or less.

The Planning and Zoning Commission held a public hearing on March 25, 2021. At the meeting of April 8, 2021, the Commission recommended approval of the application for the 8 reasons and subject to the 16 recommended conditions within the motion (included below).

Below are the draft minutes from the Planning & Zoning Commission meeting of March 25, 2021 and the draft minutes of the Planning & Zoning Commission meeting of April 8, 2021.

[Copy of Draft Minutes of the March 25, 2021 Planning & Zoning Commission Meeting](#)

C/Z 1911 Schiff Land Development Co., LLC (c/o Mr. T.J. Schiff) (Patriots Glen Phase 2)
An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a Medium Density Residential District and a CR-1 Commercial Residential District to a MR-RPC Medium Density Residential District-Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 43.463 acres, more or less. The property being a landlocked parcel lying on the south side of John J. Williams Highway (Route 24) approximately 0.92 mile southwest of Oak Orchard Road (Route 5). 911 Address: N/A. Tax Parcel: 234-29.00-67.00.



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

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Staff Analysis, a copy of the Applicant's conceptual site plan, a copy of the Applicant's exhibit book, a copy of the Traffic Impact Study (TIS), a copy of the DelDOT service level evaluation response, a copy of PLUS comments, and a copy of comments from the Sussex County Engineering Department Utility Planning Division.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Schiff Development Group, that also present are TJ Schiff, one of the principals of the Schiff Development Group and Phil Tolliver, a professional engineer with Morris and Ritchie Associates; that the Application is comprised of a 43.5 acre parcel of land which is landlocked; that access to this parcel will be gained through the MR-RPC – Patriots Glen Phase 1 which was approved by County Council in 2019; that this property is located about 1,000 ft. south of the intersection of Route 24 with Mount Joy Road and Oak Orchard Road; that approximately 14 years ago the property for Patriots Glen Phase 1 was rezoned from AR-1 and GR to C-1 – 16 acres and MR-RPC – 93.67 acres with 373 townhomes approved; that these applications CZ 1605 and CZ 1606 were filed by Nentego; that likely due to the real estate recession, the property was not developed as shown on the plan; that in 2010 CZ 1670 was submitted and that application sought to change some of the MR-RPC zoned area to CR-1 and referenced the different colored shaded areas of the property to show the different zonings; that if you drove by the site today, you would see that there are no commercial areas or residences on the site; that in 2019 the zoning for the CR-1 area except for a small narrow portion behind the commercial was changed to MR-RPC and the entire MR-RPC area was approved for 161 single-family units; that this application seeks to make this parcel one zoning classification and change the CR zoning to MR with the RPC overlay over the 43.5 acres for 128 home sites; that if this project receives approval from County Council it would revert back to the original approval in 2007 with two differences, the first is that these would not be townhomes but single-family homes and the second is that there is a reduced number as the approval in 2007 allowed for 393 townhomes and this project for both Phase 1 and 2 would have a combined total of 289 units; that the MR zoning designation allows for four units per acre where public water and sewer are available or will be provided to the site; that today's proposal is for 128 single-family units and the gross density is 2.95 and the net density is 3.52 and is less than the permitted four units per acre; that the wooded area on the property will be preserved is possible as open space; that there are no wetlands on the property and it is not in a floodplain and considered as Zone X on the FEMA map; that part of the project is within a water resource area and the project was designed taking that into consideration to comply with the 35% threshold in chapter 89 of the Zoning Code; that there are many other developments in this area including Oak Meadows, Bayliss Estates, Indian Summer Village and Patriots

Glen – Phase 1; that there is a mixing of zoning classifications in the area including C-1, MR, GR and AR-1; that this is a growing area for residential purposes in Sussex County; that the lands zoned C-1 are closest to Route 24 but as you move away from Route 24, the zoning changes to the residentially zoned districts; that this site is shown as being in the Coastal area on the 2045 Future Land Use Map which is one of the County's growth areas and is appropriate for an MR-RPC development; that on the State Strategies Map this area is in the Level 2 and Level 3 which means that under State standards it is appropriate for growth in the near future and in the long-term future; that two of the primary reasons for using the RPC tool for this development were to maximize open space and to increase perimeter buffering; that this was done with consideration of Phase 1 and 2 being integrated; that open space was set aside and is 9.66 acres which equates to 22% of the site; that this is consistent with Phase 1 as the open space is approximately 27% of the site; that the minimum 7,500 sf lot size is consistent throughout Phase 1 and 2; that perimeter buffer will go along the exterior of all the tax parcel except where it is adjacent to Phase 1; that the buffer is at a minimum of 30 ft. and at one point

extends to 278 ft.; that a stub street will be adjacent to the agricultural property to the rear to allow for development that could interconnect in the future; that the community center will have a pool, multi-purpose building, and outdoor patio area, and 24 parking spaces as part of the amenities; that there will be bicycle racks and sidewalks on both sides of the streets within the community; that there will be a walking path throughout the community and there will be one homeowners association for both Phase 1 and 2; that sewer service is available from Sussex County and Tidewater Utilities will provide water to the site; that natural gas is available through Chesapeake Utilities and electricity provided by Delmarva; that fire protection for this site is provided by Indian River Volunteer Fire Department and Troop 7 is the Delaware State Police that covers this region; that it is estimated that there would be approximately 22 new students added to the school age mix if they went to public school they would attend Long Neck Elementary School, Millsboro Middle School and Sussex Central High School; that the developer will coordinate with the school district regarding a location for a bus stop; that when the service level evaluation was submitted to DelDOT for Phase 1, DelDOT responded that it would have a minor impact on traffic; that when Phase 2 service level evaluation was submitted, DelDOT required a TIS to evaluate the impact by both phases; that a TIS was completed and there is a copy of the response from DelDOT included in the Exhibit Notebook; that there are five requirements for improvements listed in the response; that this application is superior to the previous applications and is consistent with the trend of development in the Long Neck area; that it is consistent with the Comprehensive Land Use Plan, the MR district, the requirements of the RPC district and integrates well into the approval for Phase 1 of Patriots Glen; that for all these reasons the Applicant asks for a favorable recommendation to County Council and has submitted a set of proposed conditions and findings of fact.

Mr. Mears commented that he appreciates the proposed sidewalks on both sides of the roads.

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

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

Prior to the recess, the Commission discussed Application C/Z 1911 Schiff Land Development Co., LLC (c/o Mr. T.J. Schiff) (Patriots Glen Phase 2). Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 4-0.

Copy of Draft Minutes of the April 8, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since March 25, 2021.

Ms. Wingate stated she was not present for the public hearing but listened to the audio and is prepared to participate in the vote.

Mr. Mears moved that the Commission recommend approval of CZ#1911 for an MR-RPC for Schiff Land Development Co, LLC for the development known as Patriots Glen Phase 2 based upon the record made during the public hearing and for the following reasons:

1. This site has been the subject of prior land use applications and projects. None of them have ever been constructed. For example, this land was part of CZ #1605 for an MR-RPC and CZ #1606 for a change in zone to C-1. These were approved in 2007. The land was next the

- subject of CZ #1670 seeking to change the MR-RPC to CR-1.
2. This application seeks to return the land to an MR-RPC to incorporate it into the existing Patriots Glen development that is adjacent to it. The Patriots Glen MR-RPC was approved in 2019 as CZ# 1877 and Ordinance No. 2688.
 3. This application seeks to add 128 single-family condominium units to the existing Patriots Glen MR-RPC for a gross density of 2.95 units per acre and a net density of 3.52 units per acre. This density is less than the maximum density allowed in the MR District.
 4. This site is in the Coastal Area according to the Sussex County Comprehensive Plan. The expansion of the MR-RPC is appropriate in the Coastal Area.
 5. The site will be served by central water and sewer.
 6. DelDOT has stated that the developer will be required to make certain road improvements as part of this project. The expansion of this MR-RPC will not adversely affect area traffic or roadways.
 7. The expansion of the existing MR-RPC is consistent with the character and trend of development in the area and will not adversely affect the neighboring and adjacent properties.
 8. No parties appeared in opposition to this application.
 9. This recommendation is subject to the following conditions, which are consistent with the conditions imposed as part of Conditional Use No. 1877 and Ordinance No. 2688:
 - A. There shall be no more than 128 residential units within the project.
 - B. The bulk area standards for the 128 units shall be as follows:
 - a. Front yard = 25 feet
 - b. Side yard = 10 feet
 - c. Rear yard = 10 feet
 - d. Corner yard = 15 feet
 - e. Minimum Lot Width = 60 feet
 - f. Minimum Lot Area = 7,500 square feet
 - C. Site plan review shall be required for each phase of the development.
 - D. All entrances, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's requirements or in accordance with any further modifications required by Del DOT including required for Patriot Glen Phase I.
 - E. The development shall be served as a part of the Sussex County Unified Sanitary Sewer District and shall be constructed in accordance with County engineering specifications and regulations.
 - F. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - G. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with the applicable State and County regulations. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs). The Final Site Plan shall contain the approval of Sussex County's Conservation District.
 - H. The interior street design shall be in accordance with or exceed Sussex County's street design requirements and specifications. The street design shall include sidewalks on both sides of the street.
 - I. There shall be a 30-foot forested landscaped buffer around the entire perimeter of the site.
 - J. The Application shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design, including landscaping in all of the buffer areas.
 - K. Construction and deliveries shall only occur from Monday through Saturday and only between the hours of 6:00 a.m. to 6:00 p.m.

- L. The Applicant shall form a Homeowner's Association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.
- M. The Restrictive Covenants and Final Site Plan shall state that agriculture activities exist nearby, and they shall include the Agriculture Use Protection Notice.
- N. The amenities shall be combined with Patriots Glen Phase 1 to include a clubhouse/multi-purpose building, pool and patio area, with at least 24 off-street parking spaces set aside for these areas. These amenities shall be completed and open to use by the residents of the development upon the issuance of the 81st building permit.
- O. If required by the Indian River School District, a protected school bus shelter with related parking shall be installed at the entrance to the development. Alternatively, the Developer shall coordinate with the school district for another location, with a preference for the clubhouse building.
- P. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Hoey Stevenson and carried unanimously to recommend approval of C/Z 1911 Schiff Land Development Co., LLC (c/o Mr. T.J. Schiff) (Patriots Glen Phase 2) 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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date March 25, 2021.

Application: CZ 1911 Schiff Land Development Company, LLC

Applicant: Schiff Land Development Company, LLC
16054 S. Dupont Hwy
Harrington, DE 19952

Owner: Davis Farms II Limited Partnership
26367 Timbercreek Lane
Millsboro, DE 19966

Site Location: The property being a landlocked parcel lying on the south side of John J. Williams Highway (Route 24) approximately 0.92 mile southwest of Oak Orchard Road (Route 5)

Current Zoning: Medium Density Residential (MR) & Commercial Residential (CR-1)

Proposed Zoning: Medium Density Residential, Residential Planned Community (MR-RPC)

Comprehensive Land Use Plan Reference: Coastal Area

Councilmatic District: Mr. Hudson

School District: Indian River School District

Fire District: Indian River Fire District

Sewer: Sussex County

Water: Tidewater Utilities

Site Area: 43.5 acres +/-

Tax Map ID.: 234-29.00-67.00



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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Nick Torrance, Planner I
CC: Vince Robertson, Assistant County Attorney and applicant
Date: March 18th, 2021
RE: Staff Analysis for CZ 1911 Schiff Land Development Co. (Patriots Glen)

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1911 Schiff Land Development Co. (Patriots Glen) to be reviewed during the March 25, 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 Change of Zone for Tax Parcel 234-29.00-67.00 to allow for a change of zone from a Medium Density Residential (MR) Zoning District and Commercial Residential (CR-1) Zoning District to a Medium Density Residential, Residential Planned Community (MR-RPC). The property being a landlocked parcel is lying on the south side of John J. Williams Highway (Route 24) approximately 0.92 mile southwest of Oak Orchard Road (Route 5). The parcel to be rezoned contains 43.50 acres +/-.

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 subject property has a land use designation of "Coastal Area." The properties to the south, east and west also have the land use designation of Coastal Area. The properties to the north have a land use designation of Commercial.

As outlined in the 2018 Sussex County Comprehensive Plan, the 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, townhouses, 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 all be allowed.

The property is zoned Medium Density Residential (MR) Zoning District and Commercial Residential (CR-1) Zoning District. The properties to the northwest are zoned General Commercial (C-1), to the west and south Medium Density Residential (MR), to the east General Residential (GR) and to the north Neighborhood Business (B-1).

The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 "Zoning Districts Applicable to Future Land Use Categories," the Medium Density Residential (MR) Zoning District is listed as an applicable zoning district in the "Coastal Area."

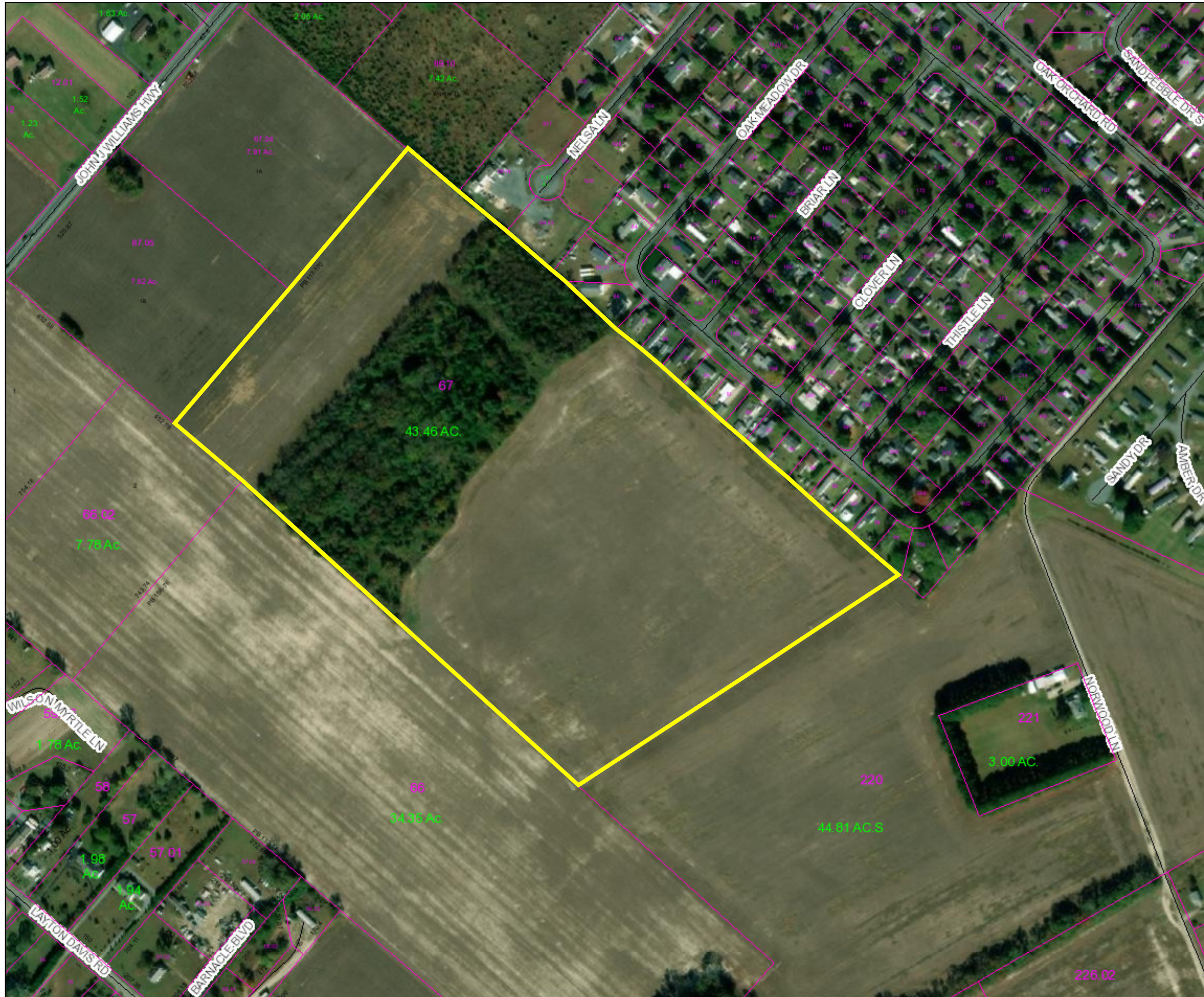


Since 2011, there has been two (2) Change of Zone applications within a 2-mile radius of the application site. The applications were for Change of Zone No. 1823 for a change of zone from an Agricultural Residential Zoning District (AR-1) to a Commercial Density Residential District (CR-1). The application was recommended approval by the Planning and Zoning Commission on July 13th, 2017, and approved by the Sussex County Council on July 25th, 2017, and adopted through Ordinance No. 2513. Change of Zone 1877 was for a change of zone from Commercial Residential (CR-1) Zoning District and Medium Density Residential (MR) Zoning District to Medium Density Residential, Residential Planned Community (MR-RPC). The application was recommended for approval by the Planning and Zoning Commission on June 27th, 2019, and approved by the Sussex County Council on July 16th, 2019 through Ordinance No. 2668. This approval was for Phase 1 of this current application.

Based on the analysis of the land use, surrounding zoning, and uses, a Change of Zone from a Medium Density Residential (MR) Zoning District and Commercial Residential (CR-1) Zoning District to a Medium Density Residential, Residential Planned Community (MR-RPC) could be considered as being consistent with the land use, area zoning, and surrounding uses.



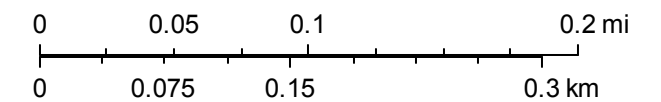
Sussex County



PIN:	234-29.00-67.00
Owner Name	DAVIS FARMS II LIMITED PARTNERSHIP
Book	4407
Mailing Address	26367 TIMBERCREEK LN
City	MILLSBORO
State	DE
Description	SE/RT 24
Description 2	1615' SW/RT 5
Description 3	N/A
Land Code	

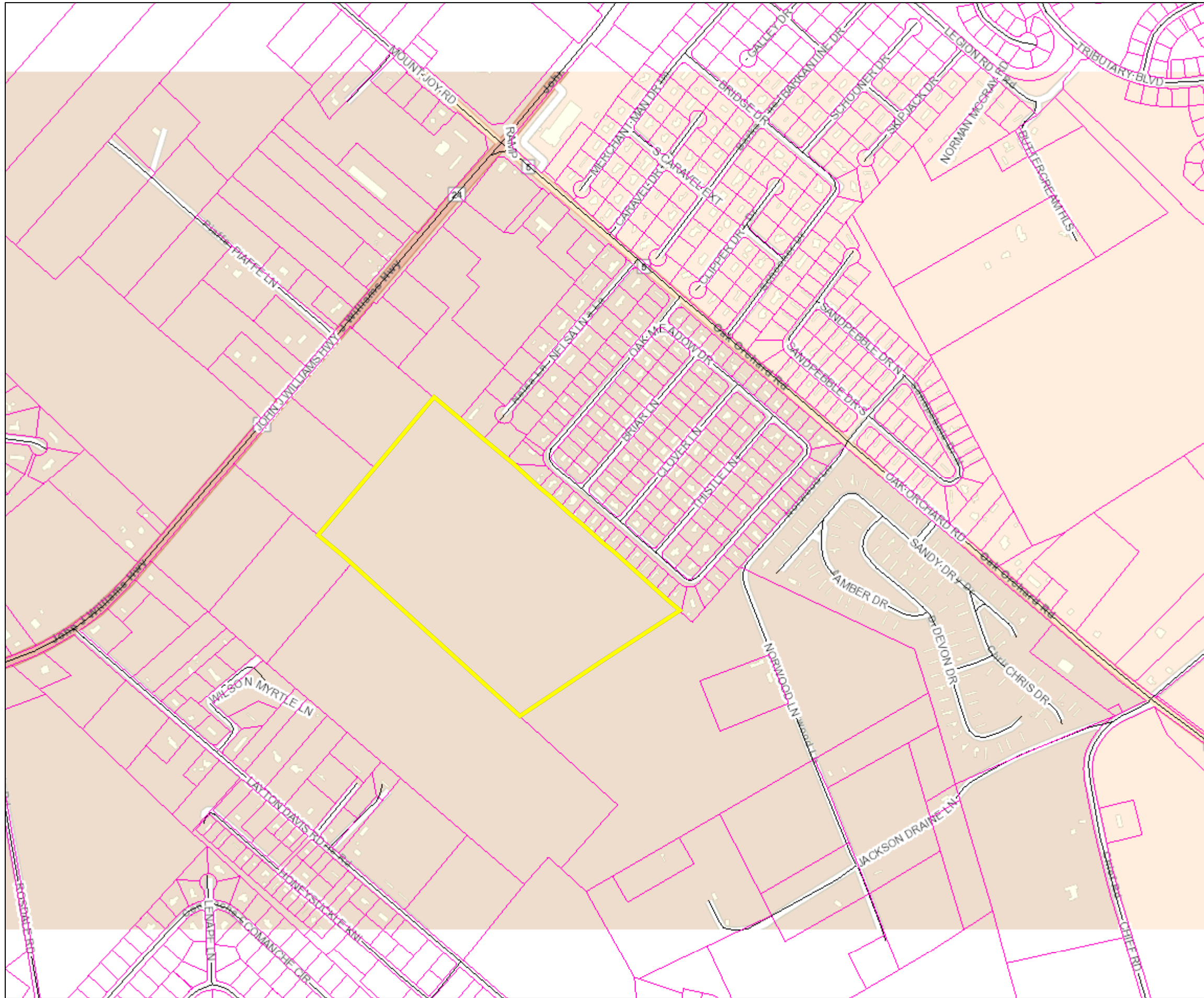
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Override 1
- polygonLayer**
Override 1
- Tax Parcels
- Streets
- County Boundaries
- Municipal Boundaries

1:4,514





Sussex County



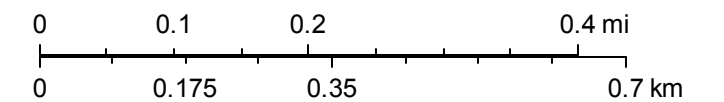
PIN:	234-29.00-67.00
Owner Name	DAVIS FARMS II LIMITED PARTNERSHIP
Book	4407
Mailing Address	26367 TIMBERCREEK LN
City	MILLSBORO
State	DE
Description	SE/RT 24
Description 2	1615' SW/RT 5
Description 3	N/A
Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

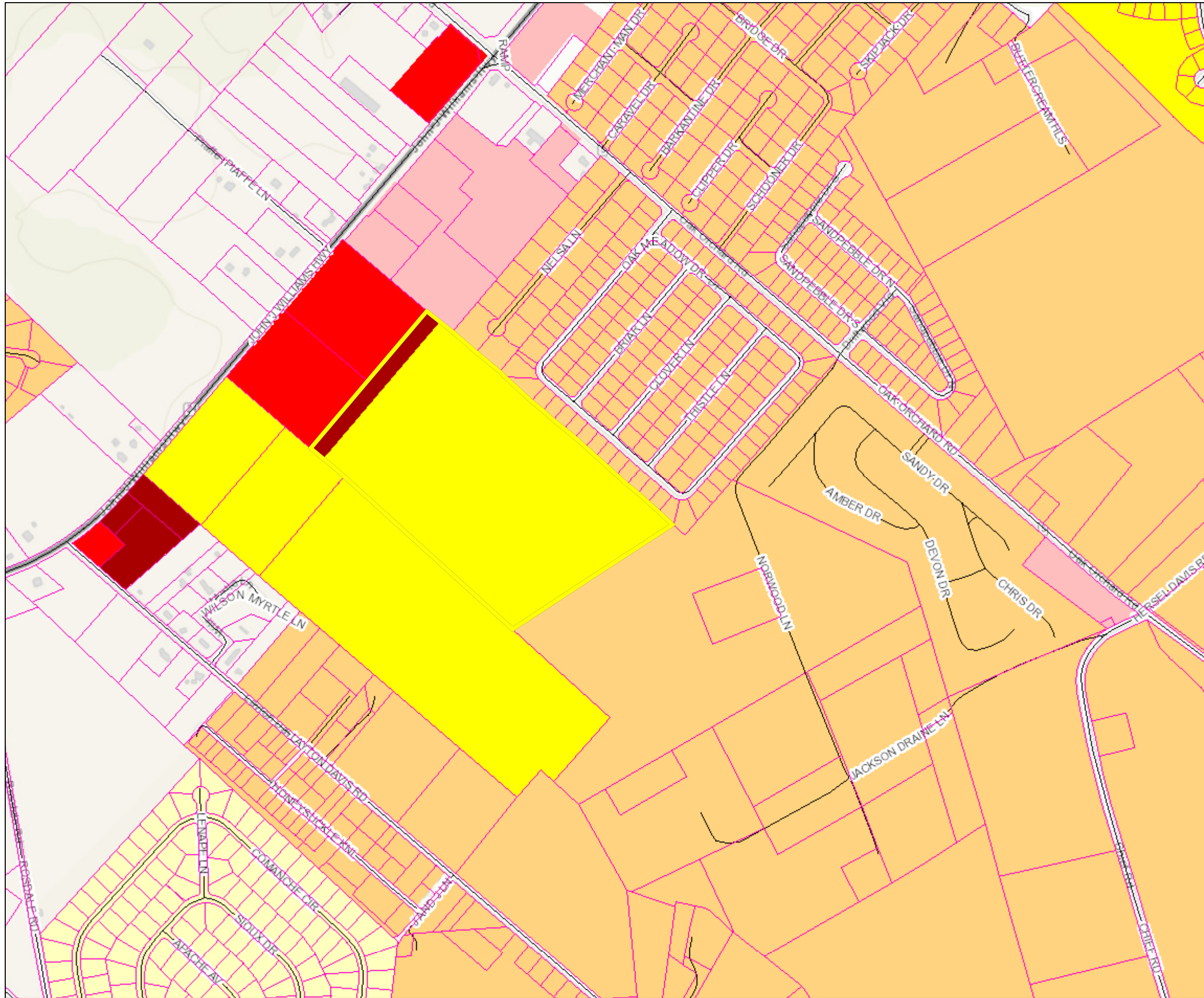
 - Override 1
- Tax Parcels
- Streets
- County Boundaries
- Municipal Boundaries

1:9,028





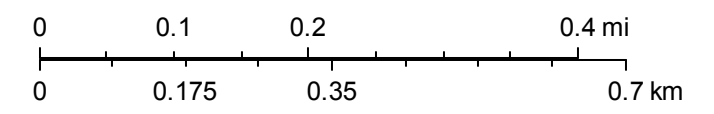
Sussex County



PIN:	234-29.00-67.00
Owner Name	DAVIS FARMS II LIMITED PARTNERSHIP
Book	4407
Mailing Address	26367 TIMBERCREEK LN
City	MILLSBORO
State	DE
Description	SE/RT 24
Description 2	1615' SW/RT 5
Description 3	
Land Code	

- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- Streets

1:9,028



Introduced 01/14/20

**Council District No. 4 – Hudson
Tax I.D. No. 234-29.00-67.00
911 Address: Not Available**

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MEDIUM DENSITY RESIDENTIAL DISTRICT AND A CR-1 COMMERCIAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 43.463 ACRES, MORE OR LESS

WHEREAS, on the 10th day of December 2019, a zoning application, denominated Change of Zone No. 1911, was filed on behalf of Schiff Land Development Co., LLC (Patriots Glen); and

WHEREAS, on the ____ day of _____ 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1911 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying south of John J. Williams Highway (Route 24), and being more particularly described in the attached legal

description prepared by Ellis & Szabo, LLP, said parcel containing 43.463 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.

PROPOSED

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: April 15, 2021

RE: County Council Report for CU 2206 filed on behalf of Linder & Company, Inc. (Evans Farm)

The Planning and Zoning Department received an application (CU 2206 filed on behalf of Linder & Company, Inc (Evans Farm)) for a Conditional Use for parcel 134-12.00-74.00 for multi-family (200 units) at 31434 Railway Road, Ocean View. The property is within the General Residential (GR) Zoning District. The parcel size is 50.62 acres +/-.

The Planning and Zoning Commission held a public hearing on March 25, 2021. At the meeting of April 8, 2021, the Commission recommended approval of the application for the 12 reasons and subject to the 19 recommended conditions outlined within the motion (included below).

Below are the draft minutes from the Planning & Zoning Commission meeting of March 25, 2021 and the draft minutes of the Planning & Zoning Commission meeting of April 8, 2021.

Draft Minutes of the March 25, 2021 Planning & Zoning Commission Meeting

C/U 2206 Linder & Company, Inc. (Evans Farm)

An Ordinance to grant a Conditional Use of land in a GR General Residential District for multi-family (200 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 50.62 acres, more or less. The property is lying on the north corner of the intersection of Railway Road (S.C.R. 350) and Old Mill Road (S.C.R. 349) and also being on the south side of Railway Road (S.C.R. 350) approximately 696 feet northeast of Old Mill Road (S.C.R. 349). 911 Address: 31434 Railway Road, Ocean View. Tax Parcel: 134-12.00-74.00.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's conceptual site plan, a copy of the Applicant's exhibit booklet, a copy of the Traffic Impact Study



(TIS), a copy of the DelDOT service level evaluation response, a copy of comments from the Sussex County Engineering Department Utility Planning Division, a copy of a letter from Tidewater Utilities, a copy of the Staff Analysis, a copy of the State's PLUS comments and a copy of the Applicant's response to the PLUS comments, a copy of the Applicant's Environmental Assessment, and copies of the previous approvals for the site. Mr. Whitehouse noted that Staff have received a petition of over 900 signatures in opposition to the Application and 262 letters in opposition to the Application and ten mail returns. Mr. Whitehouse stated that some of the comment letters are duplicate letters.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Linder and Company, Inc. who is also the owner of the property; that also present by teleconference on behalf of the Applicant is Ms. Andrea Fineroksy; that present are Mr. Mark Davidson, Principal Land Planner and Alan Decktor, Profession Engineer from Pennoni and Eric Wall, registered Landscape Architect; that an exhibit book has been submitted as part of the record and the cover page of that report shows a list of people who were involved in this project and lists their professional expertise and training; that this exact site had a previous site plan quite similar to this in 2010 with the same level of involvement by professionals; that the prior 2010 Conditional Use application number 1849 was approved by County Council; that Final Site Plan approval was granted in 2016; that what transpired between the first application and the application being heard this evening is primarily the addition of Bay Forest Club which is on the northwestern side of this property; that the remainder of the adjacent area is primarily residential properties which have been in existence for many years just north of Millville; that the Applicant is surprised by the volume of opposition to this Application as it is virtually identical to what was approved in 2010 and expected to be built until the approval lapsed; that there was a meeting with the Linder Company and one of the opposition groups; that the Applicant made adjustments to the site plan to address some of the concerns raised; that the information provided by the professionals who were involved in preparing the Application must be given greater weight than that of individual lay people; that this is one reason why the County often has professionals from other agencies attend these meeting to advise and give information when required; that DelDOT often has an expert here to assist the Commission and similarly with DNREC when there are environmental concerns.

Chairman Wheatley commented that Mr. Bill Brockenbrough and Mr. Todd Sammons from DelDOT are available by Teleconference to assist the Commission and answer questions.

Mr. Hutt stated that what he has said is not intended to be disrespectful to any member of the public involved in the process and anyone who wants to opine on an application will be given the opportunity in accordance with the rules and guidelines of the meeting; that there are things about an Application such as traffic and stormwater management that do require a level of expertise; that there are a number of misconceptions about this Application that such be addressed from the outset; that if these misperceptions are addressed from the outset it will help moving forward with the details of the Application; that many of the opposition comments address this Application as a Change of Zone application, the zoning classification will not change, this is a Conditional Use Application; that another misconception is that this Application is requesting high density or bonus density, there are other zoning designations for high density within the County but this Application is for medium density classification and there is no bonus density being sought; that the Applicant seeks to use the base density in a medium density district of 4 units per acre with 10,000 sf lots in a General Residential Zoning District (GR) which is one of two medium density zoning districts in the County, the other is the Medium Residential Zoning District (MR); that this Application seeks 200 units on a little over 50 acres situated in 17 buildings; that the reason this is a Conditional Use Application before the Planning

Commission is that it is a request for multi-family dwellings and will be addressed; that it is important to lay the groundwork of what is not being sought in this Application to help clear any misconceptions; that this property sits at the corner of Railway Avenue and Old Mill Road; that the property is bisected by Railway Avenue, on the east side that portion of the parcel contains a little over 2.25 acres containing an old farmhouse and some accessory buildings and an old chicken coop and on the west side the parcel contains 48.4 acres which is unimproved and currently used for agricultural purposes; that tonight's Application is for 17 buildings on the western portion of the property containing 200 units; that the entrance to Evans Farm would be off of Old Mill Road; that when you enter the property off Old Mill Road, there would be a looped parking lot that connects all of the buildings; that at the entrance would be the common facilities for Evans Farm which will include a swimming pool, a pool house, a sand volleyball court, tennis courts and a basketball court; that there will be a large area of open space at the center of the property and there will be a walkway that connects all of the interior buildings; that there will be an interior sidewalk for the residents of this Development; that there will be a sidewalk on the outside of the parking loop also; that there will be single story garage buildings for each unit on the exterior of the parking loop; that a 30 ft. landscaped buffer proposed for the entire perimeter of the site; that there are 3.6 acres of wooded wetlands on the northwestern portion of the property which will remain undisturbed; that this site generally slopes from Old Mill Road to the north eastern portion of the property; that stormwater management is proposed on the northern portion of the property adjacent to Railway Avenue; that Ephemeral Wet Ponds are proposed as part of best management practices for stormwater management; that there is a wide walkway from Railroad into the site; that this will serve as both an emergency access entrance for first responders in addition to being a connection to the shared use path that will be added as part of the improvements to Railway Avenue; that on the east side of Railway Avenue the existing farmhouse, outbuildings and chicken coop will be removed and it is intended that a maintenance building for the Development be placed on these two acres; that some of the letters of opposition noted that these buildings may have asbestos siding or shingles and that when being removed, it would be properly abated and removed from the property; that sewer services would be available to the property as noted by the Sussex County Engineering Department; that water will be provided by Tidewater Utilities; that many of the opposition are critical of there being apartments in this area which is surprising as almost every person has at some time in their life lived in an apartment; that sound land use planning lists that there should be a mixture of housing types within an area; that the Sussex County Comprehensive Plan lists in many places that Sussex County is primarily being developed with single-family homes and that further encouragement should be given to multi-family dwellings and structures throughout Sussex County; that based on the negative reaction to the term apartments, the Applicant has been investigating to see if it would be appropriate to change this to condominiums; that would just change this development from rentals to ownership and would not change the Conditional Use that is being sought; that in the Sussex County Code the term multi-family is defined as both apartments and condominiums and the request is for 200 multi-family units; that if they are apartments they would be market rate with annual leases required; that it is expected based on the number of bedrooms in the apartment that the monthly rental rates would be from \$1,300 - \$1,900; that the occupancy rate would be a maximum of two people per bedroom; that the target market is a full-range market for individuals seeking to lease instead of purchase and for people who work in the area; that this will not be Section 8 housing, the Applicant does not have any Section 8 housing within their portfolio; that this property is in the GR Zoning District; that the adjacent properties to the east and south are also in the GR district; that a small property on the adjacent parcel to the southwest is zoned General Commercial (C-1) and the adjacent property to the west is zoned MR and the adjacent property on the remaining northern boundary of the property is zoned Agricultural Residential Zoning District (AR-1); that the Sussex County Code defines the purpose of the GR district is to provide for

medium-density residential use including all manufactured homes; that there are two permitted uses of land within the GR district, the first is any use which is permitted in the AR-1 district predominated by single-family homes and the second is manufactured home units; that within the GR district there are a number of additional uses allowed by using the Conditional Use tool and one is for multi-family dwelling structures Articles IV through XX; that the term multi-family dwelling is defined as apartments, garden apartment, condominiums, duplexes or similar structure; that this proposal is for multi-family structures in the GR district; that the purpose of the Conditional Use states that these “uses are generally of a public or semi-public character and are essential and desirable for the general convenience and welfare but, because of the nature of the use, the importance of the relationship to the Comprehensive Plan and possible impact not only on neighboring properties but on a large section of the County, require the exercise of planning judgment on location and site plan”; that housing is certainly of a public or semi-public character and is essential and desirable for all individuals; that this presentation will show the consistency with Sussex County’s Comprehensive Plan and will review some site details that make this plan superior to the plan that was approved in 2007; that the property was acquired in 2005 from the Evans Family; that when this property was purchased the surrounding area was largely wooded and agricultural in nature; that the adjacent communities have filled in many of the adjacent wooded areas; that this property throughout history has largely been used for agricultural purposes as it is today and this is one of the last developable pieces in this area that is not a wooded wetland or other area that is not appropriate for development; that the zoning map shows a large amount of GR zoning in this area but even a larger amount of MR zoning; that the density in both GR and MR is four units to the acre; that the Conditional Use that is being sought is for 3.95 units to the acre; that there are provisions within the County Code to allow an Applicant to seek up to 12 units to the acre but is not part of this Application; that the request is consistent with the zoning applications in this area; that one opposition to this Application is that there is nothing like this in this area but some of the buildings in the Bethany Bay community are similar to the plans for this community; that the 2019 Sussex County Comprehensive Plan and the 2045 Future Land Use Map show that this property and the surrounding properties are located in the Coastal Area which is considered to be one of the seven growth areas in the County; that the Comprehensive Plan states that the “Coastal Areas can accommodate development provide special environmental concerns are addressed”; that it goes on to state that Medium and higher density (4 – 12 units per acre) could be supported in certain areas; that everyone one of the County’s residential zoning districts is appropriate within the Coastal Area and includes MR and GR in addition to the High Density Residential Districts (HR-1 & HR-2); that there are a number of considerations in the Comprehensive Plan of when medium and higher density is appropriate and most notably is the availability of public water and sewer which has been addressed; that proximity of commercial uses and employment centers and the nature and character of the area are additional considerations which will be addressed; that this property is in close proximity to the town of Millville which has seen substantial growth in recent years including a new Beebe facility which could be an employment center for residents of the proposed development; that another consideration for the Commission is the State Strategies mapping tool often referred to as the State Strategies Map and this property contains Level 2 and Level 3 areas according to this map; that Level 2 areas are where the State anticipates growth in the near-term future and Level 3 area growth in the longer-term future; that one of the areas most discussed in any land development application is the impact on area traffic; that this Application went through the PLUS process where all the various state agencies has an opportunity to comment; that according to the service level evaluation response from DelDOT this project is expected to have a minor affect on traffic; that when a project has a minor affect the Applicant can choose to contribute to an area wide study fee in lieu of a Traffic Impact Study (TIS); that this project had a preliminary meeting with DelDOT and a copy of the report from that meeting is part of the record and an area wide study fee

was established with two additional points; that the first point calculated the area wide study fee and the other two points address the off-site improvements; that the first require the Developer should improve Old Mill Road from Railway Road intersection to the western edge of the site frontage to local road standards which include two 11-foot travel lanes and 5-foot shoulders and there is enough right of way to allow this to occur; that in additions there will be a 10-foot wide shared use path along Old Mill Road; that the third point is that the Developer should make similar improvements to Railway Road, from Old Mill Road to the northern edge of the site frontage to local road standards which include two 11-foot travel lands and 5-foot shoulders and again there would be a 10-foot wide shared use path along the frontage of the property; that there are some cross road pipes on both Old Mill Road and Railway Road that will be updated when the roadwork is completed; that when the shared use paths are completed these portions of Railroad Road and Old Mill Road will be the safest areas for a pedestrian to travel; that a second point about traffic is that for this site 1,088 trips per day are anticipated and according to DelDOT calculations that if there were 112 single-family homes on this site they would generate an equal amount of traffic; that much of the opposition stated that if these were single-family homes there would not be as much traffic generated but DelDOT manuals disprove that; that another topic that is closely examined in most applications that come before the Commission in this area is stormwater management because of it's proximity to inland bays and its tributaries; that the property drains from the southwest corner to the northeast corner; that the pre-development drainage analysis shows that some of stormwater from the Bay Forest Community and from the intersection of Railway Road and Old Mill Road which would have to be handled by the Evans Farm stormwater management systems; that the post-development drainage analysis shows that there is 4.36 acres from Bay Forest which would be managed by the stormwater systems on the subject property in addition to the areas at the intersection of Railway Road and Old Mill Road; that the best management that has been selected for this project is Ephemeral Constructed Wetlands; that in the previous images you can see that following a rain event there was water on the site; that these Ephemeral Ponds will use that existing condition and enhance it to be able to manage the stormwater for this site; that there are numerous benefits to Ephemeral wetlands which are shallow in depth and help to reduce peak stormwater flows and function like a filter and remove pollutants similar to a natural wetland; that in addition there is a mixture of plants that will go into the Ephemeral wetlands which will make them a habitat for animals and pollinators; that this property is not in a flood plain and is in zone X on the FEMA maps; that the property is in an area designated as a fair recharge area and the northwest portion is designated as a good recharge area; that there are no known there are no archeological sites or national listed properties on the site; that there will be 30-foot forested buffer around the perimeter of the site which includes the boundary along Old Mill Road and Railway Road; that the existing wooded wetland property on the northwest portion of the property will remain and function as part of the perimeter buffer and where the ephemeral wetlands will function; that the Applicant has taken some of the concerns of the opposition and incorporated them into the conceptual site plan; that one of those items is some elevated areas along the entrance to the community in addition to the buffer so it will not look out of character; that the many of the opposition letters referenced the height of the proposed structures as being out of character, the height restriction for Sussex County is 42 ft. and the proposed structures will be in compliance with Sussex County Code; that Chapter 8 of the Comprehensive Plan is the housing chapter; that chapter 8.2 states that "while the County allows for multi-family (duplexes, townhouses and apartments, etc.) the primary housing type is detached single family" and that sets up a series of strategies and goals within the code and one of those is that the County should consider the ability to establish other housing types or reduce the need for a Conditional Use for a multi-family development which is the nature of this Application; that strategy 8.2.3.3 repeats that the County should consider revisiting the Zoning Code to determine in districts where multi-family housing is currently a Conditional Use should be

made a permitted use if water and sewer are already available and on the site; that this shows what the County's vision is with regard to multi-family structures within the housing options that are available throughout Sussex County; that another point that shows the need for multi-family housing is how quickly multi-family develops and fill; that there are three such projects in the County and by reputation almost instantaneously had a waiting list; that included in the packet is a letter from a certified commercial investment manager with Emory Hill describing the market for multi-family units and the positive impact they would have on the area; that at the beginning of the presentation the testimony of experts was compared to that of lay persons however, in the opposition's documents was a report from a laboratory that a shingle from the old buildings was tested and found to be asbestos; that the Applicant proposes to hire a professional asbestos abatement company to remove those structures from the property; that another email submitted by the opposition from Blair Venables, hydrogeologist with DNREC following a meeting with the residents of Banks Acres; that report has numerous items but one item states that "prior to approving new construction upgrading of the Banks Subdivision, the County must require the owners, investors or planners to demonstrate that stormwater of the project will have no net increase in the stormwater load passing through the Banks Acres subdivision"; that Mr. Venables described the site plan review process conducted at the outset of each Planning and Zoning Commission meeting; that part of that process is to make sure that an applicant who have received preliminary approval for a project gets the necessary approvals from the State agencies; that one of the baseline requirements when the Sussex Conservation District reviews an application is that a developer cannot increase the amount of stormwater leaving a property; that in the materials online there is an updated response from DelDOT and there may be additional upgrades required of the Applicant and discussions will continue with DelDOT as the project moves forward; that the Applicant was surprised at the amount of opposition to this project as it is essentially redoing a previously approved project; that there are some enhancements to the current project; that the first is the addition of the forested and landscaped buffer around the entire perimeter of the parcel; that the landscaping plan for this property will add an additional 570 deciduous and evergreen trees to the existing 3.6 acres on the northwestern portion of the property which will be left undisturbed; that these trees will provide additional screening from adjacent properties and roadways; that another enhancement from the previous plan is the minimalization of soil disturbance and grade changes because of the use of the Ephemeral wetlands; that one of the features of the Ephemeral wetlands is that they are shallow in depth; that the third enhancement is the creation of the Ephemeral wetlands as they will improve the water quality and remove pollutants and have some aesthetic appeal and provide for ground water recharge; that the fourth enhancement is that is greater preservation with the addition of these elements of scenic views and provide for natural resource protection where the wetlands remain undisturbed; that there will be ample opportunities for the residents of Evans Farm to enjoy the outdoors with an internal walkway and the more traditional exterior walkway and all the amenities at the entrance to the Community; that the Applicant requests recommendation of approval for this Conditional Use for the same reasons as it was previously approved and because the project has been enhanced; and that the Applicant has a proposed set of findings of fact and conditions which will be submitted as part of the record.

Chairman Wheatley asked Mr. Sammons from DelDOT to confirm that the daily trips from 200 multi-family homes would equal those of 112 single-family homes.

Mr. Sammons confirmed that the daily trips of 200 multi-family homes would be like those of 112 single-family homes.

Mr. Mears asked Mr. Sammons that there was testimony given that if developed this community would

have a minor impact on roads.

Mr. Sammons confirmed that it could be subjective to how people view this but to DelDOT it is viewed as a minor impact as stated in the service level response.

Mr. Mears asked if it was typical for the Applicant to provide upgrades to the roads including a shoulder.

Mr. Sammons stated that this is typical.

Mr. Mears asked how many units were proposed for the previously approved Conditional Use 1849.

Mr. Hutt stated that the proposal was also for 200 units.

Mr. Mears asked when the previous approval expired.

Mr. Davidson responded that the Final Site Plan approval was in March 2016 and expired in 2019.

Mr. Mears asked Mr. Davidson to expand on the requirements for stormwater management.

Mr. Davidson stated that a pre-development analysis and post-development of the subject property and surrounding area must be conducted in order to get stormwater management approval in the State of Delaware; that in the pre-development the report shows what drains onto the property and what the property generates in stormwater and what it does with the runoff and includes the surrounding areas; that some of the drainage from the adjacent property and from Railway Road and Old Mill Road will come into this property and the stormwater management system will manage this through the ephemeral wetlands that are proposed for this development; and that the discharge rate from this site cannot be over the pre-development rate that occurs currently and will be held onsite in the by the best management practices proposed for this site.

Ms. Stevenson asked what amenities are being proposed and if the proposed swimming pool would be large enough for the residents.

Mr. Hutt stated that this company has developed communities throughout the State of Delaware and the sizing of the pool and amenities is calculated on a per-unit basis.

Chairman Wheatley asked for a definition of Ephemeral Wetlands and what type of ongoing maintenance would be required.

Mr. Decktor stated that ephemeral wetlands is a best management practice (BMP) which is outlined in the DNREC list of options for stormwater facilities; that the nature of why the ephemeral wetlands was chosen is the rear of the site is that the seasonal high groundwater is shallow in this location; that the great option is that water can sit in the bottom of the structure; that the bottom of the structure can be at the seasonal high water table or below and you apply the storage above; that this BMP would be landscaped with a detailed landscaped plan for this structure; that due to the vegetation would be a natural pollutant remover with nitrogen, phosphorous and total suspended solids; that this BMP would have a forebay, so that water entering this structure would first enter the forebay at a lower elevation to collect any sediment that would be conveyed to this structure; that the runoff would

overflow into the wetlands and conveyed through it and out to the outfall in the existing tax ditch; that in addition to the proposed BMPs the site itself had different soil types and different ability for infiltration with lower runoff; that DNREC has specific guidelines which outlines the design and the maintenance of the ephemeral wetlands.

The Commission found that there was no one spoke in favor of the Application.

The Commission found that Mr. Tom Goglia, representing the Evans Farm Watch Group spoke in opposition to the Application. Mr. Goglia stated that Evans Farm Watch is a coalition of 11 communities in the unincorporated areas on the northeast side of Millville formed to oppose CU 2206; that they have over 1,300 opposition petition signers; that the mission of the group is to protect, maintain and enhance the quality of life in the community; that the Evans Farm development is the wrong development in the wrong place at the wrong time; that the group opposes this development because it will increase traffic congestion and roadway safety, that it will impact the character of the community, and there are concerns about stormwater management and pollution; that the traffic study in the Application was prepared in 2005 and the traffic counts for these country roads are 7 – 20 years old; that during the past 16 years there has been an increase of over 2,000 new homes in the immediate area which would mean as many as 4,000 additional cars; that there are more pedestrians and more cyclists on the roads; that he requests the Commission to make a decision based on public safety and require new traffic studies.

Chairman Wheatley asked that a representative from DelDOT address the concerns regarding the age of the traffic studies.

Mr. Bill Brockenbrough stated that the development of 200 homes does not necessarily require a traffic study; that looking at the volume of traffic, congestion is not seen on the local roads off of Route 26; that the volumes are relatively low; that the volumes on Route 26 is high and there is definitely seasonal congestion on this route; that the daily volumes are not high and therefore, did not require a new traffic study.

The Commission found that Mr. Wally Jensen, representing the Evans Farm Watch Group spoke in opposition to the Application. Mr. Jensen stated that he and Jackson Chin prepared this portion of the presentation regarding stormwater, pollution, and threats to clean water; that this project will exacerbate the problem with flooding from stormwater as it makes its way to Whites Creek and showed pictures of the current flooding issues during rain events; that this proposal will result in the loss of good draining soil as it is replaced by concrete, asphalt, and structures; that the proposed lining of the stormwater management pools will be a negative factor in the proposed drainage system; that the stormwater will be forced onto Railway Road and into the neighboring communities; and that the stormwater is being circulated across Railway Road, back and forth through pipes and will eventually push the water into the Banks Acres subdivision.

Chairman Wheatley asked Mr. Jensen how this information was determined.

Mr. Jensen stated that this information was determined by Mr. Jackson Chin, an electrical engineer.

Mr. Mears commented that the Banks Acres subdivision was developed in the 1970s; that it is at a lower elevation than the surrounding area; and that there is no stormwater management on the property.

Chairman Wheatley explained to the speaker that there is a law in place that states that you cannot discharge water from your property to your neighbor's property.

Chairman Wheatley asked Mr. Chin to discuss his civil engineering qualifications.

Mr. Jackson Chin spoke by teleconference and he stated that he is an electrical engineer but understands all branches of engineering; that water flows like electricity; that from all the impervious buildings that are being built all the water is going into drains and all the drains are being channeled into the ephemeral ponds and the two railway ponds; that previously that water was not being channeled in that direction; not the water is being taken and added to the one corner which has the most flooding currently; that the original plan was approved with a large retention pond in the center of the property; that plan has changed drastically; and that all the water is being pushed onto the neighboring communities.

Mr. Mears commented that the older developments have problems with flooding, but the newer developments do not have the same issues because they have stormwater management and can contain the water on the property.

Mr. Jensen reminded the members that the responsibility of the Commission on behalf of the citizens is to secure safety from fire, flood and other damages, to facilitate and provide adequate provisions for public requirements, transportation, water flowage, water supply, water and air pollution abatement and drainage, to preserve the character of the particular district involved, to preserve the conservation of property values and natural resources, and the general and appropriate trend in the character of land, building and population developments; that the Evans Farm proposal is wrong for this community because of the possible damage to the quality of life, the threats to health and welfare of all residents and potential damage to the environment and ecosystems; that for these reasons the request is that you deny this Application.

The Commission found that Mr. David Bartlett, representing the residents of Banks Acres spoke in opposition to the Application. Mr. Bartlett stated that the development to the north and east of Evans Farm relies on private wellheads for potable water needs; that Banks Acres sits across the road from Evans farm; that there are two stormwater ditches on the Banks Acres property; that during every major rain event the private wells of the residents who live adjacent to the ditches are placed in jeopardy from contamination from Evans Farm and the Asbestos laden fibers from an abandoned chicken house on the 2.2-acre parcel which is part of Evans Farm; and that wellhead protection for potable well water is a 3rd world, developing country issue, it should not be a Sussex County issue. Mr. Bartlett showed pictures of the recent flooding in the area during his presentation.

Chairman Wheatley explained to the speaker that in its natural state water may run off the property, however, when developed, the Developer is not allowed to have water run off the subject property and on to other properties; that they must have a stormwater management plan and this plan will be monitored by Sussex Conservation District.

Mr. Bartlett stated that there are also concerns about the asbestos fibers coming from the abandoned chicken house that may be transported and deposited near residential wellheads.

Mr. Hopkins asked the speaker if he would like the buildings to remain on the parcel because the

Applicant stated that the buildings would be removed by a company certified in asbestos removal.

Mr. Bartlett stated that the group would like the buildings to be removed and for the removal to be monitored by DNREC and that the Commission deny the Application as it is out of character with the neighborhood.

The Commission found that Mr. Marty Lampner, President of White's Creek Manor spoke in opposition to the Application. Mr. Lampner stated that Evans Farm Apartments is not in keeping with the area; that the housing in the White's Neck area is more than 80% single-family home; that though it is part of the Coastal Area it still has a rural feel with homes and farms; that it is a diverse area with wildlife and open space; that the suggested comparisons given by the Applicant are not like this development; that the apartments at Bethany Bay are 850 ft. from any single-family home; that Mr. Hutt stated there would be 17 buildings but with the garages there will be 34 buildings on this property; that this entire area suffers frequent outages even after Delmarva Power brought a new 750KV line; that there is only one provider of high-speed internet in the area and when more people are added to the system it increases the likelihood of a catastrophic failure; and that there is a need for apartments but there are other areas more suited to this type of development.

Recess 9:10 P.M. – 9:23 P.M.

The Commission found that Mr. Mike Gillease spoke in opposition to the Application and asked when the previous development for this property was approved.

Chairman Wheatley stated that the property did have previous permits that were not acted upon over the years.

Mr. Gillease stated that because the permits have expired that it is that Applicant's lost opportunity; that he believes that there were 2,000 building permits issued in the first six months of 2020; that if 200 apartments are built, it will mean approximately 400 cars; that traffic has already been addressed; that when you go to the beach the parking lots are full and cars are lined up on Route 1 to get in; that Route 113 cannot handle the volume of traffic currently; that property taxes were increased last year because Indian River School District needs a new high school because of the volume of families with school age children moving into the area; that he has some questions such as does this Commission have a plan on how many building permits will be issued; that the developer should pick up some of the cost for infrastructure.

Chairman Wheatley stated that the Developer does contribute towards infrastructure improvements.

The Commission found that Ms. Chris Falvello, Evans Farm Watch Group spoke in opposition to the Application. Ms. Falvello stated that she and her husband have had a house in South Bethany but because of the congestion moved to the Bay Forest Community; that this area has an intangible quality with a mix of water, sand, sun, bays, creeks, flat farmland and forests; that this area has been changing since 2009; that if this development is approved that the view from her backdoor will be a 15-car garage; that the original development showed that the buildings would be further away from the property line; that the new site plan shows that the buildings are pushed out; that people live here because they choose to live here; that there will be a tipping point; that some neighbors have sold their home in Bay Forest and left after learning of the proposed development; and that the Commissions duty is to protect property values.

The Commission found that Ms. Theresa Sparcado spoke in opposition to the Application. Ms. Sparcado stated that the traffic on Club House Road where she lives is constant; that a fence cannot be constructed at the front of her property because of County setback rules; that there was a cornfield just down the street when she bought her house which is now a development; that she has concerns about evacuation from her property with added large developments; and that she has concerns about first responders being able to reach people in an emergency. Ms. Sparcado also read a letter of opposition into the record from the HOA for the residents Old Mill Acres.

The Commission found that Mr. Charlie Yunckes spoke in opposition to the Application. Mr. Yunckes stated that no one spoke in favor of this Application but there has been a lot of opposition; that there are drainage issues, and it needs to be addressed; and that there will be a need for bigger firetrucks, more ambulances, and police.

The Commission found that Mr. David Knepp spoke in opposition to the Application. Mr. Knepp stated that he is the HOA president for Denton Manor and represents 106 property owners; that the residents of Denton Manor are not against development but want the interests of all the people of all the people that each new development will affect; that the roads in this area have not been brought up to current road standards; that there are safety issues on the roads in this area.

The Commission found that Mr. Bill Hand spoke in opposition to the Application.

The Commission found that Mr. Bill Murphy spoke in opposition to the Application. Mr. Murphy stated that no one cares about the animals but just keep building.

The Commission found that Mr. Mike Peterson spoke in opposition to the Application. Mr. Peterson stated that he has concerns about flooding in the area; that the development looks like a compound; and it is not in keeping with the area.

The Commission found that Ms. Terri McGrath spoke in opposition to the Application. Ms. McGrath states that there is already a problem with the noise from Old Mill Road and this complex will exasperate the noise issues; that traffic will be impacted; and that she has concerns about who will rent the apartments.

The Commission found that Mr. Charlie Fisher spoke in opposition to the Application. Mr. Fisher stated that adding more impervious surfaces will add to the flooding issues and this area is already at breaking point; and that Bethany Bay a previous development by this Applicant has flooding issues.

The Commission found that Mr. Bill Hauck spoke in opposition to the Application. Mr. Hauck stated that this development will be an eyesore in an area where the homes are well-maintained; that this will not be seasonal living but permanent residents causing more traffic; and that the numbers from DelDOT do not make sense.

The Commission found that Mr. Daryl Wiles spoke in opposition to the Application. Mr. Wiles stated that the people who spoke tonight are not opposed to development, they are opposed to this type of development, the quality of the development and the compatibility of the development with the surrounding communities; that there are no other 42-foot buildings in the area; that it will affect property values in the area; that the DelDOT dodged the questions and did not properly respond; and that it is foolish to approve this development without an up to date Traffic Impact Study.

Mr. Torrance confirmed that there are no members of the public in the overflow room.

Mr. Whitehouse confirmed that the live feed and the telephone call in number has been operational throughout the meeting.

The Commission found that Ms. Carole Dougherty spoke in opposition to the Application. Ms. Dougherty stated that she has concerns about the placement of dumpsters and the noise generated by the trucks picking up the trash; that she has concerns about the buffer; and that there are not enough ambulances to handle the current calls and people must wait.

The following people spoke by teleconference in opposition to the Application: Laurie Goodwin Phillips, Matthew Apage, Tracey Bryan, Charles Plis, Patricia Podsiad and Jacqueline Brader. The concerns raised were about the trash, the traffic, the safety issues; flooding, the loss of open space, the effect on wildlife, the overcrowded school district; the infrastructure, out of character of the area, and overdevelopment in this area.

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

At the conclusion of the Public Hearings, the Commission discussed the Applications.

In relation to Application C/U 2206 Linder & Company, Inc. (Evans Farm), motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

Draft Minutes of the April 8, 2021, Planning & Zoning Commission Meeting

Ms. Wingate stated she was not present for the public hearing but listened to the audio and is prepared to participate in the vote.

The Commission discussed this application which has been deferred since March 25, 2021.

Mr. Mears moved that the Commission recommend approval of C/U# 2206 for Linder & Company for Multi-Family Dwelling structures in a GR General Residential Zoning District based upon the record made at the public hearing and for the following reasons:

1. This property was the subject of Conditional Use #1848, which was recommended for approval by this Commission and then approved by County Council as Ordinance #2176. Ordinance #2176 was also for 200 multifamily units and is very similar to the current application.
2. Ordinance #2176 was for condominium multifamily units and this application is for apartment multifamily units. Under the Sussex County Zoning Code there is no distinction between the type of ownership for purposes of a land use decision.
3. The property is currently zoned GR General Residential. According to the Sussex County Zoning Code, the purpose of the GR District is to provide for medium density residential uses. The permitted density within the GR District is 4 units per acre. This application complies with the purpose and density of the GR Zoning District.

4. The property is in the vicinity of a mixture of commercially and residentially zoned properties, including other GR properties, MR properties and C-1 properties. The use as multifamily residential is consistent with these other zoning classifications.
5. GR Zoning permits buildings up to a height of 42 feet. The buildings on this site will not exceed the 42-foot height limit.
6. The proposed Conditional Use is appropriate for this site because residential development of this type is appropriate where central sewer and water are available. Sewer will be provided by Sussex County and water will be provided by Tidewater Utilities.
7. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single family homes, townhouses and multifamily units.
8. The project will be served or benefitted by amenities which include a clubhouse, pool, playground, sport courts, and walking paths.
9. DelDOT has reviewed the proposed project and has determined under its vehicle trip standards that the development traffic impact will be minor. When DelDOT determines that traffic impact will be minor, a project is eligible to pay an Area Wide Study Fee instead of obtaining a Traffic Impact Study. Paying this fee does not eliminate the developer's obligation to construct or pay for offsite road improvements that are required by DelDOT as a result of this multifamily development.
10. This development is a design that is superior to the prior multifamily conditional use approved by Ordinance #2176 in several ways:
 - a. There will be additional forested and landscaped buffers around the perimeter of the site which will include 570 deciduous and evergreen trees that will be planted in the existing wooded area. This will provide additional screening from neighboring properties and roadways.
 - b. There will be less soil disturbance and grade changes due to the removal of the 12-acre pond that was part of the design of the prior project.
 - c. Ephemeral wetlands will be created for stormwater management, which will improve water quality, provide for the removal of pollution in surface and groundwater recharge and generally mitigate effects on area waterways.
11. Many people testified that "they would not have purchased" in nearby developments had they known that a multifamily project like this was planned. But in many cases, they moved to the area subject to an approved 200-unit multifamily project on this site. Ordinance #2176 was approved for such a use on this property in 2010.
12. With the conditions placed upon this recommendation, there will be no adverse impact upon traffic or the neighboring area.
13. This recommendation is subject to the following conditions:
 - a. There shall be no more than 200 Units within the development.
 - b. All entrances, intersections, roadways and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 - c. Recreational Amenities shall be completed within the project as follows:
 1. Community Center/Clubhouse, pool, playground and courts on or before the issuance of the 50th Certificate of Occupancy.
 2. Multi-modal recreational facilities by the 100th Certificate of Occupancy.

- d. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
- e. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
- f. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- g. No wetlands shall be disturbed except as authorized by State and Federal permits.
- h. Interior street design shall comply with or exceed Sussex County standards and shall include sidewalks or multi-modal pathways on one side of all streets with street lighting.
- i. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- j. The applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.
- k. Construction, site work, excavation, grading and deliveries to or from the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays.
- l. The developer shall preserve as many existing trees as possible on the site. Clearing, disturbance or altering of existing vegetation shall be limited to what is necessary for construction and for the removal of dead and dying trees which pose a threat to public safety or harm to adjacent properties. These areas of non-disturbance shall be clearly shown on the Final Site Plan.
- m. The Final Site Plan shall include a landscape plan for the development, including all buffer areas. This shall also depict the landscaping and vegetation included in the bermed area at the entrance to the community along Old Mill Road. Landscape and lawn maintenance shall be the responsibility of the developer or its assigns.
- n. The Applicant or its assigns shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities and open space.
- o. There shall be an emergency entrance via Railway Road. This entrance shall be shown on the Final Site Plan.
- p. There was testimony in the record about the adverse impact of the proposed maintenance buildings across Railway Road from the rest of this development. As one person stated, these facilities impact other properties while having no adverse effect on the new units they will serve in the new development. The Applicant shall safely remove the existing dilapidated farmhouse, outbuildings and chicken house from this area but leave the area as open space. All maintenance facilities shall be located within the larger parcel where the residential units are planned. Any maintenance buildings shall be located and screened from view of adjacent properties to mitigate any impact on them.
- q. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
- r. There shall not be any lighting at the rear of the proposed garages/storage buildings. There shall also be vegetation planted and maintained by the developer at the rear of each of these buildings to reduce the visual impact of them on neighboring and adjacent properties. The design and location of these vegetative screens shall be shown on the

Final Site Plan.

- s. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried to recommend approval of C/U 2206 for Linder & Company, Inc. (Evans Farm) for the reasons and conditions stated in the motion. Motion carried 3 –1 with Ms. Hoey Stevenson dissenting.

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, AICP, MRTPI
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date March 25th, 2021.

Application: CU 2206 Linder & Company Inc. (Evans Farm)

Applicant: Linder & Company, Inc. (Attention: Andrea Finerosky)
234 North James Street
Newport, DE 19804

Owner: Linder & Company, Inc.
234 North James Street
Newport, DE 19804

Site Location: Lying on the north corner of the intersection of Railway Road (S.C.R. 350) and Old Mill Road (S.C.R. 349) and also being on the south side of Railway Rd. (S.C.R. 350) approximately 696 feet northeast of Old Mill Rd. (S.C.R. 349), Ocean View, DE 19970.

Current Zoning: General Residential (GR)

Proposed Use: Multi-Family Residential (200 units)

Comprehensive Land Use Plan Reference: Coastal Area

Councilmatic District: Mr. Hudson

School District: Indian River School District

Fire District: Millville Fire District

Sewer: Sussex County

Water: Private, On-Site

Site Area: 50.62 acres +/-

Tax Map ID.: 134-12.00-74.00



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Sussex County

DELAWARE
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Memorandum

To: Sussex County Planning Commission Members
From: Jamie Whitehouse, AICP, Planning & Zoning Director
CC: Vince Robertson, Assistant County Attorney and Applicant
Date: February 23, 2021
RE: Staff Analysis for CU 2206 Linder & Company Inc. (Evans Farm)

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2206 Linder & Company Inc. (Evans Farm) to be reviewed during the 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 134-12.00-74.00 to allow for multi-family (200 units). The parcel is located on the north corner of the intersection of Railway Road (S.C.R. 350) and Old Mill Road (S.C.R. 349) and also being on the south side of Railway Rd. (S.C.R. 350) approximately 696 feet northeast of Old Mill Rd. (S.C.R. 349). The parcel contains 50.62 acres +/-.

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 subject property has a land use designation of "Coastal Area." All adjacent properties also have the land use designation of Coastal Area.

The Coastal Area land use designation recognizes that a range of housing types should be permitted in Coastal Area, including single-family homes, townhouses, and multifamily 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. It also recognizes a careful mixture of homes with light commercial, office and institutional uses can be appropriate to provide convenient services and to allow people to work close to home.

The subject property is zoned General Residential (GR). The properties to the south as well as the properties to the east are zoned General Residential. The property to the north is zone Agricultural Residential (AR-1) and the properties to the west and northwest of the subject site are zoned Medium Density Residential (AR-1). It should also be noted there is a property across Old Mill Road (S.C.R. 349) that is zoned General Commercial (C-1).

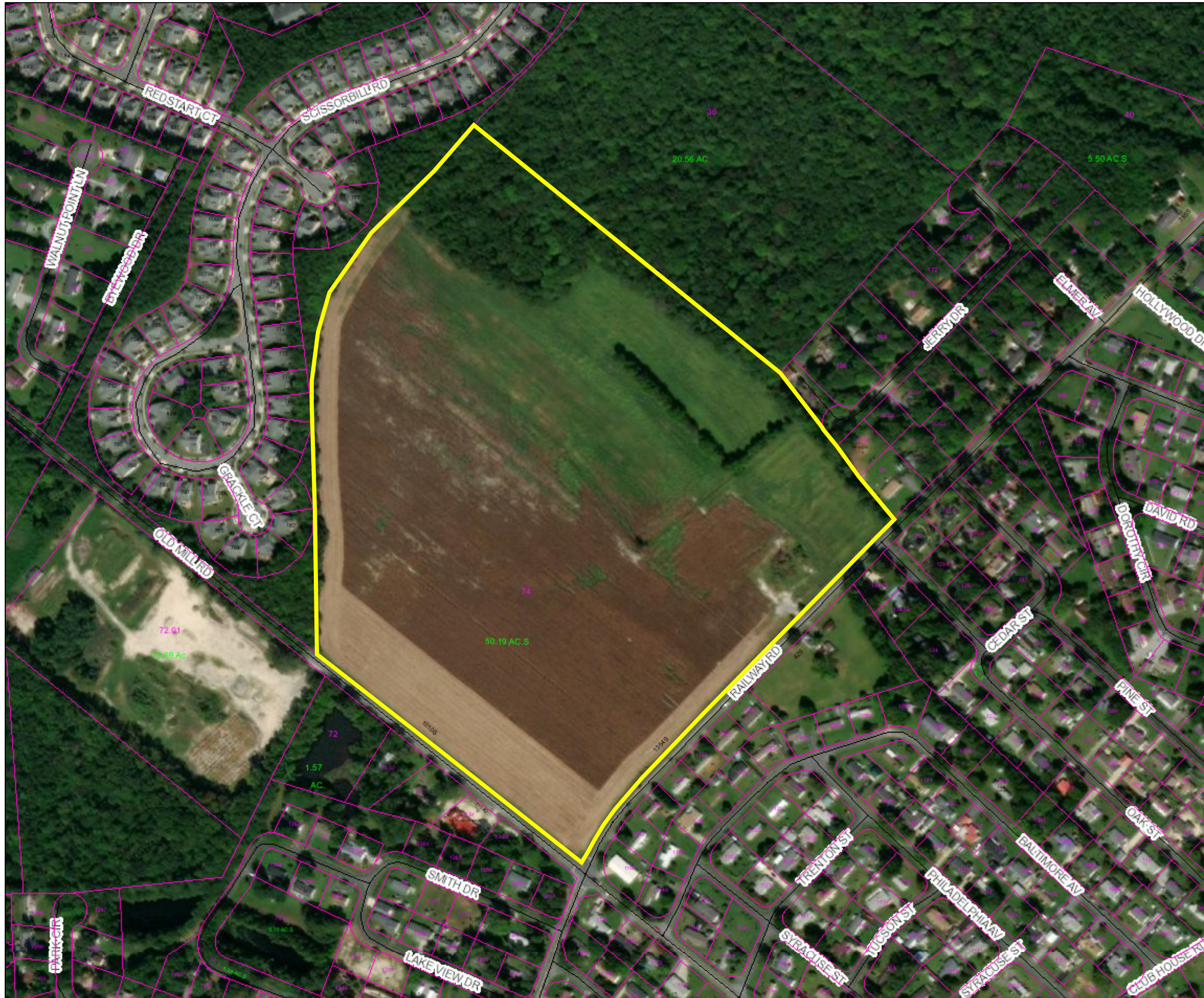
On March 1, 2011, County Council approved Ordinance No. 2176 for 200 multi-family dwelling units on Parcel 134-12.00-74.00 as part of application C/U 1849. This conditional use approval was not implemented following approval. Staff would note adjacent to this property there are approved major subdivisions including Bay Forest Club Phase 1 to the northwest, Layton's Subdivision to the northeast and Banks Acres to the southeast.



Based on the analysis of the land use, surrounding zoning and uses, the Conditional use to allow for multi-family could, subject to consideration of scale and impact, be considered as being consistent with the land use, area zoning and surrounding uses.

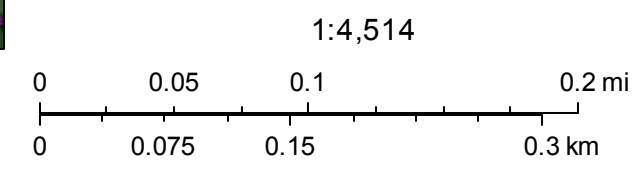


Sussex County



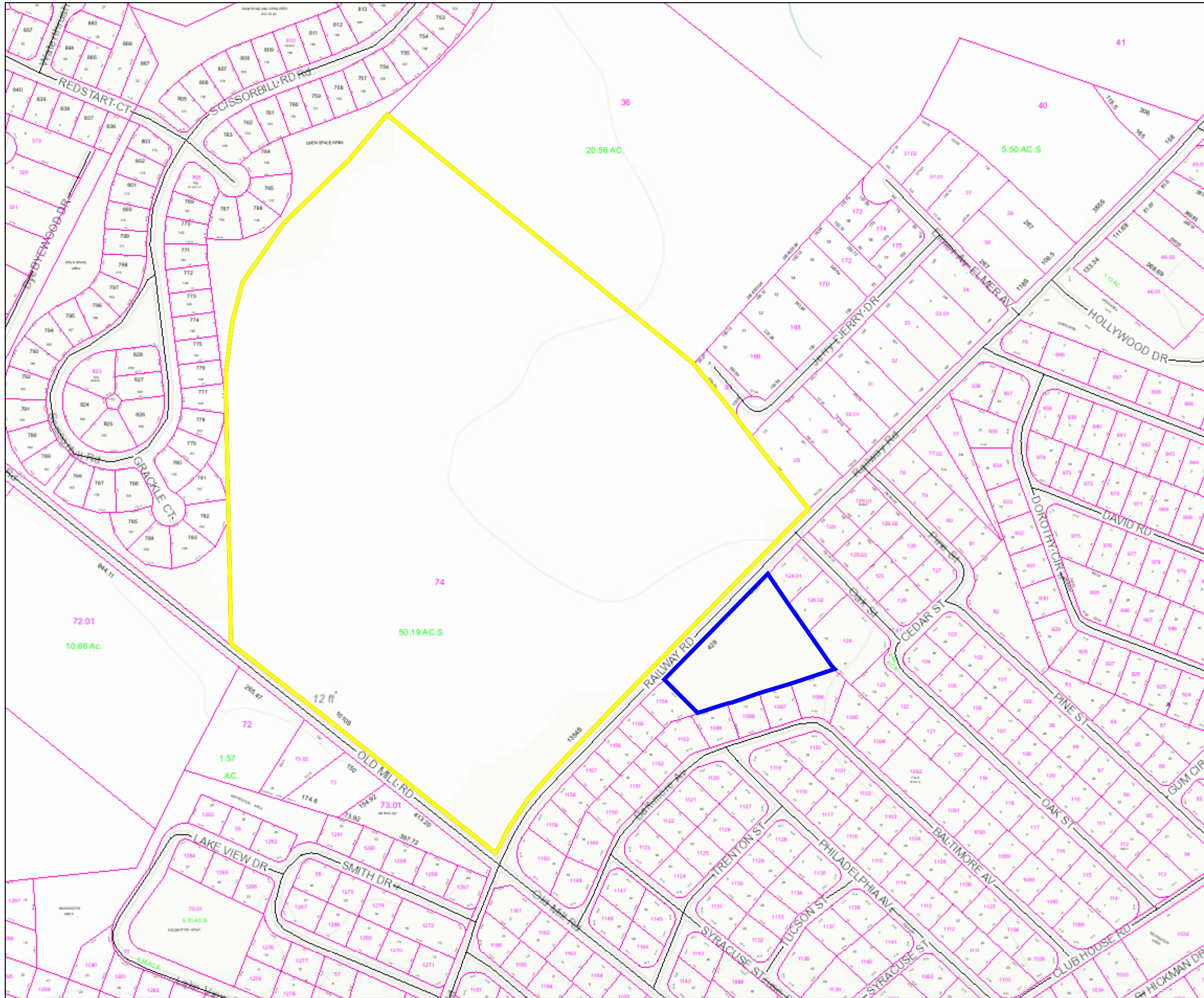
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Owner Name	LINDER & COMPANY INC
Book	3171
Mailing Address	234 N JAMES ST
City	WILMINGTON
State	DE
Description	WHITES NECKRD
Description 2	MILLVILLE TO RAILWAY
Description 3	50.19 AC.S
Land Code	

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- Override 1
- Tax Parcels
- Streets
- County Boundaries
- Extent of Right-of-Way
- Municipal Boundaries





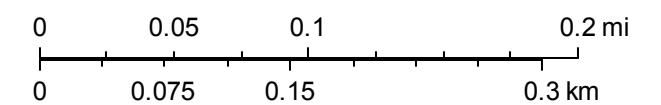
Sussex County



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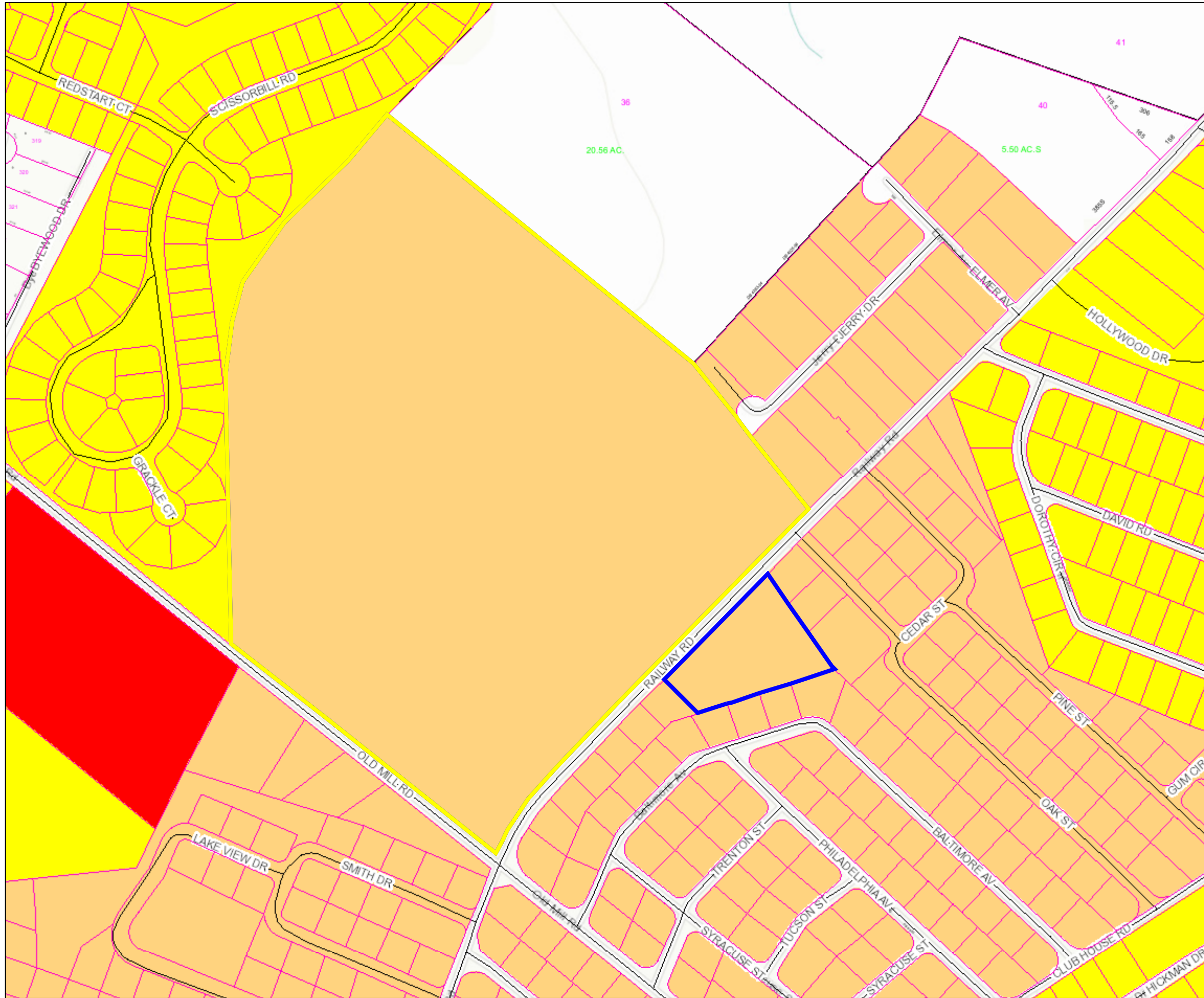
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Sussex County



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polygonLayer

Override 1

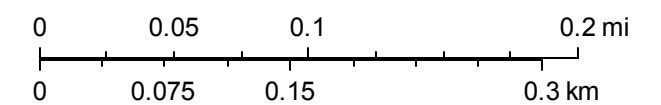
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Override 1

Tax Parcels

Streets

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Re-Introduced 01/28/20

**Council District No. 4 – Hudson
Tax I.D. No. 134-12.00-74.00
911 Address: 31434 Railway Road, Ocean View**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (200 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 50.62 ACRES, MORE OR LESS

WHEREAS, on the 17th day of September 2019, a conditional use application, denominated Conditional Use No. 2206, was filed on behalf of Linder & Company, Inc. (Evans Farm); and

WHEREAS, on the ____ day of _____ 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2206 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article VI, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2206 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the north corner of Old Mill Road and Railway Road, also being on the south side of Railway Road approximately 696 feet northeast of Old Mill Road, and being more particularly described in the attached legal description prepared by Pennoni Associates, Inc., said parcel containing 50.62 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.