

# **Sussex County Council Public/Media Packet**

**MEETING:  
April 26, 2022**

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

## COUNTY COUNCIL

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



# Sussex County

DELAWARE  
sussexcountyde.gov  
(302) 855-7743

## SUSSEX COUNTY COUNCIL

### A G E N D A

APRIL 26, 2022

10:00 A.M.

**\*AMENDED on April 21, 2022 at 9:30 a.m.<sup>1</sup>**

### Call to Order

### Approval of Agenda

### Approval of Minutes – April 5, 2022

### Reading of Correspondence

### Public Comments

### Presentation – Patti Grimes, Executive Director, Joshua M. Freeman Foundation

### Consent Agenda

1. Use of Existing Sewer Infrastructure Agreement  
Estuary Phase 4 & Oak Acres (County), Miller Creek Area
2. Use of Existing Sewer Infrastructure Agreement, IUA 807-1  
Oyster House Village, West Rehoboth Area

### Todd Lawson, County Administrator

1. Tribute – Cape Henlopen High School Cheerleading Squad
2. Administrator's Report



**Robbie Murray, Emergency Medical Services Director**

1. Dewey Beach Station Lease Agreement

**Bill Pfaff, Director of Economic Development**

1. Delaware Coastal Business Park Leases
  - A. Eastern Shore Poultry Company, Inc.
  - B. JDJS, LLC (dba) JennyGems

**Hans Medlarz, County Engineer**

1. Discussion and Possible Introduction of a Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$1,329,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH INCREASED COSTS ASSOCIATED WITH THE MULBERRY KNOLL SEWER DISTRICT PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”
2. Chapel Green, Conley’s Chapel Village & Wil King Road South Area, Project S20-16
  - A. Recommendation to Award
3. FEMA Mitigation Grant Application: FMA-PJ-03-DE-2018-002
  - A. Contract Award for 25867 Berry Street

**Old Business**

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

**Grant Requests**

1. Seaford Historical Society for Nanticoke Heritage Byway project
2. First State Community Action Agency, Inc. for golf tournament fundraiser
3. Shoes that Fit for School Uniforms for Sussex County students
4. Lord Baltimore Lions Charities, Inc. for Community Medical Equipment Loaner program

5. **Optimist International Foundation for Essay Contest, Youth Appreciation Day, Respect for Law project**
6. **Indian River Soccer Club for a new striper**

**Introduction of Proposed Zoning Ordinances**

**Council Members' Comments**

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

**Possible action on Executive Session items**

**11:30 a.m. Recess for the EOC Topping Ceremony**

**Location: Emergency Operations Complex, 21911 Rudder Lane, Georgetown**

**1:30 p.m. Public Hearings**

**Conditional Use No. 2285 filed on behalf of Ashley DiMichele**

**“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOURIST HOME TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.831 ACRES, MORE OR LESS” (property lying on the south side of Cave Neck Road [S.C.R. 88] approximately 0.43 mile west of Diamond Farm Road [S.C.R. 257]) (911 Address: 26182 Cave Neck Road, Milton) (Tax Parcel: 235-21.00-48.00)**

**Change of Zone No. 1953 filed on behalf of Brasure Holdings, LLC**

**“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.646 ACRES, MORE OR LESS” (property lying on the northwest side of Lighthouse Road [Rt. 54] approximately 0.27 mile southwest of Zion Church Road [Rt. 20]) (911 Address: 35131 Lighthouse Road, Selbyville) (Tax Parcel: 533-19.00-13.02)**

**Change of Zone No. 1967 filed on behalf of Henlopen Properties, LLC**

**“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” (property lying on the southeast side of Kings Highway [Rt. 9] and on the north side of Gills Neck Road [S.C.R. 267]) (911 Address: N/A) (Tax Parcel: 335-8.00-37.00 [portion of])**

**Change of Zone No. 1968 filed on behalf of Henlopen Properties, LLC**

**“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS” (property lying on the southeast side of Kings Highway [Rt. 9] approximately 0.11-mile northeast of the intersection of Kings Highway [Rt.9] and Gills Neck Road [S.C.R. 267]). (911 Address: N/A) (Tax Parcel: 335-8.00-37.00 [portion of])**

**Conditional Use No. 2334 filed on behalf of Henlopen Properties, LLC**

**“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (267 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS” (property lying on the southeast side of Kings Highway [Rt. 9] and on the north side of Gills Neck Road [S.C.R. 267]) (911 Address: N/A) (Tax Parcel: 335-8.00-37.00 [portion of])**

**Adjourn**

<sup>1</sup> Per 29 Del. C. §10004 (e) (5) and Attorney General Opinion No. 13-IB02, this agenda was amended to address clerical errors.

**-MEETING DETAILS-**

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on April 19, 2022 at 4:30 p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

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

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

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

To join the meeting via telephone, please dial:

**Conference Number: 1-302-394-5036**

**Conference Code: 570176**

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

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

# # # #

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, APRIL 5, 2022**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, April 5, 2022, at 10:00 a.m., in Council Chambers, with the following present:**

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

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

**Call to  
Order**

**Mr. Vincent called the meeting to order.**

**M 148 22  
Approve  
Agenda**

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

**Motion Adopted: 5 Yeas.**

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

**Minutes**

**The minutes of the March 29, 2022 meeting were approved by consensus.**

**Corres-  
pondence**

**There was no correspondence.**

**Public  
Comment**

**There were no public comments.**

**M 149 22  
Approve  
Consent  
Agenda Item**

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

**Use of Existing Wastewater Infrastructure Agreement, IUA-1150  
Tupelo Sands, Millville Area**

**Motion Adopted: 5 Yeas.**

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

**Proclamation/Fair Housing Month**

A Proclamation entitled “PROCLAIMING THE MONTH OF APRIL AS FAIR HOUSING MONTH IN SUSSEX COUNTY” was presented to Mrs. Stephanie Moody from the Sussex County Association of Realtors and Mrs. Brandy Nauman, Community Development & Housing Director.

**Administrator’s Report**

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

1. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Marsh Island – Phase 3A (Construction Record) received Substantial Completion effective March 18<sup>th</sup>.

2. County Government Day – Wednesday, April 13<sup>th</sup>

The County is pleased to again sponsor the annual County Government Day on Wednesday, April 13<sup>th</sup>. At 9:30 a.m., high school juniors from Sussex County Girls and Boys State will meet in the Council Chambers. A mock County Council session will occur, with the representatives assuming leadership roles. It is always an interesting experience to watch student representatives tackle County issues as presented by department heads. This program can be seen and heard on the County’s website.

3. Holiday and Council Meeting Schedule

A reminder that Council will not meet on Tuesday, April 12<sup>th</sup>, or Tuesday, April 19<sup>th</sup>. In addition, County Offices will be closed on Friday, April 15<sup>th</sup>, to observe the Good Friday holiday. The next regularly scheduled Council meeting will be held on Tuesday, April 26<sup>th</sup> at 10:00 a.m.

**Proposed Ordinance/ Building Code**

Mr. Moore, County Attorney presented for consideration a Proposed Ordinance relating to the International Building Code 2021 Edition and the International Residential Code 2021 Edition.

Mr. Moore explained that Mr. Wright, Chief Code Official provided a presentation regarding the Proposed Ordinance at a previous meeting. During that presentation, there were discussions relating to possible exemptions to remain. These exemptions include deleting landings because they will not be required and riser heights. In addition, the exemption for automatic fire sprinkler systems and farm buildings would remain.

Mr. Wright explained that this would update the code to the 2021



version. He explained the exemptions that are already in place, the plan is to withdraw the older landing, tread depths, and stair risers. Therefore, what is exactly in the code is what will be enforced. It has also been requested to keep the exemption for the single-family fire suppression sprinkler system and carports under 400 square feet would be exempt from building code inspection.

**Ordinance Introduction /Building Code** Mr. Hudson introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 52, § 52-1 OF THE CODE OF SUSSEX COUNTY TO ADOPT THE BUILDING CONSTRUCTION STANDARDS IN THE INTERNATIONAL BUILDING CODE 2021 EDITION AND THE INTERNATIONAL RESIDENTIAL CODE 2021 EDITION”

**Vacuum Truck Recommendation** Mr. Hans Medlarz, County Engineer presented an award recommendation for a Vacuum Truck for Council’s consideration. Mr. Medlarz explained that an open-source bid based on specific criteria would exclude certain, if not all but one manufacturer. Therefore, the Department solicited a price quotation based on “similar but not equal” criteria based on the individual manufacturer’s option. An identical request was sent to all five leading manufacturers of this type of equipment. In addition, a delivery schedule and a summary of maintenance options were requested.

**M 150 22 Vacuum Truck Award** A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved based upon the recommendation of the Sussex County Engineering Department, that the Environmental Services Vacuum Truck procurement be awarded to Mid-Atlantic Waste Systems – Division of THC Enterprises, Inc., for the best value offer of \$453,408.84.

**Motion Adopted:** 5 Yeas.

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

**PZ Sign Demonstration** Mr. Jamie Whitehouse, Planning and Zoning Director demonstrated the new Planning and Zoning Notice Signs. Mr. Whitehouse noted that the new signs are larger which allows for more information to be displayed. In addition, the sign has a QR code that links to the County’s website to find out more information regarding the application.

**Grant Requests** Mrs. Jennings presented grant requests for Council’s consideration.

**M 151 22 DE Community Foundation** A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to give \$1,000 (\$200 from each member’s Councilmanic Grant Account) to the Delaware Community Foundation for Flags for Heroes.

**Motion Adopted:** 5 Yeas.

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

**M 152 22  
Developing  
Artist  
Collabora-  
tion**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$2,500 (\$1,500 from Mr. Schaeffer's Councilmanic Grant Account and \$1,000 from Mr. Hudson's Councilmanic Grant Account) to Developing Artist Collaboration for the West Rehoboth Legacy Project.

**Motion Adopted:** 5 Yeas.

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

**Introduction  
of Proposed  
Ordinances**

Mrs. Green introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FARM TRACTOR AND TRUCK REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 20 ACRES, MORE OR LESS"

Mr. Hudson introduced a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.91 ACRES, MORE OR LESS"

Mr. Rieley re-introduced a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-30.00-94.00"

The Proposed Ordinances will be advertised for Public Hearing.

**Council  
Member  
Comments'**

There were no Council Member comments.

**M 153 22  
Go Into  
Executive  
Session**

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

**Motion Adopted:** 5 Yeas.

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

**Mr. Vincent, Yea**

**At 10:34 a.m., an Executive session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to potential/pending litigation, and land acquisition. The Executive Session concluded at 11:29 a.m.**

**M 154 22 Reconvene At 11:37 a.m., a Motion was made by Mr. Rieley, seconded by Mrs. Green to come out of Executive Session and into Regular Session.**

**Motion Adopted: 5 Yeas.**

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

**M 155 22 ES Action/  
Parcel 2022-  
C A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to move for the County Administrator to negotiate, enter into a contract and proceed to closing on a parcel identified as 2022-C.**

**M 156 22 Recess A Motion was made by Mr. Rieley, seconded by Mrs. Green to recess until 1:30 p.m. Public Hearings.**

**Motion Adopted: 5 Yeas.**

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

**M 157 22 Reconvene A Motion was made by Mr. Schaeffer, seconded by Mrs. Green to come out of recess back into Public Hearings.**

**Motion Adopted: 5 Yeas.**

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

**Mr. Moore reported that a request has been received to withdraw Change of Zone No. 1952 Application filed on behalf of Samantha Broadhurst.**

**M 158 22 Approval of  
CZ1952  
Withdraw A Motion was made by Mrs. Green, seconded by Mr. Schaeffer to allow Samantha Broadhurst to withdraw Change of Zone No. 1952.**

**Motion Adopted: 5 Yeas.**

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

**Rules**

**Mr. Moore read the procedure for public hearings on zoning matters.**

**Public  
Hearing/  
CU2287**

**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 FOR A CRAFT BUSINESS WITH OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.34 ACRES, MORE OR LESS” (Conditional Use No. 2287) filed on behalf of Danielle Roach (property lying on the northwest side of Pine Road) (Tax I.D. 234-12.18-41.00) (911 Address: 22928 Pine Road, Lewes)**

**The Planning and Zoning Commission held a Public Hearing on this application on February 17, 2022 and on March 24, 2022, the Commission recommended approval of the application for the five reasons stated and subject to the seven recommended conditions.**

**(See the minutes of the Planning and Zoning Commission dated February 17, 2022 and March 24, 2022.)**

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

**The Council found that Ms. Danielle Roach spoke on behalf of her Application; that she along with her husband are seeking a Conditional Use to store barrels in their driveway; that her husband has worked extremely hard while working full time to start his dream job of owning a small business; that the business is called Crafty Couple; that they purchase empty wine and bourbon barrels from various sources; that some are local businesses such as Dogfish Head Brewery and The Painted Stave; that others come from neighboring states; that they sell the barrels as is, and at times the barrels are painted and sanded; that often the barrels are cut in half to make planters and planters with posts; that they have made furniture as well including tables, dog beds, and shelves; that her husband has a laser graver and is able to engrave the heads of the barrels; that many connections have been made with other small businesses and the community since they have opened this business; that they buy barrels from Dogfish Head that they no longer need; that they then resell them to other small businesses; that they organize the barrels nicely and the barrels are as close to the garage as possible; that the neighborhood that they reside in does not have HOA fees; that no dues are collected; that their road is not paved and does not have much traffic; that without this Conditional Use permit, the Crafty Couple business would not be possible at this time; that pictures were submitted showing what the barrels looked like as well as the organization of them; that the barrels are as far back as possible; that two letters of support were received from her neighbors; that she has the support of her neighbors; that they have adjacent neighbors to the right and left of the property and three neighbors across from the property; that they store about 30-50 barrels depending on the size of the load; that the**

**Public  
Hearing/  
CU2287  
(continued)**

hours of operation are not done very early in the morning or very late at night; that the work is done inside the garage; that her husband does multiple deliveries at one time so that he is not coming in and out multiple times.

There were no public comments.

The Public Hearing and Public Record were closed.

**M 159 22  
Amend  
Conditions/  
CU2287**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to amend the first sentence of Condition C to read “The barrels and other materials used in this business shall only be stored inside or if outside in an orderly fashion.”

**Motion Adopted: 5 Yeas.**

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

**M 160 22  
Adopt  
Ordinance  
No. 2845  
/CU2287**

A Motion was made by Mr. Schaeffer. seconded by Mr. Hudson to Adopt Ordinance No. 2845 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A CRAFT BUSINESS WITH OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.34 ACRES, MORE OR LESS” (Conditional Use No. 2287) filed on behalf of Danielle Roach, for the following reasons and conditions given by the Planning and Zoning Commission and as amended by this Council:

1. The Applicant seeks this Conditional Use so that she and her husband can continue to operate their small home-based business converting used wooden barrels into furniture and other household-type uses.
2. Based on the testimony given during the hearing, this use is very nearly a home occupation. It could possibly be considered a home occupation under the Sussex County Zoning Code if not for the outside storage of barrels that is proposed.
3. The location is within an existing, but older, subdivision. It does not appear that there are any restrictive covenants that would prohibit this small business use in this location. However, the Commission is reluctant to establish conditional uses to operate a business in an otherwise residential subdivision. As a result, it is appropriate to include limitations on this recommendation.
4. The use, with the conditions and limitations placed upon it, will not adversely affect neighboring properties or roadways.
5. No parties appeared in opposition to this Application.
6. This recommendation is subject to the following conditions:

- A. The use shall be limited to the Applicant's intended use of converting used wooden barrels into household furnishings and other similar items. No other types of manufacturing shall occur on the site.
- B. No retail sales shall occur from the site.
- C. The barrels and other materials used in this business shall only be stored inside or if outside, in an orderly fashion. Any new structures must comply with all setbacks and their location must be shown on the Final Site Plan.
- D. All work associated with this use shall occur indoors.
- E. Because this use is located in a residential subdivision and because no retail sales are permitted from the site, there shall not be any signage advertising the business on the site.
- F. The failure to comply with any of these conditions may result in a termination of this Conditional Use.
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Committee.

**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/  
CZ1950**

**A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN I-1 INSTITUTIONAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.5 ACRES, MORE OR LESS" (Change of Zone No. 1950) filed on behalf of Roxana Volunteer Fire Company (property lying on the northeast side of Lighthouse Road [Rt.54] approximately 0.53 mile northwest of Bayville Road [S.C.R. 58B]) (Tax I.D.: 533-12.00-93.00, 93.01 & 93.02) (911 Address: 36843, 36855, & 36873 Lighthouse Road)**

**The Planning and Zoning Commission held a Public Hearing on this application on February 17, 2022, and recommended approval of the application subject to the seven reasons outlined.**

**(See the minutes of the Planning and Zoning Commission dated February 17, 2022.)**

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

**The Council found that Mr. Russell Hooper, Jr. spoke on behalf of the Application; that he is the current President of Roxanna Volunteer Fire Company; that the Roxanna Volunteer Fire Company requests to change**

**Public  
Hearing/  
CZ1950  
(continued)**

**the subject parcels from AR-1 Agricultural Residential Zoning District to I-1 Institutional District; that they currently operate their substation on the middle parcel; that the substation covers the Rt. 54 corridor; that the substation has been operating under a previously approved Conditional Use permit since inception in 1989; that over the past year the Roxanna Volunteer Fire Company purchased the other three parcels to provide a block of property on the Rt. 54 corridor, where they feel a new fire station could be constructed; that the Rt. 54 corridor is experiencing massive growth; that the current substation cannot house career staff, volunteer duty crews and does not provide the opportunity to establish a live-in program; that all these issues could be resolved with the construction of a new fire station; that the Roxanna Fire Company ran roughly 1,700 combined EMS and fire calls in 2021; that of those calls 80% or more are located within the main response district of the substation; that having their career staff and the ability to house volunteer duty crews at the proposed station would cut their response time by more than 50% for more than 80% of service calls; that to build a proper fire station, they request to rezone the properties to I-1 Institutional Zoning District; that this will allow for better outline standards and guidelines for the design and engineering phase of the project; will allow for better outline standards and guidelines for the design and engineering phase of the project; that public safety facilities, including ambulance, fire, police, rescue and national security are permitted uses within Section 24 of the I-1 Zoning in the County Code.**

**There were no public comments.**

**The Public Hearing and Public Record were closed.**

**M 161 22  
Adopt  
Ordinance  
No. 2846  
/CZ1950**

**A Motion was made by Mr. Hudson, seconded by Mr. Rieley to Adopt Ordinance No. 2846 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN I-1 INSTITUTIONAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.5 ACRES, MORE OR LESS” (Change of Zone No. 1950) filed on behalf of Roxana Volunteer Fire Company for the following reasons given by the Planning and Zoning Commission:**

- 1. This is a change of zone for the new I-1 Zoning District to allow the fire company to expand its existing site. The I-1 Zoning District has permitted uses that focus on healthcare and institutional uses, and this use for a fire company is a permitted use.**
- 2. The rezoning is consistent with the stated purpose of the I-1 District, which is to allow public, quasi-public, and institutional uses to occur on the properties that are compatible with surrounding districts and uses.**
- 3. The rezoning will not adversely affect neighboring properties, public facilities, traffic, or area roadways.**
- 4. The site is located along Route 54, which will provide convenient access to the public uses permitted under the I-1 Zone. This is an appropriate**

**M 161 22  
Adopt  
Ordinance  
No. 2846  
/CZ1950  
(continued)**

location for an expansion of the fire company's existing station adjacent to this site.

5. The use as a fire station is of a public nature, and it will promote the health, safety, and welfare of the residents of Sussex County.
6. No parties appeared in opposition to this application.
7. Any further development of the site shall be subject to the site plan review and approval of the Planning and Zoning Commission.

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
CZ1951**

A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.17 ACRES, MORE OR LESS" (Change of Zone No. 1951) filed on behalf of Shiloh Investments, LLC (property lying on the south side of Lewes Georgetown Highway [Rt.9] approximately 0.15 mile east of the intersection of Hudson Road [S.C.R. 258] and Fisher Road [S.C.R. 262])(Tax I.D. 235-30.00-50.01) (911 Address: N/A)

The Planning and Zoning Commission held a Public Hearing on this application on February 17, and on March 24, 2022, the Commission recommended approval of the application subject to the nine reasons outlined.

(See the minutes of the Planning and Zoning Commission dated February 17, and March 24, 2022.)

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

The Council found that Mr. Mark Davidson, Principal Land Planner with Pennoni Associates spoke on behalf of the Application; that the Application is a request for a Change of Zone of 4.17 acres from AR-1 Agricultural Residential to C-2 Medium Commercial District and the Application is an infill of existing commercial zoning in the area; that the property is located on Rt. 9, also known as Lewes-Georgetown Hwy.; that they are requesting the C-2 Medium Commercial Zoning designation; that also present was Mr. Pret Dyer, a managing member; that Rt. 9 is a principal arterial roadway; that located on southside of the property is Delaware's new Rails to Trails Path; that on the west side of the property is an existing commercial property, known as the Dollar General; that to the east of the property is a vacant property which is currently zoned C-1; that in Ordinance 2550 the



**Public  
Hearing/  
CZ1951  
(continued)**

**Sussex County Council desired to create a more specific C-2 Medium Commercial Zoning District with smaller, more related uses within the district to promote better planning and predictability within Sussex County; that the purpose of the C-2 Medium Commercial District is to support uses that include retail sales and performance of consumer sales; that the zoning permits a variety of retail professional service businesses; that the Ordinance states the C-2 District should be primarily located near arterial roadways and collector streets; that the zoning accommodates community commercial uses which do not have outside storage or sales; that the proposed C-2 zoning for the property would be in the vicinity of other commercially-zoned properties and commercial uses; that the proposed Change of Zone will not diminish or impair property values within the neighborhood; that the Change of Zone will not create a public nuisance, or result in any increase to public infrastructure; that there were maps submitted into the record which show all the commercial properties and uses within the area; that across the street from the subject site is zoned Institutional for the new Bayhealth facility which is currently under construction; that there is a variety of commercial uses to the east of the property; that the 2019 Comprehensive Plan identifies the subject site in the low density area; that the majority of area surrounding the property is located within the existing development area; that the Comprehensive Plan suggested each Application should be reviewed on its own merit; that the request will not have a negative impact on surrounding area, as the property is adjacent to multiple existing commercial areas; that the Comprehensive Plan mentions goals towards promoting growth and development in capital facilities and infrastructure that are already available and adequate to support the growth; that Artesian has the CPCN for both the water and sanitary sewer for the subject property; that Artesian already had infrastructure in the area; that Shiloh Investments, LLC desires to provide a commercial development, which is part of the community, providing goods and services as part of the community in scale; that nearby residential developments will benefit, in the fact the subject property is not adjacent to their development, but close enough to serve nearby residences with future services without requiring further distances to travel; that the property is located on Rt. 9 where there is current water and sewer services available; that the property is located on a principal arterial; that permanent easements are typically granted to DelDOT for their future use for utility and drainage upgrades; that the project did not require a Traffic Impact Study (TIS); that the focus of retail and office use within a low density area, is to provide for convenience, goods and services; that the request is appropriate, based off the surrounding commercial uses; that the request is consistent with the Future Land Use Plan, Sussex County has considered the development along Rt. 9 as a business corridor, with a mix of residential and commercial uses which provide local residences with access to services they need; that supplying local services will reduce traffic to SR-1 for basic needs; that the plan promotes the Rt. 9 vision to be tied to efforts to make the corridor multimodal; that Table 4.5-2 shows C-2 Commercial Zoning is an applicable zoning district in a low density area; that the property is located within the Level 4 Investment Area according to**

**Public  
Hearing/  
CZ1951  
(continued)**

**the 2015 Strategies for State Policies and Spending; that there are currently four non-tidal wetlands located on the property; that the current wetlands serve as a stormwater management system for the Dollar General; that the property is located with Flood Zone X unshaded; that the property is not located within any groundwater protection zones; that Delmarva Power Light Company will provide sufficient energy to the property; that Eastern Shore Natural Gas has a current gas line available for the property; that Verizon and Comcast are the main telecommunication providers for the area; that all of these utilities ensure quality growth and development, by development of infrastructure and services in Sussex County to compliment State and local planning efforts; that they feel the requested Change of Zone meets the general purpose of the Zoning Ordinance as it is located within an appropriate location; that the request meets the purpose of the C-2 District in the Future Land Use Plan; that the request promotes the growth and development through community design, mobility, utilities, transportation and economic development in an area with a general mixture of commercial and service activities currently exist and this is essential and desirable for the general convenience, orderly growth, prosperity and welfare of Sussex County.**

**There were no public comments.**

**The Public Hearing and Public Record were closed.**

**M 162 22  
Adopt  
Ordinance  
No. 2847  
/CZ1951**

**A Motion was made by Mr. Schaeffer. seconded by Mr. Rieley to Adopt Ordinance No. 2847 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.17 ACRES, MORE OR LESS” (Change of Zone No. 1951) filed on behalf of Shiloh Investments, LLC for the following reasons given by the Planning and Zoning Commission:**

- 1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.**
- 2. The Applicant’s property is currently zoned AR-1, but it is in the Cool Spring area along Route 9 where other commercial zonings and commercial uses exist. It is surrounded on both sides by commercially zoned property, and it is next to the future extension of the Lewes-to-Georgetown rail path. This is an appropriate location for the C-2 zoning.**
- 3. C-2 Zoning at this location along Route 9 will benefit nearby residents of Sussex County by providing a commercial location for local shopping and similar uses without having to travel to Lewes, Milton, Long Neck, or Georgetown.**
- 4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.**

**M 162 22  
Adopt  
Ordinance  
No. 2847  
/CZ1951  
(continued)**

- 5. The Sussex County Land Use Plan and Future Land Use Map supports this location for C-2 Zoning.**
- 6. It is anticipated that the site will have central water and sewer service.**
- 7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.**
- 8. No parties appeared in opposition to the rezoning application.**
- 9. Any future use of the property will be subject to Site Plan review by 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**

**M 163 22  
Adjourn**

**A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to adjourn at 2:12 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,**

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

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

## ENGINEERING DEPARTMENT

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



# Sussex County

DELAWARE  
sussexcountyde.gov

HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

JOHN J. ASHMAN  
DIRECTOR OF UTILITY PLANNING

### Memorandum

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

FROM: John J. Ashman   
Director of Utility Planning & Design Review

RE: *Existing Wastewater Infrastructure Use Agreement  
Estuary Phase 4 & Oak Acres  
File: OM 9.01*

DATE: April 26, 2022

The Existing Wastewater Infrastructure Use Agreement is an arrangement that collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Engineering Department requests approval of an agreement for the existing wastewater infrastructure use with **Estuary Development, LLC** for the **Estuary Phase 4** project in the Miller Creek Area. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, the **Estuary Phase 4** project will connect to the existing County owned wastewater infrastructure. In return for utilization of said infrastructure **Estuary Development, LLC** will contribute **\$51,554.00** for the financial catch-up contribution of the existing infrastructure to serve **120.00** Equivalent Dwelling Units. Payment will be required prior to receiving beneficial acceptance of the on-site pumpstation. System Connection Charges in place at the time of building permit request will still apply.

The County will be an EDU based participant with the developer for the construction of the new sub-regional pumpstation which will enable the County to serve the existing Oak Acres subdivision by gravity in the near future.



**USE OF EXISTING & PROPOSED INFRASTRUCTURE AGREEMENT**

**Estuary Phase 4 & Oak Acres (County)**

THIS AGREEMENT ("Agreement"), made this 26<sup>TH</sup> day of April 2022, by and between:

**SUSSEX COUNTY**, a political subdivision of the State of Delaware, hereinafter called the "County," and;

**ESTUARY DEVELOPMENT, LLC**, a Delaware Limited Liability Company, and developer of the Project (as defined below), hereinafter called the "Developer."

**WITNESSETH:**

**WHEREAS**, Developer is developing several tracts of land identified as Tax Map parcels 134-21.00-10.00, 10.01, 11.00 & 11.12 known as The Estuary (Phase 4) (Project);

**WHEREAS**, the Project has been annexed into the Sussex County Unified Sanitary Sewer District (Miller Creek Area); and

**WHEREAS**, County has determined that the Project can be served by the installation of a common pumpstation which will discharge effluent to the existing regional infrastructure; and

**WHEREAS**, the Project will utilize available capacity in existing wastewater infrastructure previously funded by Sussex County.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained herein, which is hereby acknowledged by both parties as sufficient consideration, the parties hereby agree as follows:

- (1) Developer is proposing to utilize County's existing transmission capacity by connecting to an existing regional pipeline used by multiple pump stations, therefore avoiding off-site facilities construction.
- (2) In exchange for permission to connect up to 120 equivalent dwelling units to County's existing transmission system and to utilize the existing capacity in said system, Developer agrees to a financial catch-up contribution towards the debt service of said transmission facilities in the amount of \$51,554.00.
- (3) The contribution amount in the case of multiple pump stations using an existing transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) For the construction of the new sub-regional pumpstation the County will participate on an EDU basis towards the project's proposed pumpstation. The County agrees to

contribute an amount estimated at (\$207,976.00 pro-rata share of pumpstation) - \$51,554.00 (Estuary Phase 4 IUA owed) = \$156,422.00 for capacity in the proposed infrastructure to serve the existing Oak Acres community. The Developer agrees to contribute \$453,767.00 based on the proposed projects EDU count.

- (5) The contribution amount is based on multiple projects funding a designed and constructed combined infrastructure project. Each project will pay a pro-rata share based on the equivalent dwelling units proposed for each project.
- (6) Payment of the contribution for the existing infrastructure will be deducted from the County's contribution towards the pumpstation costs.
- (7) **Upon completion of the Project, Developer shall submit an independently audited project cost summary and an invoice for the pro rata cost share. The allocation shall be the ratio of the actual County served number of EDUs over the total number of EDUs. The County shall make final payment 30 days after audit and invoice receipt.**
- (8) If the Project (as currently approved) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement may be declared by County to be null and void, and any unused payments made pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.
- (9) The contribution is to be placed in County's sewer capital fund and expended towards overall debt reduction or at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires capital improvements (See Chapter 110-96 of the Sussex County Code).
- (10) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of the *Sussex County Code* for all lots, due at such time the Developer receives the sewer connection permit.
- (11) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
- (12) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of the *Sussex County Code*.

- (13) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
- (14) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases, or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
- (15) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of litigation, arising out of Developer's negligence in connection with its performance of this Agreement, including but not limited to damage to the County's infrastructure in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.
- (16) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented, or modified by a subsequent written agreement executed by all the parties hereto.
- (17) This Agreement and exhibits constitute the final, entire, and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties, or agreements, whether written or oral, made in connection with the Agreement described herein.
- (18) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (19) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on

the part of either party in exercising any right shall operate as a waiver of such right or any other right.

- (20) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (21) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (22) Signatories agree to grant all necessary easements to construct the proposed infrastructure.
- (23) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is **6726 Curran Street, McLean Virginia 22102.**



IN WITNESS, WHEREOF, the respective parties hereto have affixed their hands and seals the day and year aforesaid.

**FOR THE COUNTY:**

{Seal}

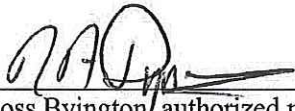
By: \_\_\_\_\_  
(President - Sussex County Council)

\_\_\_\_\_ (DATE)

ATTEST:

\_\_\_\_\_  
Tracy Torbert  
Clerk of the County Council

**FOR Estuary Development, LLC**

By:  \_\_\_\_\_ (Seal)  
Ross Byington, authorized member

3-18-2022 (DATE)

WITNESS:  \_\_\_\_\_

## ENGINEERING DEPARTMENT

ADMINISTRATION (302) 855-7718  
AIRPORT & INDUSTRIAL PARK (302) 855-7774  
ENVIRONMENTAL SERVICES (302) 855-7730  
PUBLIC WORKS (302) 855-7703  
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# Sussex County

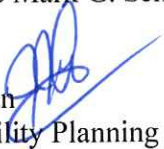
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HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

JOHN J. ASHMAN  
DIRECTOR OF UTILITY PLANNING

### Memorandum

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

FROM: John J. Ashman   
Director of Utility Planning & Design Review

RE: ***Existing Wastewater Infrastructure Use Agreement  
Oyster House Village  
File: OM 9.01***

DATE: April 26, 2022

The Existing Wastewater Infrastructure Use Agreement is an arrangement that collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Engineering Department requests approval of an agreement for the existing wastewater infrastructure use with **Oyster House Homes, LLC** for the **Oyster House Village** project in the West Rehoboth Area. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, the **Oyster House Village** project will connect to the existing County owned wastewater infrastructure. In return for utilization of said **Oyster House Homes, LLC** will contribute **\$33,595.00** for the financial catch-up contribution of the existing infrastructure to serve **30.00** Equivalent Dwelling Units. Payment will be required prior to receiving beneficial acceptance of the on-site pumpstation. System Connection Charges in place at the time of building permit request will still apply.



**EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT**

**OYSTER HOUSE VILLAGE IUA-807-1**

THIS AGREEMENT ("Agreement"), made this 11<sup>th</sup> day of April 2022, by and between:

**SUSSEX COUNTY**, a political subdivision of the State of Delaware, hereinafter called the "County," and;

**OYSTER HOUSE HOMES, LLC**, a Delaware Limited Liability Company and developer of a project known as Oyster House Village, hereinafter called the "Developer."

**WITNESSETH:**

**WHEREAS**, Developer is developing a tract of land identified as Tax Map parcel 334-19.08-42.00 to be known as Oyster House Village ("Project") and;

**WHEREAS**, the Project is within the boundary of the Sussex County Unified Sanitary Sewer District (West Rehoboth Area) and;

**WHEREAS**, the Project will utilize available capacity in existing wastewater infrastructure previously funded by Sussex County.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained herein, which is hereby acknowledged by both parties as sufficient consideration, the parties hereby agree as follows:

- (1) Developer is proposing to utilize County's existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to 30 equivalent dwelling units to County's existing infrastructure system and to utilize the capacity in said system, Developer agrees to financial catch-up contribution in the amount of **\$33,595.00** for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **Payment of the contribution must be submitted prior to receiving a connection permit for the facility.**
- (5) If the Project (as currently submitted) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement may be declared by County to be null and void, and any unused payments made

pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.

- (6) The contribution is to be placed in County's sewer capital fund and expended towards overall debt reduction or at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires capital improvements (See Chapter 110-96 of the Sussex County Code).
- (7) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of the *Sussex County Code* for all lots, due at such time the Developer receives the sewer connection permit.
- (8) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
- (9) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of the *Sussex County Code*.
- (10) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
- (11) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
- (12) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of litigation, arising out of Developer's negligence in connection with its performance of this Agreement, including but not limited to damage to the County's infrastructure in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is **222 N. Constitution Ave., Suite B, New Freedom PA 17349.**

IN WITNESS, WHEREOF, the respective parties hereto have affixed their hands and seals the day and year aforesaid.

**FOR THE COUNTY:**

{Seal}

By: \_\_\_\_\_  
(President - Sussex County Council)

\_\_\_\_\_ (DATE)

ATTEST:

\_\_\_\_\_  
Tracy N. Torbert  
Clerk of the County Council

**FOR OYSTER HOUSE HOMES, LLC**

By: William R. Luther Jr. (Seal)  
William R. Luther Jr.

4/1/22 (DATE)

WITNESS: \_\_\_\_\_



Caring People, Quality Service

# SUSSEX COUNTY EMERGENCY MEDICAL SERVICES

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

**Robert W. Murray**  
Director



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

FROM: Robbie Murray, Director 

RE: Lease with Town of Dewey

DATE: April 26, 2022

During the 2021 summer season the Rehoboth Beach and Lewes fire districts experienced an increase in demand for paramedic service. Historically, our busiest month is July. During July of 2021 we averaged 21.2 responses per twenty-four (24) hour period into those two districts (system-wide average for the same period was 9.8 per ALS unit). This resulted in neighboring paramedic units responding into those areas several times per day.

Earlier this year we learned of available space owned by the Town of Dewey Beach that could be used to house a seasonal single-person paramedic unit. After meeting with Dewey town officials, we have determined the site to be at an ideal location and the facility adequate to meet our needs.

While it is in the plans for this building to be torn down and a new building constructed, there is no set timeline. In the interim, all parties are hopeful that a paramedic unit can be deployed from the building during the summer seasons.

A lease has been drafted and agreed upon by Dewey officials. There is a five-hundred-dollar annual fee to help off-set utilities. This is scheduled to be paid June 1<sup>st</sup> of each year.

We are requesting your support in moving forward with the lease and expansion of season paramedic service in Dewey Beach.

Enclosure

- Proposed motion
- Lease Agreement

**Todd F. Lawson**  
Administrator



Motion – Lease between Sussex County Council and the Town of Dewey Beach

Be it moved that Sussex County enter into the proposed lease agreement with the Town of Dewey Beach to support the expansion of seasonal paramedic service along the coastal community.



## LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is made this \_\_\_ day of \_\_\_\_\_, 2022 between the Town of Dewey Beach, a municipal corporation of the State of Delaware, with an address of 105 Rodney Avenue, Dewey Beach, DE 19971 (“Landlord”), and Sussex County, a political subdivision of the State of Delaware, with an address of 2 The Circle, P.O. Box 589, Georgetown, DE 19947 (“Tenant”).

The parties hereto, each intending to be legally bound hereby, do mutually covenant and agree as follows:

1. Landlord hereby leases to the Tenant, and Tenant leases from Landlord, the exclusive use of the rear unit of the building located at 1505 Coastal Highway, Dewey Beach, DE 19971 (Sussex County Tax Parcel No. 334-20.18-117.00), the front portion of which currently houses the Town of Dewey Beach Code Enforcement and Parking Department. The leased premises shall consist of the rear dedicated portion of the building located on the west side thereof, with direct dedicated access to the outside, said portion of the building being approximately 650 square feet, more or less, together with uninterrupted driveway access and parking as more fully set forth in paragraph 6 hereof (“Leased Premises”).
2. The term of this Lease shall commence at midnight on the 1st day of May, 2022 and shall continue for a period of one (1) year until 11:59 p.m. on the 30th day of April, 2023 unless modified by mutual agreement of both parties or terminated by the Tenant giving the Landlord at least sixty (60) days’ written notice of its intent to terminate the Lease. Unless the Tenant provides Landlord with written notice of its intent not to renew at least sixty (60) days prior to the end of the initial, or any subsequent, Lease Term, this Lease shall automatically renew on the same terms and conditions for an additional one (1) year term for up to two (2) additional one (1) year terms.
3. Tenant agrees to pay the Landlord annual rent in the amount of One Dollar (\$1.00) to be due and payable commencing on the 1<sup>st</sup> day of May, 2022 for the entire term of this Lease, and each May 1<sup>st</sup> thereafter if the Lease is renewed in accordance with paragraph 2. Tenant shall send the rental payment to the Landlord at the address set forth in paragraph 22 hereof.
4. It is expressly agreed and understood that the Tenant relies upon the General Assembly of the State of Delaware for the funding of the paramedic operations of Sussex County, Delaware, and should the General Assembly of Delaware at any time fail to appropriate sufficient funds for the purpose of maintaining this Lease, the Tenant’s total liability under this Lease shall be limited to the funds designated for this Lease by the Sussex County Council and the Tenant’s obligation under this Lease shall immediately terminate when the funds available have been exhausted in making payments as provided for in this Lease.

5. The Tenant may use and occupy the Leased Premises for any paramedic services and operations, or such other lawful uses designated by the Sussex County Council. The Tenant shall not use or knowingly permit any part of the Leased Premises to be used for any unlawful purpose.
6. During the term of this Lease, the Landlord leases to the Tenant the right to the uninterrupted use of the presently existing driveway parking lot to be shared with Landlord which shall include two (2) undesignated parking spaces for the personal vehicles for Tenant's employees, together with the exclusive use of at one (1) designated parking space for a paramedic unit. The Landlord shall maintain a clear, uninterrupted thoroughfare for ingress/egress of Paramedic vehicle at all times.
7. The Tenant shall not place or erect any signs of any nature on any part of the Leased Premises, or the sidewalk adjoining the Leased Premises, or on any part of the Landlord's property adjacent to the Leased Premises which do not conform to requirements of any State, Federal, Municipal or county law, ordinance, rule or regulation. Said sign(s) shall not be placed without the prior consent of the Landlord, which consent shall not be unreasonably withheld.
8. The Tenant, upon the payment of the rent herein reserved, and upon performance of all the terms of this Lease, shall at all times during the term of this Lease, and during any extension or renewal hereof, peaceably and quietly enjoy and have the free and uninterrupted right of exclusive access and possession of the Leased Premises without any disturbance from the Landlord or from any other person claiming through the Landlord.
9. Maintenance and Repairs
  - a. The Landlord shall maintain and make all necessary repairs to the foundations, load bearing walls, roof, gutters, downspouts, exterior water and sewer lines, fixtures, glass and equipment on or associated with the Leased Premises, sidewalks and landscaping on or appurtenant to the building.
  - b. Tenant shall maintain and repair the heating and air conditioning systems, hot water heater, and plumbing and electrical systems.
  - c. Unless specifically identified herein as a Landlord responsibility, Tenant shall maintain and keep the Leased Premises in good repair. Tenant shall also maintain and keep the Leased Premises free of refuse and rubbish.
  - d. Tenant shall be responsible for the painting of and repairs to all interior surfaces, including walls, floors and ceilings.
  - e. Notwithstanding the other provisions of this paragraph, any repairs and replacements necessitated by any act, omission or negligence of either party or its agents or servants shall be made at the expense of that party.
  - f. Landlord shall keep the grounds surrounding the building mowed and trimmed to provide a kept appearance to the property

- g. Landlord shall be responsible for the timely removal of snow and ice from all sidewalks, as well as the driveway, entrances/exits and parking areas of the entire property.
  - h. Tenant shall be permitted to change the main exterior door locks. In the event Tenant changes the exterior door locks, Tenant shall provide Landlord with one (1) copy of the key. Landlord shall maintain close control over the key once in its possession. Landlord shall only gain access to the Leased Premises by use of Tenant's key in the event of an on-site emergency and if Tenant is not present.
10. Landlord shall provide all electricity, and other utilities required for adequate lighting and heating, as well as water and sewer, the annual cost of shall be Five Hundred Dollars (\$500) due and payable by Tenant to Landlord on the 1<sup>st</sup> day of May, 2022, and each May 1<sup>st</sup> thereafter if the Lease is renewed in accordance with paragraph 2. Tenant shall be responsible for the installation and all costs associated with obtaining cable TV and internet services. At no additional cost, Tenant shall also be permitted to: (a) use Landlord's dumpster for the disposal of household grade waste; and (b) have access to the outside water spigot at the rear of the building for general use, including, but not limited to, washing Tenant's paramedic units, weather permitting.
11. Any alterations to the Leased Premises to be made by the Tenant shall be done only with Landlord's prior approval, which shall not be unreasonably withheld, and shall conform to the requirements of any applicable municipal, county, state or federal law, ordinance, rule or regulation. Any alterations to the Leased Premises made by the Tenant shall be maintained at all times by the Tenant in conformance with the terms hereof and shall be removed upon the expiration of the term of the Lease or its earlier termination, at the option of the Landlord, provided Tenant repairs any damage done in connection with such removal.
12. At the expiration of this Lease, or any renewal thereof, the Tenant shall surrender the Leased Premises in as good condition as it was in the beginning of the term, reasonable use and wear and damages by the elements excepted, or as otherwise provided herein.
13. The Landlord acknowledges that no security deposit will be required.
14. At Landlord's option, this Lease shall thereupon become null and void, and the Landlord shall have the right to repossess the Leased Premises by summary proceedings if: (a) the Tenant defaults in the payment of rent or any sum collectable by Landlord as rent, and such default shall continue for thirty (30) days after notice thereof by Landlord to Tenant; or (b) Tenant defaults in the prompt and full performance of any covenant, condition, agreement or provision of this Lease and such default shall continue for thirty (30) days after written notice thereof; provided, however, that in the case of a default which Tenant cannot with due diligence correct within a period of thirty (30)

days, Tenant shall have such additional time to correct the same as may reasonably be necessary, provided Tenant proceeds promptly and with due diligence to correct such default.

15. The Landlord or its agents shall have the right to enter the Leased Premises at all reasonable times during normal business hours in order to inspect it or to show it to prospective lessees, upon no less than twenty-four (24) hours' prior notice to Tenant, unless otherwise agreed to by both parties. All Landlord inspections and showings shall be in the company of a representative of the Tenant unless Tenant agrees otherwise. The Landlord's right of entry shall not be deemed to impose upon the Landlord any obligation, responsibility or liability for the care, supervision or repair of the Leased Premises other than as herein provided.
16. Throughout the term of this Lease, the Landlord shall pay and maintain insurance coverage on the Leased Premises, including fire and windstorm insurance, casualty insurance, comprehensive public liability insurance with a responsible insurance company licensed to do business in Delaware.
17. Insurance and Indemnification:
  - a. Tenant shall secure and maintain, at its own expense the following insurance coverages on the Leased Premises, with an insurance company allowed to do business in the State of Delaware:
    - i. All risk (special form) property insurance which insures against direct physical loss of or damage to Tenant's business personal property, including improvements and betterments to the Leased Premises made at Tenant's expense, with limits sufficient to insure Tenant's interest therein.
    - ii. All risk (special form) business income and extra expense insurance in amounts satisfactory to protect Tenant's interests for loss of income and/or extra expense that results from direct physical loss of or damage to Tenant's property situated at the Leased Premises.
    - iii. Commercial general liability insurance which insures against bodily injury, property damage, and personal injury claims arising from Tenant's occupancy of the Leased Premises or operations incidental thereto, with a combined single limit of \$1,000,000 per occurrence and a general aggregate limit of \$2,000,000. Such insurance shall include Landlord as an additional insured. Tenant shall provide proof of insurance prior to occupancy.
  - b. Landlord shall secure and maintain, at its own expense, the following insurance coverages on the Leased Property, with an insurance company allowed to do business in the State of Delaware:
    - i. All risk (special form) property insurance which insures against direct physical loss of or damage to the building at the Leased

Premises and Landlord's personal property situated at the Leased Premises, on a replacement cost valuation basis, with limits not less than 100% of the insurable replacement cost of Landlord's property.

- ii. All risk (special form) business income and extra expense insurance in amounts sufficient to insure Landlord's loss of income and/or extra expense that results from direct physical loss of or damage to Landlord's property (Leased Premises and any other property located thereon).
  - iii. Commercial general liability insurance which insures against bodily injury, property damage, and personal injury claims arising from Landlord's ownership, maintenance or use of the Leased Premises or operations incidental thereto, with a combined single limit of \$1,000,000 per occurrence and a general aggregate limit of \$2,000,000 (combined single limit).
- c. To the extent permitted by law, the Tenant shall indemnify, defend and hold Landlord harmless, including court costs, expenses and attorneys' fees, from and against claims for bodily injury (including death) and property damage arising out of Tenant's occupancy of the Leased Premises or operations incidental thereto, unless such claims arise from the negligence or willful act of the Landlord. The above provisions of this subparagraph are not intended to waive, alter, or otherwise amend the immunity of the parties under the Delaware Code or otherwise, including, but not limited to, the County and Municipal Tort Claims Act. Additionally, the above provisions are not intended to violate any constitutional principles of the State of Delaware or United States. To the extent that any of the above obligations of this paragraph are determined by court or arbitration order or other judicial action to waive, alter, or otherwise amend such immunity or to be constitutionally prohibited or otherwise not in accordance with the laws in effect at the time of any such claim, liability, cost or expense, the offending language shall be stricken from this Agreement by such authority and considered invalid and unenforceable to the extent necessary to allow the application of such immunity to any claims, losses, damages, or suits asserted against either party or to the extent necessary to correct such violation of the law. The parties agree that any claims, liabilities, damages, costs and expenses that are permitted under this Paragraph shall be subject to the provisions of the County and Municipal Tort Claims Act, including the limitations on damages.
- d. To the extent permitted by law, the Landlord shall indemnify, defend and hold Tenant harmless, including court costs, expenses and attorney's fees, from and against claims for bodily injury (including death) and property damage arising out of Landlord's ownership, maintenance or use of the Leased Premises or operations incidental thereto, unless such claims arise from the negligence or willful act of the Tenant.

- e. To the fullest extent permitted by law, Landlord and Tenant waive all rights of recovery from the other party and their respective elected and appointed officials, officers, directors, members, employees, agents and consultants for loss of or damage to their respective real and/or personal property and any resulting loss of business income and/or extra expenses resulting from such loss or damage. Any insurance policies maintained by Landlord and Tenant shall permit such waivers of subrogation by endorsement or otherwise. It is agreed that, if it is determined that Tenant's negligence resulted in damage to Landlord's property located on the Leased Premises during the term hereof, Tenant shall reimburse Landlord for the amount of its deductible not to exceed Five Thousand Dollars (\$5,000.00). It is further agreed that, if it is determined that Landlord's negligence resulted in damage to Tenant's property located on the Leased Premises during the term hereof, Landlord shall reimburse Tenant for the amount of its deductible not to exceed Five Thousand Dollars (\$5,000.00).
18. If, during the term of the Lease, the building is so injured by fire or otherwise that the Leased Premises are rendered wholly unfit for occupancy and said Leased Premises cannot be repaired within ninety (90) days from the date of such injury, then the Lease shall cease and terminate from the date of such injury. In such case, the Tenant shall pay the rent apportioned to the time of injury and shall surrender to the Landlord, who may enter upon and repossess the Leased Premises. If the injury is such that the Leased Premises can be repaired within the ninety (90) days thereafter, Landlord shall enter and repair with reasonable promptness, and this Lease shall not be affected, except that the rent shall be suspended while such repairs are being made.
19. In the event Landlord defaults on any of its obligations under this Lease, Tenant shall provide Landlord with written notice of Landlord's default and Landlord shall have a period of fifteen (15) days from the date of the notice to cure the default. The notice shall be delivered in accordance with paragraph 22 of this Lease. In the event Landlord fails or refuses to cure the default within the 15-day cure period, Tenant shall, at its sole discretion, have the right to terminate this Lease and shall have no further obligation hereunder. In the event Landlord does not cure the default and Tenant does not terminate the Lease, Tenant's failure to terminate shall not act as a waiver of any potential future default on Landlord's behalf.
20. Any controversy which shall arise between the Landlord and the Tenant regarding the rights, duties or liabilities hereunder of either party may be settled by arbitration, if mutually agreed upon by the parties. Such arbitration shall be before one disinterested arbitrator if one can be agreed upon, otherwise before three disinterested arbitrators, one named by the Landlord, one named by the Tenant, and one by the two arbitrators thus chosen. The arbitrator or arbitrators, as the case may be, shall determine the controversy in

accordance with the laws of the State of Delaware, as applied to the facts found by him or them. The arbitrator's decision shall be non-binding. Nothing herein contained shall be construed as a waiver by either party to file suit, either in law or in equity, against the other party to resolve any and all disputes under this Lease.

- 21. The Tenant may not sublet or assign any or all of the Leased Premises without the prior written consent of the Landlord. Such written consent by the Landlord shall not be unreasonably withheld, provided that the business or occupation of the subtenant is not extra hazardous, disreputable, or illegal. The consent by the Landlord to an assignment or subletting shall not be construed to relieve the Tenant from obtaining the consent in writing of the Landlord to any further assignment or subletting.
  
- 22. All notices, requests, demands and other communications, including a notice to quit, required or permitted under this Lease shall be in writing, signed by or on behalf of the person giving such notice and may be served in any one of the following manners and shall be effective as of the time specified: (a) If by personal service upon Landlord or Tenant, on the date of such service when served by an adult person upon the party to receive the notice or upon an adult member of the household or upon the agent of any corporation, or other business entity; (b) If by posting on the Leased Premises, on the date of posting the same in a conspicuous place on the Leased Premises (this method of service to be used only for notices, requests, demands and other communications, including notices to quit, from Lessor to Lessee); or (c) If by registered or certified mail, on the date of receipt of the same as evidenced by the return receipt if signed by the party to be served or an adult member of the household or agent of the corporation or other business entity. If the same is returned by the U.S. Postal Service bearing notations such as "Refused" or "Unclaimed," service shall be deemed to have been made on the first business day following mailing of the same.

The Landlord hereby designates his address as:

Town of Dewey Beach  
 105 Rodney Avenue  
 Dewey Beach, DE 19971  
 Attention: Mayor William Stevens and Bill Zolper, Town Manager

With a copy to:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The Tenant designates its address as:

Sussex County Council  
P.O. Box 589  
Georgetown, DE 19947  
Attention: Todd F. Lawson, Sussex County Administrator

With a copy to:

J. Everett Moore, Jr., Esquire  
Moore & Rutt, P.A.  
122 W. Market Street  
P.O. Box 584  
Georgetown, DE 19947

23. The language in all parts of this Lease shall in all cases be simply construed according to its fair meaning and not strictly for or against Landlord or Tenant. This Lease is the product of the parties hereto and no conclusion shall be made as to its drafter in the event of any dispute.
24. If any particular term, covenant or provision of this Lease shall be determined to be invalid, illegal, void or unenforceable, the same shall not affect the remaining provisions of this Lease which shall nevertheless remain in full force and effect and said term, covenant or provision shall be deemed modified to conform with the law. This Lease shall be governed under the laws of the State of Delaware. The parties acknowledge and agree that this is a Commercial Lease. Accordingly, this Lease shall NOT be governed by the Delaware Landlord-Tenant Code 25 Del. C., Section 5101 et seq.
25. This Lease sets forth all the promises or representations, agreements and undertakings between Landlord and Tenant relative to the Leased Premises. There are no promises, representations, agreements or undertakings, either oral or written, between Landlord or Tenant except as set forth herein. No amendment, change or addition to this Lease shall be binding upon either party unless reduced to writing and signed by both parties. This Lease shall be binding upon Landlord and Tenant, their heirs, executors, administrators, assigns and successors, both Landlord and Tenant being duly authorized to execute the same.
26. This Lease may be executed in two (2) counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures and photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.
27. In the event any action is brought to enforce the terms of this Lease, the prevailing party shall be entitled to collect costs and reasonable attorney's fees arising therefrom.



28. The parties to this Lease agree to waive their rights to demand a jury trial in any action which may be brought to enforce any portion of this Lease.

29. Time shall be of the essence for the performance of all terms of this Lease.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have hereunto set their hands and seals on the respective day(s) and year set forth below.

LANDLORD:

TOWN OF DEWEY BEACH, a municipal corporation of the State of Delaware

By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

Attest: \_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

TENANT:

SUSSEX COUNTY, a political subdivision of the State of Delaware

By: \_\_\_\_\_ (SEAL)

Michael H. Vincent, President

\_\_\_\_\_  
Date

Attest: \_\_\_\_\_

Tracy Torbert, Clerk of the  
Sussex County Council

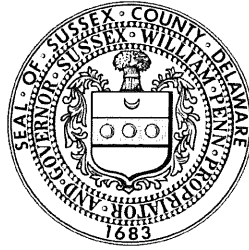
Approved as to Form:

\_\_\_\_\_  
Date

\_\_\_\_\_  
J. Everett Moore, Jr.,  
Sussex County Attorney

WILLIAM PFAFF  
ECONOMIC DEVELOPMENT DIRECTOR

(302) 855-7700 T  
(302) 854-5383 F  
william.pfaff@sussexcountyde.gov



**Sussex County**  
DELAWARE  
sussexcountyde.gov

**Memorandum**

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

FROM: William Pfaff  
Economic Development

RE: **Delaware Coastal Business Park Leases**

DATE: April 22, 2022

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On the agenda Tuesday ~ the following leases will be presented for approval in the Delaware Coastal Business Park:

- **EASTERN SHORE POULTRY COMPANY, INC.** - located at 21724 Broad Creek Ave., Georgetown, DE 19947
- **JDJS, LLC (dba) JennyGems** – located at 21348 Cedar Creek Ave., Georgetown, DE 19947

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**EASTERN SHORE POULTRY COMPANY, INC.**

Eastern Shore Poultry Company, INC is part of the Poultry Processing Industry. They typically sell to wholesalers or retailers. Eastern Shore Poultry is our second largest employer at the Delaware Coastal Business Park.



Industries in the Food Manufacturing subsector transform livestock and agricultural products into products for intermediate or final consumption. The industry groups are distinguished by the raw materials (generally of animal or vegetable origin) processed into food products. The food products manufactured in these establishments are typically sold to wholesalers or retailers for distribution to consumers, but establishments primarily engaged in retailing bakery and candy products made on the premises not for immediate consumption are included.

## **JENNYGEMS**

The business began from Jenny and Dave's home. Jenny was laid off from her full-time banking job at MBNA America and with Dave's encouragement, she pursued selling items online as a full-time career. She made it a success. Dave followed a few years later and left his job as an Animal Control Officer. At the end of 2015, Jenny and Dave officially launched JennyGems®.

Although there have been many hills, detours, and lessons along the way, they have continued to climb and push towards new goals. They now have a 7,000 square foot warehouse and a gift shop in Harbeson, Delaware. The couple began their brand by having their designs manufactured overseas in China. After being affected by the trade wars in 2019 and the inability to find a US supplier to keep up with the brands demand, the couple decided to take a big risk and use all their resources to purchase expensive manufacturing and wood shop equipment. Timing was not on their side as the equipment arrived the week before the COVID 19 pandemic. Their sales went overnight to nothing. The couple was forced to lay off all their workers. But they quickly came back fighting on social media and highlighting the **Made in USA** theme. They also began offering inspirational gift products for nurses on the front lines of the pandemic. The couple's business took a giant leap and orders began blowing up. The couple recalled all their employees and hired 12 more. The couple continues to add new members to their team.

It's a story of two people working very hard and backed by a great team. JennyGems® is in Harbeson, Delaware and soon to be located in the DELAWARE COASTAL BUSINESS PARK.

**THIRD AMENDMENT TO LEASE AGREEMENT**

**THIS THIRD AMENDMENT** to a Lease Agreement is made and executed on this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_ by and between:

**SUSSEX COUNTY, DELAWARE**, a political subdivision of the State of Delaware, with an address of 2 The Circle, Georgetown, Delaware 19947, hereinafter referred to as **“Landlord”**

**AND**

**EASTERN SHORE POULTRY COMPANY, INC.** with an address of 21724 Broad Creek Avenue, Georgetown, DE, 19947, hereinafter referred to as **“Tenant”**.

**RECITALS**

**WHEREAS**, on April 7, 1992, Landlord and Tenant entered into a Lease Agreement (hereinafter referred to as “the Lease”) for space known as Lot 26, located at 21724 Broad Creek Avenue, Georgetown, Delaware 19947 (hereinafter referred to as “the Leased Premises”); and

**WHEREAS**, on April 7, 1992, Landlord and Tenant entered into a First Amendment to the Lease Agreement (“the First Amendment”);

**WHEREAS**, on April 29, 2014, Landlord and Tenant entered into a Second Amendment to the Lease Agreement (“the Second Amendment”) which clarified the acreage of the Leased Premises;

**WHEREAS**, Section III of the Lease provides Tenant the right to renew the Lease for an additional ten (10) year term at a lease rate to be agreed upon by the parties based on the fair market rental value of the Leased Premises at the time of renewal;

**WHEREAS**, Landlord and Tenant have discussed the fair market rental value of the Leased Premises and have agreed to amend the terms of the Lease as outlined herein to clarify the rent amount for the renewal term and to otherwise amend the Lease as set forth herein,

**WITNESSETH:**

That Landlord, in consideration of the rents, terms, covenants, conditions and agreement hereinafter made on the part of Tenant to be paid, kept and performed and Tenant, in consideration of the right to occupy the Leased Premises, subject to the terms, covenants, conditions and agreements hereinafter set forth, do together hereby agree as follows:

1. The parties agree that the primary term of the Lease commenced on April 7, 1992, and ends on April 6, 2022.
2. Section III of the Lease shall be revised to read as follows:

**“SECTION III: RENEWAL OPTION.** Tenant shall have the right to renew this Lease on the same terms and conditions for an additional term (“the Renewal Term”) of ten (10) years commencing on April 7, 2022 (“Renewal Commencement Date”) subject to the terms of this Section III.

- a. During the Renewal Term, Tenant covenants and agrees to pay Landlord annual rent (“Base Rent”) in the amounts as set forth in Appendix D which is annexed hereto and made a part hereof.
- b. **CPI RENT ADJUSTMENT:** The Base Rent during the Renewal Term will be adjusted according to this Paragraph on April 7, 2027, and every year thereafter. In this Paragraph, the following terms shall have the meaning set forth herein:

- (1) “Price Index” means the Consumer Price Index for All Items, All Urban Consumers, U.S. City Average (CPI-U Table 1, unadjusted as published monthly by the United States Department of Labor, Bureau of Labor Statistics) compared to the same index sixty (60) months earlier. If publication of the above index shall be discontinued, then

another index generally recognized as authoritative shall be substituted, as selected by Landlord in its reasonable discretion.

- (2) "Base Price Index" means the Price Index for the month (the "Base Month") nearest before the Renewal Commencement Date for which the Price Index is published and/or the most recently available.
- (3) The Base Rent payable pursuant to Section III (as it may have been adjusted according to this paragraph) will be increased every year beginning on April 7, 2027, by a fraction whose numerator is the Price Index published for the then most recent anniversary month of the Base Month and whose denominator is the Base Price Index. The Base Rent as adjusted will not be reduced pursuant to this paragraph.
- (4) If a substantial change is made in the Price Index, or its publication is discontinued or changed in such a way as to prevent calculations pursuant to this Section III, then the Price Index will be adjusted to the figure that would have been used had the manner of computing the Price Index in effect at the date of this Lease not been altered. If the Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information used in determining the Price Index will be used.
- (5) No adjustments will be made due to any revision that may be made in the Price Index for any month.
- (6) The statements of the adjustment to be furnished by Landlord will consist of data prepared for the Landlord by a firm of certified public accountants (which may be the firm now or then currently employed by Landlord for the audit of its accounts). The statements thus furnished to

Tenant will constitute a final determination as between Landlord and Tenant of the relevant adjustment.

- (7) Seasonal adjustments will not be used.
- (8) Landlord's delay or failure in computing or billing for these adjustments will not impair the continuing obligation of Tenant to pay Base Rent adjustments.
- (9) Tenant's obligation to pay Base Rent as adjusted by this Section III will continue up to the expiration of this Lease and will survive any earlier termination of this Lease.
- (10) Within thirty (30) days after Landlord gives Tenant notice of the adjusted Rent, Tenant will pay the adjusted Rent retroactive to the first month of the then-current lease year. The adjusted Rent will be the yearly Base Rent for the balance of the then-current lease year. Landlord will give Tenant written notice indicating how the adjusted Rent amount was computed.

c. **PAYMENT PROVISIONS:**

- (1) All payments thereafter shall be due and payable annually on the 1<sup>st</sup> day of January each year for the remainder of the Renewal Term without demand and without setoff or deduction. Notwithstanding the foregoing, if the renewal term commences after January 1, the annual rent shall be prorated on a per diem basis for the remainder of the initial year of the renewal term and payment for the remainder of the initial year of the renewal term shall be due on the first day of the renewal term. All payments thereafter shall be due and payable annually on the 1<sup>st</sup> day of January each year for the remainder of the Lease term and any renewal thereof without demand and without

setoff or deduction. All other costs due pursuant to this Lease shall be considered additional rent ("Additional Rent") which shall be due and payable as hereinafter set forth.

- (2) Any payment by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord shall be treated as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.
- (3) All payments should be made to Sussex County Council, Sussex County Treasury Office, P.O. Box 601, Georgetown, Delaware 19947, or such other place or places as may from time to time be designated in writing by Landlord.
- (4) In the event any installment of Rent, Additional Rent, or any sum due Landlord under this Lease, is not received in full within thirty (30) days from the due date, then Tenant shall pay to Landlord a late administration fee equal to five percent (5%) of such overdue amount. Further, any Rent, Additional Rent, or other sum past due and owed to the Landlord by the Tenant under this Lease shall be subject to interest at the rate of eighteen percent (18%) per annum. Any check returned to the Landlord for any sum due to Landlord under this Lease, shall be subject to an additional late fee of ten percent (10%) and an administrative fee of the greater of One Hundred Dollars (\$100.00) or the Landlord's standard administrative fees for similar leases in the



Delaware Coastal Business Park. Acceptance of late Rent shall in no way prejudice, waive, modify, or alter any of the rights or remedies which the Landlord may have under this Lease.

- d. **ADDITIONAL RENT - COMMON AREA MAINTENANCE**. Beginning on April 7, 2027, and at any point thereafter for the Renewal Term, Landlord may elect at Landlord's sole discretion to require Tenant to pay for common area maintenance fees related to Landlord's ownership of the Delaware Coastal Business Park. If Landlord elects to charge Tenant for common area maintenance fees, Landlord shall provide Tenant with written notice of said election and, in each year, as part of the Sussex County Governments' fiscal year and budget process, Landlord shall prepare an estimate of the total cost required to pay for the maintenance, management, operation, repair and replacement of the common area in the Delaware Coastal Business Park, and shall assess fees against Tenant for its proportionate share of the total cost which shall be calculated based on the acreage of Tenant's Leased Premises in proportion to the total combined acreage of all sites available in the Delaware Coastal Business Park ("Common Area Fees"). The Common Area Fees shall be invoiced to Tenant in August based on costs from the previous July to June and shall be due and payable to Landlord by Tenant within thirty (30) days of Tenant's receipt of Landlord's written invoice. The Common Area Fees shall be deemed Additional Rent hereunder."

3. Section IX of the Lease shall be revised to read as follows:

**"SECTION IX: INSURANCE.**

- a. **Property and Business Income Insurance** - Tenant shall secure and maintain, at its own expense, all risk (special form) property insurance that insures against direct physical loss of or damage to Tenant's property including Tenant's

improvements, fixtures, equipment and materials located on the Leased Premises, on a replacement cost valuation basis, with limits not less than 100% of the insurable replacement cost of all such property. Tenant shall also secure, at its own expense, all risk (special form) business income and extra expense insurance in amounts satisfactory to protect its interests as a result of direct physical loss of or damage to Tenant's covered property located on the Leased Premises.

Landlord shall be insured on Tenant's property and business income insurance as its interests may appear, in amounts sufficient to protect Landlord's interests.

- b. **Waiver of Subrogation** - To the fullest extent permitted by law, Tenant waives any right of recovery from Landlord, and its appointed and elected officials, employees, agents, and volunteers, for any loss, damage or injury to Tenant's property located on the Leased Premises (or resulting loss of income or extra expense), by reason of any peril required to be insured against under this Lease. To the fullest extent permitted by law, Tenant's property insurer shall not hold any right of subrogation against Landlord, and its appointed and elected officials, employees, agents, and volunteers. Tenant shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any property and/or business income and extra expense insurance policies maintained by Tenant. Any deductible amount(s) selected by Tenant shall be the sole responsibility of Tenant.
- c. **Commercial General Liability Insurance** - Tenant shall secure and maintain, at its own expense, commercial general liability insurance that insures against bodily injury, property damage, personal and advertising injury claims arising from Tenant's occupancy of the Leased Premises or operations incidental thereto, with the combined single limit of \$1,000,000.00 per occurrence and a general aggregate limit of \$2,000,000.00. This insurance shall name Landlord and its appointed and elected officials, employees, agents and volunteers as insureds on a primary and non-contributory basis, with respect to liability arising out of or in

connection with Tenant's occupancy of the Leased Premises or operations incidental thereto under this Lease Agreement. A copy of the additional insured endorsement(s) that evidence the required additional insured status must accompany any certificate of insurance provided to Landlord. To the fullest extent permitted by law, Tenant's commercial general liability insurer shall not hold any right of subrogation against Landlord, and its appointed and elected officials, employees, agents, and volunteers. Tenant shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any commercial general liability insurance policies maintained by Tenant. Landlord shall maintain, at its sole expense, commercial general liability insurance covering the Delaware Coastal Business Park, including all common areas, on a full replacement cost basis, together with such other types of insurance coverage as are customarily maintained by owners of comparable use properties in the area in which the Leased Premises is located and such other insurance coverage as Landlord may elect in its reasonable discretion to carry.

- d. **Workers' Compensation & Employers' Liability** - Tenant shall secure and maintain, at its own expense, workers' compensation insurance and employers' liability insurance. The workers' compensation insurance must satisfy Tenant's workers' compensation obligation to its employees in Delaware under State or Federal law. Employers' liability insurance must be secured with minimum limits of \$100,000.00 for bodily injury by accident, \$100,000.00 each employee for bodily injury by disease, and a \$500,000.00 policy limit for bodily injury disease. To the fullest extent permitted by law, Tenant's workers' compensation and employers' liability insurer shall not hold any right of subrogation against Landlord, and its appointed and elected officials, employees, agents, and volunteers. Tenant shall advise its insurer(s) of the foregoing and such waiver

shall be permitted under any workers' compensation and employers' liability insurance policies maintained by Tenant.

- e. **Business Auto Liability Insurance** - Tenant shall secure and maintain, at its own expense business auto liability insurance with a minimum combined single limit of \$1,000,000 per accident and including coverage for bodily injury and property damage claims arising out of the maintenance, use or operation of any auto and contractual liability protection for bodily injury and property damage claims assumed under this Lease Agreement.
- f. **Umbrella Excess Liability or Excess Liability Insurance** – Tenant shall secure and maintain, at its own expense, umbrella excess liability or excess liability insurance with minimum limits of \$4,000,000 combined single limit - each occurrence and \$4,000,000 combined single limit – aggregates. This insurance shall include the insurance specified in Section IX(c) and (d) (Employers' Liability Insurance only) and Section IX(e) as underlying insurance. This insurance shall follow form with the coverage provisions, including who is an insured, required for underlying insurance.
- g. **Pollution Liability Insurance** – Tenant shall secure and maintain, at its own expense, pollution liability insurance that insures claims for pollution and remediation legal liability arising out of or in connection with the Tenant's occupancy of the Leased Premises. The minimum limits of liability for this insurance are \$1,000,000 each pollution condition and \$1,000,000 annual aggregate. This insurance shall name Landlord, and its appointed and elected officials, employees, agents, and volunteers as additional insureds on a primary and non-contributory basis. The endorsement(s) evidencing the required additional insured status must be submitted in conjunction with certificates of insurance furnished to Landlord. Tenant must continue to maintain such

insurance, covering incidents occurring or claims made, for a period of three (3) years after termination of this Agreement.

- h. **Evidence of Insurance / Insurers** - Tenant shall furnish certificates of insurance, acceptable to Landlord, to the Manager, Airport and Business Park Operations, Sussex County, Delaware evidencing all policies required above at execution of this Agreement and prior to each renewal thereafter. Such insurance shall be written with insurers allowed to do business in Delaware, with a Best's Financial Strength Rating of "A-" or better; and a Financial Size Category of "Class VII" or better in the latest evaluation of the A.M. Best Company, unless otherwise approved by the Landlord. All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation or non-renewal in coverage until sixty (60) days prior written notice has been given to Landlord. Therefore, a copy of the endorsements to the required policies that confirm additional insured status and the insurer is obligated to send notice to Landlord as required herein, must accompany all certificates of insurance. Liability policies required herein (other than pollution liability) may not be written on a "claims made" basis without the prior written approval of Landlord. If Tenant shall fail, refuse or neglect to secure and maintain any insurance required of Tenant or to furnish satisfactory evidence of insurance, premiums paid by Landlord shall be recoverable by Landlord from Tenant, together with interest thereon, as additional rent promptly upon being billed therefore.
- i. All policy limits as stated herein shall be adjusted every five (5) years in accordance with increases in the consumer price index to levels satisfactory to Landlord."

4. Section XXXI of the Lease shall be revised to read as follows:

“SECTION XXXI: Intentionally Omitted.”

5. Section XXXIII of the Lease shall be revised to read as follows:

**“SECTION XXXIII: Intentionally Omitted.”**

6. Section XXXIV of the Lease shall be revised to read as follows:

**“SECTION XXXIV: Intentionally Omitted.”**

7. **Interpretation of Amendment.** All other terms and conditions of the Lease, First Amendment, and Second Amendment shall remain intact and in full force and effect. Wherever there exists a conflict between this Third Amendment and the Lease, the First Amendment, or Second Amendment, the provisions of this Third Amendment shall control. Unless otherwise indicated, capitalized terms shall be defined in the manner set forth in the Lease.
8. **Counterparts.** This Third Amendment may be signed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one (1) instrument.

**(REST OF PAGE LEFT INTENTIONALLY BLANK)**

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals,  
this \_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_\_.

Attest:

LANDLORD: SUSSEX COUNTY COUNCIL

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Clerk of County Council


\_\_\_\_\_  
Name: \_\_\_\_\_ (SEAL)  
Title: \_\_\_\_\_


APPROVED AS TO FORM:

\_\_\_\_\_  
J. Everett Moore, Jr., County Attorney

Attest:

TENANT: EASTERN SHORE POULTRY  
COMPANY, INC.

  
\_\_\_\_\_  
Name: Stephen Durham  
Title: Manager

  
\_\_\_\_\_  
Name: HARRY H. DUKES (SEAL)  
Title: PRESIDENT

**APPENDIX D**  
**SCHEDULE OF BASE RENT FOR RENEWAL TERM**

<b>Renewal Year</b>	<b>Dates of Term</b>	<b>Annual Rent<sup>1</sup> Base for Renewal Year</b>
1	April 7, 2022 to April 6, 2023	\$10,590.00 <sup>2</sup>
2	April 7, 2023 to April 6, 2024	\$21,180.00 <sup>3</sup>
3	April 7, 2024 to April 6, 2025	\$21,180.00
4	April 7, 2025 to April 6, 2026	\$21,180.00
5	April 7, 2026 to April 6, 2027	\$21,180.00
6	April 7, 2027 to April 6, 2028	\$21,180.00 plus CPI-U adjustments
7	April 7, 2028 to April 6, 2029	Year 6 Rent plus CPI-U adjustments
8	April 7, 2029 to April 6, 2030	Year 7 Rent plus CPI-U adjustments
9	April 7, 2030 to April 6, 2031	Year 8 Rent plus CPI-U adjustments
10	April 7, 2031 to April 6, 2032	Year 9 Rent plus CPI-U adjustments

<sup>1</sup> This figure shall not include additional rent which may otherwise be due pursuant to the Lease.

<sup>2</sup> 4.236 acres x \$2,500.00 rent per acre per year = \$10,590.00 rent per year

<sup>3</sup> 4.236 acres x \$5,000.00 rent per acre per year = \$21,180.00 rent per year



## COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT ("Lease") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date"), by and between **SUSSEX COUNTY**, a political subdivision of the State of Delaware, with an address of 2 The Circle, P.O. Box 589, Georgetown, DE 19947 ("Lessor"), and **JDJS, LLC**, a Delaware limited liability company, t/a JennyGems, with an address of \_\_\_\_\_ ("Lessee"), and it recites and provides as follows.

### RECITALS

WHEREAS, Lessor is the owner of certain commercial real property which is improved by two commercial buildings (collectively "the Buildings") as hereafter described; and

WHEREAS, Lessee desires to lease said commercial real property known as 21348 Cedar Creek Avenue, Georgetown, Delaware, which is identified as Lot 12 and a portion of Lot 13 in the Delaware Coastal Business Park, for the operation of a gift sign manufacturing business.

### W I T N E S S E T H :

That the parties of this Lease, intending to be legally bound, hereby covenant and agree as follows:

1. **PREMISES:** Lessor leases to Lessee and Lessee accepts, as Lessee, the premises to a suitable Lessee for business purposes, described as follows:

A portion of the tract of land as improved by the Buildings identified as 21348 Cedar Creek Avenue, Georgetown, Delaware, which is identified as Lot 12 and a portion of Lot 13 in the Delaware Coastal Business Park and as Sussex County Tax Parcel No. 135-20.00-75.00-A being approximately 3.0 acres of land, more or less, and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Leased Premises" or "premises"). Lessee acknowledges that Lessor reserves the right to change the parcel numbers and street names located in Delaware Coastal Business Park during the term of this Lease.

2. **TERM:** The initial term of this Lease shall be thirty (30) years which shall commence at 10:00 o'clock A.M. on \_\_\_\_\_, 2022 ("the Commencement Date") and shall terminate at 11:59 o'clock P.M. on \_\_\_\_\_

\_\_\_\_\_, 2052, unless sooner terminated as provided in this Lease.

3. **RENT:**

a. For the initial 30 year lease term referred to in paragraph 2, and for any renewal period referred to in paragraph 5 herein, Lessee shall pay rent annually in one (1) lump sum payment, payments of which shall be due and payable upon the commencement of the Lease term. Notwithstanding the foregoing, if the Lease term commences after January 1, the annual rent shall be prorated on a per diem basis for the remainder of the initial year and payment for the remainder of the initial year shall be due on the Commencement Date ("Initial Rent Payment"). All payments thereafter shall be due and payable annually on the 1<sup>st</sup> day of January each year for the remainder of the Lease term and any renewal thereof without demand and without setoff or deduction. The initial annual rent shall be calculated at the rate of Five Thousand Dollars (\$5,000.00) per acre based on acreage of three (3) acres which is Fifteen Thousand Dollars (\$15,000.00) ("Base Rent"). The Base Rent shall be adjusted every five (5) years during the Initial Term and any renewal thereof in accordance with Paragraph 4 and 5 hereof (collectively "Rent"). All other costs due hereunder shall be considered additional rent ("Additional Rent") which shall be due and payable as hereinafter set forth.

b. Any payment by Lessee or acceptance by Lessor of a lesser amount than shall be due from Lessee to Lessor shall be treated as a payment on account. The acceptance by Lessor of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Lessor may accept such check without prejudice to any other rights or remedies which Lessor may have against Lessee.

c. **PAYMENT PROVISIONS:** All payments should be made to Sussex County Council, Sussex County Treasury Office, P.O. Box 601, Georgetown, Delaware 19947, or such other place or places as may from time to time be designated in writing by Lessor.

4. **CPI RENT ADJUSTMENT:** The Base Rent in Paragraph 3 will be adjusted according to this paragraph on January 1, 2027, and every five (5) years thereafter, including any renewals thereof.

a. In this Paragraph 4, the following terms shall have the meaning set forth herein:

- (1) "Price Index" means the Consumer Price Index for All Items, All Urban Consumers, U.S. City Average (CPI-U Table 1, unadjusted as published monthly by the United States Department of Labor, Bureau of Labor Statistics) compared to the same index sixty (60) months earlier. If publication of the above index shall be discontinued, then another index generally recognized as authoritative shall be substituted, as selected by Lessor in its reasonable discretion.
  - (2) "Base Price Index" means the Price Index for the month (the "Base Month") nearest before the Commencement Date for which the Price Index is published and/or the most recently available.
- b. The Base Rent payable pursuant to Paragraph 3 (as it may have been adjusted according to this paragraph) will be increased every five (5) years beginning on January 1, 2027, including renewals hereof, by a fraction whose numerator is the Price Index published for the then most recent anniversary month of the Base Month and whose denominator is the Base Price Index. The Base Rent as adjusted will not be reduced pursuant to this paragraph.
  - c. If a substantial change is made in the Price Index, or its publication is discontinued or changed in such a way as to prevent calculations pursuant to this Paragraph 4, then the Price Index will be adjusted to the figure that would have been used had the manner of computing the Price Index in effect at the date of this Lease not been altered. If the Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information used in determining the Price Index will be used.
  - d. No adjustments will be made due to any revision that may be made in the Price Index for any month.
  - e. The statements of the adjustment to be furnished by Lessor will consist of data prepared for the Lessor by a firm of certified public accountants (which may be the firm now or then currently employed by Lessor for the audit of its accounts). The statements thus furnished to Lessee will constitute a final determination as between Lessor and Lessee of the relevant adjustment.
  - f. Seasonal adjustments will not be used.
  - g. Lessor's delay or failure in computing or billing for these adjustments will not impair the continuing obligation of Lessee to pay Base Rent adjustments.

- h. Lessee's obligation to pay Base Rent as adjusted by this Paragraph 4 will continue up to the expiration of this Lease, and any renewals hereof, and will survive any earlier termination of this Lease.
- i. Within thirty (30) days after Lessor gives Lessee notice of the adjusted Rent, Lessee will pay the adjusted Rent retroactive to the first month of the then-current five (5) year lease period. The adjusted Rent will be the yearly Base Rent for the balance of the then-current five (5) year lease period. Lessor will give Lessee written notice indicating how the adjusted Rent amount was computed.

5. **RENEWAL OF LEASE:**

- a. Provided Lessee is not otherwise in default of this Lease, Lessee shall have the option to renew this Lease on the same terms expressed herein for two (2) additional five (5) year terms. If Lessee intends to exercise its option to renew this Lease for an additional five (5) year term, Lessee shall provide Lessor with a minimum of one hundred eighty (180) days' written notice prior to the expiration of this Lease or renewal period, as the case may be. Upon Lessor's receipt of such notice from Lessee, except as otherwise provided herein, the provisions of this rental agreement shall be deemed to have been accepted and agreed to by Lessor, and the terms of this Lease shall remain in full force and effect. In the event Lessee does not provide Lessor with the required notice in a timely manner, unless Lessor and Lessee agree in writing to renew this Lease without modifications or amendments prior to the expiration of this Lease, this Lease shall terminate upon expiration of this Lease. If Lessee fails to exercise the option, at the end of the initial Lease term, or any further extensions or renewals thereof, the land subject to this Lease and all improvements thereon shall revert to Lessor, or its successors or assigns.
- b. Upon Lessee's exercise of any renewal option, Lessor shall conduct a market rent analysis to establish the rental value of acreage in the Delaware Coastal Business Park ("the New Market Base Rent"). If Lessor has otherwise conducted a market rent analysis in the Delaware Coastal Business Park within one (1) year of Lessee's exercise of the renewal option, Lessor may use the results of said analysis to establish the New Market Base Rent instead of conducting a new market rent analysis. Upon receipt of the market rent analysis, Lessor shall provide a copy of the same to Lessee and the value of acreage in the Delaware Coastal Business Park as determined by said analysis shall be the rent payable per acre by Lessee for the renewal term. In no event shall the rent for the renewal term be lower than the rent

payable during the last year of the prior lease term. Upon receipt of the market rent analysis from Lessor, Lessee may opt to forego the renewal option and otherwise terminate this Lease at the end of the then current Lease term provided Lessee notifies Lessor in writing within thirty (30) days of Lessor's submission of the market rent analysis. If Lessee does not elect to terminate this Lease as provided in this Paragraph, it is understood and agreed that the renewal option has been exercised and that the per acre rent for the renewal term and the corresponding Base Rent shall be based on the New Market Base Rent as determined by the market rent analysis outlined in this Paragraph 5.

- c. Within thirty (30) days after Lessor gives Lessee notice of the adjusted Rent and Lessee does not object to the same as provided above, then Lessee will pay the adjusted Rent retroactive to the first month of the then-current five (5) year lease period. The adjusted Rent will be the yearly Base Rent for the balance of the then-current five (5) year lease period. Lessor will give Lessee written notice indicating how the adjusted Rent amount was computed.
- d. If Lessee objects to the analysis as provided in Paragraph 5(b) above, then Lessee shall be free to engage its own commercial appraiser, having no less than five (5) years' full-time commercial appraisal experience in the State of Delaware and an MAI designation to perform at Lessee's expense, the land rental analysis. The appraiser shall have a certified general license by the Delaware Council on Real Estate Appraisers or, if the appraiser is an out-of-state appraiser, the appraiser shall have a temporary license or certificate issued by the Delaware Council on Real Estate Appraisers. The Lessee's appraiser shall provide its written analysis to Lessor within forty-five (45) days of engagement by the Lessee but in no event more than sixty (60) days from the date of Lessee's objection to the analysis as provided in Section 5(b) above. If the Lessor accepts the Lessee's appraiser's analysis, then it shall constitute an accepted adjustment and the New Market Base Rent. If the Lessor objects to the Lessee's appraiser's analysis within thirty (30) days of its receipt of the same and Lessee's appraiser's analysis is within twenty percent (20%) of the Lessor's appraiser's analysis, the results of both appraisals shall be averaged to determine the New Market Base Rent. If the Lessor objects to the Lessee's appraiser's analysis within thirty (30) days of its receipt of the same and the Lessee's appraiser's analysis differs from the Lessor's appraiser's analysis by greater than twenty percent (20%), then Lessor and Lessee agree that their respective appraisers shall mutually select a third appraiser who must meet the qualifications of an appraiser as set forth in this paragraph. If the Lessor's appraiser and the Lessee's appraiser are unable to agree upon the third appraiser, the Lessor shall

appoint a third appraiser. The third appraiser shall review the results of both appraisals conducted by the Lessor's appraiser and the Lessee's appraiser and may request a hearing at which both the Lessor's appraiser and the Lessee's appraiser shall provide such additional information and clarification regarding their studies as the third appraiser may request. The third appraiser shall make a final determination of the land rental value based upon the data contained in the two (2) appraisals and any additional information provided by Lessor's appraiser and Lessee's appraiser provided that the third appraiser shall have the right to gather, analyze, and consider additional data as the third appraiser deems appropriate. The decision of the third appraiser regarding the land rental value shall constitute the accepted adjustment and the New Market Base Rent. All fees and expenses associated with the work of the third appraiser shall be split equally and paid by the Lessor and the Lessee. During any period of disagreement between Lessor and Lessee regarding the rent adjustment, Lessee shall be responsible for the payment of the New Market Base Rent as recommended by Lessor's appraiser. Once the disagreement is resolved, any difference between the Base Rent paid and the accepted New Market Base Rent shall be refunded or credited to Lessee (as appropriate).

6. **EASEMENTS, RESTRICTIONS AND CONDITIONS; RULES AND**

**REGULATIONS**: This Lease is subject to easements, restrictions and conditions which are of record, or generally applicable to the immediate neighborhood, or may be observed by inspection of the premises. The Lessee shall be responsible for obtaining a title search should the Lessee so desire to verify all such easements, conditions and regulations. Lessee further acknowledges that its use of the Leased Premises is subject to Lessor's Rules and Regulations, which may be reasonably amended from time to time at Lessor's discretion, a copy of which is attached hereto as Exhibit B and are incorporated herein by reference. Failure to comply with any easements, restrictions, conditions or Rules and Regulations shall constitute a material breach of the terms of this Lease.

7. **USE**:

- a. Lessee shall have the right to utilize the Leased Premises and any improvements to be located thereon for activities such as one or more of the following: manufacturing of gift signs or any other use which may be consented to by Lessor, which consent may be granted or withheld in Lessor's reasonable discretion.
- b. The use of the Leased Premises shall at all times comply with all laws, ordinances, orders, regulations and requirements of any governmental authority having jurisdiction.

- c. It is specifically agreed that this Lease Agreement is non-exclusive. Lessor reserves the right to lease other real property at the Delaware Coastal Business Park or the Delaware Coastal Airport for identical or similar uses.
- d. Lessee agrees not to make any unlawful, improper or offensive use of the Leased Premises or to make any use thereof contrary to any law or ordinance now or hereafter enacted or to make any use thereof which endangers any person or property, threatens the insurability of the Leased Premises, or otherwise constitutes a nuisance (in Lessor sole judgment). Further, Lessee agrees to operate its business within the guidelines, requirements and regulations of all government and regulatory agencies as these apply to Lessee's business and use. Any notices of the Lessee's failure to fully comply, or notices that the Lessee's business violates any regulations or standards contained in the regulations of any agency, shall constitute a material breach of this Lease if not cured within permitted time frames set forth in this Lease.
- e. Lessee agrees to promptly open its business and use and occupy the Leased Premises continuously and uninterrupted in a commercially reasonable manner throughout the term of this Lease and to be open for business during reasonable business hours.
- f. Lessee agrees to operate the Leased Premises for the purposes set forth above during the entire term of this Lease in a prudent, efficient manner and reflecting the standards of a commercially appropriate business based on the permitted uses.
- g. Lessee may not (i) abandon or vacate the Leased Premises without giving notice to the Lessor; (ii) disfigure or deface the Leased Premises or permit any waste, nuisance or unlawful use on or about the Leased Premises; (iii) use the Leased Premises without a Certificate of Occupancy; or (iv) violate any municipal, county, state or federal law, rule, regulation or order.

8. **ADDITIONAL RENT - PAYMENTS, COMMON AREA MAINTENANCE, TAXES AND INSURANCE.**

- a. **Payments.** In the event any installment of Rent, Additional Rent, or any sum due Lessor under this Lease, is not received in full within thirty (30) days from the due date, then Lessee shall pay to Lessor a late administration fee equal to five percent (5%) of such overdue amount.

Further, any Rent, Additional Rent, or other sum past due and owed to the Lessor by the Lessee under this Lease shall be subject to interest at the rate of eighteen percent (18%) per annum. Any check returned to the Lessor for any sum due to Lessor under this Lease, shall be subject to an additional late fee of ten percent (10%) and an administrative fee of the greater of One Hundred Dollars (\$100.00) or the Lessor's standard administrative fees for similar leases in the Delaware Coastal Business Park. Acceptance of late Rent shall in no way prejudice, waive, modify, or alter any of the rights or remedies which the Lessor may have under this Lease.

- b. **Taxes**. Lessor will pay all general real estate taxes, if any, which may be levied or assessed by any lawful authority against the real property only on the Leased Premises. Lessee agrees to pay any and all taxes and assessments levied or assessed against the improvements constructed on the Leased Premises and all equipment installed therein. Lessee shall make payments directly to the taxing authority when due.
  
- c. **Maintenance** Lessee shall be responsible for operating, repairing, and maintaining the Buildings, facilities and all grounds of the Leased Premises (hereinafter "Maintenance"). Maintenance of Leased Premises shall be an all-inclusive term which encompasses, among other things, snow and ice removal of all parking areas and drive aisles, lawn mowing, landscaping, debris and refuse removal from the grounds, etc. If Lessee fails to meet its obligations under this Paragraph, Lessor may perform the necessary work and charge Lessee for the same, which charge shall be deemed as Additional Rent due within thirty (30) days of Lessee's receipt of written notice from Lessor. Lessor shall be responsible for ground maintenance, including lawn mowing and snow and ice removal, along Cedar Creek Avenue up to the edge of the Leased Premises. Lessee shall neither encumber nor obstruct the sidewalks, driveways, yards or entrances, but shall keep and maintain the same in a clean condition, free from debris, trash, refuse, snow and ice. Lessee shall be responsible for all grass cutting and snow removal on the Leased Premises. Grass shall be mowed regularly so as to prevent grass from growing beyond six (6) inches in height. Snow removal from access road to the Buildings shall be the sole responsibility of Lessee.
  
- d. **Common Area Maintenance Charges**. Each year, as part of the Sussex County Government's fiscal year and budget process, Lessor shall prepare an estimate of the total cost required to pay for the maintenance, management, operation, repair and replacement of the common area in the Delaware Coastal Business Park, and shall assess fees against Lessee for its proportionate share of the total cost which shall be calculated based on



the acreage of Lessee's Leased Premises in proportion to the total combined acreage of all sites available in the Delaware Coastal Business Park ("Common Area Fees"). The Common Area Fees shall be invoiced to Lessee in August based on costs from the previous July to June and shall be due and payable to Lessor by Lessee within thirty (30) days of Lessee's receipt of Lessor's written invoice. The Common Area Fees shall be deemed Additional Rent hereunder.

9. **TRANSFER TAX:** This transaction is exempt from realty transfer tax.
10. **UTILITIES:** Lessor shall be responsible for extending electric, potable water, sewer and fire suppression facilities to the edge of the Leased Premises. Lessee shall be solely responsible for all permanent utility installation on and from edge of the Leased Premises. Lessee shall pay all one-time charges, for on and/or off-site improvements levied by utility providers including but not limited to: connection fees, tap-in fees, impact fees, hookup fees and deposits, for electricity, potable water, fire suppression, sewer, internet access, telephone and fire alarm land lines, etc. Lessee shall also pay for any and all recurring charges for utility services used or consumed at the Leased Premises during Lessee's use or occupancy thereof.
11. **IMPROVEMENTS:**
  - a. **Condition of Leased Premises.** Subject to Lessor's responsibilities referred to herein, Lessee accepts the Leased Premises, including the Buildings, in "as is" condition and acknowledges that the Leased Premises and the Buildings are suitable for Lessee's intended use.
  - b. **Intentionally Omitted.**
  - c. **Lessee's Work.** Lessee intends to renovate the Buildings at Lessee's sole cost and expense. Lessee agrees not to commence any renovations, repairs, or construction until Lessor has approved the Lessee's plans and layout. Lessee shall keep the Leased Premises and the Buildings free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Lessee. Any work performed by Lessee shall be completed in a good and workman like manner using new construction materials, and Lessee shall obtain all permits required for any such work.
  - d. **Stormwater Management.** Lessee shall meet all stormwater and water quality requirements, rules, laws, regulations, statutes, and ordinances, as may be amended from time-to-time by an authority having jurisdiction over the same, pertaining to the Leased Premises either by use of on-site facilities constructed at Lessee's sole expense or through use of existing

facilities within the Delaware Coastal Business Park subject to Lessor's prior written approval which may be withheld in Lessor's sole discretion.

e. **Construction, Repair, Maintenance and Alteration of Improvements.**

The Leased Premises are being leased with the Buildings located thereon. Lessee acknowledges that the Buildings shall be repaired and maintained at Lessee's sole cost and expense, and that Lessee shall maintain any and all improvements on the Leased Premises in good condition and repair during the Lease term. Any improvements or structure of any kind Lessee constructs on the Leased Premises, and any repairs, maintenance and alterations thereto or to the Buildings, shall be in compliance with all restrictions, conditions, ordinances, laws, regulations, Rules and Regulations, including Lessee's application for and receipt of all required permits and approvals prior to commencement of any work. All fixtures and equipment shall remain Lessee's property except as otherwise stated herein. The Buildings shall at all times remain property of Lessor. Lessee shall provide Lessor with a copy of all Certificates of Occupancy and Releases of Liens.

12. **LIENS:**

- a. **No Authority to Encumber.** Lessee has no authority whatsoever to encumber the Leased Premises, the Buildings, or any improvements located thereon.
- b. **Mechanic's Liens.** Lessee shall not permit and shall immediately remove any mechanic's liens placed against the Leased Premises which may have resulted from any work performed on Lessee's behalf. Permitting a Mechanic's Lien to be placed against the Leased Premises or the Delaware Coastal Business Park shall be a material default if not removed within thirty (30) days after notice of its entry. Any improvements by Lessee on said Leased Premises shall be constructed at the sole expense of Lessee, and Lessor and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. Before starting construction, Lessee shall have recorded on the public records of Sussex County, Delaware, such legal notice as may be necessary, and in the form attached hereto as Exhibit C, wherein the public is advised that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials on said job, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said demised

property. If any mechanic's or materialmen's lien is filed or any claim made on account of labor or other material furnished, alleged to have been furnished or to be furnished to Lessee at the Leased Premises or against Lessor as the owner thereof, in addition to all remedies at law, Lessee shall: (a) pay to Lessor the greater of a fine of \$50.00 per day or the Lessor's standard fine for similar violations in similar leases in the Delaware Coastal Business Park for every day that any such Mechanic's Lien remains shall be due, and (b) within ninety (90) days after written notice from Lessor thereof, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. Lessee will indemnify Lessor and its appointed and elected officials, employees, agents, and volunteers for its costs, legal fees and expenses in defending any action, suit or proceedings which may be brought thereon or for the enforcement of such lien, or liens and Lessee shall pay any damages and any judgment entered thereon and save harmless and indemnify Lessor and its appointed and elected officials, employees, agents, and volunteers from any claims of damages resulting there from. Failure to do so shall entitle Lessor to resort to remedies as are provided herein in the case of any default of this Lease, in addition to such as are permitted by law.

- c. **Liens**. Any liens placed on property owned by Lessee which are located on the Leased Premises must first be approved by Lessor and Lessor shall have the right, in Lessor's sole discretion, to grant or withhold consent. Lessee shall hold Lessor harmless and without risk with respect to any lien placed on Lessee's equipment or personal property within or about the Leased Premises. Prior to the expiration or earlier termination of this Lease, Lessee shall promptly remove any and all liens including any against any of Lessee's property or equipment, or with advanced written notice to Lessor, remove any such property or equipment from the Leased Premises. Lessor shall assume no risk or responsibility for any lien remaining on the Leased Premises or Lessee's equipment or property and Lessee shall indemnify Lessor from any liability whatsoever. This paragraph shall apply to any work performed by Lessee on or in the Leased Premises during the entire Term of this Lease and any renewal hereof.
- d. **Statutory Lien**. Lessor hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, real and personal property of any Lessee or Sub-Lessee placed upon the improvements, and Lessee agrees that Lessor has such a lien to the extent provided by statute or otherwise. Lessor may, at Lessor's reasonable discretion, subordinate its lien right to the lien of any mortgage, deed of trust, or security instrument given by Lessee for the renovation of the improvements and purchase of

the equipment, furniture, fixtures and personal property placed upon the Leased Premises. Lessee shall furnish the Lessor with copies of all such security instruments.

13. **INSURANCE:**

- a. **Property and Business Income Insurance** - Lessee shall secure and maintain, at its own expense, all risk (special form) property insurance that insures against direct physical loss of or damage to the Buildings and Lessee's personal property including Lessee's improvements, fixtures, equipment and materials located on the Leased Premises, on a replacement cost valuation basis, with limits not less than 100% of the insurable replacement cost of all such property. Lessee shall also secure, at its own expense, all risk (special form) business income and extra expense insurance in amounts satisfactory to protect its interests as a result of direct physical loss of or damage to Lessee's covered property located on the Leased Premises. Lessor shall be an insured on Lessee's property and business income insurance as its interests may appear, in amounts sufficient to protect Lessor's interests.
- b. **Waiver of Subrogation** - To the fullest extent permitted by law, Lessee waives any right of recovery from Lessor, and its appointed and elected officials, employees, agents, and volunteers, for any loss, damage or injury to Lessee's property located on the Leased Premises (or resulting loss of income or extra expense), by reason of any peril required to be insured against under this Lease. To the fullest extent permitted by law, Lessee's property insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any property and/or business income and extra expense insurance policies maintained by Lessee. Any deductible amount(s) selected by Lessee shall be the sole responsibility of Lessee.
- c. **Commercial General Liability Insurance** - Lessee shall secure and maintain, at its own expense, commercial general liability insurance that insures against bodily injury, property damage, personal and advertising injury claims arising from Lessee's occupancy of the Leased Premises or operations incidental thereto, with the combined single limit of \$1,000,000.00 per occurrence and a general aggregate limit of \$2,000,000.00. This insurance shall name Lessor and its appointed and elected officials, employees, agents and volunteers as insureds on a primary and non-contributory basis, with respect to liability arising out of or in connection with Lessee's occupancy of the Leased Premises or operations incidental thereto under this Lease

Agreement. A copy of the additional insured endorsement(s) that evidence the required additional insured status must accompany any certificate of insurance provided to Lessor. To the fullest extent permitted by law, Lessee's commercial general liability insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any commercial general liability insurance policies maintained by Lessee. Lessor shall maintain, at its sole expense, commercial general liability insurance covering the Delaware Coastal Business Park, including all common areas, together with such other types of insurance coverage as are customarily maintained by owners of comparable use properties in the area in which the Leased Premises is located and such other insurance coverage as Lessor may elect in its reasonable discretion to carry.

- d. **Workers' Compensation & Employers' Liability** - Lessee shall secure and maintain, at its own expense, workers' compensation insurance and employers' liability insurance. The workers' compensation insurance must satisfy Lessee's workers' compensation obligation to its employees in Delaware under State or Federal law. Employers' liability insurance must be secured with minimum limits of \$100,000.00 for bodily injury by accident, \$100,000.00 each employee for bodily injury by disease, and a \$500,000.00 policy limit for bodily injury disease. To the fullest extent permitted by law, Lessee's workers' compensation and employers' liability insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any workers' compensation and employers' liability insurance policies maintained by Lessee.
- e. **Business Auto Liability Insurance** - Lessee shall secure and maintain, at its own expense business auto liability insurance with a minimum combined single limit of \$1,000,000 per accident and including coverage for bodily injury and property damage claims arising out of the maintenance, use or operation of any auto and contractual liability protection for bodily injury and property damage claims assumed under this Lease Agreement.
- f. **Umbrella Excess Liability or Excess Liability Insurance** – Lessee shall secure and maintain, at its own expense, umbrella excess liability or excess liability insurance with minimum limits of \$4,000,000 combined single limit - each occurrence and \$4,000,000 combined single limit – aggregates. This insurance shall include the insurance specified in Paragraphs 13(c), 13(d) (Employers' Liability Insurance only) and 13(e) as underlying insurance. This

insurance shall follow form with the coverage provisions, including who is an insured, required for underlying insurance.

- g. **Pollution Liability Insurance** – Lessee shall secure and maintain, at its own expense, pollution liability insurance that insures claims for pollution and remediation legal liability arising out of or in connection with the Lessee's occupancy of the Leased Premises. The minimum limits of liability for this insurance are \$1,000,000 each pollution condition and \$1,000,000 annual aggregate. This insurance shall name Lessor, and its appointed and elected officials, employees, agents, and volunteers as additional insureds on a primary and non-contributory basis. The endorsement(s) evidencing the required additional insured status must be submitted in conjunction with certificates of insurance furnished to Lessor. Lessee must continue to maintain such insurance, covering incidents occurring or claims made, for a period of three (3) years after termination of this Agreement.
- h. **Evidence of Insurance / Insurers** - Lessee shall furnish certificates of insurance, acceptable to Lessor, to the Manager, Airport and Business Park Operations, Sussex County, Delaware evidencing all policies required above at execution of this Agreement and prior to each renewal thereafter. Such insurance shall be written with insurers allowed to do business in Delaware, with a Best's Financial Strength Rating of "A-" or better, and a Financial Size Category of "Class VII" or better in the latest evaluation of the A.M. Best Company, unless otherwise approved by the Lessor. All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation or non-renewal in coverage until sixty (60) days prior written notice has been given to Lessor. Therefore, a copy of the endorsements to the required policies that confirm additional insured status and the insurer is obligated to send notice to Lessor as required herein, must accompany all certificates of insurance. Liability policies required herein (other than pollution liability) may not be written on a "claims made" basis without the prior written approval of Lessor. If Lessee shall fail, refuse or neglect to secure and maintain any insurance required of Lessee or to furnish satisfactory evidence of insurance, premiums paid by Lessor shall be recoverable by Lessor from Lessee, together with interest thereon, as additional rent promptly upon being billed therefore.
- i. All policy limits as stated herein shall be adjusted every five (5) years in accordance with increases in the consumer price index to levels satisfactory to Lessor.

14. **ENTRY BY LESSOR AND AGENTS**. At any and all reasonable times during the term of this Lease, Lessor and Lessor's duly authorized agent or agents shall have the right to enter the Leased Premises for the following purposes:
- a. To inspect the Leased Premises in the event of an emergency; and
  - b. To effect Lessee's compliance with any rule or regulation adopted by Lessor, or to effect Lessee's compliance with any restriction, covenant, law, ordinance, order or regulation of Lessor, including, but not limited to, the existence and validity of permits or other approvals for any work or activity being performed on the Leased Premises.

Lessor shall provide Lessee with at least twenty-four (24) hours advance written notice prior to entering the premises unless such notice has been waived by Lessee. Lessor will use its best efforts to inspect the premises at a time and in a manner that minimizes any interference with Lessee's business operations being conducted on the premises.

15. **LESSEE TO INDEMNIFY LESSOR**. Lessee hereby releases Lessor from any and all liability and shall hold Lessor harmless, defend and indemnify Lessor for any and all liability, claims, causes of action, damage and loss or any kind whatsoever, including but not limited to attorneys' fees and costs, for injuries sustained by any person or persons in or upon the Leased Premises (including death) or injuries to property (real or personal), unless the basis for the cause of action solely relates to the willful or negligent actions of the Lessor, its employees and agents. For purposes of this provision, "Lessor" shall include its appointed and elected officials, employees, agents, and volunteers.

16. **EXPIRATION OF LEASE TERM**.
- a. Unless this Lease is renewed pursuant to Paragraph 5 hereof, at the expiration of the Lease term, Lessee shall peaceably surrender and yield to Lessor, its successors or assigns, the Leased Premises; provided, however, that Lessee shall be responsible for any damage to the Leased Premises not covered by Lessor's insurance if such damage is caused by fire or other casualty resulting from the negligence, accidental conduct or tortuous conduct of Lessee or Lessee's employees, licensees or invitees, ordinary wear and tear excepted.
  - b. Lessee may not allow any liens to be placed against any of Lessee's equipment or the improvements remaining in, about or upon the Leased Premises. Lessee agrees to defend and hold Lessor harmless against any claim, liability or loss that may result for any reason from any lien. Lessor

shall have the absolute right to dispose, remove or to retain any equipment not removed from the Leased Premises at the termination or expiration of this Lease, surrender or abandonment of the Leased Premises and shall not be bound or subject to any risk, cost or liability from liens Lessee has permitted to be attached thereto. At the termination of this Lease, the improvements erected on the Leased Premises and any fixtures which are a part thereof which cannot be removed without substantial damage to said improvements, shall remain a part to the Leased Premises and shall be the property of the Lessor. Any trade fixtures which were installed on the Leased Premises by Lessee and which are removable without substantial damage to the improvements shall remain the property of the Lessee, provided that Lessee shall promptly repair any damage to the improvements on the Leased Premises caused by their removal and that Lessee is not in default of any covenant or agreement contained in this Lease Agreement; otherwise such trade fixtures shall not be removed and Lessor shall have a lien thereon to secure itself on account of its claims.

- c. If the Lessee shall default in surrendering the Leased Premises upon the expiration or earlier termination of this Lease, the Lessee shall be deemed to be "Holding Over" without Lessor's consent and Lessee shall be liable to Lessor for all costs, losses, claims or liabilities (including attorneys' fees) that Lessor may incur as a result of Lessee's failure to surrender the Leased Premises.

17. **QUIET ENJOYMENT**. Lessor covenants and agrees that, so long as Lessee shall not be in default under any of the terms and conditions of this Lease, Lessee shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Lease without hindrance or molestation from Lessor, or any person or persons claiming under Lessor wherein Lessor shall have previous knowledge of any actions.
18. **SIGNS**. Prior to installation, Lessee shall submit sign proposals to Lessor for Lessor's approval and consent as to the size, height, type, and location of any on premise sign Lessee seeks to install, such approval not to be unreasonably withheld. Electronic Messaging Centers shall be prohibited. Any sign, device, fixture or other attachment permitted to be installed by Lessee hereunder, shall be installed by Lessee at its own expense and in accordance with the Rules and Regulations attached hereto, all governmental rules, regulations, ordinances, laws and requirements and Lessee shall obtain any and all required permits. Lessee shall be responsible for any damage resulting from the installation or removal of any such sign, device, fixture or other attachment. Lessee shall keep its sign lighted at such reasonable times as Lessor may require under its Rules and Regulations,



or as may be required by ordinance, law or regulation of any governing authority. Lessee shall maintain its sign and keep it in good repair during the term of this Lease. Upon the expiration or earlier termination of this Lease or Lessor's right to possession of the Leased Premises in accordance with this Lease, Lessee shall, at Lessee's sole cost and expense, remove any signage and restore and repair that portion of the Leased Premises affected by the installation or removal of the signage to the condition satisfactory to Lessor.

19. **DEFAULT.**

- a. **Events of Default.** The occurrence of one or more of the following events shall constitute an event of default (each being referred to as an "Event of Default") pursuant to the terms of this Lease:
  - i. Lessee fails to pay when due any and all monies due hereunder, including, but not limited to Rent, Additional Rent, and/or any other sums due Lessor by Lessee, and such failure continues more than thirty (30) days after receipt by Lessee of Lessor's written notice of such failure; or
  - ii. Failure by Lessee to secure required insurance pursuant to Paragraph 13 of this Lease, or to cause renewals to be written and policies or copies thereof to be delivered to Lessor at least ten (10) days before the respective expiration thereof; or
  - iii. The failure of Lessee to comply with or to observe any other terms, provisions or conditions of this Lease performable by Lessee to Lessor's satisfaction, including, but not limited to, compliance with the Rules and Regulations, maintenance, removal, repairs and replacements, and such failure continues after Lessor gives Lessee written notice that Lessee has thirty (30) days to cure the default. If such default cannot reasonably be cured within the thirty (30) day period, Lessee shall be permitted such additional time as is needed to cure the same so long as Lessee has notified Lessor and Lessee has commenced its actions to cure within such thirty (30) day period and such cure thereafter is continuously and diligently undertaken and pursued by Lessee (or its mortgagee) and prosecuted to completion, but in no event longer than ninety (90) days, unless the cure involves repairing or correcting any structural issues where the cure time frame shall be a commercially reasonable time frame;
  - iv. The dissolution or liquidation of Lessee or the filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift or bond (if legally permissible) any execution, garnishment or attachment of

such consequences as will impair its ability to carry on its operation, or the commission by Lessee of any act of bankruptcy, or adjudication of Lessee as bankrupt or assignment by Lessee for the benefit of its creditors, or the entry by Lessee into an agreement of composition with its creditors, or the approval by a Court of competent jurisdiction of a petition applicable to Lessee in any proceedings for its reorganization instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar act which may hereafter be enacted. The term "dissolution or liquidation of the Lessee", as used in this subsection, shall not be construed to include the cessation of the corporate existence of Lessee resulting from a merger or consolidation of Lessee into or with another corporation or of a dissolution or liquidation of Lessee following a transfer of all or substantially all its assets as an entirety; or

- v. Failure by Lessee to abide by any laws, statutes, rules, or regulations relating to the Leased Premises or the Delaware Coastal Airport and Delaware Coastal Business Park, which failure continues for a period of thirty (30) days after Lessee's receipt of notice by mail that the violation referred to in such notice has not been corrected;
  - vi. Lessee shall abandon the Leased Premises or suffer the Leased Premises to become vacant or deserted;
  - vii. Lessee shall remove or caused to be removed from the Leased Premises Lessee's fixtures, machines, or equipment without Lessor's prior written consent; or
  - viii. Failure by Lessee to cure immediately after receipt of notice from Lessor, any hazardous condition which Lessee has created in violation of law or this Lease.
- b. **Lessor's Remedies.** In the event Lessee has an Event of Default that has not been cured within the permitted time periods, the Lessor shall have all of the rights and remedies permitted by law, in equity, by statute and otherwise, including, without limitation, the following:
- i. **Terminate Lease.** Lessor may terminate this Lease, in which event, Lessee shall remove all personal property from the Leased Premises within sixty (60) days after termination. If Lessee fails to timely remove said personal property, Lessee will be deemed to have abandoned the property, and title for which shall revert to Lessor, and at Lessor's option, Lessor may remove the property. Lessee agrees to pay Lessor the cost of removing the personal property.

- ii. **Enter and Cure Default.** If Lessee defaults in the performance of any of its obligations under the provisions of this Lease and if such default shall continue beyond the time periods set forth herein for curing such default, then Lessor may, at its option, enter upon the Leased Premises without terminating this Lease and without being liable to prosecution or for any claim of damages, and do whatever Lessee is obligated to do under the terms of this Lease or otherwise cure any default by removal (including removal of the Improvements), repair or replacement, and cure any such default on behalf of Lessee, and any sums expended by Lessor in the performance of any such obligation of Lessee shall be repaid as Additional Rent, by Lessee to Lessor immediately upon demand, together with interest thereon, at the interest rate of eighteen percent (18%) per annum beginning from the date any such expense was incurred by Lessor. In the event that Lessor determines, in Lessor's reasonable judgment, that it is in best interest of the Lessor for Lessor to complete or perform any of Lessee's obligations under this Lease, Lessor reserves the right to complete or perform any such obligation at Lessee's cost and liability, no written notice being required. This shall not be permitted until the expiration of the time frames in Paragraph 19(a) above.
- iii. **Surrender of Premises.** Upon termination of this Lease for any reason or upon termination of Lessee's right of possession, as provided above, Lessee shall promptly surrender possession to Lessor and vacate the Leased Premises, and Lessor may re-enter the Leased Premises without further notice to Lessee and repossess the Leased Premises by force, summary of proceedings, ejectment or otherwise. Lessor may also dispossess or remove Lessee and all other persons and property from the Leased Premises, and Lessor shall have, hold and enjoy the Leased Premises and the right to receive all rental income therefrom.
- iv. **Re-letting.** At any time after the expiration of Lessee's possessory right to the Leased Premises, Lessor may re-let the Leased Premises, or any part thereof, in the name of Lessor or otherwise for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of the Lease) and on such conditions (which may include concession or free rent) as Lessor, in its sole and absolute discretion, may determine, and Lessor may collect and receive the rental therefrom which will serve to mitigate the damages due from Lessee. Lessor shall in no way be responsible or liable to Lessee for any failure to re-let the Leased Premises or any part thereof or for any failure to collect any rent due upon such re-letting, and Lessee's liability shall not

be affected or diminished in any respect by such failure. In the event Lessor re-lets the Leased Premises at a rental higher than that due from Lessee under the provisions hereof, Lessee shall not be entitled to share in any excess. Lessor, at its option, may make such alterations, repairs and changes to the Leased Premises as Lessor, in its sole judgment, considers advisable or necessary for the purpose of re-letting the Leased Premises, and the making of such alterations, repairs and changes shall not operate or be construed to release Lessee from liability.

- c. **Lessee's Obligation**. The expiration of Lessee's right to possession of the Leased Premises shall not relieve Lessee of its liabilities hereunder, and the obligations created under this Lease shall survive any such expiration. In the event of such expiration, whether or not the Leased Premises or any part thereof shall have been re- let, Lessee shall pay to Lessor all Rent and Additional Rent required to be paid by Lessee up to the time of such expiration; and thereafter, Lessee, until the end of the term of this Lease, shall be liable to Lessor and shall pay to Lessor, as and for liquidated and agreed current damages for Lessee's default(s), the equivalent of the amount of the Rent and Additional Rent which would be payable under this Lease by Lessee if Lessee were still in possession less the net proceeds of any re-letting effected pursuant to the provisions of Section (d) of this paragraph after deducting all of Lessor's expenses in connection with such re-letting including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorney's fees actually incurred, alteration and repair costs and expenses of preparation for such re-letting.
- d. **Current Damages**. Lessee shall pay such current damages ("Deficiency") to Lessor in a timely manner when due under the terms of this Lease, and Lessor shall be entitled to recover from Lessee each Deficiency as such Deficiency shall arise. At any time after the expiration of Lessee's possessory right to the Leased Premises, Lessor, at its option, may demand as and for liquidated and agreed final damages for Lessee's default(s), and Lessee shall pay to Lessor an amount equal to the difference between the Rent and Additional Rent payable hereunder for the unexpired portion of the Lease Term and then fair and reasonable rental value of the Leased Premises for the same period. Lessee shall also pay to Lessor all of Lessor's expenses incurred in connection with any re-letting including, without limitation, all repossession costs, brokerage commissions, legal expenses actually incurred of preparation for re-letting. If the Leased Premises or any part thereof is re-let by Lessor for the unexpired term of this Lease Agreement or any part thereof, the amount of rent payable upon such re-letting shall be deemed to be the fair and reasonable rental value for the part

or the whole of the Leased Premises re-let. Nothing herein contained shall limit or prejudice the right of Lessor to prove and obtain as damages, by reason of any default by Lessee, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when such damages are to be proved.

- e. **Deficiency**. Any suit brought to collect the amount of the deficiency for any month shall not prejudice the right of Lessor to collect the deficiency for any subsequent month by a similar action.
  - f. **Lessor's Right**. Any action taken by Lessor under this Paragraph shall not operate as a waiver of any right Lessor would otherwise have against Lessee for breach of this Lease, and Lessee shall remain liable to Lessor for any damages suffered by reason of Lessee's default or breach of this Lease. Lessor shall also be entitled to enjoin any breach or threatened breach by Lessee of any of the covenants and conditions of this Lease; and in the event of such breach, Lessor shall have all rights and remedies allowed at law and equity by statute or otherwise. Any and all remedies provided for herein are considered cumulative and not exclusive.
  - g. **Waiver of Jury Trial**. TO THE EXTENT PERMITTED BY LAW, IT IS MUTUALLY AGREED BY AND BETWEEN LESSOR AND LESSEE THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY DO HEREBY, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS OR ASSIGNS ON ANY MATTERS ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE AGREEMENT, THE RELATIONSHIP OF LESSOR AND LESSEE, AND/OR LESSEE'S USE OF, OR OCCUPANCY OF, THE LEASED PREMISES AND ANY CLAIM OR INJURY OR DAMAGES RELATING THERETO. IN ANY EVICTION PROCEEDING ARISING OUT OF A DEFAULT BY LESSEE, LESSOR AND LESSEE CONSENT TO AN EXPEDITED OR SUMMARY PROCEEDING TO THE EXTENT AVAILABLE UNDER APPLICABLE LAW.
20. **EMINENT DOMAIN**. The Lessor agrees not to take the Leased Premises by Eminent Domain or similar vehicle to remove the Lessee from the Leased Premises.
21. **CONDEMNATION**: If at any time during the term hereof the whole of the Leased Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, then and in such event, when possession shall have been taken of the Leased Premises by the condemning authority, this Lease and all rights of Lessee hereunder shall immediately cease and terminate and the rent shall be

apportioned and paid to the time of such termination. If pursuant to the provisions of this article, this Lease Agreement shall have been terminated and if prior to such termination, Lessee shall have made any improvements upon the Leased Premises, Lessor shall be entitled to all of the condemnation proceeds which may be granted with respect to the land and improvements existing on the Leased Premises at the commencement of this Lease; and Lessee shall be entitled to the proceeds of any condemnation awarded on account of the value of any improvements made by Lessee.

22. **PARTIAL CONDEMNATION:** If after commencement of this Lease Agreement only a part of the Leased Premises shall be taken or condemned, Lessor shall be entitled to any award made with respect to the land and any improvements existing on the Leased Premises at the commencement of this Lease and Lessee shall be entitled to any award made for any improvements made by Lessee which are condemned. In the event such condemnation shall leave a portion of the Leased Premises which in Lessee's sole judgment is usable by Lessee, this Lease shall remain in full force and effect, but the Rent herein reserved to Lessor shall be adjusted so that Lessee shall be entitled to a reduction in Rent in the proportion that the value of land taken bears to the value of the entire Leased Premises. If a portion of the Leased Premises is taken or condemned prior to commencement of construction hereunder, the proceeds shall belong solely to Lessor and the rental hereunder shall not be abated. Notwithstanding the foregoing, Lessee shall have the right to terminate this Lease if, in its sole judgment, the Leased Premises have been rendered unsuitable for its purpose.

23. **SUBORDINATION.**

- a. This Lease shall be subject and subordinate to, and may be assigned as security for, any present and future mortgage or deed of trust on or of the Leased Premises and all renewals, modifications, extensions, consolidations or replacements thereof. If requested, Lessee agrees to execute written documents evidencing the subordination of this Lease to, and its assignment as additional security for any mortgage or deed of trust. If Lessor requires Lessee to execute a Subordination Agreement, preparation of the Subordination Agreement shall be Lessor's sole cost and expense.
- b. In addition, upon request of any mortgagee of the Leased Premises, Lessee will execute and enter into an attornment and non-disturbance agreement with such mortgagee wherein Lessee will agree that, in the event that such mortgage is foreclosed, Lessee will attorn to the mortgagee or other owner of the Property as Lessee's Lessor and the mortgagee or other owner of the

Property will, provided Lessee is not in default under the terms of this Lease, recognize the rights of Lessee under the provisions of this Lease and will not disturb the possession of Lessee hereunder.

24. **PROPERTY RIGHTS RESERVED**: This Lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which Lessor acquired the Leased Premises from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in this Lease of said lands from Lessor, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by Lessor pertaining to the Delaware Coastal Airport and the Delaware Coastal Business Park. This Lease is expressly subordinate to the terms and conditions of any grant agreement between Sussex County and the Federal Aviation Administration.
25. **ASSIGNMENT AND SUBLETTING**. Lessee shall not have the right to assign this Lease Agreement or sublet the Leased Premises unless the written consent of Lessor is acquired, which consent may be granted or withheld in Lessor's sole discretion. Lessee shall not assign or sublet the Leased Premises for a use other than as specified in Paragraph 7 above and shall provide Lessor with at least thirty (30) days' prior written notice of any desired assignment or subletting. All assignments and subletting shall require Lessor's prior review and written approval, which Lessor may withhold or grant in its sole discretion. Unless otherwise agreed, such assignment or subletting shall in no way relieve Lessee of any responsibility for the payment of rent or for the performance of any of the other covenants or conditions hereof. Such assignee or Sub-Lessee shall in writing assume all of the obligations to be performed by Lessee hereunder. Lessee agrees to pay for any attorney's fees incurred by Lessor resulting from any sublease or assignment. Lessor reserves the right to require the renegotiation of the terms of the Lease in return for consenting to a sublease or assignment.
26. **WAIVER**. Waiver by Lessor of any right or remedy available to it in the event of any default hereunder or any breach by Lessee of the terms and conditions of this Lease shall not constitute a waiver of any succeeding default of the same or other terms and conditions of this Lease.
27. **TRANSFER OF LESSOR'S INTEREST**. Lessor shall be entitled to sell, transfer or otherwise convey its interest in the Leased Premises, and any such sale, transfer or conveyance shall operate to relieve Lessor of any of its obligations and responsibilities hereunder, provided that the purchaser or other transferee of such interest shall expressly assume and agree to perform Lessor's obligations and responsibilities to Lessee hereunder.

28. **RISK OF LOSS FOR IMPROVEMENTS AND PERSONAL PROPERTY.** Lessee agrees that all improvements and personal property located in the Leased Premises shall be and remain at Lessee's sole risk, and Lessor shall not be liable for any damage to or loss of such improvements and personal property unless such damage or loss arises from any acts of negligence or willful misconduct by Lessor nor shall Lessor be liable for any damage to or loss of Lessee's personal property resulting from fire or other casualty, from the leaking of the roof or from the bursting, leaking or overflowing of water and sewer pipes or from malfunctions of the heating, plumbing or electrical systems, or from any other cause whatsoever, except if said damage or loss is caused by the acts or negligence or willful misconduct of Lessor or its agents, servants, employees, etc.
29. **APPLICATION OF PAYMENTS.** Lessor shall have the right in its sole discretion to apply any payments made by Lessee to the satisfaction of any debt or obligation of Lessee to Lessor regardless of the instructions of Lessee as to the application of any such payment. The acceptance by Lessor of any rental payment by anyone other than Lessee shall not be deemed to constitute an approval of any assignment of this Lease by Lessee.
30. **MEMORANDUM OF LEASE.** This Lease shall be recorded in the Office of the Recorder of Deeds, in and for Sussex County, DE.
31. **NOTICES.** All notices required to be given hereunder shall be sent by registered or certified mail, return receipt requested or by a nationally recognized overnight delivery service with all charges pre-paid and sent to the address as follows:

If intended for Lessor:

Sussex County Administrator  
Sussex County Administration  
Building 2 The Circle  
P.O. Box 589  
Georgetown, DE  
19947

With a copy to:

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



Georgetown, DE 19947

If intended for Lessee:

JDJS, LLC  
Attn.: Jennifer & David McMillan

\_\_\_\_\_  
\_\_\_\_\_

Either party shall be entitled to change the person or address to which notices shall be given hereunder by giving notice to the other party in accordance with the provisions set forth herein.

32. **NO PARTNERSHIP.** The relationship created by this Lease is that of Lessor and Lessee, and nothing in this Lease shall be construed to make Lessor and Lessee partners. Lessee shall have no authority to make any contract or do any act so as to bind Lessor or as to render Lessor or the Leased Premises liable therefore.
33. **PRONOUNS.** All pronouns and any variations thereof used in this Lease shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the Lessor or Lessee be more than one person, these provisions shall be taken to bind and apply to them jointly and severally, or if a corporation, then to its successors and assigns.
34. **COUNTERPARTS; ELECTRONIC SIGNATURES.** This Lease may be executed in two counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures and photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.
35. **BINDING EFFECT.** This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, successors and assigns.
36. **PARAGRAPH HEADINGS.** Paragraph headings relating to the contents of particular paragraphs have been inserted for the convenience of reference only and shall not be construed as parts of the particular paragraphs to which they refer.
37. **GOVERNING LAW.** This Lease shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles, and with venue lying in Sussex County. The parties acknowledge and agree that this is a Commercial Lease. Accordingly, this Lease shall NOT be governed by the Delaware Lessor-Lessee Code 25 Del. C., § 5101 et seq.

38. **ENTIRE AGREEMENT.** This Lease constitutes the entire agreement between the parties, and it supersedes any and all prior understandings or commitments concerning the subject matter of this Lease. This Lease shall not be modified or amended except by a written instrument executed by both Lessor and Lessee.
39. **PARTIAL INVALIDITY.** If any provision of this Lease or the application thereof shall to any extent be held invalid, then the remainder of this Lease or the application of such provision other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.
40. **ATTORNEYS' FEES.** Lessee shall pay upon demand all of Lessor's costs, charges, reasonable attorney's fees and expenses, incurred in enforcing Lessee's obligations hereunder or incurred by Lessor in any litigation in which Lessor, without Lessor's fault, becomes involved or concerned by reason of the existence of this Lease or the relationship hereunder of Lessor and Lessee.
41. **EXHAUST AND ODORS.** Lessee shall, at its sole cost and expense, install and maintain adequate equipment for the Leased Premises so as to keep any and all unreasonable odors from entering the Common Areas or other lands of Lessor. Lessee shall not cause or permit any unreasonable odors to emanate from the Leased Premises. In the event Lessor notifies Lessee in writing that unreasonable odors are emanating from the Leased Premises, Lessee shall within five (5) days after such notice from Lessor, commence to install, at its sole cost and expense, any necessary control devices or procedures to eliminate such odors and shall complete such installation as expeditiously as possible proceeding in a good faith manner. In the event that Lessee fails to stop unreasonable odors from emanating from the Leased Premises, Lessor may proceed to cure the odor problem at Lessor's discretion and recover all costs and expenses from Lessee.
42. **CONSTRUCTION; FREELY NEGOTIATED.** Lessee and Lessor acknowledge that they have had their respective counsel review this Lease and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Lease. Lessor and Lessee agree that this Lease has been freely negotiated by both parties.
43. **LESSEE WARRANTY.** Lessee represents and warrants that Lessee is a duly formed Delaware limited liability company registered to do business in Delaware, in good standing and has full power and authority under its operating agreement to enter into this Lease. The Certificate of Good Standing from the State of Delaware and all necessary resolutions shall be provided upon Lessor's requests. Lessee has taken all legal action necessary to carry out the transaction

contemplated herein, so that when executed, this Lease constitutes a valid and binding obligation enforceable in accordance with its terms.

44. **LESSOR'S RIGHT OF OFFSET**. Notwithstanding anything contained in this Lease to the contrary, Lessor shall have the absolute right to retain and use any of Lessee's funds or monies in Lessor's possession, no matter what the source of the funds or monies may be, and use any such funds or monies to off-set any payments or outstanding sums owed to Lessor.
45. **HAZARDOUS MATERIALS**. Lessee shall not permit any hazardous materials to be used or stored in the Leased Premises, unless used or stored in full compliance with any State or Federal regulations and shall hold Lessor harmless from any liability and expense from same in accordance with paragraph 15 hereof. Lessee shall comply with all Federal and State regulations related to the handling or disposal of any materials or byproducts regulated by State or Federal rules, laws or regulations.
46. **TIME OF THE ESSENCE**: Time shall be of the essence for the performance of all terms of this Lease
47. **JOINT AND SEVERAL LIABILITY**: If the Lessee is more than one person or entity, the obligation created by this Lease is intended to be a joint and several obligation of the undersigned.
48. **COMPLIANCE WITH LAWS**: Lessee shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and County Government and Public Authorities and of all their departments, bureaus and subdivisions, applicable to and affecting the said premises, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said premises, during the term hereof; and shall promptly comply will all orders, regulations and directives of the State Fire Marshal or similar authority and of any insurance companies which have issued or are about to issue policies of insurance covering the said premises and its contents, for the prevention of fire or other casualty, damage or injury, at the Lessee's own cost and expense.
49. **NON-PERFORMANCE BY LESSOR**. This Lease and the obligation of Lessee to pay the Rent hereunder and to comply with the covenants and conditions hereof, shall not be affected, curtailed, impaired or excused because of Lessor's inability to supply any service or material called for herein, by reason of any rule, order, regulation or preemption by any governmental entity, authority, department, agency or subdivision or for any delay which may arise by reason of negotiations for the

adjustment of any fire or other casualty loss or because of strikes or other labor trouble or for any cause beyond the control of Lessor.

50. **AIRPORT PROTECTION:**

- a. It shall be a condition of this lease, that Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.
- b. Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Title 14, Code of Federal Regulations, Part 77.
- c. Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the hereinafter described real property which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

51. **NON-DISCRIMINATION:**

- a. Lessee for its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, creed, sexual orientation, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- b. That in the event of breach of any of the above nondiscrimination

covenants, Lessor shall have the right to terminate the Lease and to re-enter and as if the Lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

52. **ECONOMIC NONDISCRIMINATION.** To the extent Lessee engages in any aeronautical activity for furnishing services to the public at the Delaware Coastal Airport, Lessee shall:

- a. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
- b. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

[ Signature Pages to Follow ]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be duly executed as of the Effective Date (notwithstanding the actual date of execution and deliver hereof).

LESSOR

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Michael H. Vincent, President  
Sussex County Council

Attest: \_\_\_\_\_

STATE OF DELAWARE :  
: ss.  
COUNTY OF SUSSEX :

BE IT REMEMBERED, That on this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 202\_\_\_\_, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, Michael H. Vincent, President of Sussex County Council, a political subdivision of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed and the act and deed of the said political subdivision; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said political subdivision, duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the members of Sussex County Council.

GIVEN under my hand and Seal of Office, the day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC  
\_\_\_\_\_  
Print Name of Notary Public  
My Commission Expires: \_\_\_\_\_

LESSEE:

JDJS, LLC  
A Delaware limited liability company

*[Handwritten Signature]*

Witness

By: *[Handwritten Signature]* (SEAL)

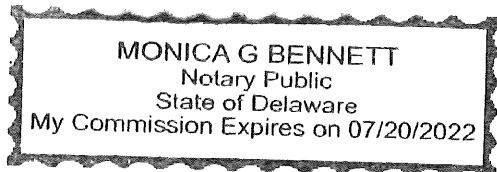
Jennifer McMillan  
Authorized Member

DATED: 3/31/22

STATE OF Delaware  
: ss.  
COUNTY OF Delaware:

BE IT REMEMBERED, that on this 31<sup>st</sup> day of March, A.D. 2022, personally came before me, a Notary Public for the State and County aforesaid, Jennifer McMillan, duly authorized Member of JDJS, LLC, a limited liability company existing under the laws of the State of Delaware, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be her act and deed and the act and deed of said company, that the signature of the duly authorized Member thereto is in her own proper handwriting and the seal affixed is the common and corporate seal of said company, and that Her act of sealing, executing, acknowledging and delivering said indenture was duly authorized by the Operating Agreement of said company.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.



Notary Public *[Handwritten Signature]*

Print Name of Notary Public

*Monica Bennett*  
My commission expires: 4/20/22 7/20/22

## EXHIBIT A

### LEGAL DESCRIPTION

ALL that certain lot, piece, and parcel of land situate, lying and being in Georgetown Hundred, Sussex County, Delaware, lying on Road "C" in the Sussex County Industrial Park, being part of Lot 12 and part of Lot 13, and being more particularly described as follows, to wit:

BEGINNING at an iron pipe set on the Northwestern right-of-way of Road "C", said iron pipe being 307.95 feet from a concrete monument found previously set; thence running by and along the northwestern right-of-way of Road "C", North 32 degrees 54 minutes 36 seconds East 348.40 feet to a concrete monument set; thence turning and running North 57 degrees 05 minutes 24 seconds West 375.00 feet to a concrete monument set; thence turning and running South 32 degrees 54 minutes 36 seconds West 348.40 feet to a concrete monument set; thence turning and running South 57 degrees 05 minutes 24 seconds East 375.00 feet, home to the place of beginning, and said to contain 3.0 acres +\ as surveyed by McCann, Inc., Registered Surveyors, on July 17, 1990.



## EXHIBIT B

### RULES AND REGULATIONS

The Rules and Regulations entitled, "Delaware Coastal Business Park Rules, Regulations and Restrictions," shall remain in effect for the duration of this Lease unless amended in a writing executed by both parties.

The Lessee agrees as follows:

EXHIBIT C

Tax Map Number:  
135-20.00-75.00-A

Return to:  
Sussex County  
P.O. Box 589  
Georgetown, DE  
19947

NOTICE OF AGREEMENT TO  
RESTRICT LESSEE FROM  
ENCUMBERING PROPERTY

THIS NOTICE OF AGREEMENT TO RESTRICT LESSEE FROM ENCUMBERING PROPERTY (this "Notice") dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between SUSSEX COUNTY, a political subdivision of the State of Delaware, P.O. Box 589, 2 The Circle, Georgetown, Delaware 19947, hereinafter referred to as "Lessor", and JDJS, LLC, a Delaware limited liability company, \_\_\_\_\_, Delaware, as "Lessee".

RECITALS:

WHEREAS, Lessor is the owner of certain real property and improvements known as 21348 Cedar Creek Avenue, Georgetown, Delaware, which is identified as Lot 12 and a portion of Lot 13 in the Delaware Coastal Business Park and as Sussex County Tax Parcel No. 135-20.00-75.00-A comprised of three (3) acres, more or less, and as further described on Exhibit A which is attached hereto and incorporated herein by reference ("the Leased Premises");

WHEREAS, Lessee is a Lessee of the Leased Premises pursuant to a lease agreement dated \_\_\_\_\_, 2022 ("the Lease"); and

WHEREAS, pursuant to this Lease, Lessor and Lessee agreed that Lessor shall not be liable for debts, acts, or omissions of Lessee and that Lessee has no authority to encumber the Leased Premises; and

WHEREAS, this Notice is to provide legal notice to the public that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials for any work performed on the Leased Premises, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said Leased Premises.

WITNESSETH

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereby certify, consent, and agree as follows:

1. The parties acknowledge that Lessee shall not be the agent or partner of Lessor and Lessee shall have no authority to make any contract or do any act so as to bind Lessor or as to render Lessor or Lessor's interest in the Leased Premises liable therefore. Lessee will save Lessor and the Leased Premises harmless from any penalty, damages, neglect, or negligence of Lessee, property damage, illegal act or otherwise. Any improvements by Lessee on said Leased Premises shall be constructed at the sole expense of Lessee, and Lessor and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. No liens may be placed on the Leased Premises without Lessor's prior written approval. Lessee has no authority whatsoever to encumber the Leased Premises or any improvements located thereon.

2. The parties hereby notify the public that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials for any work performed on the Leased Premises, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said Leased Premises.

3. This Notice shall be governed by the laws of the State of Delaware.

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

IN WITNESS WHEREOF, the undersigned has caused this Notice to be signed as a sealed document under Delaware law as of the date set forth above.

LESSOR:

SUSSEX

COUNTY

DATED: \_\_\_\_\_

By: \_\_\_\_\_

Michael H. Vincent, President  
Sussex County Council

Attest: \_\_\_\_\_

STATE OF DELAWARE :  
: ss.  
COUNTY OF SUSSEX :

BE IT REMEMBERED, That on this \_\_\_\_ day of \_\_\_\_\_, A. D. 202\_\_\_\_, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, Michael H. Vincent, President of Sussex County Council, a political subdivision of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed and the act and deed of the said political subdivision; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said political subdivision, duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the members of Sussex County Council.

GIVEN under my hand and Seal of Office, the day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Print Name of Notary Public

My Commission Expires: \_\_\_\_\_

LESSEE:

JDJS, LLC  
A Delaware limited liability company

*[Signature]*  
Witness

By: *[Signature]* (SEAL)  
Jennifer McMillan  
Authorized Member

DATED: 3/31/22

STATE OF Delaware :

: ss.

COUNTY OF DeSsex :

BE IT REMEMBERED, that on this 31<sup>st</sup> day of March, A.D. 2022, personally came before me, a Notary Public for the State and County aforesaid, Jennifer McMillan, duly authorized Member of JDJS, LLC, a limited liability company existing under the laws of the State of Delaware, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be her act and deed and the act and deed of said company, that the signature of the duly authorized Member thereto is in her own proper handwriting and the seal affixed is the common and corporate seal of said company, and that Her act of sealing, executing, acknowledging and delivering said indenture was duly authorized by the Operating Agreement of said company.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

MONICA G BENNETT  
Notary Public  
State of Delaware  
My Commission Expires on 07/20/2022

\_\_\_\_\_  
Notary Public *[Signature]*  
\_\_\_\_\_

Print Name of Notary Public

*Monica Bennett*  
My commission expires: 4/18/22

EXHIBIT A  
TO NOTICE OF AGREEMENT TO  
RESTRICT LESSEE FROM  
ENCUMBERING PROPERTY  
LEGAL DESCRIPTION OF PROPERTY

## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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

[hans.medlarz@sussexcountyde.gov](mailto:hans.medlarz@sussexcountyde.gov)



# Sussex County

DELAWARE  
[sussexcountyde.gov](http://sussexcountyde.gov)

## Memorandum

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

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

RE: ***Mulberry Knoll Sewer District Area  
Proposed Supplemental \$1,329,000 Debt Service Ordinance***

DATE: April 26, 2022

Council adopted Resolution R 011 17 on June 6, 2017, expanding the Unified Sanitary Sewer District to include the Mulberry Knoll Area. On August 13, 2019, Council conducted a public hearing for a funding offer through the Clean Water State Revolving Fund. Ordinance No. 2672 was adopted, for the issuance of a General Obligation Bond up to \$3,135,379 for design, construction and equipping of the Project, with an expectation of principal forgiveness up to \$1,941,000 reducing the principal amount to \$1,194,379 upon completion.

Contract Documents for Project S20-14, Mulberry Knoll Pump Station & Force Main were advertised and on September 25, 2020 seven (7) bids were received. On November 17, 2020, Council awarded Project S20-14 to Teal Construction Inc. upon concurrence of DNREC to ensure the State's commitment to total project financing. On March 26, 2021, DNREC notified the Department there was no objection to proceeding with the construction of the Mulberry Knoll Pump Station and Force Main Project with the understanding a supplemental funding request will have DNREC's support when necessary.

Contract Documents for Project S20-22, Mulberry Knoll Collection System were advertised and on September 23, 2021 seven (7) bids were received. The Department initiated a review of the bids and requested KCI to perform a bid evaluation, noting the low bidder appeared to provide a response without acknowledging Addendum #1 of the bidding documents. The Department concurred with KCI's recommendation that all bids be rejected, and the project rebid since irregularities were involved in the two lowest bids. On October 12, 2021, Council approved a rejection of all bids and readvertisement of the Project.

Contract Documents were updated, the project re-advertised and ten bids (10) received. On November 30, 2021 Council awarded Project S20-14 to Carrow Construction, for a total amount of \$1,861,538.00.



Total project financing was evaluated using the bids received for Project S20-22 in combination with the current Project S20-14 construction contract and related costs. The current construction market and material pricing required additional funding to maintain overall project financing and on November 30, 2021 Council authorized submission of a supplemental SRF funding request in the amount of \$1,329,000. The request was reviewed by the State's WIAC on March 16, 2022 and subsequently approved by DNREC with 100% principal loan forgiveness and interest only during construction. The Finance & Engineering Departments recommend introduction and approval of the associated Ordinance after public hearing.



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$1,329,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH INCREASED COSTS ASSOCIATED WITH THE MULBERRY KNOLL SEWER DISTRICT PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH**

WHEREAS, pursuant to Title 9, Delaware Code, Section 7001(a) Sussex County (the “County”) has “all powers which, under the Constitution of the State, it would be competent for the General Assembly to grant by specific enumeration, and which are not denied by statute” (the “Home Rule Power”);

WHEREAS, acting pursuant to its Home Rule Power, and pursuant to Title 9, Delaware Code, Chapters 65 and 67, the County has authorized the design, construction and equipping of the Mulberry Knoll Sewer District Project, which will finance a portion the increased cost of a gravity collection system, sub-regional pump station, and force main to serve 63 Equivalent Dwelling Units in the area south of Route 24, along Mulberry Knoll Road, an area which is a peninsula in the Rehoboth Bay, with the wastewater being pumped to the County’s Inland Bays Regional Wastewater Facility for treatment and disposal, an area which has been created and is now a part of the Sussex County Unified Sanitary Sewer District (collectively, the “Project”);

WHEREAS, pursuant to Title 9, Delaware Code, Section 6706, the County is authorized to issue its bonds and to pledge its full faith and credit thereto, to finance the cost of any object, program or purpose for which the County is authorized to raise, appropriate or expend money under Chapter 67 of Title 9;

WHEREAS, pursuant to Ordinance No. 2672 adopted on August 13, 2019, the County authorized the issuance of its General Obligation Bonds in the maximum principal amount of up to \$3,135,379 for the Project;

WHEREAS, the County previously issued its General Obligation Bond (Mulberry Knoll Sewer District Project) Series 2019C-SRF in the maximum aggregate principal amount of up to \$3,135,379 (the “2019C Bond”) on September 26, 2019 to secure a loan from the Delaware Water Pollution Control Revolving Fund (acting by and through the Delaware Department of Natural Resources & Environmental Control) (“DNREC”) to fund the Project;

WHEREAS, the County requires additional funding due to increased construction costs of the Project and desires to accept a supplemental loan in the amount of \$1,329,000 from DNREC to fund the increased construction costs of the Project; and

WHEREAS, acting pursuant to the aforesaid authority, the County desires to authorize the issuance of general obligations of the County to finance the increased construction costs of the Project and for the other purposes described herein.

NOW THEREFORE THE COUNTY OF SUSSEX HEREBY ORDAINS (AT LEAST FOUR FIFTHS OF THE MEMBERS OF COUNCIL CONCURRING HEREIN):

Section 1. Amount and Purpose of the Bonds. Acting pursuant to Title 9, Delaware Code, Chapters 65 and 67, Sussex County shall issue its negotiable general obligations in the maximum aggregate principal amount not to exceed \$1,329,000 (the “Bonds”) to finance or reimburse the County for a portion of the increased cost of the design, construction, and equipping of the Project, with the expectation that up to \$1,329,000 of principal forgiveness will be applied to the Bonds, resulting in a total forgiveness of \$3,270,000 with respect to the 2019C Bonds and the Bonds, to reduce the combined principal amount of the 2019C Bond and the Bonds outstanding to \$1,194,379 upon Project completion.

The monies raised from the sale of the Bonds (including the investment earnings thereon) after the payment of the costs of issuance, shall be held in one or more Project accounts and shall be expended only for the purposes authorized herein or as may otherwise be authorized by subsequent action by County Council. Authorized purposes include the cost of funding of the construction budget shortfall, additional engineering services associated with the extended construction period and a 15% contingency on the collection system.

Section 2. Security for the Bonds. The principal, interest and premium, if any, on the Bonds may be paid by ad valorem taxes on all real property subject to taxation by the County without limitation as to rate or amount, except as limited by Title 9, Delaware Code Section 8002 (c). Pursuant to Title 9, Delaware Code, Section 6706, the full faith and credit of the County is pledged to such payment. The Bonds shall contain a recital that they are issued pursuant to Title 9, Delaware Code, Chapter 67, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. While the Bonds are backed by the County’s full faith and credit, it is expected that the debt service will be paid from revenues of the Mulberry Knoll Sewer District.

Section 3. Terms of the Bonds. The Bonds shall be sold at such prices and upon such other terms and conditions consistent with the provisions of this Ordinance and otherwise as the County Administrator shall determine to be in the best interests of the County. The Bonds shall bear interest at such rate or rates and shall mature in such amounts and at such times, but not exceeding thirty (30) years from the date of completion of the Project, and shall be subject to redemption, as the County Administrator shall determine.

Section 4. Sale of the Bonds. The Bonds may be issued in one or more series and shall be sold in one or more public sales or private negotiated transactions upon such terms and conditions as the County Administrator shall determine shall be in the best interest of the County. It is anticipated that the Bonds will be sold to the State of Delaware Water Pollution Control Revolving Fund (acting by and through DNREC) (or any successor agency).

Section 5. Details of the Bonds. The County Administrator is authorized to determine the details of the Bonds including the following: the date or dates of the Bonds; provisions for either serial or term bonds; sinking fund or other reserve fund requirements; due dates of the interest thereon; the form of the Bonds; the denominations and designations of the Bonds; registration, conversion and transfer provisions; provisions for the receipt, deposit and investment of the proceeds of the Bonds; provisions for the replacement of lost, stolen, mutilated or destroyed Bonds; and provisions for issuing uncertificated obligations and all procedures appropriate for the establishment of a system of issuing uncertificated debt. The Bonds shall be

executed by the manual or facsimile signature of the County Administrator, shall contain an impression of the County seal or a facsimile thereof and shall be attested by the manual signature of the County Clerk. The County Administrator shall determine the form of the Bonds.

Section 6. Debt Limit. It is hereby determined and certified, as of the effective date hereof, that the issuance of the Bonds is within the legal debt limit of the County.

Section 7. Further Action. The President of the County Council, the County Administrator, the Finance Director and the County Clerk are authorized and directed to take such other action on behalf of the County, as may be necessary or desirable to effect the adoption of this Ordinance and the issuance and sale of the Bonds and to provide for their security and to carry out the intent of this Ordinance, including the publication of notices and advertisements and the execution and delivery of customary closing certificates.

Section 8. Effective Date. This Ordinance shall become effective immediately upon its passage.

The County Clerk is hereby directed to publish a notice of the adoption hereof in accordance with Section 7002(m)(2) of Title 9 of the Delaware Code, as amended.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

ADOPTED this \_\_\_\_\_ day of April, 2022.

SUSSEX COUNTY, DELAWARE

Attest:

---

Clerk  
Sussex County Council

---

President  
Sussex County Council

[SEAL]

**SYNOPSIS:** This Ordinance provides for the issuance of up to \$1,329,000 of Sussex County General Obligation Bonds in order to finance or reimburse the County for a portion of the increased cost of the design, construction, and equipping of a gravity collection system, sub-regional pump station, and force main to serve 63 Equivalent Dwelling Units in the area south of Route 24, along Mulberry Knoll Road, an area which is a peninsula in the Rehoboth Bay, with the wastewater being pumped to the County's Inland Bays Regional Wastewater Facility for treatment and disposal, an area which has been created and is now a part of the Sussex County Unified Sanitary Sewer District (collectively, the "Project"), with the expectation that up to \$1,329,000 of principal forgiveness will be applied to the Bonds, resulting in a total forgiveness of \$3,270,000 with respect to the 2019C Bonds and the Bonds, to reduce the combined principal amount of the 2019C Bond and the Bonds outstanding to \$1,194,379 upon Project completion.



## Memorandum

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

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

**RE:** *Sussex County Unified Sanitary Sewer District  
Chapel Green, Conley's Chapel Village & Wil King Road South Area,  
Project S20-16*  
A. *Recommendation to Award*

**DATE:** April 26, 2022

On November 1, 2016, County Council established the Chapel Branch Area of the Sussex County Unified Sanitary Sewer District after a successful referendum under a front-foot based assessment. In March of 2019, the Department received letters from the Chapel Green & Oak Crest Farms Homeowner Associations requesting the assessment method to be changed to an EDU basis. The County Attorney advised that a second referendum would be required which County Council authorized after a second public hearing. After a positive referendum result, County Council approved a Resolution to adjust the re-payment method on November 19, 2019.

On November 1, 2016, County Council had also approved Amendment No. 9 to Whitman & Requardt and Associates base engineering contract for aerial mapping of the Chapel Branch Area. On March 13, 2018, County Council approved Amendment No.12 in a "not to exceed" amount of \$329,119.00 for the overall Chapel Branch design & permitting. This amendment did not include contract administration nor on-site inspection. However, this project is County funded and the Engineering Department staff can be utilized and supplemented by the consultant to cover these services.

The Chapel Branch area is served by two County owned and two Artesian owned pump stations under the agreement between Artesian and Sussex County. Therefore, the overall design was complex, and the project was broken down in the following segments:

1. Initial connection of Oak Crest Farms septic effluent to the County's transmission system on an emergency basis via a temporary pump station.
2. Construction of County pump stations no. 408 & 409 under the Herring Creek, Contract 1.



3. Construction of the Artesian owned pump station in Anchor's Run and modification of Artesian's pump station in Oakwood Village, both using private funding.
4. Reconstruction of part of the Oak Crest Farms gravity system under George & Lynch's portion of the General Labor & Equipment Contract.
5. Abandonment of septic tanks in Chapel Green and modification to the sewer lateral, also under the General Labor & Equipment Contract.
6. The Chapel Green, Conley's Chapel Village & Wil King Road South Area gravity system under the Pact One contract.
7. The Wil King Road Area pressure system under a standalone bid later on in 2022.

Invitations to the Chapel Green, Conley's Chapel Village & Wil King Road South Area bid were advertised in the newspaper, viewable on the Sussex County website, and directly sent to contractors experienced with the type of work. On March 30, 2022, bids for were opened. Six (6) bids were received. The bid contained an alignment alternate for placement of a short section of gravity sewer in the southbound travel lane of Wil King Road. The Department recommends award to Pact One, LLC of the Bid Alternate (Parts B, C & D) in the amount of \$2,129,050.00.

Based on this bid, previous work completed and estimates for the remaining work, the Department prepared the attached project cost summary. Based on the summary, the Finance Department recalculated the cash flow analysis, including a RTT borrowing cost for a loan rate of 1.75% over a 30-year term.

Table with columns: Description, Size, Unit, Quantity, Engineer's Estimate (Unit Price, Item Total), JJD, Inc. Bear, DE (Unit Price, Item Total), Teal Construction, Inc. Dover, DE (Unit Price, Item Total), Pact One, LLC Ringoes, NJ (Unit Price, Item Total), Eastern States Construction Wilmington, DE (Unit Price, Item Total), Chesapeake Turf Salisbury, MD (Unit Price, Item Total). Includes sections for Part A (CHAPEL GRREN AND CONLEY'S CHAPEL VILLAGE GRAVITY SEWER: CONTRACT 20-16), Part B (Stipulated Contingent Bid Items), Part C (Unstipulated Contingent Bid Items), and Part D (Alternate Bid (Wil King Road)).



# Chapel Branch Summary

As of 4/04/2022

	Status	Contract Amount	Spent-to-Date	Obligated Funds
Legal and Admin		11,649.47	11,649.47	-
Land and ROW		17,180.00	17,180.00	-
SCENV Construction Exp.		5,494.23	5,494.23	-
SCENV Salaries		3,023.63	3,023.63	-
<b>Engineering</b>				
WRA 92017034 - Aerial Mapping	Closed	18,175.00	18,175.00	-
WRA 92016043 - EA & PER (PO#20161192 charged to 6290100.52900)	Closed	4,498.82	4,498.82	-
WRA 92018041 - Amendment #12 Oak Crest/Chapel Branch Final Design	Open	329,119.00	153,387.20	175,731.80
WRA 92020039 - Herring Creek Amd 2 & 4 CA/PI (*Use 22%)	Open	82,754.32	75,713.72	7,040.60
<b>Construction</b>				
Chesapeake Turf 92020040 PS 408 & 409 only	Open	1,139,980.00	1,132,030.00	7,950.00
T&M - G&L 92020024 - Oak Crest Farms West - Install New FM (FY20)	Closed	148,201.79	148,201.79	-
T&M - G&L 92022012 - Oak Crest Gravity Transfer Completion	TBD	1,000,000.00	-	1,000,000.00
T&M - JJID 92022014 - Chapel Green Gravity Transfer Completion	TBD	500,000.00	-	500,000.00
Pact One - Will King South (S20-16)	Open	2,129,050.00	-	2,129,050.00
Will King North	TBD	300,000.00	-	300,000.00
Connection Fees (435 EDU's @ Quoted Rate of \$6,360/EDU.)	Closed	2,766,600.00	2,766,600.00	-
				-
		8,455,726.26	4,335,953.86	4,119,772.40

## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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

[hans.medlarz@sussexcountype.gov](mailto:hans.medlarz@sussexcountype.gov)



**Sussex County**  
DELAWARE  
[sussexcountype.gov](http://sussexcountype.gov)

## Memorandum

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

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

RE: ***FEMA Mitigation Grant Application: FMA-PJ-03-DE-2018-002***  
***A. Contract Award for 25867 Berry Street***

DATE: April 26, 2022

The Delaware Emergency Management Agency (DEMA) has been soliciting eligible projects to be submitted through sub-applicants i.e. local governments for the Hazard Mitigation Grant Program. DEMA reviews all pre-applications for eligibility and determines which projects will move forward in the application process. Eligible project sub-applications will be required to be submitted to FEMA for further review and concurrence. April of 2010 County Council approved the FEMA Flood Mitigation Program in principle.

The Wien application for tax parcel 234-25.00-2.00 with an address of 25867 Berry Street was originally submitted to FEMA in April of 2017 with a 25% applicant cost share. The application was amended in January 2020 and accepted by FEMA with a Federal Cost Share of 100% not to exceed \$165,000.00.

The structure to be raised, above base flood elevation (BFE), is the one-story portion of the improvements. It is connected in a non-structural fashion to the two-story portion. The property has been owned by Mr. Wien since 1972 and he currently uses it as his primary residence.

This house is situated on one of three privately owned waterfront parcels completely surrounded by the Bay City Mobile Home Park. Historical documentation supports a progression of buildup on the rental mobile home berthing spaces surrounding the property. The home was significantly flooded February 5, 1998 and since then it has been flooded multiple times. In August of 2017 FEMA designated the property in the Severe Repetitive Loss category.



The property is designated by FEMA as flood zone AE with a BFE of 6 feet which was confirmed by FEMA. Furthermore, FEMA agreed to extend the project completion deadline for a final year to April 2023. On June 14, 2021, County Council approved to sponsor the FEMA Mitigation Grant Application: FMA-PJ-03-DE-2018-002 under the 100% Federal cost share arrangement.

On May 14, 2019, County Council awarded a five (5) year base contract for miscellaneous engineering services to Davis, Bowen & Friedel, Inc. and on July 13, 2022 Council approved scope of Amendment No. 4 for design, bidding, construction documents and construction administration services associated with the FEMA project on an hourly basis in the not to exceed amount of \$37,500.00. To date approximately \$25,000 are expended for design, geotechnical services and bidding.

Invitations to bid were advertised in the newspaper, viewable on the Sussex County website, and directly sent to contractors experienced with the type of work. On March 17, 2022, bids for 25867 Berry Street were opened but only one (1) bid was received from East Coast Structural Movers in the base bid amount of \$186,750.00. The bid contained a foundation alternate no. 2 for a deduct of \$28,600.00. Therefore, the Department recommends award to East Coast Structural Movers, Inc. in the amount of \$158,150.00.

Despite the reduced award, the project is still above the maximum allowed FEMA limit. In order to proceed, Mr. Wien posted a contribution of \$25,000.00 and the Engineering Department will assume the construction administration. The first step will be to develop a value engineering approach with a potential credit change order for Council's future consideration.

SECTION 00300

BID FORM

1. BID RECIPIENT:

This Bid is submitted by East Coast Structural Movers, Inc.  
("Bidder")

To SUSSEX COUNTY ("Owner"), 2 The Circle, Georgetown, Delaware 19947.

2. BIDDER ACKNOWLEDGEMENTS:

- A. The Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the Owner to perform all Work for **Residential Home Elevation, Sussex County Project G22-04**, in strict accordance with the Contract Documents and other terms and conditions of the Bidding Documents and at the prices stated herein.
- B. The undersigned Bidder has visited the Site of Work and upon examination satisfied itself of the conditions that may affect cost, progress and performance of all Work.
- C. The undersigned Bidder has carefully and thoroughly studied all Plans, General Conditions, Supplemental Conditions, Technical Specifications, the Agreement, and all other Contract Documents as listed in the Agreement for construction of the Project, is satisfied to the general nature of the Work, and has given the Engineer written notice of all conflicts, errors, ambiguities or discrepancies discovered by Bidder, and confirms the written resolution thereof by Engineer is acceptable to Bidder.
- D. The Bidder has the labor and equipment capacity at time of Bid to staff the Project in a timely manner and furnish all material prescribed by Contract Documents, and hereby agrees to commence Work under this Contract as instructed by Owner and to complete the Work for a final payment as defined in the Contract Documents.
- E. The undersigned Bidder further understands that all supplies and materials covered by this Bid shall be new and of the best quality and the highest-grade workmanship.
- F. The Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents and the following Addenda, receipt of which is hereby acknowledged:

Addendum No.

1

Addendum Date

March 4, 2022

- G. Accompanying this Bid is a cashier's check / certified check in the amount of 9,337.50, payable to Sussex County Council, Sussex County, Delaware, which is to be forfeited to the extent necessary to make up the difference between the Bid and the second low bid, or if the undersigned shall fail to execute the Agreement and furnish

satisfactory Performance and Payment Bonds under the conditions and within the time specified; otherwise said Bid guarantee shall be returned to the undersigned. If the Bid Bond or guarantee is not sufficient to make up the difference between the Bid and the second low bid, together with any consequential damages, the undersigned Bidder agrees to pay the Owner any losses in excess of the bond or guarantee.

H. The Bidder understands subcontracting is limited to **50%** of the Total Bid price, and must complete this "Listing of Subcontractors" below in its entirety:

Type of Work	Subcontractor Name & Address or "self"	Subcontract Amount
Home Elevation	Self	
Electrical	Power Back Service LLC 30146 Mitchell St, Millsboro, DE	4,000.00
Plumbing	Caswell Plumbing 32645 Long Neck Rd, Millsboro, DE	3,000.00
Roofing & Siding	EH Custom Homes 1632 Savannah Rd, Lewes, DE	84,000.00
Total Subcontracted Amount: \$		91,000.00
Percent of Total Contract:		48 %

Note: Contractor should indicate "self" for any type of work directly performed and omit such amount from calculation.

**3. BIDDER CERTIFICATIONS:**

- A. During the performance of this Contract, Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. Contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin.
- B. Bidder agrees to comply with Title VI of the Civil Rights Act of 1964.
- C. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization or corporation;
- D. By submission of this Bid, the Bidder certifies; and in the case of a joint Bid each party thereto certifies as to its own organization, that this Bid has been arrived ta independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.
- E. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham bid;
- F. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- G. Bidder has not engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract. For the purposes of this Paragraph:

REVISED BID FORM – ADDENDUM 1  
MARCH 4, 2022

RESIDENTIAL HOME ELEVATION  
PROJECT G22-04

ITEM NO.	DESCRIPTION	Lump Sum Price
1	Mobilization (Max 5% of Total Bid)	0.00
2	Home Elevation	20,000.00
3	Pile Foundation w/ 10 Feet Pile Depth	69,750.00
4	Electrical & Plumbing	8,500.00
5	Building Construction/Modification per Plan	86,800.00
8	Site Restoration	1,700.00

**TOTAL BID:** \$ 186,750.00

**4b. ALTERNATE BID:**

ITEM NO.	DESCRIPTION	Lump Sum Add or Deduct Price
1	Performance & Payment Bonds	5,602.00
2	Spread Footing Foundation	deduct 28,600.00
3	5 Feet Helix Pile Extension Per Each	\$ 210.00

**5. ATTACHMENTS:**

- A. A copy of a current State of Delaware business license or attach evidence that an application process for such license has been initiated.
- B. Bid Bond / certified check as required security defined herein.

REVISED BID FORM – ADDENDUM 1  
MARCH 4, 2022

6. BID SUBMITTAL:

This Bid is submitted by:

Name:

East Coast Structural Movers, Inc.

(SEAL)

(Type or Print – Individual, Partnership, LLC, or Corporation Name)

By:

[Signature]  
(Signature)

Title:

President

Address:

P.O. Box 111

City, State, Zip:

HARRISON, DE 19951

Phone:

302-645-5966

Fax:

307-947-2248

Cell:

302-542-2460

Email:

cdavidson1129@verizon.net

State of Delaware License No.:

1997110715

**ADDENDUM NO.1**

**RESIDENTIAL HOME ELEVATION**

**March 4, 2022**

The Bidder acknowledges receipt of the following Addendum:

**Bid Form**

Replace the original Bid Form with the attached, revised Bid Form dated March 4, 2022. The revised Bid Form must be submitted with your Bid.

**General Conditions**

Section 6.04- In the first and second sentence, replace the 3-year requirement with 1 year.

**Drawings**

Replace original drawing no. 4 with the attached, revised drawing no. 4.

**RESPECTFULLY ACKNOWLEDGED:**

FIRM: East Coast Structural Movers Inc.

SIGNATURE: [Handwritten Signature]

TITLE: President

DATE: 3/17/2022

**Note: This form must be executed and included in the bid package**



# STATE OF DELAWARE

## Department of Finance Division of Revenue

ACTIVE BUSINESS LICENSE  
1997110715

EFFECTIVE

01/01/2022 - 12/31/2022

ISSUED TO

EAST COAST STRUCTURAL MOVERS INC  
PO BOX 111  
HARBESON DE 19951-0111

LOCATION

EAST COAST STRUCTURAL MOVERS INC  
PO BOX 111  
HARBESON, DE 19951-0111

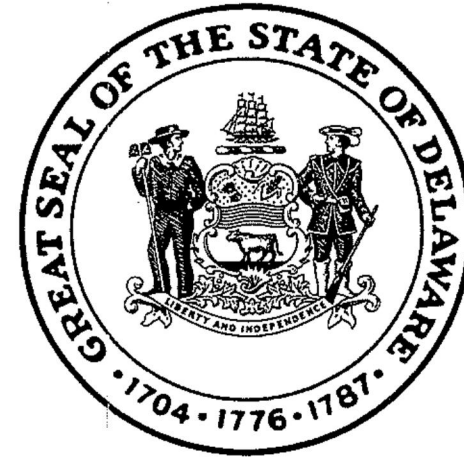
TRADE, BUSINESS, OR  
PROFESSIONAL ACTIVITY

RESIDENT CONTRACTOR

ISSUED: 01/09/2022

FEE PAID: \$75.00

Is hereby licensed to practice, conduct, or engage in the occupation or business activity indicated above in accordance with the license application duly filed pursuant to Title 30, Delaware Code.



2022

POST CONSPICUOUSLY - NOT TRANSFERABLE



THIS CHECK IS VOID WITHOUT A TEAL BACKGROUND, MICROPRINT SIGNATURE LINES, A TRUE WATERMARK AND VISIBLE PLUS INVISIBLE FLUORESCENT FIBERS

# Fulton Bank

1000742785

60-142  
313

## CASHIER'S CHECK

CHECK DATE  
March 17, 2022

AMOUNT  
**\$9,337.50**

PAY **Nine Thousand Three Hundred Thirty Seven Dollars and Fifty Cents**

TO THE ORDER OF **Sussex County Council,  
Sussex County, Delaware**

*Lamarr Cain* MP

REMITTER **East Coast Structural Movers, Inc.**

MP

⑈ 1000 74 2785 ⑈ ⑆ 03 130 14 22 ⑆ 0090 0009 1 ⑈

THIS CHECK IS VOID WITHOUT A TEAL BACKGROUND, MICROPRINT SIGNATURE LINES, A TRUE WATERMARK AND VISIBLE PLUS INVISIBLE FLUORESCENT FIBERS

# Fulton Bank

1000742785

60-142  
313

## CASHIER'S CHECK

CHECK DATE  
March 17, 2022

AMOUNT  
**\$9,337.50**

PAY **Nine Thousand Three Hundred Thirty Seven Dollars and Fifty Cents**

TO THE ORDER OF **Sussex County Council,  
Sussex County, Delaware**

*Liamon Cain* MP

REMITTER **East Coast Structural Movers, Inc.**

⑈ 1000742785⑈ ⑆031301422⑆ 0090 00091⑈

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

6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

63

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

65

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

69

70 **§99-5 Definitions.**

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

72

73 . . .

74

75 **EPHEMERAL STREAMS**

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

83

84 . . .

85

86 **INTERMITTENT STREAMS**

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

94

95 . . .

96

97 **MAJOR SUBDIVISION**

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

100

101 . . .

102

103 **MINOR SUBDIVISION**

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

111

112 . . .

113

114 **NON-TIDAL WETLANDS**

115

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

123

124 . . .

125

126 **ORDINARY HIGH WATER MARK DELINEATION**

127

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

133 terrestrial vegetation, the presence of litter and debris, or other similar physical  
134 characteristics indicating the frequent presence of flowing water.

135  
136 . . .

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

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

144  
145 . . .  
146

147 **RESOURCE BUFFER - WETLANDS AND WATERS**

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

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

162  
163 . . .

164  
165 **RESOURCES**



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

170  
171 . . .

172  
173 **TAX DITCH**

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

179  
180 . . .

181  
182 **TIDAL WATERS (MEAN HIGH-WATER LINE)**

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

187  
188 . . .

189  
190 **TIDAL WETLANDS**

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

194  
195 . . .

196  
197 **WATER DEPENDENT ACTIVITIES**

198 Activities that are approved through federal and state permit programs that meet the  
199 definition of water dependent activities included in those programs. Water-

200 dependent uses are uses that can only be conducted on, in, over, or adjacent to the  
201 water; each involves, as an integral part of the use, direct access to and use of the  
202 water. Examples include marinas, boat ramps/launches, docks, piers, water intakes,  
203 aquatic habitat restoration, and similar uses.

204  
205 . . .

206  
207 **WATER RELATED ACTIVITIES**

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

211  
212 . . .

213  
214 **WETLANDS**

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

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

230  
231 **§99-6 General Requirements and Restrictions.**

232  
233 . . .

234

235 H. When land being subdivided contains wetlands, either state or federal, or a  
 236 Resource with Resource Buffers, the recorded restrictive covenants or declaration  
 237 for the subdivision and the deeds to the lots to be conveyed [, containing wetlands]  
 238 shall include a disclosure statement that reads “This site contains regulated wetlands  
 239 or a Resource with Resource Buffers governed by the Sussex County Zoning and  
 240 Subdivision Codes. Activities within these wetlands may require a permit from the  
 241 U.S. Army Corps of Engineers and/or the State of Delaware. Disturbance of a  
 242 Resource or Resource Buffer may be a violation of the Sussex County Zoning and  
 243 Subdivision Codes, for which penalties and other remedies may be imposed by  
 244 Sussex County.

245  
 246 . . .

247  
 248 J. A forested and/or landscape buffer, as defined in § 99-5, Subsections A  
 249 through J must be depicted on the preliminary and final plot plans for each major  
 250 subdivision of lands [into four or more lots] and must be established in accordance  
 251 with all the requirements of the definition of "forested and/or landscaped buffer  
 252 strip," Subsections A through J in § 99-5.

253  
 254 . . .

255  
 256 K. Resources and Resource Buffers, as defined in § 99-5 must be depicted on the  
 257 preliminary and final plot plans for each major subdivision of lands and must  
 258 comply with the requirements of §115-193.

259

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

263  
 264 **§99-7 Preliminary Conference.**

265  
 266 . . .

267  
 268 C. If the Director determines that the proposed subdivision represents a minor  
 269 subdivision of a parcel, existing as of the effective date of this amended provision,  
 270 on a street other than a major arterial roadway, and if the Director determines that

271 review by the Commission is not necessary or desirable, he may waive the  
272 requirement of preparing a preliminary plat and may authorize the preparation of a  
273 record plat for purposes of recordation. He may, however, request review assistance  
274 from other concerned agencies prior to authorizing preparation of the plat. Lots in  
275 any minor subdivision plat approved by the Director, without review by the  
276 Commission, shall have a minimum area of 3/4 of an acre and a minimum width of  
277 150 feet and shall utilize entrances as approved by the Delaware Department of  
278 Transportation. [Such a minor subdivision shall be limited to four lots per parcel, as  
279 well as one additional lot for each 10 acres of parcel size, with a maximum of four  
280 subdivided lots approved for recordation per calendar year.]

281

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

285 **§99-23 Information to Be Shown.**

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

288 . . .

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

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

294 (2) All existing (i.e., at the time of application) natural forest, managed forest and  
295 non-forest meadow within the future Resource Buffer shall be identified.

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

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

298 (5) Calculations supporting Resource Buffer enhancement calculations and  
299 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-  
300 193F).

301 (6) Proposed access easement layout for access to Resource Buffers and the  
302 adjacent Resources with a note that such access easements are “public access

303 easements for maintenance purposes”. For purposes of this requirement, “public”  
304 shall mean, and be limited to, those parties requiring access for maintenance  
305 purposes.

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

308 (8) Any walking trails, including the method of construction and the materials  
309 used to establish the trails.

310

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

314 **§99-24 Supporting Statements**

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

317 . . .

318 G. A Resource and Resource Buffer Management Plan that describes measures  
319 for managing the Resource and Resource Buffer(s) required pursuant to Chapter  
320 115, Article XXV, Section 115-193 on the site. The Resource and Resource Buffer  
321 Management Plan shall be included as part of the recorded declaration for the  
322 subdivision.

323

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

327 **§99-26 Information to Be Shown.**

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

330 . . .

331 (21) The location of all Resource Buffers.

332 (a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources  
333 (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will  
334 be shown per methods identified in the definitions of Wetlands and Ordinary High  
335 Water Line Delineation. *In addition, the boundary shall marked on the site itself*  
336 *with permanent markers and signage, with the location and type of signage depicted*  
337 *on the final plat.*

338 (b) All existing (i.e., at the time of application) natural forest, managed forest and  
339 non-forest meadow within the future Resource Buffer shall be identified.

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

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

342 (e) Calculations supporting Resource Buffer enhancement calculations and  
343 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§155-  
344 193F).

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

350 (g) A statement incorporating the Resource and Resource Management and  
351 Maintenance Plan by reference.

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

354 *(i) That disturbance of the Resource Buffers on the site may result in penalties*  
355 *imposed pursuant to Section 115-193.K of the Sussex County Zoning Code.*

356 (22) Any walking trails, including method of construction and the materials used  
357 to establish the trails.

358 . . .

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

362

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

366 **§99-30 Plans.**

367  
368 Plans, profiles and specifications for the required improvements shall be prepared  
369 by the subdivider and submitted for approval by the appropriate public authorities  
370 prior to construction. No construction shall commence prior to the issuance of a  
371 notice to proceed by the County Engineer or his or her designee for the required  
372 improvements. All plans, profiles and specifications approved by the County  
373 Engineer or his or her designee with the issuance of a notice to proceed shall remain  
374 valid or, if substantial construction is not actively and continuously underway, they  
375 shall expire upon the expiration of the final site plan. Prior to the issuance of a notice  
376 to proceed, the County Engineer may require the owner and/or his designee to  
377 execute an agreement addressing the required improvements. The plans and profiles  
378 submitted for all new construction shall include the following:

379  
380 . . .

381  
382 *J. Resources and Resource Buffers.*

383  
384 *K. Proposed access easement layout with a note that such access easements are*  
385 *“public access easements for maintenance purposes”. For purposes of this*  
386 *requirement, “public” shall mean, and be limited to, those parties requiring access*  
387 *for maintenance purposes.*

388  
389 **Section 8. The Code of Sussex County, Chapter 115, Article I, §115-4**  
390 **“Definitions and Word Usage,” is hereby amended by inserting the italicized**  
391 **and underlined language alphabetically in Subsection B thereof:**

392  
393 **§115-4 Definitions and Word Usage.**

394  
395 . . . .

396  
397 B. General definitions. For the purpose of this chapter, certain terms and words  
398 are hereby defined as follows:

399  
400 . . . .

401  
402 **EPHEMERAL STREAMS**

403 *A feature, excluding laterals draining agricultural fields, that carries only runoff in*  
404 *direct response to precipitation with water flowing only during and shortly after*  
405 *large precipitation events. An Ephemeral Stream may or may not have a well-defined*  
406 *channel, its aquatic bed is always above the water table during a year of normal*  
407 *rainfall, and runoff is its primary source of water. An Ephemeral Stream typically*  
408 *lacks the biological, hydrological, and physical characteristics commonly*  
409 *associated with the continuous or intermittent conveyance of water.*

410  
411 . . .

412  
413 **INTERMITTENT STREAMS**

414 *A well-defined channel, excluding laterals draining agricultural fields, that contains*  
415 *flowing water for only part of the year, typically during winter and spring when the*  
416 *aquatic bed is below the water table, connecting otherwise isolated Non-tidal*  
417 *Wetlands to downstream Tidal/Perennial Waters/Streams. The flow may be heavily*  
418 *supplemented by runoff. An Intermittent Stream often lacks the biological and*  
419 *hydrological characteristics commonly associated with the continuous conveyance*  
420 *of water.*

421  
422 . . .

423 **NON-TIDAL WETLANDS**

424 *Non-Tidal Wetlands are those Wetlands, not classified by this Chapter as Tidal*  
425 *Wetlands, which lie contiguous or abutting to Tidal Waters, Tidal Wetlands,*  
426 *Perennial Streams or those Intermittent Streams providing a surface water*  
427 *connection between adjacent Wetlands and ultimately downstream navigable*  
428 *waters. Non-Tidal Wetlands also include those Wetlands only separated from*  
429 *otherwise contiguous or abutting Wetlands by constructed dikes, barriers, culverts,*  
430 *natural river berms and beach dunes.*

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432 . . .



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**ORDINARY HIGH WATER MARK DELINEATION**

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

...

**PERENNIAL NON-TIDAL RIVERS AND STREAMS**

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

...

**RESOURCE BUFFER - WETLANDS AND WATERS**

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

- Protect the Resources and their associated functions.
- Improve/protect water quality via sediment filtration, reduce impact of nutrient loading on Resources, moderate water temperature, and enhance infiltration and stabilization of channel banks.
- Provide wildlife habitat via nesting, breeding, and feeding opportunities; provide sanctuary/refuge during high water events; protect critical water's edge habitat; and protect rare, threatened, and endangered species associated with each Resource and its upland edge.

- 467 • Enhance and/or maintain the flood plain storage functionality via reduction  
468 of flood conveyance velocities as well as dissipation of stormwater discharge  
469 energy.

470  
471 . . .

## 472 **RESOURCES**

474 Those wetlands and waters to be provided with a Resource Buffer due to their  
475 importance to Sussex County. These Resources include Tidal Waters, Tidal  
476 Wetlands, Non-Tidal Wetlands, Perennial Streams, and those Intermittent Streams  
477 providing a surface water connection between Wetlands.

478  
479 . . .

## 480 **TAX DITCH**

481  
482  
483 A Tax Ditch is a drainage channel or conveyance and the corresponding right-of-  
484 way established and/or formed in accordance with Title 7, Chapter 41 of the  
485 Delaware Code, and approved by a “ditch order” entered by the Superior Court of  
486 the State of Delaware and County of Sussex.

487  
488 . . .

## 489 **TIDAL WATERS (MEAN HIGH-WATER LINE)**

490  
491 Those waters occurring below the mean high-water line of any tidal water body,  
492 tidal stream, or tidal marsh, which is defined as the average height of all the high-  
493 tide water recorded over a nineteen-year period as defined by the National Oceanic  
494 and Atmospheric Administration.

495  
496 . . .

## 497 **TIDAL WETLANDS**

498  
499 Areas under the jurisdiction of Title 7, Chapter 66 of the Delaware Code, as  
500 regulated and mapped by the Department of Natural Resources and Environmental  
501 Control.

502  
503 . . .

504  
505 **WATER DEPENDENT ACTIVITIES**

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

512  
513 . . .

514  
515 **WATER RELATED ACTIVITIES**

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

519 . . .

520 **WETLANDS**

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

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

535

536 **§115-25** Height, Area and Bulk

537

538 F. Review procedures for cluster development

539

540 . . .

541

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

545

546 (a) The cluster development sketch plan and the preliminary plan of  
547 the cluster subdivision provides for a total environment and design  
548 which are superior, [and] *in* the reasonable judgment of the Planning  
549 Commission, to that which would be allowed under the regulations for  
550 the standard option. For the purposes of this subsection a proposed  
551 cluster subdivision which provides for a total environment and design  
552 which are superior to that allowed under the standard option  
553 subdivision is one which, in the reasonable judgment of the Planning  
554 Commission meets all of the following criteria:

555

556 . . .

557

558 [4] [A minimum of 25 feet of permanent setback must be  
559 maintained around the outer boundaries of all wetlands, except  
560 for tidal waters, tidal tributary streams and tidal wetlands and  
561 from the ordinary high water line of perennial nontidal rivers and  
562 nontidal streams as provided for in §115-193B under Ordinance  
563 No. 774 where a fifty-foot permanent setback is required. No  
564 buildings or paving shall be placed within these setbacks.] *The*  
565 *preliminary plan shall comply with the requirements of §115-*  
566 *193.*

567

568 **Section 10. The Code of Sussex County, Chapter 115, Article XXV, §115-193**  
569 **“Buffer Zones for Wetlands and Tidal and Nonperennial Waters,” is hereby**  
570 **amended by amending the Title thereof to state “Resource Protection” and**

571 **deleting the language in brackets and inserting the italicized and underlined**  
572 **language:**

573  
574 **§115-193 [Buffer Zones for Wetlands and Tidal and Nonperennial Waters]**  
575 **Resource Protection**

576  
577 [A.  
578 Definitions. As used in this section, the following terms shall have the meanings  
579 indicated:

580 BUFFER ZONE

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

587  
588 MEAN HIGH-WATER LINE OF TIDAL WATER

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

592 PERENNIAL NONTIDAL RIVERS AND STREAMS

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

595 TIDAL TRIBUTARY STREAM

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

597 TIDAL WETLANDS

598 Areas under the jurisdiction of Title 7, Chapter 66, of the Delaware Code, as  
599 the chapter appears as of the date of the adoption of this Article, as regulated  
600 and mapped by the Department of Natural Resources and Environmental  
601 Control.

602 WETLANDS

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

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

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

616 D. Excluded from buffer zone regulations are facilities necessarily associated  
617 with water-dependent facilities (maritime, recreational, educational or fisheries  
618 activities that cannot exist outside of the buffer by reason of the intrinsic nature of  
619 their operation) and the installation, repair or maintenance of any stormwater  
620 management facility, sanitary sewer system, culvert, bridge, public utility, street,  
621 drainage facility, pond, recreational amenity, pier, bulkhead, boat ramp, waterway  
622 improvement project or erosion-stabilization project that has received the joint  
623 approval of the County Engineering Department and the appropriate federal, state  
624 and local agencies. An existing public storm-drain system may be extended in order  
625 to complete an unenclosed gap or correct a drainage problem, subject to receiving  
626 the approval of the County Engineering Department and the appropriate federal,  
627 state and local agencies.

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

630 (1) Existing improvements and construction as of the date of the approval  
631 of this section may continue. Alterations or expansions which shall be  
632 attached to a preexisting structure built on nonconforming land, pursuant to  
633 this section, will not be permitted unless proven that such improvement is  
634 constructed at an equal distance or landward of the preexisting structure which  
635 is most proximate to the wetland area and a variance is granted as provided  
636 below.

637 (2) Subdivision plats and site plans approved and of record in the office of  
638 the Director of Planning and Zoning or in the office of the Recorder of Deeds

639 in and for Sussex County prior to the adoption of this section, originally  
 640 adopted July 19, 1988, or approved and similarly of record as of the effective  
 641 date of this amendment, adopted July 2, 1991, may be developed as of record  
 642 and shall be subject to setbacks or buffer restrictions established for the use  
 643 when originally approved. Any previously approved and similarly recorded  
 644 subdivision plats and site plans, if approved prior to the original date of this  
 645 section on July 19, 1988, or prior to this amendment, adopted July 2, 1991,  
 646 may be amended if it is determined by the Planning and Zoning Commission  
 647 that the amended plan represents an equal or less intrusive use on the buffer  
 648 area or setback area.

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

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

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

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

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

667 (3) Any land upon which development has progressed to the point of  
 668 pouring of a foundation or the installation of structural improvements as of  
 669 the date of the approval of this section shall be permitted to be developed,  
 670 provided that there shall be no further encroachment upon the buffer zone, as  
 671 required in Subsection E(1) above.]

672  
 673 A. *Resource Buffer Widths and Markers.*

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1. Resource Buffer Widths shall be established in accordance with Table 1, with Zone A being closest to the Resource.
2. Resource Buffers are not required landward/adjacent to those portions of Resources to be filled or developed with a valid U. S. Army Corps of Engineers or Delaware Department of Natural Resources and Environmental Control permit.
3. No Resource Buffer shall overlay a Tax Ditch or Tax Ditch Right of Way. If a proposed development contains a Tax Ditch, with a right-of-way of less than the total Resource Buffer Width, then that area of the Resource Buffer outside of the right-of-way shall be designated as Zone B.
4. The upland edge of all Resource Buffers shall be clearly marked with permanent in-ground markers and signage located at one-hundred foot intervals. Such signage shall be at least five inches by 7 inches in size.



694

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

695

696 B. Resource Buffer Width Averaging.

697

698 1. Resource Buffer width averaging may be utilized **but only within**  
 699 **Resources Buffers adjacent to the same Resource** to adjust the required  
 700 Zone B Resource Buffer width thereby allowing flexibility for the  
 701 proposed development, so long as the overall square footage of the  
 702 Zone B Resource Buffer is maintained.

703

704 2. Criteria for utilizing Resource Buffer width averaging:

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

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

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

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

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

717  
 718 (f) The Zone B Resource Buffer averaging shall only occur within  
 719 the Resource Buffer adjacent to the same Resource.

720  
 721 C. Permitted Activities.

722  
 723 Activities in Zone A and B shall be “Permitted” or “Not Permitted” as set forth in  
 724 the following Table. Uses not specifically identified shall be prohibited, unless the  
 725 contrary is clear from the context of the Table, as determined by the Commission.

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

<b><u>Table 2: Resource Buffer Activities by Zone</u></b>		
<b><u>ACTIVITY</u></b>	<b><u>ZONE A</u></b>	<b><u>ZONE B</u></b>
<u>roads, bridges, culverts, water lines, and sanitary sewer lines.</u>		
<u>4. Temporary impacts resulting from installation of utilities by trenching methods which are part of State or Federally approved utility installation projects or the installation of utilities by directional boring methods.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>5. Stormwater Management conveyances as approved by the Sussex Conservation District.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>6. Tax Ditch Maintenance as approved by DNREC Drainage Program.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>7. Maintenance or repair of drainage conveyances not within a Tax Ditch Right of Way as approved by the Sussex County Engineering Department or Sussex Conservation District.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>8. Structural crossings of Resources such as bridges or boardwalks which may not require a State or Federal permit.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>9. Maintenance or modification to previously existing structures and improvements within existing footprint.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>10. State or Federally approved wetland restoration, creation, and enhancement projects.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>11. State or Federally approved flood plain restoration, or Resource restoration projects involving the maintenance, repair, restoration, creation, or enhancement of Resources and their Resource Buffers.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>

<b><u>Table 2: Resource Buffer Activities by Zone</u></b>		
<b><u>ACTIVITY</u></b>	<b><u>ZONE A</u></b>	<b><u>ZONE B</u></b>
<b><u>12. Soil Erosion and Sediment Control measures as approved by Sussex Conservation District.</u></b>	<b><u>PERMITTED</u></b>	<b><u>PERMITTED</u></b>
<b><u>13. Forest Management Activities conducted under the guidance and direction of a Licensed Forester, Arborist, Landscape Architect, or Qualified Resource Buffer Professional.</u></b>	<b><u>PERMITTED</u></b>	<b><u>PERMITTED</u></b>
<b><u>14. Invasive Species Control (plant, insect, animal) conducted in accordance with State and Federal law.</u></b>	<b><u>PERMITTED</u></b>	<b><u>PERMITTED</u></b>
<b><u>15. Planting/establishment of non-invasive native species (as listed by DNREC).</u></b>	<b><u>PERMITTED</u></b>	<b><u>PERMITTED</u></b>
<b><u>16. Installation, repair, maintenance, and removal of wells (potable, monitoring, injection as approved by state/federal agencies).</u></b>	<b><u>PERMITTED</u></b>	<b><u>PERMITTED</u></b>
<b><u>17. <del>Walking Trails where any impervious area runoff is managed under a Sussex Conversation District Permit.</del> Walking Trails where any impervious area runoff is managed under a Sussex Conservation District Permit that are generally perpendicular to a Resource for the purpose of providing access to the Resource or a Permitted Activity within the Resource Buffer.</u></b>	<b><u>PERMITTED</u></b>	<b><u>PERMITTED</u></b>
<b><u>18. Extended Detention dry and wet stormwater management ponds.</u></b>	<b><u>NOT PERMITTED</u></b>	<b><u>NOT PERMITTED</u></b>

<b><u>Table 2: Resource Buffer Activities by Zone</u></b>		
<b><u>ACTIVITY</u></b>	<b><u>ZONE A</u></b>	<b><u>ZONE B</u></b>
<b><u>19. Removal of any dead, dying, damaged, or unstable live tree from a Resource or Resource Buffer which presents an imminent danger to property or public safety.</u></b>	<b><u>PERMITTED</u></b>	<b><u>PERMITTED</u></b>
<b><u>20. Stormwater Management Water Quality BMPs as approved by the Sussex Conservation District.</u></b>	<b><u>PERMITTED</u></b> <i>(Limited to 10% of Total square footage of Zone A in a proposed development)</i>	<b><u>PERMITTED</u></b>
<b><u>21. Sewage disposal facilities.</u></b>	<b><u>NOT PERMITTED</u></b>	<b><u>NOT PERMITTED</u></b>
<b><u>22. Storage of hazardous materials and siting of industrial sites, landfills, or junkyards.</u></b>	<b><u>NOT PERMITTED</u></b>	<b><u>NOT PERMITTED</u></b>
<b><u>23. Swimming pools, community clubhouses, and all Non-Water-Dependent or Non-Water Related improvements not specifically permitted under this section.</u></b>	<b><u>NOT PERMITTED</u></b>	<b><u>NOT PERMITTED</u></b>
<b><u>24. Walking Trails running by and with a Resource (i.e. generally parallel with the Resource) where any impervious area runoff is managed under a Sussex Conservation District Permit.</u></b>	<b><u>NOT PERMITTED</u></b>	<b><u>PERMITTED</u></b>

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**D. Resource Buffer Standards.**

- 1. All existing (i.e., at the time of application) conditions, including the vegetative land features, and the proposed conditions within the proposed Resource Buffer shall be identified on the Preliminary Site Plan.**
- 2. If a proposed development contains a Resource, then the associated Resource Buffer shall conform with the following criteria based on vegetative features existing at the time of Preliminary Site plan Submission:**

736 (a) Established natural forests and non-forest meadows predominated by  
737 non-invasive species shall be retained.

738  
739 (i) Forest: Subject to §115-193C, all existing trees and understory  
740 constituting a proposed Resource Buffer shall be preserved and  
741 maintained in their natural state. Invasive species may be removed from  
742 the Resource Buffer.

743  
744 (ii) Non-forest Meadow: Subject to §115-193C, all existing meadows  
745 constituting a proposed non-forested Resource Buffer that are composed  
746 of herbaceous and shrub species shall be preserved and maintained in  
747 their natural state. Non-forest meadow may also include old field areas  
748 with a mixture of herbaceous vegetation, shrubs and trees transitioning to  
749 a forested condition through natural succession. Invasive species may be  
750 removed from the Resource Buffer.

751  
752 (b) Grazed pasture, managed turf, active cropland or areas of bare earth  
753 not stabilized with vegetative cover shall be re- established as **native natural**  
754 forest or non-forest meadow prior to determination of substantial completion  
755 of the proposed development phase where that “unstabilized” area is located  
756 by planting of non-invasive species or through the process of natural  
757 succession augmented with invasive species control.

758 E. Removal of Invasive Species.

759  
760 1. Invasive species control shall be completed under the guidance and approval of a  
761 Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or  
762 Qualified Resource Buffer Professional.

763  
764 F. Maintenance of Drainage Conveyances

765  
766 1. All Resource Buffers identified on a Final Site Plan shall be designated as a  
767 drainage and access easement permitting access by any future owners’  
768 association, federal, state or local agency and the public, for the limited  
769 purpose of maintenance or monitoring of drainage capacity or conveyance by  
770 any future owners’ association; federal state or local agency; and the public.  
771 In addition, a corresponding easement for access into each individual

772 Resource Buffer established on the site shall, whenever possible, be provided  
773 from a public road or street within a proposed development.

774

775 2. If a Resource Buffer abuts or contains features such as ephemeral,  
776 intermittent or perennial streams which are not part of an established Tax  
777 Ditch and which convey drainage from or through a site proposed for  
778 development, a “Drainage Assessment Report” shall be prepared by a  
779 registered Delaware Professional Engineer. As part of the pre-application  
780 process, Sussex County will determine the information to be included in the  
781 Drainage Assessment Report. At a minimum, the Drainage Assessment  
782 Report shall identify the following concerning measures needed for drainage  
783 conveyances:

784

785 (a) Identification of any unstable or eroding stream banks or  
786 conveyance requiring stabilization or restoration measures.

787

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

790

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

794

795 (d) A discussion of all recommended measures to remedy any  
796 impediment to drainage conveyance or drainage stability.

797

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

800

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

803

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

806

807 G. Resource Buffer Options

808

809 1. A proposed development shall be permitted to utilize the following options,  
810 consistent with §115-193, Section B. Resource Buffer Width Averaging, to

811 incentivize the retention of forests, but only for those Resource Buffers  
 812 adjacent to Perennial Non-Tidal Rivers and Streams, Non-Tidal Wetlands and  
 813 Intermittent Streams:

814

815 (a) When the preservation of a forest within the Resource Buffer that has  
 816 been in existence for at least five years prior to the date of application  
 817 as identified by a Licensed Forester, Arborist, Landscape Architect, or  
 818 Qualified Resource Buffer Professional is achieved, then a  
 819 corresponding area reduction of either the Resource Buffer Zone B  
 820 along the entire or part of that Resource; or the Forested and/or  
 821 Landscaped Buffer required in Chapter 99 in areas adjacent to ~~like-~~  
 822 ~~zoned land is permitted a residential subdivision, residential conditional~~  
 823 ~~use or residential planned community.~~

824

825 (b) When the Preservation of a natural forest connected to (but not within)  
 826 a Resource Buffer in excess of the requirements listed in Section 115-  
 827 193.A. is achieved by adding the area to Zone B, then a corresponding  
 828 area reduction of either non-Forest Resource Buffer Zone B on the same  
 829 Resource, or Forested and/or Landscaped Buffer required in Chapter  
 830 99 in areas adjacent to ~~like-zoned land is permitted a residential~~  
 831 ~~subdivision, residential conditional use or residential planned~~  
 832 ~~community.~~

833

834 (c) When the provision of Resource Buffer area in excess of the  
 835 requirements listed in Section 115-193.A. is achieved, then a  
 836 corresponding area reduction of the Forested and/or Landscaped Buffer  
 837 required in Chapter 99 in areas adjacent to ~~like-zoned land is permitted~~  
 838 ~~a residential subdivision, residential conditional use or residential~~  
 839 ~~planned community.~~

840

841 2. A proposed development shall be permitted to utilize the following options to  
 842 incentivize the retention or expansion of Resource Buffers or provide  
 843 additional functional benefit of Resource Buffers forests, but only for those  
 844 Resource Buffers adjacent to Perennial Non-Tidal Rivers and Streams, Non-  
 845 Tidal Wetlands and Intermittent Streams:

846



847 (a) (i)When the creation of an off-site Resource Buffer is protected under a  
 848 perpetual conservation easement, then a 75 percent corresponding area  
 849 reduction of the Resource Buffer Zones ~~A and/or~~ B in the same Resource  
 850 within the development is permitted. The upland line of that new off-site  
 851 Resource Buffer and perpetual conservation easement shall be  
 852 considered the edge of the Resource for locating a Resource Buffer in  
 853 the event that the off-site land is developed in the future. The perpetual  
 854 conservation easement shall be for the benefit of a conservation  
 855 organization approved by Sussex County, and it must be located within  
 856 the same twelve-digit hydrologic unit code as defined by the United  
 857 States Geological Survey as the proposed development. ~~The area within~~  
 858 this conservation easement shall adhere to the requirements of  
 859 subsection D. herein and shall not be used for agricultural purposes.

861 (ii)When the creation of an off-site Resource Buffer for forest preservation  
 862 is protected under a perpetual conservation easement, then a 125  
 863 percent corresponding area reduction of the Resource Buffer Zones ~~A~~  
 864 ~~and/or~~ B in the same Resource within the development is permitted. The  
 865 upland line of that new off-site Resource Buffer and perpetual  
 866 conservation easement shall be considered the edge of the Resource for  
 867 locating a Resource Buffer in the event that the off-site land is developed  
 868 in the future. The perpetual conservation easement shall be for the  
 869 benefit of a conservation organization approved by Sussex County, and  
 870 it must be located within the same twelve-digit hydrologic unit code as  
 871 defined by the United States Geological Survey as the proposed  
 872 development. ~~The area within this conservation easement shall adhere~~  
 873 to the requirements of subsection D. herein and shall not be used for  
 874 agricultural purposes.

875  
 876 (b) Funding, partially or entirely, an off-site restoration project under the  
 877 Sussex County Clean Water Enhancement Program, subject to approval  
 878 of the Sussex Conservation District, with completion of the restoration  
 879 by Sussex County prior to final acceptance of the first phase of the  
 880 proposed development by the Sussex County Engineering Department  
 881 in the same twelve digit hydrologic unit code as defined by the United  
 882 States Geological Survey as the proposed development with a  
 883 corresponding Resource Buffer Zone ~~A and/or~~ B reduction equal to the

884 Resource Buffer area on that same resource created in the off-site  
 885 project.

886

887 (c) (i) When a proposed development has a pre-existing property boundary  
 888 that is located in the center of an Intermittent or Perennial Stream and  
 889 the entire Resource (including the off-site portion of it) including an off-  
 890 site Resource Buffer Zone A is protected under a perpetual conservation  
 891 easement, then a corresponding area reduction of the Resource Buffer  
 892 Zones B on the same Resource development is permitted. The upland line  
 893 of that new off-site Resource Buffer Zone A and perpetual conservation  
 894 easement shall be considered the edge of the Resource for locating a  
 895 Resource Buffer in the event that the off-site land is developed in the  
 896 future. The perpetual conservation easement shall be for the benefit of  
 897 a conservation organization approved by Sussex County. *The area*  
 898 *within this conservation easement shall adhere to the requirements of*  
 899 *subsection D. herein and shall not be used for agricultural purposes.*

900

901 (ii) When a proposed development has a pre-existing property boundary  
 902 that is located in the center of an Intermittent or Perennial Stream and  
 903 the entire Resource (including the off-site portion of it) including an off-  
 904 site Resource Buffer Zone A in the form of a natural forest is protected  
 905 under a perpetual conservation easement, then a corresponding 125%  
 906 area reduction of the Resource Buffer Zones B on the same Resource  
 907 within the development is permitted. The upland line of that new off-site  
 908 Resource Buffer Zone A and perpetual conservation easement shall be  
 909 considered the edge of the Resource for locating a Resource Buffer in  
 910 the event that the off-site land is developed in the future. The perpetual  
 911 conservation easement shall be for the benefit of a conservation  
 912 organization approved by Sussex County. *The area within this*  
 913 *conservation easement shall adhere to the requirements of subsection*  
 914 *D. herein and shall not be used for agricultural purposes.*

915

916 3. For purposes of this Subsection G., “Forest” shall mean: A vegetative  
 917 community dominated by trees and other woody plants covering a land area  
 918 of 10,000 square feet or greater. Forest includes: (1) areas that have at least  
 919 100 trees per acre with at least 50% of those having a two-inch or greater

920 diameter at 4.5 feet above the ground and larger, and (2) forest areas that  
921 have been cut but neither stumps were removed nor the land surface regraded.

922  
923  
924 H. Resource and Resource Buffer Maintenance and Management.

925  
926 1. Resource and Resource Buffer Management Plan

927 Any proposed development where Resource Buffers are required shall submit  
928 a Resource and Resource Buffer Management Plan, prepared by a Qualified  
929 Resource Buffer Management Professional, that describes measures for  
930 maintaining or improving the Resource and the Resource Buffer(s) on the site.  
931 The Resource and Resource Buffer Management Plan shall be proffered as  
932 part of the Supporting Statement requirements of §99-24, or at the time of  
933 Preliminary Site Plan approval for any residential conditional use. The  
934 maintenance standards or management actions associated with the Resource  
935 and Resource Buffer Management Plan shall be included as an obligation of  
936 the owners' association in the recorded declaration for any new development.  
937 The Resource and Resource Buffer Management Plan shall describe how the  
938 Resource Buffer will be managed to maintain its functions and cite any  
939 measures to be implemented for the enhancement of Resource Buffers or their  
940 functions. It shall also include a narrative discussing the overall plan for  
941 access easements sufficient for expected short- and long-term maintenance  
942 and management needs.

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

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

953 (b) If the deficient Perennial or Intermittent Stream has no adjacent  
954 Non-Tidal Wetlands, the applicant shall restore the conveyance

955 channel to a positive conveyance (i.e. the removal of conveyance  
956 impediments) within the entire site prior to the issuance of substantial  
957 completion of the first approved phase. This restoration shall be in  
958 compliance with all applicable federal, state and county requirements.

959 I. Modifications and Exceptions.

960  
961 The Planning and Zoning Commission shall be authorized, as part of the site plan  
962 review process, to grant preliminary or final site plan approval with modifications  
963 of, or exceptions to, the foregoing requirements upon the submission of a detailed  
964 and specific written request from the applicant with supporting documentation from  
965 a Qualified Wetland Resource Professional or Qualified Resource Buffer  
966 Management Professional, but only upon the satisfaction of all of the following  
967 conditions:

968  
969 1. When the Commission finds that special conditions or circumstances  
970 exist that are peculiar to the land or structure and that a literal enforcement  
971 of a specific requirement of this section would result in unwarranted hardship.

972  
973 2. That the modification or exception request is not based upon conditions  
974 or circumstances which are the result of actions by the applicant, nor does  
975 the request arise from any condition relating to land or building use, either  
976 permitted or nonconforming, on any neighboring property.

977  
978 3. That the granting of a modification or exception will not adversely  
979 affect the functions of the Resource or its Resource Buffer as set forth in the  
980 definition of that term. Waivers shall be in harmony with the general spirit  
981 and intent of this section and any subsequent regulations.

982  
983 4. That the basis for the modification or exception cannot be achieved  
984 through Resource Buffer Width Averaging as provided by §115-193B.

985  
986 5. That in no event shall there be a modification or exception to the width  
987 requirements of Zone A.

988  
989 The date of any modification or exception by the Commission shall be noted on the  
990 final site plan.

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

993 K. Violations and Penalties

994  
995 The owner of the land and any person or corporation who shall violate any  
996 provisions of this Section shall be subject to the following penalties. Separate  
997 violations or a series of violations may be combined to determine the total area  
998 where the violation occurred.

999  
1000 (a) A fine of \$10,000.00 per quarter-acre of disturbance or part thereof  
1001 shall be imposed; and

1002  
1003 (b) Resource Buffer rehabilitation and replanting in the area were the  
1004 violation occurred, in accordance with a Mitigation Plan approved by the  
1005 Director that complies with the following:

1006 (i) For every tree removed or destroyed with a caliper of six inches  
1007 or greater at breast height, there shall be at least three replacement  
1008 trees planted within the buffer area.

1009 (ii) The replacement trees shall be a native species.

1010 (iii) The quality and size of the replacement trees shall be at least two  
1011 inches caliper at breast height. Any tree that was removed or destroyed  
1012 shall be replaced through the Mitigation Plan at a ratio of at least one-  
1013 inch per caliper at breast height for each inch of caliper removed. The  
1014 property owner and/or party who violates this Section shall be  
1015 responsible for the health and survival of the replacement trees,  
1016 including regular necessary watering, for a minimum of two years and  
1017 shall replace any trees that die within two years of planting.

1018 (iv) The replanting design shown within the Mitigation Plan shall  
1019 provide adequate space for root and crown development; and

1020 (c) No building or zoning permits shall be issued nor shall any inspections  
1021 occur within the Phase where the violation occurred (including, but not  
1022 limited to building code and utility inspections) until the buffer rehabilitation  
1023 is complete and approved by the Director.

1024

1025 **Section 11. The Code of Sussex County, Chapter 115, Article XXVIII, §115-**  
1026 **220 “Preliminary Site Plan Requirements”, is hereby amended by inserting the**  
1027 **italicized and underlined language as a new Subsection B(17) thereof:**

1028 **§115-220 Preliminary Site Plan Requirements**

1029 . . .

1030 B. The preliminary site plan shall show the following:

1031 . . .

1032 (17) In the case of a proposed development with the uses identified in §115-  
1033 219A(1) and (2) or Residential Planned Communities, the site plan shall include all  
1034 required Resource Buffers and the following:

1035 (a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources  
1036 (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will  
1037 be shown per methods identified in the definitions of Wetlands and Ordinary High  
1038 Water Line Delineation.

1039 (b) All existing (i.e., at the time of application) natural forest, managed forest and  
1040 non-forest meadow within the future Resource Buffer shall be indentified.

1041 (c) The limits of the required Resource Buffers.

1042 (d) Calculations supporting Resource Buffer width averaging (§115-193B).

1043 (e) Calculations supporting Resource Buffer enhancement calculations and  
1044 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-  
1045 193F).

1046 (f) Proposed access easement layout for access to Resource Buffers and the  
1047 adjacent Resources with a note that such access easements are “public access  
1048 easements for maintenance purposes”. For purposes of this requirement, “public”  
1049 shall mean, and be limited to, those parties requiring access for maintenance  
1050 purposes.

1051 (g) A reference by title, author and date, to the “Drainage Assessment Report”  
1052 required by Section 115-193.F.2.

1053 (h) Any walking trails, including the method of construction and the materials  
1054 used to establish the trails.

1055

1056 **Section 12. The Code of Sussex County, Chapter 115, Article XXVIII, §115-221**  
1057 **“Final Site Plan Requirements”, is hereby amended by inserting the italicized**  
1058 **and underlined language as a new Subsections B(19) and E. thereof:**

1059 **§115-221 Final Site Plan Requirements**

1060 . . .

1061 B. The final site plan shall show the following:

1062 (19) In the case of a proposed development with the uses identified in §115-  
1063 219A(1) and (2) or Residential Planned Communities, the site plan shall include all  
1064 required Resources and Resource Buffers including the following, where applicable:

1065 (a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources  
1066 (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will  
1067 be shown per methods identified in the definitions of Wetlands and Ordinary High  
1068 Water Line Delineation. *In addition, the boundary shall marked on the site itself*  
1069 *with permanent markers and signage, with the location and type of signage depicted*  
1070 *on the final site plan.*

1071 (b) All existing (i.e., at the time of application) natural forest, managed forest and  
1072 non-forest meadow within the future Resource Buffer shall be identified.

1073 (c) The limits of the required Resource Buffers.

1074 (d) Calculations supporting Resource Buffer width averaging (§115-193B).

1075 (e) Calculations supporting Resource Buffer enhancement calculations and  
1076 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-  
1077 193F).

1078 (f) Proposed access easement layout for access to Resource Buffers and the  
1079 adjacent Resources with a note that such access easements are “public access  
1080 easements for maintenance purposes”. For purposes of this requirement, “public”  
1081 shall mean, and be limited to, those parties requiring access for maintenance  
1082 purposes.

1083 (g) A statement incorporating the Resource and Resource Management and  
1084 Maintenance Plan by reference.

1085 (h) A reference by title, author and date, to the “Drainage Assessment Report”  
1086 required by Section 115-193.F.2.

1087 (i) Any walking trails, including the method of construction and the materials  
1088 used to establish the trails.

1089 (j) That disturbance of the Resource Buffers on the site may result in penalties  
1090 imposed pursuant to Section 115-193.K of the Sussex County Zoning Code.

1091

1092 . . .

1093 E. An AutoCAD drawing file containing all items required in Section A above  
1094 shall be submitted in electronic format. The data shall be referenced in NAD 1983  
1095 StatePlane Delaware FIPS 0700 (U.S. Feet) Projected Coordinate System.

1096

1097 **Section 13. Effective Date.**

1098 This Ordinance shall take effect upon six (6) months from the date of adoption by  
1099 Sussex County Council. Provided however, that it shall not apply to any completed  
1100 applications on file with the Sussex County Office of Planning & Zoning.



Vincent  
OK - 4.6.

### Council Grant Form

**Legal Name of Agency/Organization**

Seaford Historical Society

OK

**Project Name**

Get Back to Tourism

**Federal Tax ID**

EIN # 51-0200225

OK

**Non-Profit**

Yes

**Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)**

No

**Organization's Mission**

The Seaford Historical Society was founded in 1976 and is committed to preserve, protect, and promote our local history. We possess some of the most unique sites in the area. The Historical Society is dedicated to presenting our history with accuracy and enthusiasm.

**Address**

203 High Street

**Address 2**

**City**

Seaford

**State**

DE

**Zip Code**

19973

**Contact Person**

Jim Blackwell

**Contact Title** Curator

**Contact Phone Number** 302 629 8806

**Contact Email Address** [blackwell629@comcast.net](mailto:blackwell629@comcast.net)

**Total Funding Request** \$2,000

**Has your organization received other grant funds from Sussex County Government in the last year?** Yes

**If YES, how much was received in the last 12 months?** 1500

**Are you seeking other sources of funding other than Sussex County Council?** No

**If YES, approximately what percentage of the project's funding does the Council grant represent?** N/A

**Program Category (choose all that apply)** Cultural, Educational

**Program Category**  
Other

**Primary Beneficiary Category** Low to Moderate Income

**Beneficiary Category**  
Other

**Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program** 1000

**Scope** The Seaford Historical Society is a founding member of the Nanticoke Heritage Byway, which has been non-functioning since Covid 19 struck our area. We are starting it back up and need some basic funds to do that. Seaford, Laurel, Bethel and Bridgeville will be working together to increase the number of tourists coming to Western Sussex. This money will support tourism in Seaford and Western Sussex.

**Religious Components** N/A

**Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)** 0.00

**Description** Personnel - Exec Director (part time)

**Amount** 2,000.00

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**TOTAL EXPENDITURES** 2,000.00

**TOTAL DEFICIT FOR  
PROJECT OR  
ORGANIZATION** -2,000.00

**Name of Organization** Seaford Historical Society

**Applicant/Authorized  
Official** L J Blackwell, jr

**Date** 04/03/2022

**Affidavit  
Acknowledgement** Yes

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

Rieley  
OK - 4.6.

## Council Grant Form

**Legal Name of  
Agency/Organization**

First State Community Action Agency, Inc. OK

**Project Name**

"It's a Par-Tee" Mini Golf Tournament

**Federal Tax ID**

510104704 OK

**Non-Profit**

Yes

**Does your organization  
or its parent  
organization have a  
religious affiliation? (If  
yes, fill out Section 3B.)**

No

**Organization's Mission**

To work towards the elimination of poverty and lessen the effects of poverty on low-income people.

**Address**

308 North Railroad Ave

**Address 2**

**City**

Georgetown

**State**

DE

**Zip Code**

19947

**Contact Person**

Tosajhn Hughes

**Contact Title**

Public Relations Manager

**Contact Phone  
Number**

3022785449

<b>Contact Email Address</b>	<a href="mailto:thughes@firststatecaa.com">thughes@firststatecaa.com</a>
<b>Total Funding Request</b>	2500
<b>Has your organization received other grant funds from Sussex County Government in the last year?</b>	Yes
<b>If YES, how much was received in the last 12 months?</b>	16590
<b>Are you seeking other sources of funding other than Sussex County Council?</b>	Yes
<b>If YES, approximately what percentage of the project's funding does the Council grant represent?</b>	15
<b>Program Category (choose all that apply)</b>	Educational, Fair Housing, Health and Human Services
<b>Program Category Other</b>	
<b>Primary Beneficiary Category</b>	Low to Moderate Income
<b>Beneficiary Category Other</b>	

**Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program**

10000

**Scope**

First State holds it's "It's a Par-Tee" Mini-Golf tournament annually during the month of May. Teams of 4 register for a day of miniature golf at Jungle Jim's followed by a luncheon to be held at The Lodge at Truitt Homestead. Each year, our miniature golf tournament is held in order to raise funds and gather support for First State's After-School and Youth Based programs. Proceeds from the event fund numerous aspects of these programs varying from; the purchase and distribution of school supplies, to; funding for youth employment and professional development seminars.

**Religious Components**

**Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)**

4,000.00

**Description**

Marketing Promotions

**Amount**

500.00

**Description**

Supplies, Gifts, and Equipment

**Amount**

250.00

**Description**

Golf Venue



**Amount** 3,000.00

**Description** Luncheon Venue/Catering

**Amount** 3,000.00

**Description** Beverage Truck

**Amount** 500.00

**Description** Photographer

**Amount** 500.00

**Description** DJ

**Amount** 500.00

**Description**

**Amount**

**TOTAL EXPENDITURES** 8,250.00

**TOTAL DEFICIT FOR  
PROJECT OR  
ORGANIZATION** -4,250.00

**Name of Organization** First State Community Action Agency, Inc.

**Applicant/Authorized  
Official** Tosajhn Hughes

**Date** 03/30/2022

**Affidavit  
Acknowledgement** Yes

GREEN  
OK 4.6.

### Council Grant Form

**Legal Name of Agency/Organization** Shoes That Fit-Delaware Chapter

**Project Name** School Uniforms for Sussex County Students

**Federal Tax ID** 95-4425565 (OK)

**Non-Profit** Yes

**Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)** No

**Organization's Mission**

Shoes That Fit tackles one of the most visible signs of poverty in America by giving children in need new athletic shoes to attend school with dignity and joy, prepared to learn, play, and thrive.

In addition to shoes, the Delaware Chapter has expanded its scope to address basic clothing needs for school attendance, typically around new school uniforms, socks, underwear, and outerwear.

**Address** 4 West Periwinkle Lane

**Address 2**

(City)

Newark WOODBRIDGE, Lulu ROSS.  
PHYLLIS WHEATLY

**State** DE

**Zip Code** 19711

**Contact Person** Joanne Glauser

**Contact Title** President- Delaware Chapter

**Contact Phone Number** 3025457652

**Contact Email Address** [jhglaus@gmail.com](mailto:jhglaus@gmail.com)

**Total Funding Request** 1496.50

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

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

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

**If YES, approximately what percentage of the project's funding does the Council grant represent?** 20

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

**Program Category Other**

**Primary Beneficiary Category** Disability & Special Needs

**Beneficiary Category Other**

**Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program** 73

**Scope** The goal of this project is to provide 73 students in Delaware with new school uniforms\* (2 shirts, 2 pants) required by their school for attendance in the 2022/2023 school year. The specific students receiving the uniforms will be determined by the school contact that Shoes That Fit works with to determine the number of uniforms needed for the upcoming school year.

Cost per student would be \$20.50, including 2 uniform shirts and 2 uniform pant. 73 students could be assisted for a total of \$1496.50.

Shoes That Fit works with school contacts to determine how many students in need will require uniforms. We purchase the uniforms in bulk to obtain the best prices, and then

distribute to the school. The school contact is responsible for getting the uniform to the school

**Religious Components** Not applicable

**Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)** 0.00

**Description** 146 school uniform shirts

**Amount** 547.50

**Description** 146 school uniform pants

**Amount** 949.00

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**TOTAL EXPENDITURES** 1,496.50

**TOTAL DEFICIT FOR  
PROJECT OR  
ORGANIZATION** -1,496.50

**Name of Organization** Shoes That Fit

**Applicant/Authorized  
Official** Joanne H. Glauser

**Date** 03/12/2022

**Affidavit** Yes

**Acknowledgement**

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



# SUSSEX COUNTY GOVERNMENT

## GRANT APPLICATION

### SECTION 1 APPLICANT INFORMATION

ORGANIZATION NAME: Lord Baltimore Lions Club Charities Inc.  
PROJECT NAME: Community Medical Equipment Loaner Program  
FEDERAL TAX ID: 51-0366329 NON-PROFIT:  YES  NO

DOES YOUR ORGANIZATION OR ITS PARENT ORGANIZATION HAVE A RELIGIOUS AFFILIATION?  
 YES  NO \*IF YES, FILL OUT SECTION 3B.

ORGANIZATION'S MISSION: To improve health and well-being, strengthen communities and support those in need.

ADDRESS: P O Box 525  
Ocean View DE 19970  
(CITY) (STATE) (ZIP)

CONTACT PERSON: Thomas Roth  
TITLE: Director  
PHONE: 302-537-7727 EMAIL: tr621de@aol.com

**TOTAL FUNDING REQUEST: \$2,000.00**

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

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

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

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

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

## SECTION 2: PROGRAM DESCRIPTION

### PROGRAM CATEGORY (choose all that apply)

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

### BENEFICIARY CATEGORY

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

### BENEFICIARY NUMBER

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

## SECTION 3: PROGRAM SCOPE

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

One of the many programs of the Lord Baltimore Lions Club is a medical equipment loaner program. We supply many different types of durable medical equipment to members of our community, from canes and walkers to hospital beds and wheelchair lifts. These items are then returned to the club when no longer needed. From July 2020 to June 2021 we loaned over 400 pieces of equipment.

We currently have three wheelchair lifts that allow disabled persons to safely move in and out of their homes for medical appointments or other necessary travel. We would like to purchase another wheelchair lift to fill the ever-growing need.



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

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

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

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

### SECTION 4: BUDGET

<b>REVENUE</b>	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
<b>TOTAL REVENUES</b>	0.00
<b>EXPENDITURES</b>	
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. <b>(Put amounts in as a negative)</b>	
Planet Mobility Wheelchair Life	\$ 3,641.00
<b>TOTAL EXPENDITURES</b>	<b>\$ 3,641.00</b>
<b>TOTAL DEFICIT FOR PROJECT OR ORGANIZATION</b>	<b>\$ 3,641.00</b>

### SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the Lord Baltimore Lions Club agrees that:  
(Name of Organization)

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

**SECTION 5: STATEMENT OF ASSURANCES (continued)**

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

  
\_\_\_\_\_  
Applicant/Authorized Official Signature

04/01/2022  
Date

  
\_\_\_\_\_  
Witness Signature

04/01/2022  
Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

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

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

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

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

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

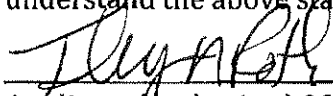
For non-religious organizations, all accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.

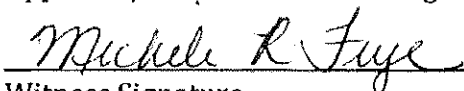
For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before funding is released. Grant is relinquished if supporting documentation is not provided within one year of County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

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

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

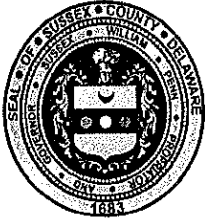
I acknowledge and represent on behalf of the applicant organization that I have read and understand the above statements.

  
\_\_\_\_\_  
Applicant/Authorized Official Signature

  
\_\_\_\_\_  
Witness Signature

Director  
\_\_\_\_\_

Title  
04/01/2022  
\_\_\_\_\_  
Date



# SUSSEX COUNTY GOVERNMENT

## GRANT APPLICATION

### SECTION 1 APPLICANT INFORMATION \**Optimist International Foundation*

ORGANIZATION NAME: *Optimist Club of Sussex County/ Opt Int. Foundation* *Foundation*

PROJECT NAME: Essay Contest, Youth Appreciation Day, Respect for Law

FEDERAL TAX ID: *23-7102928* NON-PROFIT:  YES  NO

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

YES  NO \*IF YES, FILL OUT SECTION 3B.

ORGANIZATION'S MISSION: Promoting hope and positive vision. Optimist bring out the best in youth, our communities and ourselves.

ADDRESS: *37267 Dirickson Creek Rd*

*Selbyville* *DE* *19975*  
(CITY) (STATE) (ZIP)

CONTACT PERSON: *Shelley McBride*

TITLE: *President*

PHONE: *302-258-5107* EMAIL: *shelley.mcbride@irsd.k12.de.us*

TOTAL FUNDING REQUEST: *\$1500.00*

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

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

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

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

If YES, approximately what percentage of the project's funding does the Council grant represent? *100%*

## SECTION 2: PROGRAM DESCRIPTION

### PROGRAM CATEGORY (choose all that apply)

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

### BENEFICIARY CATEGORY

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

### BENEFICIARY NUMBER

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

.....

## SECTION 3: PROGRAM SCOPE

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

Our Club sponsors our Essay Contest to all students in high school in Sussex County, DE. The topic is chosen by Optimist International. The essay length is 700-800 words. A rubric is used to judge the essays. Our club awards \$500.00, \$250.00, \$125.00 to the top three essay contestants. We invite three essay contestants to read their essays at our general meeting and we provide dinner for them and their parents. Two years ago our top winner won third at the district level.

We also sponsor Youth Appreciation day to all students in Sussex County High School. We invite two students from each high school to participate and see their local government in action. They visit the County Council and the Court of Common Pleas. We provide lunch and a gift to them at the Counting House.

We sponsor Respect for Law. A police officer from Sussex County is selected who works with the youth and is a shining star in the community.

This is a great opportunity for our youth in Sussex County.

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

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

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

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

### SECTION 4: BUDGET

<b>REVENUE</b>	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
<b>TOTAL REVENUES</b>	
<b>EXPENDITURES</b>	
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
Essay Awards - 3 monetary, 3 medallions	-\$ 970.00
Dinner for top three contestants and their parents	-\$ 125.00
Youth appreciation Lunches	-\$ 400.00
Youth appreciation gifts	\$ 200.00
Repect for Law Plaque and Dinner	-\$ 150.00
<b>TOTAL EXPENDITURES</b>	<b>-\$ 1,445.00</b>
<b>TOTAL DEFICIT FOR PROJECT OR ORGANIZATION</b>	<b>-\$ 1,445.00</b>

### SECTION 5: STATEMENT OF ASSURANCES

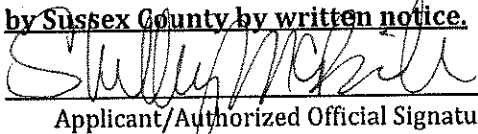
If this grant application is awarded funding, the Optimist Club of Sussex County agrees that:  
(Name of Organization)

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



**SECTION 5: STATEMENT OF ASSURANCES (continued)**

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

  
Applicant/Authorized Official Signature

4/6/22

Date

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

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

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

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

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

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

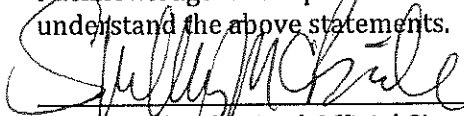
For non-religious organizations, all accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.


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

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

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

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

  
Applicant/Authorized Official Signature

  
Title

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

**Council Grant Form**

<b>Legal Name of Agency/Organization</b>	Indian River Soccer Club ✓
<b>Project Name</b>	New Equipment
<b>Federal Tax ID</b>	51-0377913 ✓
<b>Non-Profit</b>	Yes
<b>Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)</b>	No
<b>Organization's Mission</b>	The mission of the River Soccer Club is to provide opportunities for youth 4 to 19, to learn to play soccer in a wholesome and sportsmanlike atmosphere, with an emphasis on providing an appropriate level of soccer for all interested children.
<b>Address</b>	PO Box 1366
<b>Address 2</b>	32221 Gum Rd. Frankford, DE 19945
<b>City</b>	Ocean View
<b>State</b>	Delaware
<b>Zip Code</b>	19970
<b>Contact Person</b>	Rebecca Mais
<b>Contact Title</b>	President, River Soccer Club

**Contact Phone Number** 3025392389

**Contact Email Address** [rgmais@comcast.net](mailto:rgmais@comcast.net)

**Total Funding Request** \$1,000

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

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

**Are you seeking other sources of funding other than Sussex County Council?** No

**If YES, approximately what percentage of the project's funding does the Council grant represent?** N/A

**Program Category (choose all that apply)** Educational, Other

**Program Category Other** sport for youth in our community

**Primary Beneficiary Category** Youth

**Beneficiary Category Other**

**Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program** 1500

**Scope** River Soccer Club is located at 32221 Gum Road Frankford, DE. We have approximately 45 acres dedicated to 7 playing fields for youth soccer. We have three Recreational Programs through out the year serving over 650 youth each season and over 200 youth playing on travel teams. The club also has camps, tournaments, special training, and TOPSOCCER (program for special need children). We need a new stripper to line the soccer fields and the cost is \$2,600. We also rent to fields to outside groups for tournaments, camps, etc. We do all the maintance ourselves and this piece of equipment is essential . League games and practices are held each week. Fields must be marked to standards set by rules of soccer. We line fields every week. Our activities are for our local children as well as outside guest using many other facilities throughout the county.

**Religious Components**

**Please enter the current support your organization receives for this project (not entire organization)** 0.00

revenue if not applicable to request)

**Description** Operating cost / stripping machine

**Amount** 0.00

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**TOTAL EXPENDITURES** 0.00

**TOTAL DEFICIT FOR  
PROJECT OR  
ORGANIZATION** 0.00

**Name of Organization** River Soccer Club

**Applicant/Authorized  
Official** Rebecca Mais

**Date** 04/12/2022

**Affidavit  
Acknowledgement** Yes

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

To Be Introduced: 04/26/2022

Council District 1: Mr. Vincent  
Tax I.D. No.: 232-12.10-3.00  
911 Address: 30186 Seaford Road, Laurel

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN ON-PREMISES ELECTRONIC MESSAGE CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 7.03 ACRES, MORE OR LESS**

WHEREAS, on the 4<sup>th</sup> day of April 2022, a conditional use application, denominated Conditional Use No. 2363 was filed on behalf of Laurel Wesleyan Church c/o Reverend M. Scott Conn; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2363 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

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

**Section 1.** That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2363 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 west side of Seaford Road (Rt. 13A), approximately 0.53 mile northwest of Discount Land Road (S.C.R. 468), and being more particularly described in the attached deed prepared by Moore & Rutt, P.A., said parcel containing 7.03 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: 4/26/22

Council District 4: Mr. Hudson  
Tax I.D. No. 134-19.00-24.00  
911 Address 34667 Central Avenue, Frankford

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (60 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.45 ACRES, MORE OR LESS**

WHEREAS, on the 11<sup>th</sup> day of January 2022, a conditional use application, denominated Conditional Use No. 2339 was filed on behalf of Ron Sutton; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2339 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

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

**Section 1.** That Chapter 115, Article V, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2339 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 southeast side of Central Avenue (Rt. 84), approximately 0.17-mile northeast of the intersection of Peppers Corner Road (S.C.R. 365) and Central Avenue (Rt. 84) and being more particularly described in the attached legal description prepared by W. W. Edinger, said parcel containing 14.45 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: 04/26/22

Council District 4: Mr. Hudson  
Tax I.D. No. 134-19.00-24.00  
911 Address: 34667 Central Avenue, Frankford

ORDINANCE NO. \_\_\_\_

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.45 ACRES, MORE OR LESS

WHEREAS, on the 11<sup>th</sup> day of January 2022, a zoning application, denominated Change of Zone No. 1969 was filed on behalf of Ron Sutton; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1969 be \_\_\_\_\_; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation MR Medium 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 southeast side of Central Avenue (Rt. 84), approximately 0.17-mile northeast of the intersection of Peppers Corner Road (S.C.R. 365) and Central Avenue (Rt. 84) and being more particularly described in the attached legal description prepared by W. Edinger, said parcel containing 14.45 ac., more or less.

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

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 14, 2022

RE: County Council Report for C/U 2285 filed on behalf of Ashley DiMichele

---

The Planning and Zoning Department received an application (C/U 2285 filed on behalf of Ashley DiMichele) for a Conditional Use for parcel 235-21.00-48.00 for a tourist home. The property is located within the Agricultural Residential (AR-1) Zoning District and is located at 26182 Cave Neck Road, Milton. The parcel size is 2.831 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on February 10, 2022. At the meeting of March 24, 2022, the Planning & Zoning Commission recommended denial of the application for the 10 reasons as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of February 10, 2022 and March 24, 2022.

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

### C/U 2285 Ashley DiMichele

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential Zoning District for a tourist home to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 2.831 acres, more or less.** The property is lying on the south side of Cave Neck Road (S.C.R. 88), approximately 0.43 mile west of Diamond Farm Road (S.C.R. 257). 911 Address: 26182 Cave Neck Road, Milton. Tax Parcel: 235-21.00-48.00

Mr. Whitehouse advised the Commission that submitted into the record is the Applicant's survey, staff analysis, a letter from Sussex County Engineering Department Utility Planning Division, the DelDOT Service Level Evaluation Response, and zero comments.



The Commission found Ms. Ashley DiMichele spoke on behalf of her Application; that she owns a tiny home; that it is built like a RV; that it is road ready but has more of the comforts of a home; that it is off-grid capable; that it can be plugged up like an RV; that it has a water hose, 50 amp plug in, composting toilet and a grey tank; that the tiny home was originally purchased as a retirement plan, a vacation home, which was capable of being taken offsite or a guest house for visiting family; that she works at a restaurant; that when the COVID-19 pandemic hit, business and income went down; that once things began to open up she desired to make money with the idea of an Air B&B; that the home received more traffic than expected; that she did not realize it was required to update the tourist home, due to her regular home is located on the same property; that their property is near Dog Fish Head Brewery, McCabe Preserve, Prime Hook and Broadkill Beach and Dewey Beach Beer Company; that she has a lot of visitors from the cities, who are tired of working from their own homes; that these visitors stay to walk the trails, bird watch, go to the beaches; that she limits it to only two visitors at a time; that typically the group of people who stay are very quiet; that at times she has had people stay and never leave the tourist home; that she submitted pictures of the tourist home into the record; that the tourist home is set back from the road; that the tiny home is shielded next to a large magnolia tree, in between the wood line, to help prevent anything objectional to adjacent neighbors; that the home located to the front-left of their property is also a rental home; that any visitor for the tiny home uses her personal driveway; that she also submitted information and specs from the builder of the tiny home and the specs provide information of how the home differs from an RV.

Mr. Whitehouse stated there was a history to this Application; that it had been explored a tourist home can be approved a Special Use Exception before the Sussex County Board of Adjustment; that the definition of a tourist home within the Code specifically prohibits cooking facilities in the individual rental rooms; that there was a lot of discussion on this, but a Conditional Use was decided to be the best path forward; that this could be the first Application the Commission has seen of this nature; that there was further discussion as to whether or not to describe the home as a “tiny home” in the legal advertisements; that tiny home is not currently defined in Sussex County Code which led to the decision to describe the home as a tourist home; that there is a mechanism within the AR-1 Zoning District, if an applicant cannot proceed forward under the permitted uses, the application can come forward as a Conditional Use and the Application began after questions were raised regarding the requirement of a building permit.

Ms. Stevenson questioned if Ms. DiMichele permanently lived onsite, how water is supplied; that she confirmed the home has a compost toilet, and questioned the length of the rental stays and she questioned Mr. Robertson if there should be a limitation to how long visitors could stay.

Mr. Hopkins stated he likes the idea and questioned how the Application came about.

Mr. Robertson questioned how the septic was constructed and stated he is unsure how the County would enforce rental length limitations.

Ms. DiMichele stated a hose hook up is provided for water services; that water is collected in a grey tank; that the kitchen contains a stovetop, refrigerator, and sink; that the home does not contain an oven; that currently, she has a two day stay minimum; that most people stay at least three days to a

week; that her goal is not to have a permanent resident for the home; that they were originally under the impression they were not required to obtain a building permit, due to the home being built like an RV by a licensed company; that after the home was placed on-site, they were informed they were required to obtain a building permit and after further investigation it was later ruled she was not required to obtain a building permit

Mr. Phillips confirmed Ms. DiMichele and he worked together to obtain a building permit; that upon further investigation it was decided a building permit was not required for the home and he confirmed with the County Assessment Department the home is not a taxable dwelling unit.

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

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

In relation to Application C/U 2285 Ashley DiMichele. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

#### Draft Minutes of the March 24, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which has been deferred since February 10, 2022.

Ms. Stevenson moved that the Commission recommend a denial of C/U 2285 for Ashley DiMichele for a tourist home based upon the record made during the public hearing and for the following reasons:

1. The Applicant is requesting a conditional use to operate a tourist home using an RV camper on her property as the home. Based upon the record, it is intended to be rented on a short-term basis through services such as Airbnb or VRBO.
2. The RV camper is not on a fixed foundation, and it does not have permanent utility connections. Instead, the record indicates that water service is via a hose connection, and wastewater is held in a tank within the RV Camper that is emptied on an as-needed basis.
3. The use as an RV Camper cannot be considered a “dwelling” under the applicable Codes, including the County Building Code. Although the use was informally referred to as a “tiny home” at times, it cannot be considered a “home” because it is not habitable as a “dwelling” under our applicable Codes.
4. This use is essentially a one-camper campground. There are specific requirements in the Sussex County Zoning Code for campgrounds and these apply whether the request is for 1 or 100 campsites. All campsites within Sussex County must comply with these requirements.
5. Section 115-172H of the Sussex County Zoning Code regulates the use of “mobile campers, tents, camp trailers, touring vans and the like”, and several of the placement requirements for these campsites are not satisfied with this application.
6. Section 115-172H requires access to the campsite to be via an easement that has a width of at least 50 feet. This section also requires all interior drive easements to have paving that is 24 feet wide within a 30 foot right of way. That requirement is not satisfied here.

7. Section 115-172H requires each campsite to be at least 400 feet from any existing dwelling on the property of other ownership. This RV Camper and campsite is not 400 feet from dwellings of other ownership on Mercury Lane. This requirement is not satisfied.
8. Section 115-172H requires every campsite to have an area of at least 2,000 square feet and a width of not less than 40 feet. It also requires campsites to have a landscaped space that is at least 50 feet wide along all boundaries that is free of buildings and streets. These requirements are not satisfied here.
9. Even though this is just one campsite with one RV Camper, it is held to the same requirements as larger campgrounds. Since it does not meet those standards, and since it cannot be considered a “dwelling” since it is undersized, does not have proper utility connections, and does not have a foundation, the application should be denied.
10. While this application was for an RV camper to be used for short-term vacation rentals and not for housing, it provides a good opportunity to start the larger conversation of how the County should address “tiny homes” in the future. Tiny homes can provide an affordable housing option for residents of Sussex County with the proper standards in place governing them. I would recommend that County Council look at ways to regulate and permit tiny homes as dwellings.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried to recommend denial of C/U 2285 Ashley DiMichele for the reasons stated in the motion. Motion carried 4-1.

The vote by roll call; Mr. Hopkins – nay, Ms. Stevenson – yea, Chairman Wheatley – yea, Ms. Wingate – yea, Mr. Mears – yea

**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, MRTPI, AICP  
DIRECTOR OF PLANNING & ZONING

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date: February 10<sup>th</sup>, 2022

Application: CU 2285 (Tourist Home)

Applicant: Ashley DiMichele  
26182 Cave Neck Road  
Milton, DE 19968

Owner: Ashley & Patrick DiMichele  
26182 Cave Neck Road  
Milton, DE 19968

Site Location: South side of Cave Neck Road at 26182 Cave Neck Road, Milton

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

Proposed Use: Tourist Home

Comprehensive Land  
Use Plan Reference: Developing Area, portion being Town Center

Councilmanic  
District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Milton Fire Department

Sewer: On-site septic system

Water: Private on-site well

Site Area: 2.831 acres +/-

Tax Map ID.: 235-21.00-48.00



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



**Sussex County**

DELAWARE  
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## Memorandum

To: Sussex County Planning Commission Members  
From: Chase Phillips, Planner II  
CC: Vince Robertson, Assistant County Attorney and Applicant  
Date: February 3<sup>rd</sup>, 2022  
RE: Staff Analysis for CU 2285 (Ashley DiMichele)

---

This memo provides background and an analysis for the Planning Commission to consider as a part of Conditional Use No. 2285 to be reviewed during the February 10, 2022, Planning Commission Meeting. This analysis should be a part of the record, and it is subject to the comments presented during the public hearing.

The request is for a Conditional Use of land for a tourist home to be located on Tax Parcel: 235-21.00-48.00. The parcel is on the southwest side of Cave Neck Road (S.C.R. 88), approximately 0.43 of a mile west of Diamond Farm Road (S.C.R. 257). The property is 2.831 acres +/-.

### Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) includes a Future Land Use Map that helps determine how land uses should change over time. The Future Land Use Map in the plan indicates that the subject property is split between the “Developing Area” and “Town Center” designations. A map is attached that shows the extent of this split designation.

Developing Areas are emerging growth areas that demonstrate characteristics of developmental pressures. A range of housing types, including single family, townhomes, and multi-family units, could be desirable in the Developing Area. Development in this designation could be best suited in areas with good road access. Appropriate mixed-use developments should be considered as well. This classification supports the base residential density of two (2) units to the acre, and medium densities (4 – 12 units) may be appropriate in select locations.

The Town Center designation includes areas of county jurisdiction that surround municipalities. The Town Center designation acknowledges that commercial uses should serve the daily needs of residents, workers, and visitors. Smaller scale and lower impact uses may be appropriate, but larger uses such as industrial uses are proposed to be directed to Industrial Areas. Medium to high density residential development is encouraged. This ranges from 4 to 12 units per acre. Development within Town Centers are strongly encouraged to be served by central water and sewer facilities. As mentioned above, a map is published in the packet that shows the extent of the two Future Land Use Map is attached in the published packet.

### Zoning

The subject property is within the Agricultural Residential (AR-1) Zoning District. All properties to the north, south, east, and west are also within the AR-1 Zoning District. The AR-1 Zoning District is established to provide opportunity for a full range of agricultural uses and to protect agricultural lands and the county’s most valuable natural resources. This district is also intended to





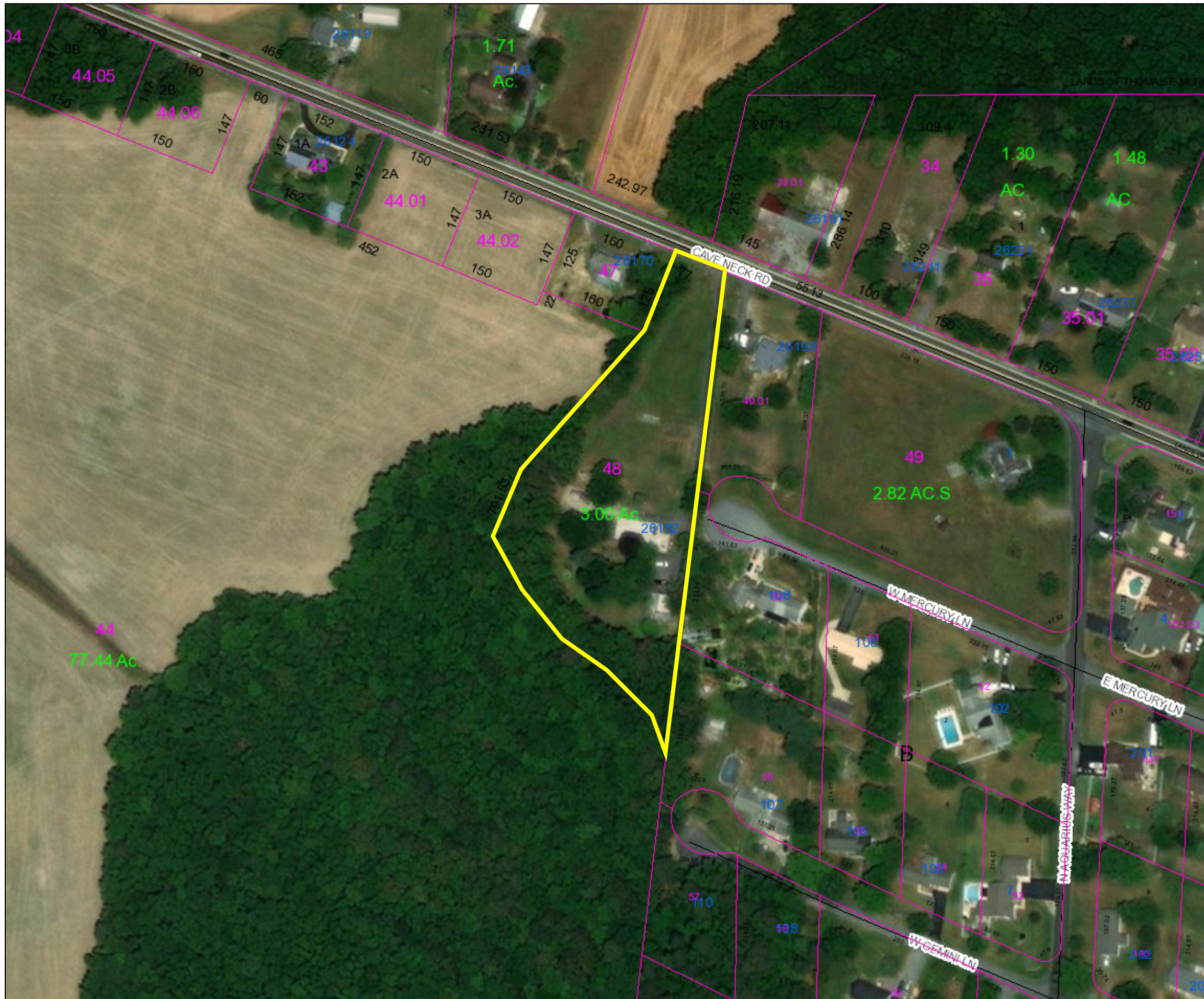
protect watersheds, waterways, forests, and scenic values as it accommodates lower density single family housing that is often classified as single family. The AR-1 Zoning District seeks to prevent untimely scattering of more urban uses which are encouraged to be in places planned for the provision of public services and utilities.

There have been no other approved Conditional Use within a one-mile radius within the past 20 years.

Based on the analysis provided, a Conditional Use for a tourist home could be considered as consistent with the surrounding land uses and zoning regulations given plans of scale and impact.



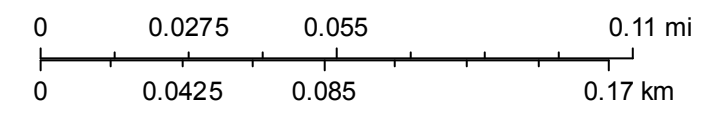
# Sussex County



<b>PIN:</b>	235-21.00-48.00
<b>Owner Name</b>	MARKHAM-DIMICHELE ASHLEY E
<b>Book</b>	4389
<b>Mailing Address</b>	26182 CAVE NECK ROAD
<b>City</b>	MILTON
<b>State</b>	DE
<b>Description</b>	S/RT 88 FR
<b>Description 2</b>	OVERBROOK TO MILTON
<b>Description 3</b>	N/A
<b>Land Code</b>	

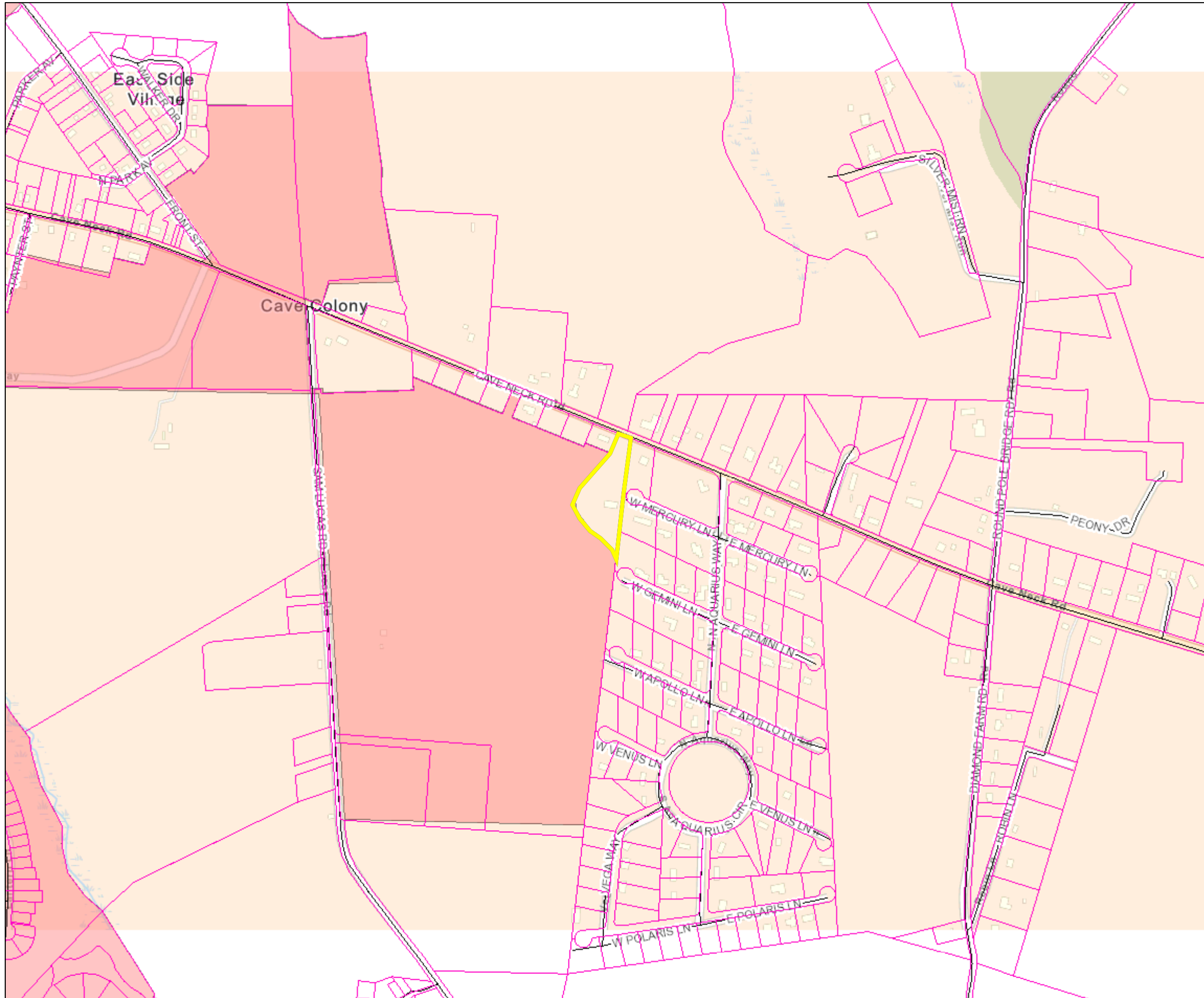
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- Tax Parcels**
- 911 Address**
- Streets**

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# Sussex County



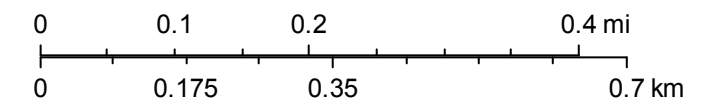
<b>PIN:</b>	235-21.00-48.00
<b>Owner Name</b>	MARKHAM-DIMICHELE ASHLEY E
<b>Book</b>	4389
<b>Mailing Address</b>	26182 CAVE NECK ROAD
<b>City</b>	MILTON
<b>State</b>	DE
<b>Description</b>	S/RT 88 FR
<b>Description 2</b>	OVERBROOK TO MILTON
<b>Description 3</b>	
<b>Land Code</b>	

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- polygonLayer**

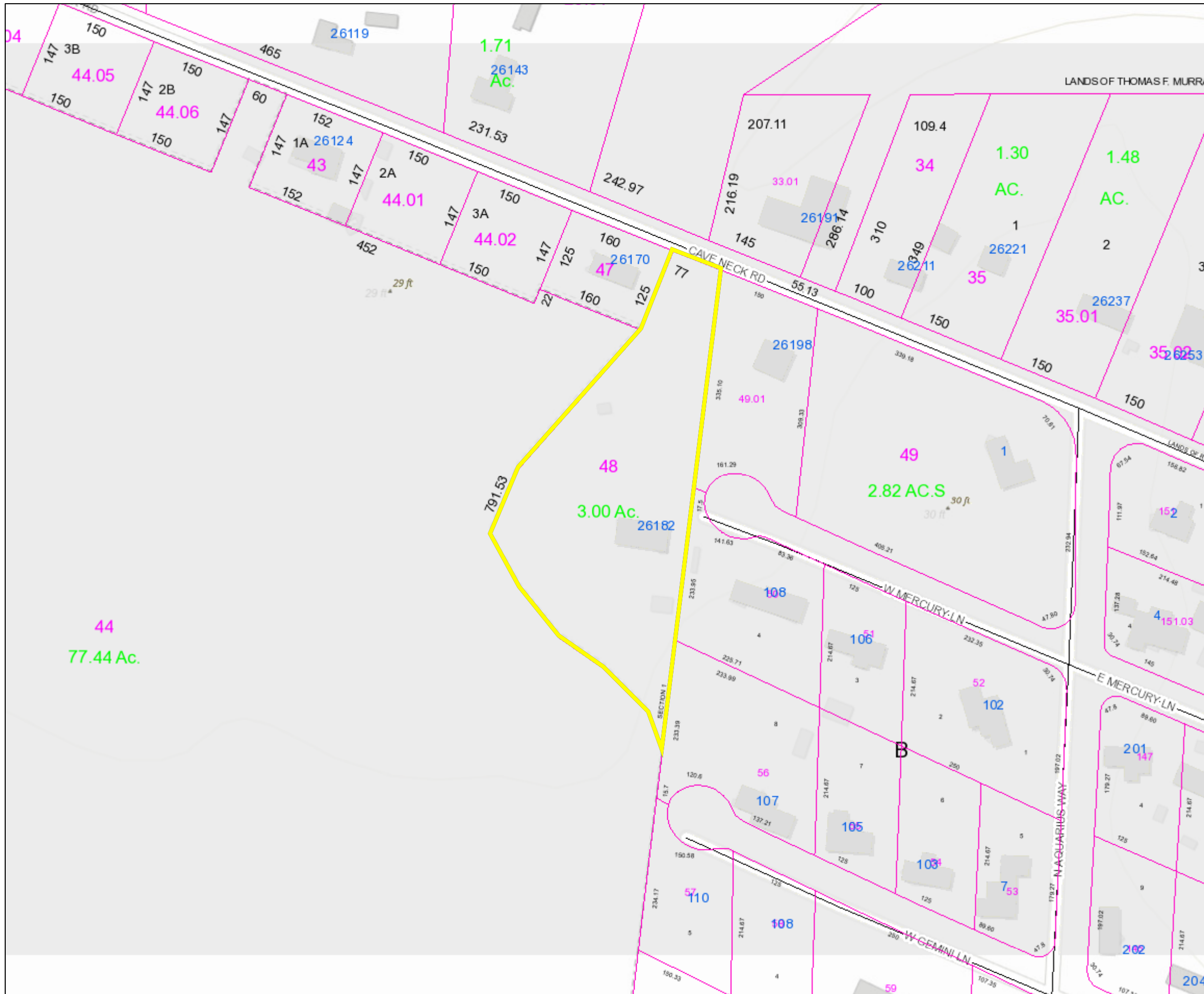
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  - Streets
  - County Boundaries
  - Municipal Boundaries

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# Sussex County



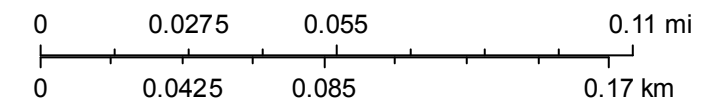
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<b>Owner Name</b>	MARKHAM-DIMICHELE ASHLEY E
<b>Book</b>	4389
<b>Mailing Address</b>	26182 CAVE NECK ROAD
<b>City</b>	MILTON
<b>State</b>	DE
<b>Description</b>	S/RT 88 FR
<b>Description 2</b>	OVERBROOK TO MILTON
<b>Description 3</b>	N/A
<b>Land Code</b>	

- polygonLayer**

  - Override 1
- polygonLayer**

  - Override 1
- ⋯ Tax Parcels
- 911 Address
- Streets

1:2,257



**Introduced: 1/25/22**

**Council District 3: Mr. Schaeffer  
Tax I.D. No. 235-21.00-48.00  
911 Address: 26182 Cave Neck Road, Milton**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOURIST HOME TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.831 ACRES, MORE OR LESS**

**WHEREAS, on the 24<sup>th</sup> day of April 2021, a conditional use application, denominated Conditional Use No. 2285 was filed on behalf of Ashley DiMichele; 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. 2285 be \_\_\_\_\_; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.**

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

**Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2285 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 south side of Cave Neck Road (S.C.R. 88), approximately 0.43 mile west of Diamond Farm Road (S.C.R. 257), and being more particularly described in the attached deed prepared by Bonnie M. Benson P.A., said parcel containing 2.831 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 14, 2022

RE: County Council Report for C/Z 1953 filed on behalf of Brasure Holdings, LLC

---

The Planning and Zoning Department received an application (C/Z 1953 filed on behalf of Brasure Holdings, LLC) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District. The property is located at 35131 Lighthouse Road, Selbyville. The change of zone is for 0.27 acres, more or less.

The Planning and Zoning Commission held a public hearing on March 10, 2022. At the meeting of March 10, 2022, the Commission recommended approval of the application for the 8 reasons as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meeting of March 10, 2022.

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

### C/Z 1953 Brasure Holdings, LLC

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.646 ACRES, MORE OR LESS.** The property is lying on the northwest side of Lighthouse Road (Rt. 54) approximately 0.27 mile southwest of Zion Church Road (Rt. 20). 911 Address: 35131 Lighthouse Road, Selbyville. Tax Parcel: 533-19.00-13.02.

Mr. Whitehouse stated that submitted into the record is the staff analysis, a letter from Sussex County Engineering Department Utility Planning Division, the Applicant's legal description, the DeIDOT Service



Level Evaluation Response, the Applicant's survey, and zero comments in support and opposition.

The Commission found that Mr. Ray Blakeney spoke on behalf of the Application – C/Z 1953 Brasure Holdings, LLC, and also present was Ms. Heather Brasure, the wife of Mr. Justin Brasure, Vice President.

Ms. Brasure stated they are seeking a rezoning of the proposed property, which is located between their current business on property zoned as C-1 (General Commercial) and the property owned by Mr. David Brasure and Ms. Peggy Brasure; that the property they are seeking to rezone is owned by Brasure Holdings, LLC, which is owned by Mr. David Brasure and Ms. Peggy Brasure; that the property is leased to Brasure's Carpet Care, Inc.; the subject property is currently zoned AR-1 (Agricultural Residential); that the request to have the property rezoned to C-2 (Medium Commercial); that they request this rezoning to allow an 80'x100' storage facility; that due to the new development in the area and increased production volume, they have outgrown their current building; that by adding the proposed storage facility, they would be able to purchase padding and chemicals in bulk; that purchasing in bulk would allow them to purchase materials at a discounted rate; that they currently have two high-top sprinters which do not fit in the current garages; that the proposed building would be able to accommodate the high-top vehicles, in addition to the two vehicles used to provide estimates; that they require a climate controlled room for the storage of rugs and cushions which are awaiting delivery, as well as rugs being stored for their customers; that they currently employ 14 full-time employees and the business seems to grow every day.

Mr. Ray Blakeney stated the current business has existed at the current site for almost 40 years; that the existing business property is currently zoned C-1 (General Commercial); that business is growing and they have a need to expand; that they desire to make the zoning consistent with what is currently existing; that they have had initial contacts with DelDOT for a Letter of No Contention and they have had a preliminary meeting with Sussex Conservation District regarding stormwater management.

Ms. Wingate requested to confirm the current business is located within C-1 Zoning and she stated she recognizes their need to expand.

Mr. Blakeney stated the current business is located within the C-1 commercially zoned portion of the property.

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

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

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

Mr. Mears moved the Commission recommend approval of Change of Zone 1953 for Brasure Holdings, LLC. for a Change in Zone from AR-1 Agricultural-Residential zoning to C-2 "Medium Commercial" zoning based upon the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.

2. The Applicant's property is currently zoned AR-1 along Lighthouse Road. It is adjacent to the Applicant's property and business that is zoned C-1 and adjacent to other lands owned by the Applicant. This is an appropriate location for C-2 zoning.
3. C-2 Zoning at this location along Lighthouse Road will benefit nearby residents of Sussex County by providing a convenient location for retail uses or consumer services.
4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
5. The site is mostly in the "Coastal Area" according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
7. No parties appeared in opposition to the rezoning application.
8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval, of C/Z 1953 Brasure Holdings, LLC. 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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302-854-5079 F  
JAMIE WHITEHOUSE, MRTPI, AICP  
DIRECTOR OF PLANNING & ZONING

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date: March 10<sup>th</sup>, 2022

Application: CZ 1953 Breasure Holdings, LLC

Applicant: Brasure Holdings, LLC  
35131 Lighthouse Road  
Selbyville, DE 19975

Owner: Brasure Holdings, LLC  
35131 Lighthouse Road  
Selbyville, DE 19975

Site Location: Lying on the northwest side of Lighthouse Road (Rt. 54) approximately  
0.27 mile west of Zion Church Road (Rt. 20)

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

Proposed Zoning: Medium Commercial (C-2) Zoning District

Comprehensive Land  
Use Plan Reference: Coastal Area

Councilmanic  
District: Mr. Rieley

School District: Indian River School District

Fire District: Roxana Fire Department

Sewer: Sussex County

Water: Well

Site Area: 1.646 acres +/-

Tax Map ID.: 533-19.00-13.02



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: Christin Scott, Planner I  
CC: Vince Robertson, Assistant County Attorney, and applicant  
Date: March 2, 2022  
RE: Staff Analysis for CZ 1953 Brasure Holdings, LLC

---

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1953 Brasure Holdings, LLC to be reviewed during the March 10, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for part of Tax Parcel 533-19.00-13.02 to allow for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Medium Commercial (C-2) Zoning District. The property is lying on the northwest side of Lighthouse Road (Rt. 54), approximately 0.27 mile southwest of Zion Church Road (Rt. 20). The portion of the parcel to be rezoned consists of 1.646 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 north, south, east and west of the subject property also contain the Future Land Use Designation of "Coastal Area."

As outlined within the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided 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 also be allowed. In doing so, careful mixtures of homes with light commercial, office and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home. Major new industrial uses are not proposed in these areas.

The portion of this property is zoned Agricultural Residential (AR-1) Zoning District. The rest of the property is zoned General Commercial (C-1) Zoning District. Adjacent parcels to the north are also zoned Agricultural Residential (AR-1) Zoning District. The properties to the south on the opposite side of Lighthouse Road (Route 54) are zone Agricultural Residential (AR-1) and Medium Residential (MR) and the adjacent properties to the west are zoned Agricultural Residential (AR-1) Zoning District. Properties further to the east are zoned Heavy Commercial (C-3), Neighborhood Business (B-1) and Medium Residential (MR) Zoning Districts.



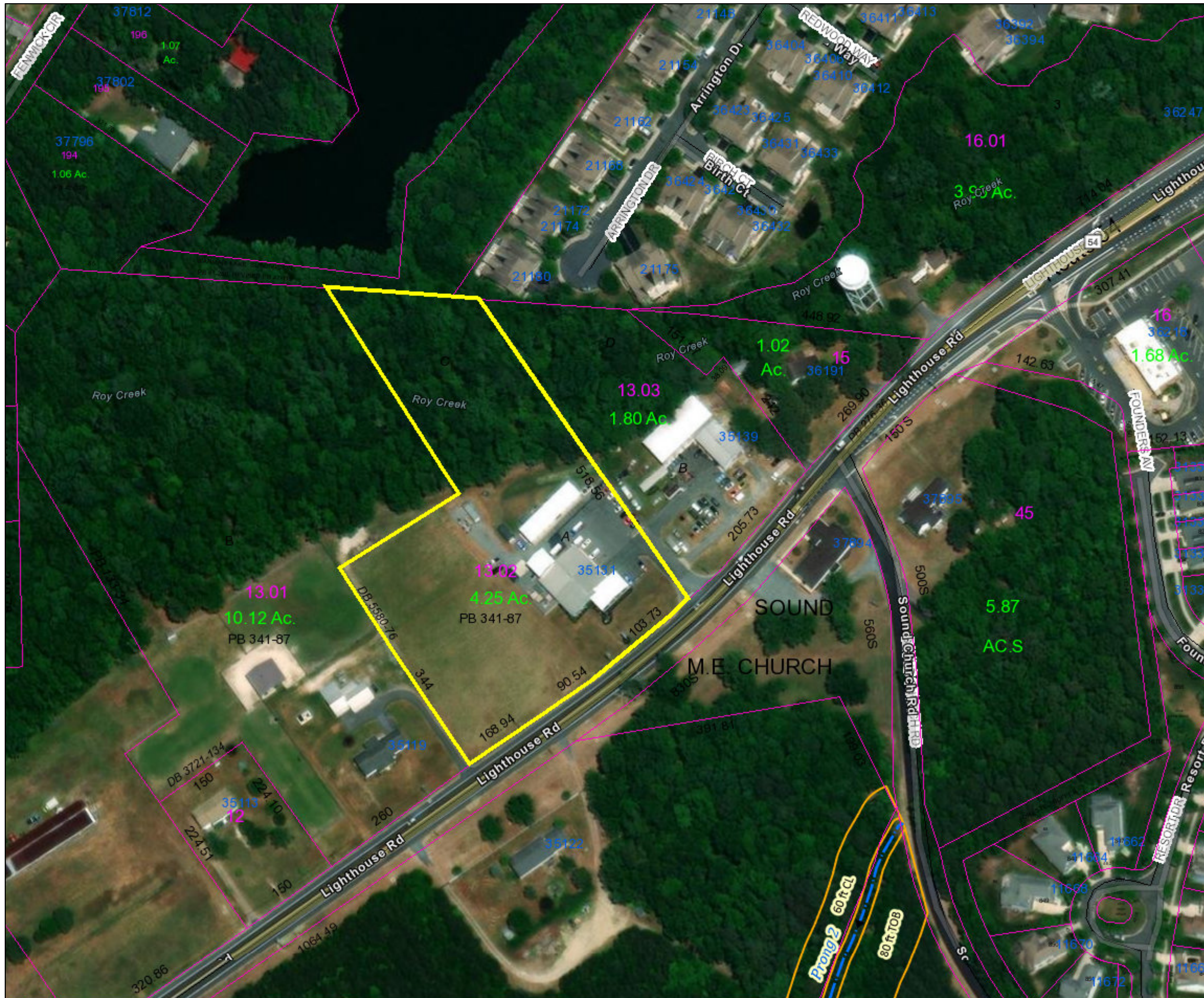
The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories,” the Medium Commercial (C-2) Zoning District is listed as an applicable zoning district in the Coastal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

Since 2011, there have been nine (9) Change of Zone applications within a 1-mile radius of the application site. The Change of Zone applications approved include Medium Residential (MR), Commercial Residential (CR-1), Neighborhood Business (B-1), and Medium Commercial (C-2) Zoning Districts.

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from an Agricultural Residential Zoning District (AR-1) to a Medium Commercial Zoning District (C-2) could be considered as being consistent with the land use, based on the size, scale, zoning and surrounding uses.



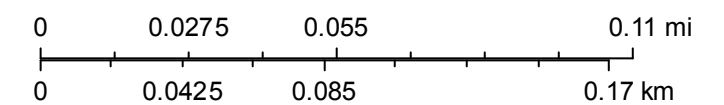
# Sussex County



<b>PIN:</b>	533-19.00-13.02
<b>Owner Name</b>	BRASURE HOLDINGS LLC
<b>Book</b>	4537
<b>Mailing Address</b>	35131 LIGHTHOUSE RD
<b>City</b>	SELBYVILLE
<b>State</b>	DE
<b>Description</b>	NW/LIGHTHOUSE RD
<b>Description 2</b>	PARCEL A C
<b>Description 3</b>	N/A
<b>Land Code</b>	

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

1:2,257





### Addresses / Parcels

- TaxParcels

### Council Districts

- Fire Districts
- County District 01
- County District 02
- County District 03
- County District 04
- County District 05
- County Boundaries

### Schools/Libraries

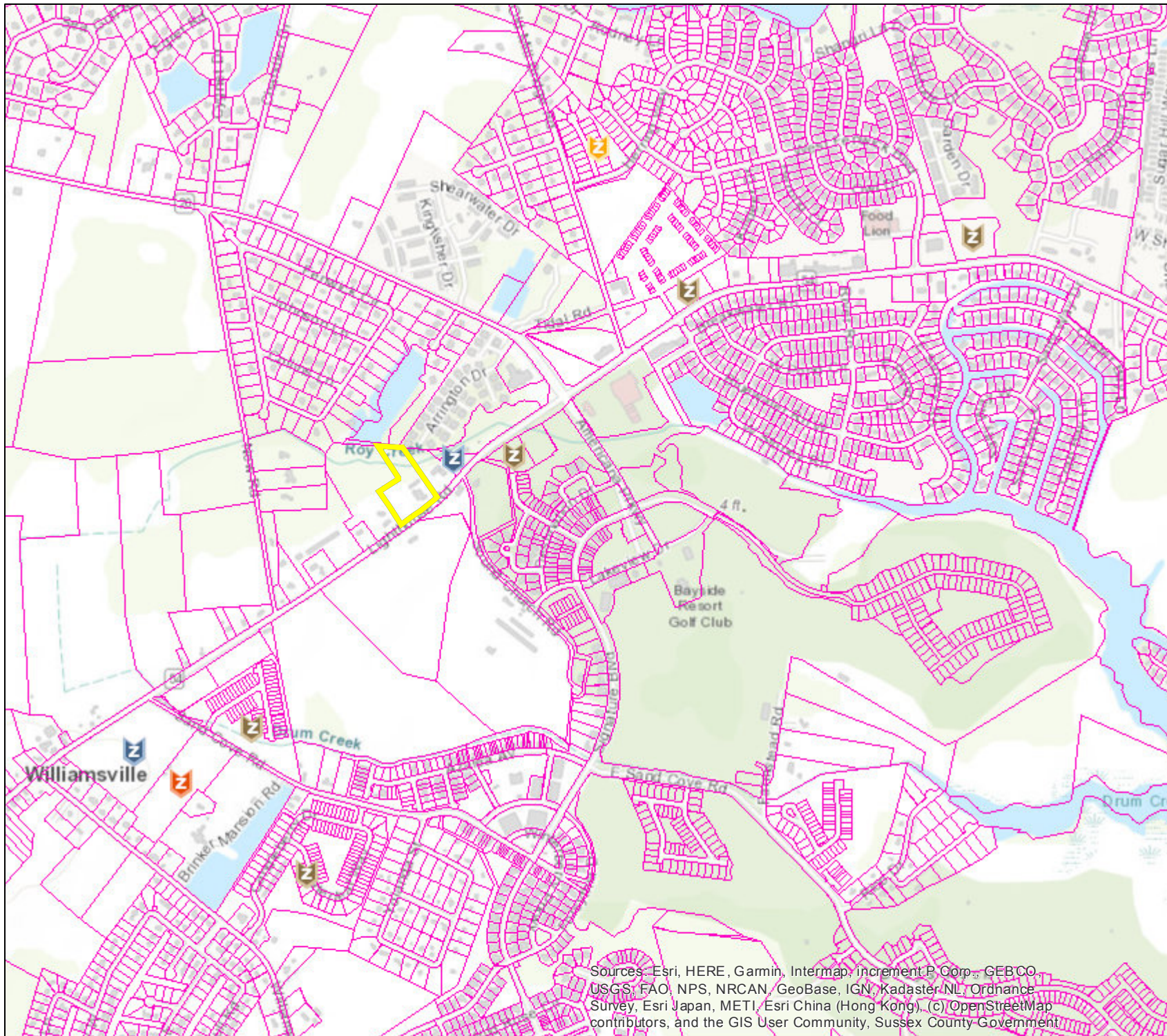
- School Buildings (Various)
- School Library
- Public Library
- Special Library
- DOE School Districts
- DOE VoTech School Districts

### Hydrology

- Streams / Rivers
- Lakes, Ponds, Bays

### Flood Zones

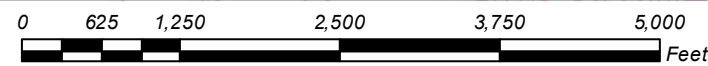
- 0.2% Annual Chance Flood Hazard
- A
- AE
- AO
- Open Water
- VE
- Public Protected Lands
- Municipalities
- Communities
- Boundaries State County



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, Sussex County Government



## Sussex County Map





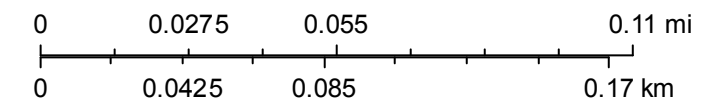
# Sussex County

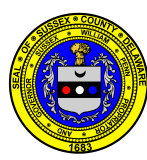


<b>PIN:</b>	533-19.00-13.02
<b>Owner Name</b>	BRASURE HOLDINGS LLC
<b>Book</b>	4537
<b>Mailing Address</b>	35131 LIGHTHOUSE RD
<b>City</b>	SELBYVILLE
<b>State</b>	DE
<b>Description</b>	NW/LIGHTHOUSE RD
<b>Description 2</b>	PARCEL A C
<b>Description 3</b>	N/A
<b>Land Code</b>	

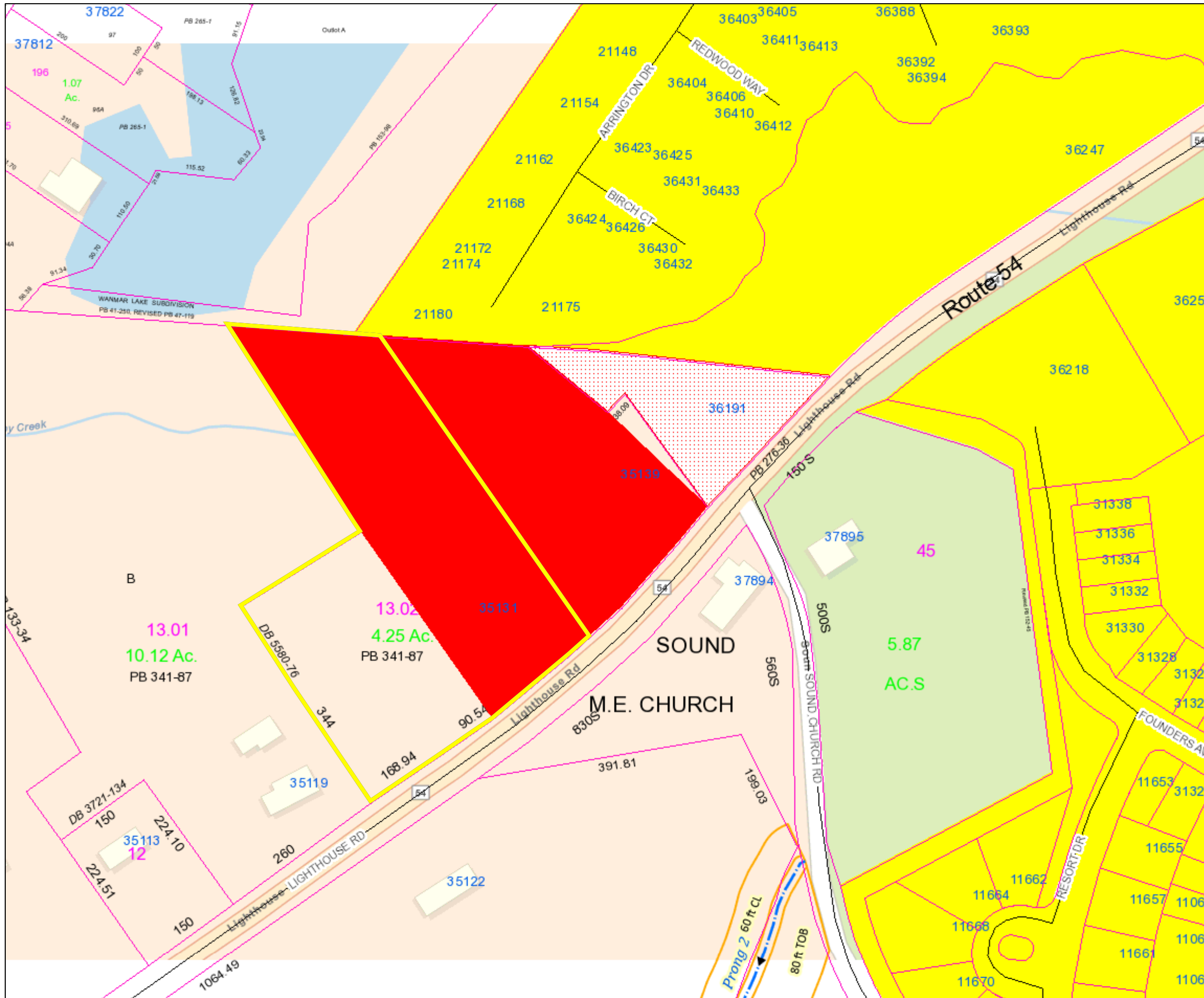
- polygonLayer**
  - Override 1
- polygonLayer**
  - Override 1
- Tax Parcels
- 911 Address
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- Tax Ditch Segments**
  - Tax Ditch Channel
  - Pond Feature
  - Special Access ROW
  - Extent of Right-of-Way
  - Municipal Boundaries
  - TID

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# Sussex County



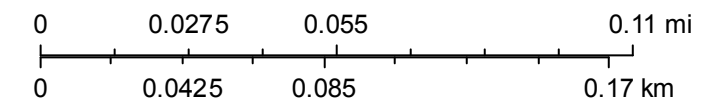
<b>PIN:</b>	533-19.00-13.02
<b>Owner Name</b>	BRASURE HOLDINGS LLC
<b>Book</b>	4537
<b>Mailing Address</b>	35131 LIGHTHOUSE RD
<b>City</b>	SELBYVILLE
<b>State</b>	DE
<b>Description</b>	NW/LIGHTHOUSE RD
<b>Description 2</b>	PARCEL A C
<b>Description 3</b>	N/A
<b>Land Code</b>	

- polygonLayer**

  - Override 1
- polygonLayer**

  - Override 1
- Tax Parcels
- 911 Address
- Streets

1:2,257



**Introduced 10/12/21**

**Council District 5 - Rieley  
Tax I.D. No. 533-19.00-13.02  
911 Address: 35131 Lighthouse Road, Selbyville**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.646 ACRES, MORE OR LESS**

**WHEREAS, on the 28th day of July 2021, a zoning application, denominated Change of Zone No. 1953 was filed on behalf of Brasure Holdings, LLC; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1953 be \_\_\_\_\_; and**

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

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

**Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of AR-1 Agricultural Residential District for a portion of the parcel (1.646 acres) and adding in lieu thereof the designation of C-2 Medium Commercial District as it applies to the property hereinafter described.**

**Section 2. The subject property is described as follows:**

**ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the northwest side of Lighthouse Road (Route 54) approximately 0.27 mile southwest of Zion Church Road (Route 20), and being more particularly described in the attached legal description prepared by Land Surveying Services, said parcel containing 1.646 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  
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jamie.whitehouse@sussexcountyde.gov



**Sussex County**

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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 14, 2022

RE: County Council Report for C/Z 1967 filed on behalf of Henlopen Properties, LLC

---

The Planning and Zoning Department received an application (C/Z 1967 filed on behalf of Henlopen Properties, LLC) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR Medium Residential District. The property is located on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). The change of zone is for 43.777 acres, more or less.

The Planning and Zoning Commission held a public hearing on March 10, 2022. At the meeting of April 14, 2022, the Commission recommended approval of the application for the 7 reasons as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meeting of March 10, 2022 and the minutes of the Planning & Zoning Commission meeting of April 14, 2022.

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

### **C/Z 1967 Henlopen Properties, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS.** The property is lying on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). 911 Address: N/A. Tax Parcel: 335-8.00-37.00 (portion of).



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

Mr. Whitehouse advised the Commission that submitted into the record for C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC is the Applicant's Site Plan, the Applicant's Exhibit Booklet, the Traffic Impact Study (TIS), and the DelDOT response to the TIS, a letter from Sussex County Engineering Department Utility Planning Division, the PLUS Comments, the responses to the PLUS comments, a Cultural Resource Assessment, an Environmental Assessment, three letters of support, two letters of opposition and four mail returns.

The Commission found that Mr. David Hutt, Esq. with Morris James spoke on behalf of Applications 2022-01, C/Z 1967, C/Z 1968 and C/U 2334 for Henlopen Properties, LLC; that he is representing both the owners of the property, Mitchell Family, LLC and the Applicant, Henlopen Properties, LLC; that also present were Mr. Robert Mitchell, a member of the Mitchell Family, LLC, Mr. John Myer and Mr. Jon Hoffman, representatives of Henlopen Properties, LLC., Mr. Ring Lardner and Mr. Cliff Mumford, civil engineers with Davis, Bowen & Friedel, Inc.; Mr. Dennis Hughes, II, the traffic engineer with Davis, Bowen & Friedel, Inc., Mr. Steven Cahill, geologist, Mr. Edward Otter, archeologist and Mr. Mark Davidson, a principal land planner with Pennoni; that the current Applications were not the first Applications to be filed for the project; that the first proposed plan for the property was filed in April 2019; that the name of the project has changed several times; that the project was called "The Mitchell Farm" with the submission of the first Application; that the approved name became Zwaanendael Farm; that the property is currently known as Mitchell's Corner; that a number of things have changed since the Applications were filed; that the world experienced the COVID-19 Pandemic; that there has been a change in the directorship of Sussex County Planning & Zoning, from Ms. Janelle Cornwell to Mr. Jamie Whitehouse; that since the submission of the Application there have been numerous conversations and correspondence regarding the scheduling of the public hearings for the Applications; that in order to have a public hearing on a land use application, pursuant to the memorandum of understanding between DelDOT and Sussex County, a Traffic Impact Study (TIS) Review Letter was required; that the Applicant was awaiting the completion of the TIS Review Letter; that the initial response to the TIS Review Letter occurred October 2021; that the response was to the TIS performed for the initial Application; that the initial proposal had the Cape Henlopen Medical Center on the corner of Kings Hwy and Gills Neck Rd., C-3 Heavy Commercial properties along Kings Hwy., B-2 Business Community District properties located along Gills Neck Rd. and MR Medium-Density Residential located for the rest of the property, where apartments and other housing were proposed with a Conditional Use and Subdivision Application; that initially there was a total of five submitted applications; that since then, the applications have been reduced to four applications; that the current Applications received a Supplemental TIS Review letter; that the currently proposed Applications reduced the commercial impact of the project; that stated within the Supplemental TIS Review Letter, the Applications being heard are a trip generation reduction of almost 50% from the initial Applications; the subject property is located across the street from the Cape Henlopen High School; that next to the Cape Henlopen School is the Jack Lingo Real Estate office; that currently under construction is the Lewes Medical Campus, which is proposed to be an assisted living facility; that west of Gills Neck Rd. is the future location of the Village Center; that located on the same side as the subject property, at the corner of Gills Neck Rd. and Kings Hwy. is the Cape Henlopen Medical Center; that the Mitchell Family filed a previous Conditional Use Application (C/U 2112) in 2018 for the Cape Henlopen Medical Center; that C/U 2112 was for medical professional offices in a 39,000 sq. ft. building; that the Cape Henlopen

Medical Center is a good demonstration of the need for professional services within Sussex County as it serves many residents within the immediate area; that continuing down Kings Hwy, on the same side as the subject property, toward the City of Lewes, are the offices of Lane Builders; that the next property is the Big Oyster Brewery; that on the northern boundary of the property is Jefferson Apartments and Bay Breeze Estates, both of which are located within the City of Lewes; that on the eastern side of the subject property is The Moorings, formally known as Cadbury at Lewes; that the most detailed history of the project can be found within the Cultural Resource Assessment, prepared by Dr. Otter; that the majority of the mentioned culturally significant resources are found closer to Pot Hook Creek than the subject site; that the historical item mentioned is the existing farmhouse located on the subject property; that

the farmhouse is still occupied by Mr. Jerry Mitchell; that Dr. Otter's report mentioned the farmhouse,

outbuilding and additional structures require documentation before being removed from the property; that a condition proposed by the Applicant states the property and structures would be properly documented before removal; that the Applicant plans to have Dr. Otter perform the documentation before the removal of the farmhouse; that the subject property has been with the Mitchell Family since the late 1800's; that the first Mitchell family member was a Robinson; that if one looks at the George Robinson ownership in the late 1800's, that is when the Mitchell Family ownership began; that most recently Mr. Mitchell and his family have owned the 58-acre farm; that from 1998 until 2013 the property was located with the Agricultural Preservation; that with the development around the subject property, the farmland was becoming very difficult to farm, which resulted in the decision to sell the property; that as the Mitchell Family was working toward selling, they were approached by adjacent property owners; that several portions of the 58-acre parcel was sold to adjacent neighbors; that the portion to the rear of the property was sold to The Moorings, which was the subject of a recent Application Change of Zoning to Medium-Density Residential and to request an Residential Planned Community (RPC); that there was a portion sold to The Big Oyster, which was the subject of an application for rezoning from AR-1 to C-3; that the parcel, located on the corner of Kings Hwy. and Gills Neck Rd. was the subject of C/U 2112 for the Cape Henlopen Medical Center; that property most recently sold again sold to The Big Oyster Brewery for additional expansion; that the recently sold property will be the subject of a Change of Zone application, requesting rezoning from AR-1 to C-3, at the Planning & Zoning meeting on April 14, 2022; that after the pieces of lands were sold off, the property currently consists of 47-acres; that the current Applications request a Change of Zone, for approximately three acres, next to the site of the Cape Henlopen Medical Center; that the Change of Zone Application seeks to change the zoning designation from AR-1 to C-2 Medium Commercial; that an additional Change of Zone Application request to change the zoning classification of approximately 44-acres of the property from AR-1 to MR (Medium-Density Residential); that there is also a Conditional Use Application seeking approval for a multi-family use of the property, for 267 units, on the MR zoned portion of the property; that the final Application is a Subdivision application, which was necessary to create all the various component parts of the project; that currently the property is completely zoned AR-1; that immediately south of the proposed site is B-1 Neighborhood Business Zoning, which is the location of the Village Center Project; that moving closer toward Rt. 1, there is existing C-1 and B-1 properties at the corner of Clay Rd. and Kings Hwy.; that more toward the City of Lewes, the Big Oyster property is zoned C-1, with C-3

property immediately behind it; that across the street from the subject site are two properties, located within the City of Lewes, zoned as General Commercial; that immediately behind that property is R-5 Zoning, which is the City of Lewes' mixed residential zoning; that adjacent to those properties is the City of Lewes', CFHC Zoning, which is Community Facilities Health Care Zoning; that this is the site of the Lewes Senior Campus; that located closer to the City of Lewes is more General Commercial properties; that to the north side of the property is R-5, Mixed Residential for the City of Lewes; that also located near the subject property is R-2, Residential Low Density Zoning with the City of Lewes; that nearby, The Moorings, Breakwater and Admirals Chase, are located within the MR (Medium-Residential Zoning) with Sussex County; that the project is located within the Coastal Area according to the Future Land Use Map; that surrounding areas to the project are also located within the Coastal Area or a commercial area; that the Coastal Area is designated as one of the Sussex County's seven growth areas; that Chapter 4 of the Comprehensive Plan includes Table 4.5-2, which compares zoning districts applicable to Future Land Use categories; that both the C-2 (Medium Commercial District) and the MR Medium-Density Residential District are applicable zoning districts within the Coastal Area; that the County Code describes the purpose of the C-2 (Medium Commercial Zoning District) as a district which supports retail sales and performance of consumer services, permitting a variety of retail, professional and services businesses; that the district should be primarily located near arterial and collector streets; that the district accommodates community commercial users who do not have outside storage or sales; that the County Codes description of the C-2 Medium Commercial District exactly describes the purpose the Applicant desires with the proposed project; that the project proposes to provide additional professional and business services in an area where the services are needed; that this need is demonstrated best by the success of the Cape Henlopen Medical Center; that the previously approved Conditional Use for the Cape Henlopen Medical Center mirrors the purpose proposed for the property; that the developer hired an architect to design a building for the site; that the architect studied the architecture in the area; that the architect provided a letter explaining the proposed building, as shown on the rendering; that there are comments on record regarding the architecture along Kings Hwy. and how the proposed building does not match; that the architect described the architecture along Kings Hwy. as numerous architectural motifs in the context which may be evoked to rationalize any architectural style; that do to the various architectural styles along Kings Hwy. it is difficult to match any one of those; that the developer requested the architect consider the nearest architectural style and blend the building to those nearest to the property; that features from the Cape Henlopen Medical Center and Cape Henlopen High School, compliment those features while performing the same idea for the proposed townhomes along Kings Hwy.; that once the site plan was established, the Applicant requested Mr. Mark Davidson, Land Planner with Pennoni, to review the land plan; that the peer review provided by Mr. Davidson is included in the record; that the developer determined the square footage of all buildings in the surrounding area; that some of the buildings considered were Cape Henlopen High School at 367,000 sq. ft., Lewes Senior Living Campus at 223,000 sq. ft., The Moorings at 117,000 sq. ft., the future Village Center at 75,000 sq. ft. and Cape Henlopen Medical Center at 39,000 sq. ft.; that the building proposed for the project is smaller than almost all other studied buildings, being just slightly bigger than the Cape Henlopen Medical Center; that the proposed building is an appropriate size and scale for the area; that the County Code states commercial properties should be located along arterial and collector streets; that Kings Hwy. is a perfect match for this proposed use as it is considered a major arterial by Sussex County; that the

same process and considerations were made regarding the proposed rezoning of 44-acres to be MR Medium-Density Residential; that according to the Sussex County Code, the MR District is to provide for medium- density residential development in area which are, or expected to become, generally urban in character and where sanitary sewer and water supplies may or may not be available at the time of construction; that a permitted Conditional Use is for multi-family dwelling structures, which created the need for the Conditional Use application, which accompanies the Change of Zone application; that the purpose of a Conditional Use is to provide uses which are generally public or semi-public in character, being essential and desirable for the convenience and welfare; that because of the nature of the use, the importance to the relationship of the Comprehensive Plan and possible impact on neighboring properties and Sussex County, create the requirement for extra planning judgement on location and site plan; that housing is considered public or semi-public in character; that housing is desirable, particularly within the Coastal Area; that the purpose of the presented Applications are to provide for medium residential development, in areas which are becoming more urbanized; that there are townhomes and duplexes located within Governors, Admirals Chase, Breakwater, The Moorings and The Lewes Senior Living Campus; that within the City of Lewes, multifamily housing is offered at Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens; that Bay Breeze Estates is a single-family use, located within the R-2 zoning classification with the City of Lewes, that the density within Bay Breeze Estates is still three units to an acre; that Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens, within the City of Lewes, are all zoned R-5; that R-5 Zoning is the City of Lewes' multifamily residential district, where the purpose is to provide a mix of housing types to include multifamily and affordable housing alternatives; that multifamily is located adjacent to the subject property, as well as across the street from the property; that in correspondence in the file, there is reference to the density for the project; that include in the project book, are the densities for the surrounding communities; that Dutchman's Harvest is 17 units to the acre; that Jefferson Apartments is 9.8 units to the acre; that The Moorings is 6.4 units to the acre; that Henlopen Gardens is 5.5 units to the acre; that Bay Breeze Estates is 3 units to the acre; when considering the Future Land Use Map and the densities of surrounding areas, the proposed density of 6.1 units to acre is consistent to the surrounding area; that the more intense uses should be located closer to the highway, decreasing in intensity moving further away from the highway; that this is accomplished by placing the townhomes and commercial area along Kings Hwy.; that moving closer to Bay Breeze Estates and The Moorings the uses become duplexes, which are a less intense use; that the Comprehensive Plan states lands within the Coastal Area should be able to accommodate both commercial and residential provided special environmental concerns are addressed; that medium to higher densities, between 4 to 12 units to the acre, can be appropriate in certain locations; that an appropriate location for this is where there is central water and sewer, when near a significant number of commercial uses and employment centers, when keeping with the character of the area, when situated along a main road or near a major intersection and where there is adequate level of service; that the project meets all of those characteristics; that the TIS Review Letter did state there are several intersections without adequate levels of service within the area; that the final solution to the issue is the dualization of Kings Hwy.; that waiting on the improvements would not be beneficial to the community or the project; that due to this, the

developer and DelDOT agreed upon interim improvements, to allow traffic to be improved for the time period it takes for DelDOT to complete the dualization project; that the proposed interim improvements are more than what is required within the Memorandum of Understanding between Sussex County and DelDOT; that the Memorandum of Understanding seeks to have a Level of Service D at intersections; that the most recent Memorandum of Understanding recognizes the Level of Service D is not always obtainable and this requirement may create an undue burden on a property owner looking to develop a property, given the prior development which has occurred in an area contributing to the existing level of service; that a level of service cannot be degraded by a project; that with the proposed interim improvements, there will be no degrading by the proposed project; that the improvements will provide and upgrading of service until DelDOT provides the final solution with the dualization of Kings Hwy.; that it would be unfair to request the last individual developing a property to fix all the issues; that in 2009 the need for the dualization of Kings Hwy. was recognized; that the improvements along Gills Neck Rd. have been accomplished; that during the February 23, 2022 workshop with DelDOT, it was said the estimate for the construction improvements was

\$23,000,000.00; that it would be an undue burden to require the last property owner to dualize Kings Hwy.; that although the Applicant cannot provide the dualization of Kings Hwy., they did desire to provide some temporary relief, which will be afforded through the interim improvements; that the developer did meet with the Lewes Byways Committee; that the developer agreed upon, as a Condition of Approval for the proposed project, the developer would maintain permanent easement areas and multi-modal path; that DelDOT is pushing the vast majority of the improvements onto the project side of Kings Hwy.; that the property is located within the Level 1 Investment area according to the State Strategies Map; that PLUS had no objection to the proposed project; that Investment Level 1 reflect areas which are already developed in an urban or suburban fashion, infrastructure is available and where future redevelopment or infill projects are expected; that State Strategies Map, Comprehensive Plan and the Zoning Code were all guideposts for the project's design and layout and he submitted proposed Findings and Conditions for the Application and a Willing and Able Letter from Tidewater Utilities.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is a professional engineer with Davis, Bowen & Friedel, Inc.; that the property is a total of 46.81-acres; that the portion of land requesting C-2 Zoning is located along Kings Hwy., adjacent to the Cape Henlopen Medical Center; that per DelDOT, Kings Hwy. is classified as an Other Principal Arterial, and furthermore identified as a major arterial roadway per No. 7 of the definition found in 115-4 of the County Code; that the remaining portion of land is approximately 43.77-acres and subject to the other three applications; that this portion of land also has frontage along Kings Hwy. and along Gills Neck Rd.; that Gills Neck Rd. is classified as a local road per DelDOT Functional Classification Map; that the layout of the site first began with a 20-ft. forested buffer along The Moorings, Bay Breeze and Jefferson Apartments; that this provides some additional open area to help establish the rear lot lines and allow for drainage; that this was how the lot lines were established for the townhomes and the duplexes; that they looked at the existing entrance, which is currently being utilized for Cape Henlopen Medical Center; that the developer desired to do more residential and move away from the grid street which currently exist; that they designed an arch entrance, which allows the service road to access both commercial properties; that this allows them

to avoid redesigning the entrance and roadway; that in doing this, it allowed the proposed area for a stormwater pond to serve the project; that they looked at how to best connect with the adjacent Big Oyster property; that Mr. Mitchell, the developer and Big Oyster have worked together on various land acquisitions and interconnectivity; that their goal was to separate the commercial traffic from Big Oyster from interacting with the residential traffic; that the same intent was to keep the commercial traffic from traveling through the residential area; that this was their motive for providing the direct connection to Gills Neck Rd.; that commercial traffic is heavier than residential traffic on a normal day; that they designed a mini round-about; that the round-about will be designed allowing vehicles of all types to navigate the circle; that the round-about will be reviewed by both the Fire Marshal and Sussex County Engineering; that once those spots were created, they then focused on a plan which offered a mixture of duplexes, 28-ft. wide and 24-ft. wide townhomes; that there are various prototypes offered within the proposed community; that the roads will be designed to Sussex County standards; that the right-of-way has been narrowed to 40-ft., which is allowable per County Code; that this allows them to bring the houses closer to the roadway, providing at least 20-ft between the sidewalk and the house; that this prevents vehicles from blocking the sidewalk; that No Parking signs will be added to prevent on street parking; that on street parking is always a concern of the Fire Marshal; that No Parking signs will allow enforcement to be occurred within the community if needed; that all lots were designed so no lots were backed up against each other; that all lots have some type of open space between them; that this will help facilitate drainage and landscaping; that sidewalks will be located on both sides of the road for all roadways within the community, with the exception of Road C; that the reasoning is the shared-use path is adjacent to the roadway; that it would not make sense to have a shared-use path and sidewalk next to each other; that active amenities will include a dog park, two mailcenters, a community center, a playground and sports courts for the community to use; that they have added some additional walking paths to promote pedestrian connectivity and walkability within the community; that stormwater management will be provided by infiltration through grass swales, which are located in the open area, to the rear of the lots, perforated pipes and an infiltration basin with the primary and secondary basins being located along Gills Neck Rd.; that higher volume storms, like the 10-yr. and 100-yr. storm events, will discharge via storm pipe through the lands of JG Townsend, which will discharge into a tidal discharge; that the plan was previously approved by Sussex Conservation District for the previous Application; that the pipe will still be able to be used for the current project; that the project does not contain any wetlands; that the project is not located within a flood plain; that the State Housing Preservation Office provided information regarding a known archeological site and some known prehistorical sites with high potential resources due to the known historic structures; that they hired Dr. Edward Otter to complete the Cultural Resource Assessment; that the Resource Assessment can be found in Appendix R of the Exhibit Booklet; that the existing buildings are proposed to be demolished; that Dr. Otter has confirmed he will perform the documentation for the existing buildings, should the Application receive approval; that about 6.34-acres of the project is located within the Wellhead Protection Area and must comply with Chapter 89 of the Sussex County Code; that Verdantas was hired to provide an Environmental Assessment Report; that there was a typo in the some calculations submitted into the record; that Post-Development calculations for Total Area is 9.34-acres and the Recharge Volume is 58-in.; that the total Post-Development, Recharge Volume for Stormwater Basin should have read 135,771 gallons; that with those correct numbers, the calculation remains the same as reported, which is 1,574,948 gallons; that the proposed impervious area with the 6.34-acres is

approximately 2.75-acres based on the current preliminary plan provided; that this equates to 44% of impervious coverage; that they always agreed to provide stormwater management for the Cape Henlopen Medical Center; that when they add in the Cape Henlopen Medical Center property the total impervious coverage becomes approximately 52%; that in accordance with Chapter 89 a Water Climatic Budget is required due to the project coverage being greater than 5% but less than 60%; that the Water Budget report can be found in Exhibit S of the Exhibit Booklet; that the budget shows there is a deficit of 2,646-sq. ft. of rooftop to balance the budget; that there is approximately 450,000-sq. ft. of rooftop available outside of the recharge area to balance the budget; that the project proposes to recharge more groundwater than what currently exists; that a pre-chamber system will be installed for debris and potential petroleum releases to help protect the ground water; that the pre-chamber will filter out the hydrocarbons; that the water quality will also be improved by converting the farm from its use of chemical applications to the proposed project; that Verdantas stated in their report, that the property as proposed can be constructed without adversely impacting the Lewes supply wells; that the property is located within the Sussex County Unified Sewer District; that the property will be served by a gravity sewer system, which will discharge to the Governors pump station; that the property may be served by both the City of Lewes Board of Public Works and Delaware Electric Cooperative as the parcel is split by both providers based on the map for electric territories; that water can be provided to the project by the City of Lewes Public Works or Tidewater Utilities; that both utilities have waterlines along the property frontage; that a CPCN will be required for either utilities; that Tidewater Utilities did provide a Willing & Able Letter to serve the project; that natural gas is available from Chesapeake Utilities, as they have a gas main along Gills Neck Rd.; that a Traffic Impact Study was prepared in 2019; that an addendum was prepared in April 2020 for the previous withdrawn Application; that the withdrawn Application consisted of 206,500 sq. ft. of medical office buildings, 60 single-family homes and 150 multi-family homes; that the TIS Review Letter was prepared on October 7, 2021; that the improvements included within that letter were right-of-way dedication, interim improvements and build-out improvements; that subsequent to the review letter, a new plan, which is currently being proposed was submitted to DelDOT and Sussex County; that as part of the submission the developer stated to DelDOT that despite the reduction of traffic of approximately 50%, they would abide by the recommendations from the original study; that after review of the request in the reduction of traffic, DelDOT did not require a new TIS; that DelDOT provided an amended study and a letter; that during the same time, DelDOT had sped up the design of the DelDOT US Rt 9., Kings Hwy., Dartmouth Dr. to Freeman Hwy., DelDOT Contract T202212901 or also known as the dualization of Kings Hwy.; that the dualization of Kings Hwy. was first identified in 2009 as part of a larger agreement involving projects which have all completed their construction and their portions of overall improvements; that those projects include Senators, Governors, Showfield and Whites Pond Meadow who will construct their portion in summer to fall of 2022; that the last remaining piece is the dualization of Kings Hwy.; that DelDOT held a public workshop on February 23, 2022, on their improvement project; that the developer was agreeable with the interim improvements; that the developer began working on various projects for the current public hearing before the information from the DelDOT workshop was available and before final interim improvements were negotiated; that the rendering submitted was constructed before they received information regarding how the dualization of Kings Hwy. would occur with the landscape guidelines and shared-use path; that the rendering does provide an idea how the project would look from an aerial view; that they must create a corridor effect with landscaping and



shared-use path meandering through and integrate the project with the dualization of Kings Hwy. to create a corridor the byways would be pleased with; that they recognize it is a byway and the gateway into the City of Lewes; that a second through lane was added in the southbound direction; that after discussion of the project, the time of the dualization and the reduction in traffic, DelDOT did not support the interim improvements; that after further discussion and the developers willingness and desire to provide some temporary relief, DelDOT has agreed to interim improvements; that the improvements are slightly different from what was originally required in the October 7, 2021 letter; that DelDOT proposed additional requirements; that DelDOT's first requirement is the developer will mill an overlay approximately 3,500 linear feet of Kings Hwy.; that DelDOT's second requirement is to construct a rights-in and rights-out entrance on Kings Hwy.; that this will be located across from the Lewes property; that the entrances will align across from each other; that at that location DelDOT has proposed to make a round-about for the two entrances as part of the overall project; that the round-about is the reason the developer is agreeable to the rights-in and rights-out entrance during the interim condition; that the third DelDOT requirement was to maintain the entrance on Gills Neck Rd.; that no changes are required for this, as the entrance is designed for proposed amount of traffic for the project; that the developer is to improve Kings Hwy., Gills Neck Rd. and Cape Henlopen High School; that they will convert the through lane from Gills Neck Rd. onto Kings Hwy. into a dedicated left turn lane; that this will create two left turn lanes from Gills Neck Rd. onto Kings Hwy.; that the right turn lane will be converted to a through right turn lane; that this will allow traffic to go through to Cape Henlopen High School or turn right in the intersection; that they will be adding a second through lane in the southbound direction; that a separate right turn lane will remain; that they will be shifting the intersections roadway approximately 10-ft. into the site to accomplish the improvement; that there will be two through lanes in the southbound direction and a dedicated left turn lane going onto Gills Neck Rd.; that the dual through lane will continue south; that there will be a lane drop where the right hand through lane will become a dedicated right turn lane onto Clay Rd. in the interim condition; that a separate bicycle lane will be provided through the intersection; that they will also install a shared-use path from Cape Henlopen High School to Clay Rd. to complete pedestrian connectivity to Clay Rd.; that the developer will enter into an agreement to provide an equitable contribution to the dualization project; that the developer will dedicate 50-ft. of right of way from the center line of the road; that the developer will reserve an additional 30-ft. of right of way parallel to Kings Hwy. for the dualization of the project; that a 30-ft. dedication will occur along Gills Neck Rd.; that in addition to the reservation and dedicated right of way, a 15-ft. permanent easement will be provided for a shared-use path; that a shared-use path will be provided, wrap around and connect to the Big Oyster; that the developer will enter into an agreement to provide an equitable contribution to the Clay Rd. and Marsh Rd. intersection as part of the overall realignment project; that they will provide connections and cross-access easements between the onsite lots; that there is interconnectivity provided to the Cape Henlopen Medical Center and Big Oyster; that there will also be an interconnection into Lane Builders once the roundabout is installed; that they will provide bicycle, pedestrian and transit improvements to include the shared-use paths; that they will provide a Type 2 bus stop; that the developer had a meeting with select individuals of the Lewes Byway Committee; that the meeting was held prior to the release of the dualization plan; that during the meeting the developer committed to working with the committee on the shared use path, landscaping and fencing; that after the release of the dualization plan, the developer reached out to the Lewes Byway Committee to reconfirm their commitment; that DelDOT is equally

supportive of the development of the 10-ft shared-use path, landscaping and maintenance within the permanent easement; that the project was reviewed by PLUS on December 15, 2021; that the PLUS comments and responses can be found in Exhibit M; that the PLUS comments provided were general in nature and will comply with all regulatory requirements; that Davis, Bowen & Friedel, Inc. (DBF) prepared an Environmental Assessment and Public Facility Evaluation Report in accordance of County Code, Chapter 115-194.3; that the written responses can be located within Exhibit K; that they have analyzed all of the respected items; that all mitigation measures are consistent with the Comprehensive Plan; that DBF prepared a written response to items listed in Chapter 99-9C; that the responses can be located within Exhibit J; that the project is integrated into existing terrain and surrounding landscape; that the project does not contain wetlands or flood plains; that the project provides buffers to screen objectionable features; that the project prevents pollution of surface and groundwater; that the plan provides for vehicular and pedestrian movement; that the plan mitigates the effect on area roadways and public transportation and the project is compatible with otherland areas.

Ms. Stevenson questioned if the Applicant will be using the recommendations and plans of the Lewes Byway Commission, if the Applicant is agreeable to the proposals made in the TIS Review Letter, if swales would be placed along Kings Hwy. or a closed stormwater system, if she could see a rendering of the interim highway is proposed to look like, if there will be shoulders on the roadways once the improvements are built; that shoulders are a big concern for her since Kings Hwy. is a major roadway for ambulances; that she questions what the Applicant is doing to create more pervious surfaces and questioned extra parking possibilities; that she mentioned the adjacent multi-family housing offers a lot of additional parking; that since the Applicant is offering multi-family housing, her hope is the units would be workforce housing; that she believes younger families, who work in the area, would live there and more than likely will have family and friends who visit; that with no parking on the street, additional parking will be needed; that she questioned the interconnectivity to the property; that she questioned the reasoning for not promoting access from Kings Hwy; that Gills Neck Rd. is much smaller than Kings Hwy.; that she fears the plan will encourage 400 to 500 additional people to utilize Gills Neck Rd. to enter Lewes; that she questioned if the entrance from Gills Neck Rd. could be a right-in and right-out, prohibiting traffic to turn left onto Gills Neck Rd.; that she feels until improvements are made, people will attempt to take the back way of Gills Neck Rd. into Lewes and she questioned if the Applicant has had any discussions with the school district.

Mr. Hutt stated he is unsure if there is a defined plan, especially with the new plan of the roundabout; that the Applicant intends to work with the Byway Commission as the dualization process moves forward; that the Byway Commission was excited with the Applicant's proposal shown in the rendering; that the Byway Commission did want trees and boulevards; that the Applicant hopes to accomplish as much as they can within the remaining area; that the Applicant is agreeable to the proposals made in the TIS Review Letter; that DelDOT will regulate if there should be open or closed drainage system along Kings Hwy.; that they are learning what the proposed plans are for the dualization of Kings Hwy.; that he cannot speculate on what will be required and the Sussex County Engineering Department verified the calculations to ensure there is a balanced budget on what is proposed.

Mr. Bryan Behrens spoke on behalf of the Application, that he is the group engineer for DelDOT's project development for the south section; that he is in charge of the design of the Kings Hwy. dualization project; that proposed currently is open drainage, which will be swales adjacent to the roadway; that they did reach out to the Lewes Byways Commission ahead of the DelDOT public workshop to present their proposal; that he believes Lewes Byways Commission was similarly as enthusiastic about the proposal as DelDOT was; that they are proposing a shared-use path and landscaping, which is the same proposal as the Applicant, providing room for collaboration and he does not have a rendering of the highway during the interim improvements.

Mr. Lardner stated they only have a drawing to show what the proposed travel lanes will look like; that he does not have a rendering of what the improvements will look like; that he has a drawing showing where the travel lanes will be once the roadway is shifted; that all details will be worked out with Mr. McCabe and his staff as part of the review process; that there is still a lot more collaboration to go through of how the final lanes will look; that there will be two lanes heading southbound out of the City of Lewes, heading toward Dartmouth Dr.; that there will be shoulders on both sides the roadways, in the interim condition, and upon final construction; that the driveway material has not been finalized, as the homeowners need to be part of the conversation when discussing long-term maintenance; that there will be infiltration in all rear yard swales; that this will allow the back half of roof run off to drain into the rear yard swales with infiltration in them; that the roadways will have perforated piping; that this will allow the roadways to infiltrate as soon as the drainage hits the system; that drainage will infiltrate through the roadbed; that any runoff which still makes it to the infiltration ponds, will further infiltrate within the pond; that the pond will have a pre-treatment system on it; that this will further protect the wellheads; that their intent is to infiltrate at the source; that they will balance the budget to ensure they comply completely with the Wellhead Protection requirements; that they have proposed two parking spaces per unit; that there is a parking area by the clubhouse; that during non-business hours the parking lot of the Cape Henlopen Medical Center could be used; that he believes there is other opportunities for overflow parking elsewhere, however those areas are not reflected on the current site plan; that they do have an exit from the property to Big Oyster; that he can speak to Big Oyster's plan, as they have worked very closely with Mr. Hammer and the Big Oyster staff to ensure Big Oyster's and the Applicant's needs are both met; that the stub shown on the site plan is the interconnection to Big Oyster's proposed plan in the back; that they would have access to Big Oyster, through the roundabout, both in and out; that once the improvements are completed along Kings Hwy. they will have access to the dualized roundabout; that this will provide interconnectivity to Big Oyster; that collaborations will be ongoing as the Applicant and Mr. Hammer have been partners for a long time; that traffic accessing the project from Kings Hwy. would be required to cut through the residential section, in trying to keep the peaceful nature of the neighborhood; that they were attempting to separate the medical office commercial traffic, by only using the Gills Neck intersection; that commercial traffic can be heavy at times; that Gills Neck Rd. is not much smaller in the particular section being referred to; that traffic coming down Gills Neck Rd. toward Kings Hwy. would access the medical center by turning right, before reaching Kings Hwy; that the frontage of Gills Neck Rd. is adequately sized to handle the traffic when using the intersection, where as a subdivision street at 24-ft. wide is not designed for the commercial use; that he does not feel residents from the proposed community would take Gills Neck Rd. to access Lewes, as they will have access to Kings Hwy. as well as the Gills Neck Rd. intersection; that the potential for a right-in and right-out only

would be regulated by DelDOT; that DelDOT granted the access as a full access and entrance; that DelDOT prefers the access to be on the lower classification roadway rather than the high classification roadway; that this causes competing interests regarding the entrance; that it would be quicker for residents to take a right onto Kings Hwy. into Lewes than to take the back way through Gills Neck Rd.; that he does not understand how eliminating the left onto Gills Neck Rd. will achieve Ms. Stevenson's goal; that he reached out to the Superintendent and Director of Operations; that they did not want to provide a letter in support or opposition; that the school district was sent a letter with the plans; that they currently are and will continue coordinating with the school district regarding school bus stops.

Mr. Thomas Brockenbrough spoke on behalf of DelDOT in relation to the Application; that it is physically possible to create a no left turn onto Gills Neck Rd. from the project by widening Gills Neck Rd. and providing a median; that the construction of this will not be easy; that it will be costly, and it may be out of character with the Lewes Byway.

Ms. Wingate stated people wanting to make the left onto Gills Neck Rd. will most likely cause a lengthy wait, as there will not be a light at the location, causing people to avoid turning left and she would also like to see additional parking provided within the community.

Mr. Mears stated he also agrees with the need for additional parking; that he questioned if every proposed unit would have a garage and a garage will help with the parking issues.

Mr. Lardner stated every unit is proposed to have a garage. The Commission found that Mr. Tom Panetta spoke in opposition to the Application; that he is speaking on behalf of Lewes Board of Public Works; that he also lives in Lewes; that Lewes Board of Public Works opposes the Change of Zone request; that the five wells providing for the City of Lewes are located directly across the street from the project; that the proposed project along with the existing medical office complex building, the Village Center, the Village Center Cottages, along with 37 additional acres, sit directly over the Wellhead Protection Area; that this creates grave concern for them; that the Lewes Board of Public Works presented in front of the Planning & Zoning Commission before; that all of the water for Lewes and the service territories comes from the five wells; that the wells were replaced in the late 1950's to early 1960's; that DNREC has mentioned the placement of the wells is the most ideal locations for the Aquaphor; that they have been searching for redundant sites, but have been unsuccessful in finding a more suitable location; that the last study on the Wellhead Protection Area was performed in 2003; that since the study they have seen an increase in the pumping rate of 25%, from 400 to 500 million gallons per year; that the pumping is currently still within the permits; that Lewes has increased their pumping, but the surrounding wells have also increased pumping; that they have been in discussions with Geotech and DNREC questioning if the Wellhead Protection Area is currently sufficient as is; that the subject property and other properties mentioned, cover a third to a quarter of the Wellhead Protection Area; that the five wells drawn from 85-ft. to 100-ft. deep; that they are not very deep; that placing stormwater infiltration ponds directly within the Wellhead Protection Area, adjacent to the wells, does not allow much time to recover if something were to spill; that all of the nutrients from landscaping and surface contamination from the roads are going to be sent to the stormwater ponds; that he finds it hard to believe the site will be 44% of impervious coverage, given the density, roads, walkway, tennis courts and pool; that he had also spoke at the PLUS meeting; that the PLUS report submitted to Sussex County stated the pavement

should be pervious; that the plan shows the pavement as conventional hot mix; that the use of pervious pavement would greatly reduce the amount of water to be sent to the stormwater ponds; that the PLUS report also mentioned using rain gardens, filter strips and other best practices; that he did not see these proposed in the plans; that Sussex County, the City of Lewes and the Lewes Board of Public Works have already purchased the Jones Farm due to the concern for protecting the Wellheads; that collectively \$6,000,000.00 was spent to accomplish this; that with this project the remaining portion of the Wellhead Protection Area is in danger of being developed; that this is a cumulative issue, not being just the proposed project; that this issue needs to be looked at holistically; that the Lewes Board of Public Works has not issued a Readiness to Serve, for the electric for the project; that without a master plan, a holistic overview of all the lands along Kings Hwy., the wellhead will suffer a death by a thousand cuts and this will jeopardize everyone in Lewes, and all of the service territory.

Chairman Wheatley questioned if the property is located within the service area of Lewes Board of Public Works.

Ms. Stevenson questioned if Mr. Panetta had any suggestions as to how the project could make things better regarding the Wellhead Protection Area.

Mr. Robertson questioned if the Wellhead Protection Area is important to Lewes, what was the reasoning for Lewes not annexing the surrounding areas.

Mr. Panetta stated half of the property is located within the CPCN of Lewes Board of Public Works and the other half of the property is not; that the City of Lewes must agree to any service outside of the city limits; that he stated the City of Lewes wanted to attend the public hearing, but they had a Mayor and City Council meeting going on concurrently, which included all staff; that they intend to submit a formal letter to Planning and Zoning; that moving the stormwater pond out of the Wellhead Protection Area would help; that the stormwater pond is located within the worst possible area on the property; that the Wellhead Protection Area is located within the lower corner for the property; that the soils on the entire property are part of the recharge area; that they are having additional studies performed to confirm the true impact on the wells, as well as the private wells in the area; that the Village Center Cottages is located completely in the Wellhead Protection Area; that without looking at these projects holistically, decisions will be difficult to make and the City of Lewes does not have the right to annex properties without the owner applying for annexation first.

Mr. Robertson stated the public hearing will be closed for the Planning & Zoning Commission unless the Commission chose to hold the record open, however, public comments can be submitted for the public hearing before the County Council.

Chairman Wheatley questioned what the County Code states regarding the Wellhead Protection Area; that he questioned if there was a prior situation where the existence or location of the stormwater ponds caused adverse issues for a municipal water system and if the land was currently being tilled with chemicals.

Mr. Whitehouse stated Chapter 89 of the County Code focuses more on the site plan review rather than the use; that in any Wellhead Protection Area, with less than 35% impervious cover, there is no requirement; that there is a requirement an Environmental Assessment be submitted when 35% to

60% of impervious cover is proposed; that the Environmental Assessment must include an appropriate level of detail of how the area should be managed and development within the area is not prohibited within the 35% to 60% range, however, does require supporting technical analysis.

Mr. Panetta stated if the Commission performs a search they will find examples, such as a dry cleaning business contaminating wells with trichloroethylene; that there are issues with contaminants on roadways, such as hydraulic fluid and gasoline being washed into the stormwater ponds; that farmers apply fertilizer as required to meet the soil requirements; that this is different than a homeowner who applies fertilizer twice a year; the difference is a business operation versus residential use; that the Chesapeake and Coral Gables, Florida are controlling the amount of fertilizer being used for residential use and he feels this should be considered with the proposed project.

The Commission found Mr. Jay Tomlinson spoke by teleconference with questions regarding a potential construction date for the interim improvements for the proposed project, as the previous TIS referenced the former project; that he questioned if it was intended to have commercial businesses along the first floor and the possibility of leaving the record open.

Mr. Hutt stated he believes Mr. Tomlinson's concern originated from the statement within the TIS regarding the separation between retail business and professional office space.

Mr. Lardner stated the milestone for the proposed interim improvements is immediate, that the interim improvements are required to be installed and accepted before the first Certificate of Occupancy is granted for the project; that there will not be businesses along the first floor of the proposed professional office building; that the office building will be strictly for professional, dental and/or medical offices; that there will be no intent for retail or convenient stores; that with the original study they had proposed a 6,500 sq. ft. commercial shopping center; that this intent is where the initial 117,500 threshold originates from and the proposed project generates less traffic than the 117,500 trips, which is why they have agreed to perform the interim improvements immediately before the first Certificate of Occupancy. Ms. Wingate questioned the potential to move the location of the stormwater management pond. Ms. Stevenson questioned which direction the runoff would naturally run.

Mr. Lardner stated there is an opportunity to relocate the stormwater management pond; that it would require a redesign of the site, with a potential loss of units; that they have proposed recharge in excellent areas and Wellhead Protection Areas; that there have been conversations regarding impervious surfaces; that there are stormwater management practices within the Wellhead Protection Areas; that these are different practices to achieve the same result; that the Applicant has proffered for pretreatment of the system, should there be a leaking vehicle or a similar situation; that the runoff naturally runs away from the Wellhead Protection Area and this is stated within the report prepared by Mr. Cahill.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to Applications, 2022-01, C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC.

Upon there being no further questions, Chairman Wheatly closed the public hearing. At the conclusion of the public hearing, the Commission discussed the Applications.

In relation to Application 2022-01 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1967 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1968 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/U 2334 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Hopkins, and carried unanimously. Motion carried 5-0.

#### Minutes of the April 14, 2022 Planning & Zoning Commission Meeting

The Commission discussed the application which has been deferred since March 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/Z 1967 Henlopen Properties, LLC, for a Change in Zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available.
2. Both central water and central sewer will be available to this site.
3. This site is the location of the Gill's Neck Road and King's Highway lighted intersection. DelDOT is also planning to improve the King's Highway Corridor in the near future. Given its location adjacent to these roadways and this intersection, MR zoning is appropriate for this property.
4. The property is in the immediate vicinity of other properties that are commercially zoned or are being used for business, commercial and institutional uses. The site is also across from the Cape Henlopen High School campus. There is also extensive MR-zoned property to the east of this site. This rezoning is consistent with other zoning and land uses in the area.
5. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
6. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. MR Zoning is appropriate in this Area according to the Plan.

7. For all of these reasons, MR zoning is appropriate for this site.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/Z 1967 Henlopen Properties, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson – Yea, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea



**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: March 10<sup>th</sup>, 2022

Application: CZ 1967 Henlopen Properties, LLC

Applicant: Henlopen Properties, LLC  
4750 Owing Mills Boulevard  
Owing Mills, MD 21117

Owner: Mitchell Family, LLC  
1019 Kings Highway  
Lewes, DE 19958

Site Location: Lying on the southeast side of Kings Hwy. (Rt. 9) and on the north side of Gills Neck Rd. (S.C.R. 267)

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

Proposed Zoning: Medium Residential (MR) Zoning District

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Lewes Fire Department

Sewer: Sussex County

Water: Tidewater

Site Area: 43.777 acres +/-

Tax Map ID.: 335-8.00-37.00 (portion of)



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**Sussex County**

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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: March 2, 2022  
RE: Staff Analysis for CZ 1967 Henlopen Properties, LLC

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1967 Henlopen Properties, LLC to be reviewed during the March 10, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for part of Tax Parcel 335-8.00-37.00 (portion of) to allow for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Medium Residential (MR) Zoning District. The property is lying on the southeast side of Kings Highway (Rt. 9), approximately 390 feet northeast of Gills Neck Road (S.C.R. 267) and on the north side of Gills Neck Road (S.C.R. 267) approximately 329 southeast of Kings Highway (Rt. 9). The portion of the parcel to be rezoned consists of 43.777 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 of the subject property also contain the Future Land Use Designation of "Coastal Area." Properties further to the north and across Kings Highway to the west are located within the municipality of Lewes.

As outlined within the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided 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 also be allowed. In doing so, careful mixtures of homes with light commercial, office and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home. Major new industrial uses are not proposed in these areas.

The portion of this property is zoned Agricultural Residential (AR-1) Zoning District. Adjacent parcels to the north are also zoned Agricultural Residential (AR-1) Zoning District, as well as General Commercial (C-1) and Heavy Commercial (C-3). The properties to the north are zoned Medium Residential (MR) and the properties across Kings Highway and Gills Neck Road to the west and south are zoned Agricultural Residential (AR-1) Zoning District and Neighborhood Business (B-1).



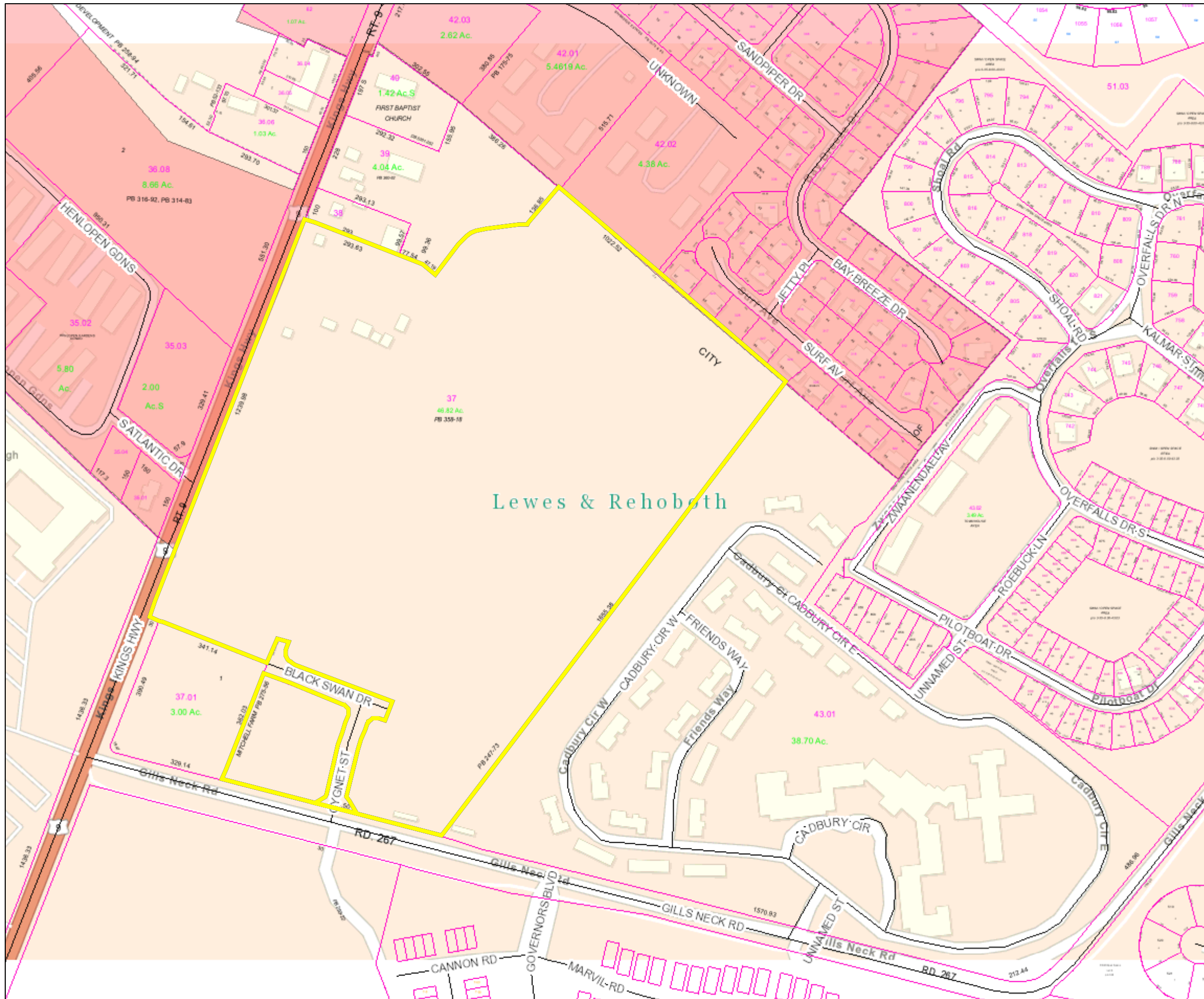
The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories,” the Medium Residential (MR) Zoning District is listed as an applicable zoning district in the Coastal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

Since 2011, there have been nine (9) Change of Zone applications within a 2-mile radius of the application site. The Change of Zone applications approved include Medium Residential (MR), Neighborhood Business (B-1), Heavy Commercial (C-3) and Medium Commercial (C-2) Zoning Districts.

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from an Agricultural Residential Zoning District (AR-1) to a Medium Residential Zoning District (MR) could be considered as being consistent with the land use, based on the size, scale, zoning and surrounding uses.



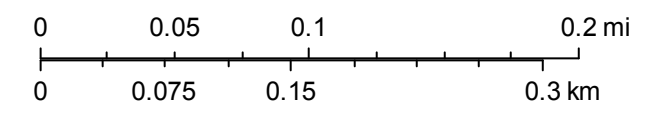
# Sussex County



<b>PIN:</b>	335-8.00-37.00
<b>Owner Name</b>	JEFF-KAT LLC
<b>Book</b>	5613
<b>Mailing Address</b>	1007 KINGS HWY
<b>City</b>	LEWES
<b>State</b>	DE
<b>Description</b>	SE/KINGS HWY
<b>Description 2</b>	RESIDUAL LANDS
<b>Description 3</b>	N/A
<b>Land Code</b>	

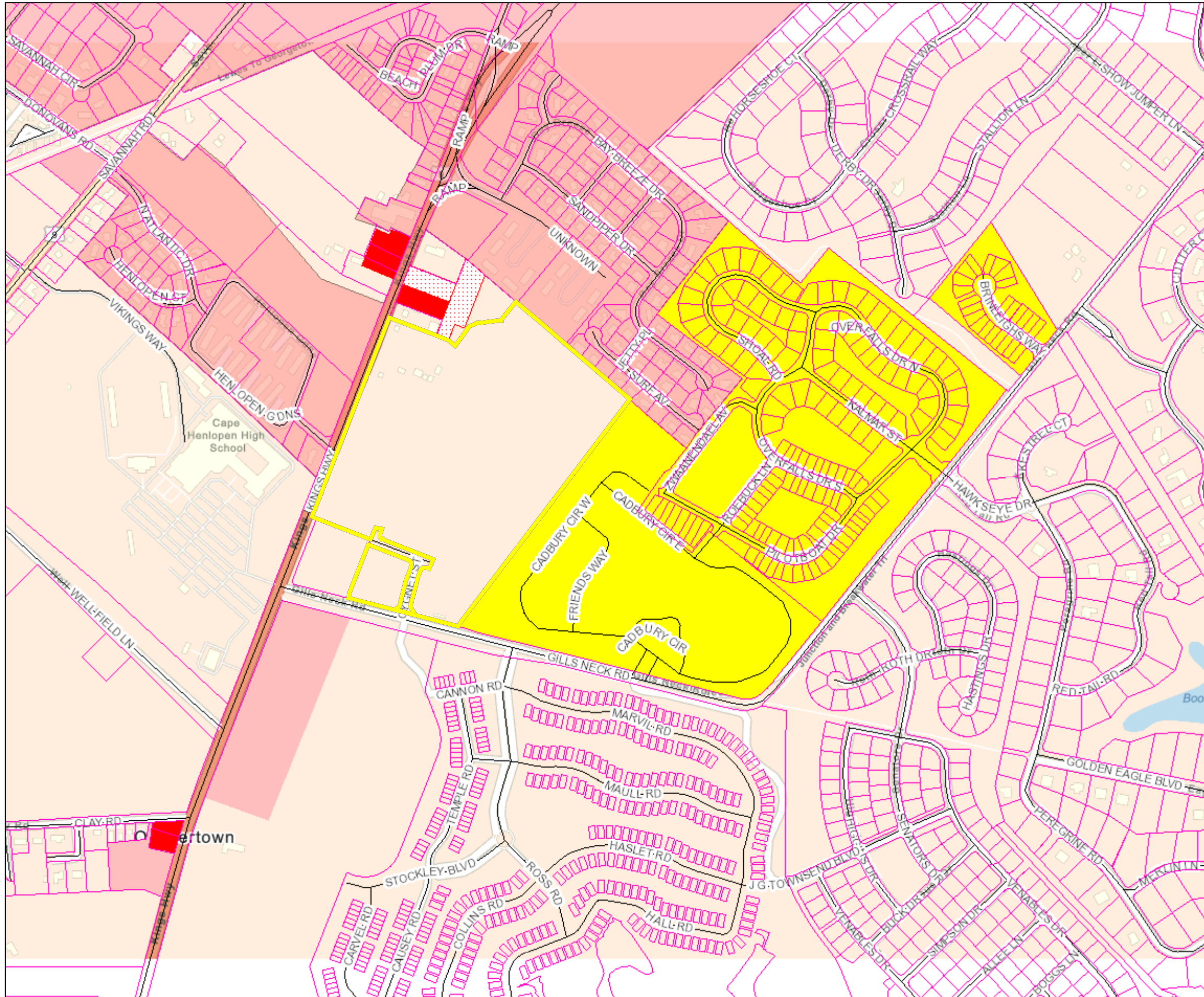
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- Streets
- Hundred Boundaries
- County Boundaries
- Tax Ditch Segments**
- Tax Ditch Channel
- Pond Feature
- Special Access ROW
- Extent of Right-of-Way
- Municipal Boundaries
- TID

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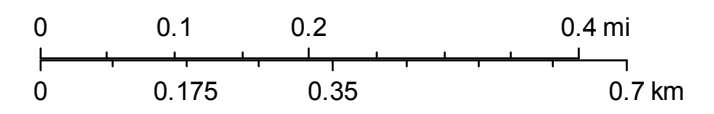
# Sussex County



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<b>Owner Name</b>	JEFF-KAT LLC
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<b>State</b>	DE
<b>Description</b>	SE/KINGS HWY
<b>Description 2</b>	RESIDUAL LANDS
<b>Description 3</b>	N/A
<b>Land Code</b>	

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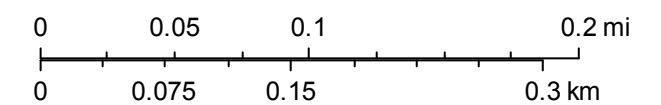
# Sussex County



<b>PIN:</b>	335-8.00-37.00
<b>Owner Name</b>	JEFF-KAT LLC
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<b>Description 3</b>	N/A
<b>Land Code</b>	

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

1:4,514



**Introduced: 2/1/22**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS**

**WHEREAS, on the 5<sup>th</sup> day of January 2022, a zoning application, denominated Change of Zone No. 1967 was filed on behalf of Henlopen Properties, LLC; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1967 be \_\_\_\_\_; and**

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

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

**Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation MR Medium 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 Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the southeast side of Kings Highway (Rt. 9) approximately 390 feet northeast of Gills Neck Road (S.C.R. 267) and on the north side of Gills Neck Road (S.C.R. 267) approximately 329 feet southeast of Kings Highway (Rt. 9) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 43.777 ac., more or less.**

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

JAMIE WHITEHOUSE, AICP  
DIRECTOR OF PLANNING & ZONING  
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**Sussex County**

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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 14, 2022

RE: County Council Report for C/Z 1968 filed on behalf of Henlopen Properties, LLC

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The Planning and Zoning Department received an application (C/Z 1968 filed on behalf of Henlopen Properties, LLC) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District. The property is located on the north side of Gills Neck Road (S.C.R. 267), approximately 329 feet southeast of Kings Highway (Rt. 9). The change of zone is for 3.041 acres, more or less.

The Planning and Zoning Commission held a public hearing on March 10, 2022. At the meeting of April 14, 2022, the Commission recommended approval of the application for the 7 reasons as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meeting of March 10, 2022 and the minutes of the Planning & Zoning Commission meeting of April 14, 2022.

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

### **C/Z 1968 Henlopen Properties, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS.** The property is lying on the north side of Gills Neck Road (S.C.R. 267) approximately 329 feet southeast of Kings Highway (Rt. 9). 911 Address: N/A. Tax Parcel: 335-8.00-37.00 (portion of).



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



Mr. Whitehouse advised the Commission that submitted into the record for C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC is the Applicant's Site Plan, the Applicant's Exhibit Booklet, the Traffic Impact Study (TIS), and the DelDOT response to the TIS, a letter from Sussex County Engineering Department Utility Planning Division, the PLUS Comments, the responses to the PLUS comments, a Cultural Resource Assessment, an Environmental Assessment, three letters of support, two letters of opposition and four mail returns.

The Commission found that Mr. David Hutt, Esq. with Morris James spoke on behalf of Applications 2022-01, C/Z 1967, C/Z 1968 and C/U 2334 for Henlopen Properties, LLC; that he is representing both the owners of the property, Mitchell Family, LLC and the Applicant, Henlopen Properties, LLC; that also present were Mr. Robert Mitchell, a member of the Mitchell Family, LLC, Mr. John Myer and Mr. Jon Hoffman, representatives of Henlopen Properties, LLC., Mr. Ring Lardner and Mr. Cliff Mumford, civil engineers with Davis, Bowen & Friedel, Inc.; Mr. Dennis Hughes, II, the traffic engineer with Davis, Bowen & Friedel, Inc., Mr. Steven Cahill, geologist, Mr. Edward Otter, archeologist and Mr. Mark Davidson, a principal land planner with Pennoni; that the current Applications were not the first Applications to be filed for the project; that the first proposed plan for the property was filed in April 2019; that the name of the project has changed several times; that the project was called "The Mitchell Farm" with the submission of the first Application; that the approved name became Zwaanendael Farm; that the property is currently known as Mitchell's Corner; that a number of things have changed since the Applications were filed; that the world experienced the COVID-19 Pandemic; that there has been a change in the directorship of Sussex County Planning & Zoning, from Ms. Janelle Cornwell to Mr. Jamie Whitehouse; that since the submission of the Application there have been numerous conversations and correspondence regarding the scheduling of the public hearings for the Applications; that in order to have a public hearing on a land use application, pursuant to the memorandum of understanding between DelDOT and Sussex County, a Traffic Impact Study (TIS) Review Letter was required; that the Applicant was awaiting the completion of the TIS Review Letter; that the initial response to the TIS Review Letter occurred October 2021; that the response was to the TIS performed for the initial Application; that the initial proposal had the Cape Henlopen Medical Center on the corner of Kings Hwy and Gills Neck Rd., C-3 Heavy Commercial properties along Kings Hwy., B-2 Business Community District properties located along Gills Neck Rd. and MR Medium-Density Residential located for the rest of the property, where apartments and other housing were proposed with a Conditional Use and Subdivision Application; that initially there was a total of five submitted applications; that since then, the applications have been reduced to four applications; that the current Applications received a Supplemental TIS Review letter; that the currently proposed Applications reduced the commercial impact of the project; that stated within the Supplemental TIS Review Letter, the Applications being heard are a trip generation reduction of almost 50% from the initial Applications; the subject property is located across the street from the Cape Henlopen High School; that next to the Cape Henlopen School is the Jack Lingo Real Estate office; that currently under construction is the Lewes Medical Campus, which is proposed to be an assisted living facility; that west of Gills Neck Rd. is the future location of the Village Center; that located on the same side as the subject property, at the corner of Gills Neck Rd. and Kings Hwy. is the Cape Henlopen Medical Center; that the Mitchell Family filed a previous Conditional Use Application (C/U 2112) in 2018 for the Cape Henlopen Medical Center; that C/U 2112 was for medical professional offices in a 39,000 sq. ft. building; that the Cape Henlopen

Medical Center is a good demonstration of the need for professional services within Sussex County as it serves many residents within the immediate area; that continuing down Kings Hwy, on the same side as the subject property, toward the City of Lewes, are the offices of Lane Builders; that the next property is the Big Oyster Brewery; that on the northern boundary of the property is Jefferson Apartments and Bay Breeze Estates, both of which are located within the City of Lewes; that on the eastern side of the subject property is The Moorings, formally known as Cadbury at Lewes; that the most detailed history of the project can be found within the Cultural Resource Assessment, prepared by Dr. Otter; that the majority of the mentioned culturally significant resources are found closer to Pot Hook Creek than the subject site; that the historical item mentioned is the existing farmhouse located on the subject property; that

the farmhouse is still occupied by Mr. Jerry Mitchell; that Dr. Otter's report mentioned the farmhouse,

outbuilding and additional structures require documentation before being removed from the property; that a condition proposed by the Applicant states the property and structures would be properly documented before removal; that the Applicant plans to have Dr. Otter perform the documentation before the removal of the farmhouse; that the subject property has been with the Mitchell Family since the late 1800's; that the first Mitchell family member was a Robinson; that if one looks at the George Robinson ownership in the late 1800's, that is when the Mitchell Family ownership began; that most recently Mr. Mitchell and his family have owned the 58-acre farm; that from 1998 until 2013 the property was located with the Agricultural Preservation; that with the development around the subject property, the farmland was becoming very difficult to farm, which resulted in the decision to sell the property; that as the Mitchell Family was working toward selling, they were approached by adjacent property owners; that several portions of the 58-acre parcel was sold to adjacent neighbors; that the portion to the rear of the property was sold to The Moorings, which was the subject of a recent Application Change of Zoning to Medium-Density Residential and to request an Residential Planned Community (RPC); that there was a portion sold to The Big Oyster, which was the subject of an application for rezoning from AR-1 to C-3; that the parcel, located on the corner of Kings Hwy. and Gills Neck Rd. was the subject of C/U 2112 for the Cape Henlopen Medical Center; that property most recently sold again sold to The Big Oyster Brewery for additional expansion; that the recently sold property will be the subject of a Change of Zone application, requesting rezoning from AR-1 to C-3, at the Planning & Zoning meeting on April 14, 2022; that after the pieces of lands were sold off, the property currently consists of 47-acres; that the current Applications request a Change of Zone, for approximately three acres, next to the site of the Cape Henlopen Medical Center; that the Change of Zone Application seeks to change the zoning designation from AR-1 to C-2 Medium Commercial; that an additional Change of Zone Application request to change the zoning classification of approximately 44-acres of the property from AR-1 to MR (Medium-Density Residential); that there is also a Conditional Use Application seeking approval for a multi-family use of the property, for 267 units, on the MR zoned portion of the property; that the final Application is a Subdivision application, which was necessary to create all the various component parts of the project; that currently the property is completely zoned AR-1; that immediately south of the proposed site is B-1 Neighborhood Business Zoning, which is the location of the Village Center Project; that moving closer toward Rt. 1, there is existing C-1 and B-1 properties at the corner of Clay Rd. and Kings Hwy.; that more toward the City of Lewes, the Big Oyster property is zoned C-1, with C-3

property immediately behind it; that across the street from the subject site are two properties, located within the City of Lewes, zoned as General Commercial; that immediately behind that property is R-5 Zoning, which is the City of Lewes' mixed residential zoning; that adjacent to those properties is the City of Lewes', CFHC Zoning, which is Community Facilities Health Care Zoning; that this is the site of the Lewes Senior Campus; that located closer to the City of Lewes is more General Commercial properties; that to the north side of the property is R-5, Mixed Residential for the City of Lewes; that also located near the subject property is R-2, Residential Low Density Zoning with the City of Lewes; that nearby, The Moorings, Breakwater and Admirals Chase, are located within the MR (Medium-Residential Zoning) with Sussex County; that the project is located within the Coastal Area according to the Future Land Use Map; that surrounding areas to the project are also located within the Coastal Area or a commercial area; that the Coastal Area is designated as one of the Sussex County's seven growth areas; that Chapter 4 of the Comprehensive Plan includes Table 4.5-2, which compares zoning districts applicable to Future Land Use categories; that both the C-2 (Medium Commercial District) and the MR Medium-Density Residential District are applicable zoning districts within the Coastal Area; that the County Code describes the purpose of the C-2 (Medium Commercial Zoning District) as a district which supports retail sales and performance of consumer services, permitting a variety of retail, professional and services businesses; that the district should be primarily located near arterial and collector streets; that the district accommodates community commercial users who do not have outside storage or sales; that the County Codes description of the C-2 Medium Commercial District exactly describes the purpose the Applicant desires with the proposed project; that the project proposes to provide additional professional and business services in an area where the services are needed; that this need is demonstrated best by the success of the Cape Henlopen Medical Center; that the previously approved Conditional Use for the Cape Henlopen Medical Center mirrors the purpose proposed for the property; that the developer hired an architect to design a building for the site; that the architect studied the architecture in the area; that the architect provided a letter explaining the proposed building, as shown on the rendering; that there are comments on record regarding the architecture along Kings Hwy. and how the proposed building does not match; that the architect described the architecture along Kings Hwy. as numerous architectural motifs in the context which may be evoked to rationalize any architectural style; that do to the various architectural styles along Kings Hwy. it is difficult to match any one of those; that the developer requested the architect consider the nearest architectural style and blend the building to those nearest to the property; that features from the Cape Henlopen Medical Center and Cape Henlopen High School, compliment those features while performing the same idea for the proposed townhomes along Kings Hwy.; that once the site plan was established, the Applicant requested Mr. Mark Davidson, Land Planner with Pennoni, to review the land plan; that the peer review provided by Mr. Davidson is included in the record; that the developer determined the square footage of all buildings in the surrounding area; that some of the buildings considered were Cape Henlopen High School at 367,000 sq. ft., Lewes Senior Living Campus at 223,000 sq. ft., The Moorings at 117,000 sq. ft., the future Village Center at 75,000 sq. ft. and Cape Henlopen Medical Center at 39,000 sq. ft.; that the building proposed for the project is smaller than almost all other studied buildings, being just slightly bigger than the Cape Henlopen Medical Center; that the proposed building is an appropriate size and scale for the area; that the County Code states commercial properties should be located along arterial and collector streets; that Kings Hwy. is a perfect match for this proposed use as it is considered a major arterial by Sussex County; that the

same process and considerations were made regarding the proposed rezoning of 44-acres to be MR Medium-Density Residential; that according to the Sussex County Code, the MR District is to provide for medium- density residential development in area which are, or expected to become, generally urban in character and where sanitary sewer and water supplies may or may not be available at the time of construction; that a permitted Conditional Use is for multi-family dwelling structures, which created the need for the Conditional Use application, which accompanies the Change of Zone application; that the purpose of a Conditional Use is to provide uses which are generally public or semi-public in character, being essential and desirable for the convenience and welfare; that because of the nature of the use, the importance to the relationship of the Comprehensive Plan and possible impact on neighboring properties and Sussex County, create the requirement for extra planning judgement on location and site plan; that housing is considered public or semi-public in character; that housing is desirable, particularly within the Coastal Area; that the purpose of the presented Applications are to provide for medium residential development, in areas which are becoming more urbanized; that there are townhomes and duplexes located within Governors, Admirals Chase, Breakwater, The Moorings and The Lewes Senior Living Campus; that within the City of Lewes, multifamily housing is offered at Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens; that Bay Breeze Estates is a single-family use, located within the R-2 zoning classification with the City of Lewes, that the density within Bay Breeze Estates is still three units to an acre; that Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens, within the City of Lewes, are all zoned R-5; that R-5 Zoning is the

City of Lewes' multifamily residential district, where the purpose is to provide a mix of housing types to include multifamily and affordable housing alternatives; that multifamily is located adjacent to the subject property, as well as across the street from the property; that in correspondence in the file, there is reference to the density for the project; that include in the project book, are the densities for the surrounding communities; that Dutchman's Harvest is 17 units to the acre; that Jefferson Apartments is 9.8 units to the acre; that The Moorings is 6.4 units to the acre; that Henlopen Gardens is 5.5 units to the acre; that Bay Breeze Estates is 3 units to the acre; when considering the Future Land Use Map and the densities of surrounding areas, the proposed density of 6.1 units to acre is consistent to the surrounding area; that the more intense uses should be located closer to the highway, decreasing in intensity moving further away from the highway; that this is accomplished by placing the townhomes and commercial area along Kings Hwy.; that moving closer to Bay Breeze Estates and The Moorings the uses become duplexes, which are a less intense use; that the Comprehensive Plan states lands within the Coastal Area should be able to accommodate both commercial and residential provided special environmental concerns are addressed; that medium to higher densities, between 4 to 12 units to the acre, can be appropriate in certain locations; that an appropriate location for this is where there is central water and sewer, when near a significant number of commercial uses and employment centers, when keeping with the character of the area, when situated along a main road or near a major intersection and where there is adequate level of service; that the project meets all of those characteristics; that the TIS Review Letter did state there are several intersections without adequate levels of service within the area; that the final solution to the issue is the dualization of Kings Hwy.; that waiting on the improvements would not be beneficial to the community or the project; that due to this, the

developer and DelDOT agreed upon interim improvements, to allow traffic to be improved for the time period it takes for DelDOT to complete the dualization project; that the proposed interim improvements are more than what is required within the Memorandum of Understanding between Sussex County and DelDOT; that the Memorandum of Understanding seeks to have a Level of Service D at intersections; that the most recent Memorandum of Understanding recognizes the Level of Service D is not always obtainable and this requirement may create an undue burden on a property owner looking to develop a property, given the prior development which has occurred in an area contributing to the existing level of service; that a level of service cannot be degraded by a project; that with the proposed interim improvements, there will be no degrading by the proposed project; that the improvements will provide and upgrading of service until DelDOT provides the final solution with the dualization of Kings Hwy.; that it would be unfair to request the last individual developing a property to fix all the issues; that in 2009 the need for the dualization of Kings Hwy. was recognized; that the improvements along Gills Neck Rd. have been accomplished; that during the February 23, 2022 workshop with DelDOT, it was said the estimate for the construction improvements was

\$23,000,000.00; that it would be an undue burden to require the last property owner to dualize Kings Hwy.; that although the Applicant cannot provide the dualization of Kings Hwy., they did desire to provide some temporary relief, which will be afforded through the interim improvements; that the developer did meet with the Lewes Byways Committee; that the developer agreed upon, as a Condition of Approval for the proposed project, the developer would maintain permanent easement areas and multi-modal path; that DelDOT is pushing the vast majority of the improvements onto the project side of Kings Hwy.; that the property is located within the Level 1 Investment area according to the State Strategies Map; that PLUS had no objection to the proposed project; that Investment Level 1 reflect areas which are already developed in an urban or suburban fashion, infrastructure is available and where future redevelopment or infill projects are expected; that State Strategies Map, Comprehensive Plan and the Zoning Code were all guideposts for the project's design and layout and he submitted proposed Findings and Conditions for the Application and a Willing and Able Letter from Tidewater Utilities.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is a professional engineer with Davis, Bowen & Friedel, Inc.; that the property is a total of 46.81-acres; that the portion of land requesting C-2 Zoning is located along Kings Hwy., adjacent to the Cape Henlopen Medical Center; that per DelDOT, Kings Hwy. is classified as an Other Principal Arterial, and furthermore identified as a major arterial roadway per No. 7 of the definition found in 115-4 of the County Code; that the remaining portion of land is approximately 43.77-acres and subject to the other three applications; that this portion of land also has frontage along Kings Hwy. and along Gills Neck Rd.; that Gills Neck Rd. is classified as a local road per DelDOT Functional Classification Map; that the layout of the site first began with a 20-ft. forested buffer along The Moorings, Bay Breeze and Jefferson Apartments; that this provides some additional open area to help establish the rear lot lines and allow for drainage; that this was how the lot lines were established for the townhomes and the duplexes; that they looked at the existing entrance, which is currently being utilized for Cape Henlopen Medical Center; that the developer desired to do more residential and move away from the grid street which currently exist; that they designed an arch entrance, which allows the service road to access both commercial properties; that this allows them

to avoid redesigning the entrance and roadway; that in doing this, it allowed the proposed area for a stormwater pond to serve the project; that they looked at how to best connect with the adjacent Big Oyster property; that Mr. Mitchell, the developer and Big Oyster have worked together on various land acquisitions and interconnectivity; that their goal was to separate the commercial traffic from Big Oyster from interacting with the residential traffic; that the same intent was to keep the commercial traffic from traveling through the residential area; that this was their motive for providing the direct connection to Gills Neck Rd.; that commercial traffic is heavier than residential traffic on a normal day; that they designed a mini round-about; that the round-about will be designed allowing vehicles of all types to navigate the circle; that the round-about will be reviewed by both the Fire Marshal and Sussex County Engineering; that once those spots were created, they then focused on a plan which offered a mixture of duplexes, 28-ft. wide and 24-ft. wide townhomes; that there are various prototypes offered within the proposed community; that the roads will be designed to Sussex County standards; that the right-of-way has been narrowed to 40-ft., which is allowable per County Code; that this allows them to bring the houses closer to the roadway, providing at least 20-ft between the sidewalk and the house; that this prevents vehicles from blocking the sidewalk; that No Parking signs will be added to prevent on street parking; that on street parking is always a concern of the Fire Marshal; that No Parking signs will allow enforcement to be occurred within the community if needed; that all lots were designed so no lots were backed up against each other; that all lots have some type of open space between them; that this will help facilitate drainage and landscaping; that sidewalks will be located on both sides of the road for all roadways within the community, with the exception of Road C; that the reasoning is the shared-use path is adjacent to the roadway; that it would not make sense to have a shared-use path and sidewalk next to each other; that active amenities will include a dog park, two mailcenters, a community center, a playground and sports courts for the community to use; that they have added some additional walking paths to promote pedestrian connectivity and walkability within the community; that stormwater management will be provided by infiltration through grass swales, which are located in the open area, to the rear of the lots, perforated pipes and an infiltration basin with the primary and secondary basins being located along Gills Neck Rd.; that higher volume storms, like the 10-yr. and 100-yr. storm events, will discharge via storm pipe through the lands of JG Townsend, which will discharge into a tidal discharge; that the plan was previously approved by Sussex Conservation District for the previous Application; that the pipe will still be able to be used for the current project; that the project does not contain any wetlands; that the project is not located within a flood plain; that the State Housing Preservation Office provided information regarding a known archeological site and some known prehistorical sites with high potential resources due to the known historic structures; that they hired Dr. Edward Otter to complete the Cultural Resource Assessment; that the Resource Assessment can be found in Appendix R of the Exhibit Booklet; that the existing buildings are proposed to be demolished; that Dr. Otter has confirmed he will perform the documentation for the existing buildings, should the Application receive approval; that about 6.34-acres of the project is located within the Wellhead Protection Area and must comply with Chapter 89 of the Sussex County Code; that Verdantas was hired to provide an Environmental Assessment Report; that there was a typo in the some calculations submitted into the record; that Post-Development calculations for Total Area is 9.34-acres and the Recharge Volume is 58-in.; that the total Post-Development, Recharge Volume for Stormwater Basin should have read 135,771 gallons; that with those correct numbers, the calculation remains the same as reported, which is 1,574,948 gallons; that the proposed impervious area with the 6.34-acres is

approximately 2.75-acres based on the current preliminary plan provided; that this equates to 44% of impervious coverage; that they always agreed to provide stormwater management for the Cape Henlopen Medical Center; that when they add in the Cape Henlopen Medical Center property the total impervious coverage becomes approximately 52%; that in accordance with Chapter 89 a Water Climatic Budget is required due to the project coverage being greater than 5% but less than 60%; that the Water Budget report can be found in Exhibit S of the Exhibit Booklet; that the budget shows there is a deficit of 2,646-sq. ft. of rooftop to balance the budget; that there is approximately 450,000-sq. ft. of rooftop available outside of the recharge area to balance the budget; that the project proposes to recharge more groundwater than what currently exists; that a pre-chamber system will be installed for debris and potential petroleum releases to help protect the ground water; that the pre-chamber will filter out the hydrocarbons; that the water quality will also be improved by converting the farm from its use of chemical applications to the proposed project; that Verdantas stated in their report, that the property as proposed can be constructed without adversely impacting the Lewes supply wells; that the property is located within the Sussex County Unified Sewer District; that the property will be served by a gravity sewer system, which will discharge to the Governors pump station; that the property may be served by both the City of Lewes Board of Public Works and Delaware Electric Cooperative as the parcel is split by both providers based on the map for electric territories; that water can be provided to the project by the City of Lewes Public Works or Tidewater Utilities; that both utilities have waterlines along the property frontage; that a CPCN will be required for either utilities; that Tidewater Utilities did provide a Willing & Able Letter to serve the project; that natural gas is available from Chesapeake Utilities, as they have a gas main along Gills Neck Rd.; that a Traffic Impact Study was prepared in 2019; that an addendum was prepared in April 2020 for the previous withdrawn Application; that the withdrawn Application consisted of 206,500 sq. ft. of medical office buildings, 60 single-family homes and 150 multi-family homes; that the TIS Review Letter was prepared on October 7, 2021; that the improvements included within that letter were right-of-way dedication, interim improvements and build-out improvements; that subsequent to the review letter, a new plan, which is currently being proposed was submitted to DelDOT and Sussex County; that as part of the submission the developer stated to DelDOT that despite the reduction of traffic of approximately 50%, they would abide by the recommendations from the original study; that after review of the request in the reduction of traffic, DelDOT did not require a new TIS; that DelDOT provided an amended study and a letter; that during the same time, DelDOT had sped up the design of the DelDOT US Rt 9., Kings Hwy., Dartmouth Dr. to Freeman Hwy., DelDOT Contract T202212901 or also known as the dualization of Kings Hwy.; that the dualization of Kings Hwy. was first identified in 2009 as part of a larger agreement involving projects which have all completed their construction and their portions of overall improvements; that those projects include Senators, Governors, Showfield and Whites Pond Meadow who will construct their portion in summer to fall of 2022; that the last remaining piece is the dualization of Kings Hwy.; that DelDOT held a public workshop on February 23, 2022, on their improvement project; that the developer was agreeable with the interim improvements; that the developer began working on various projects for the current public hearing before the information from the DelDOT workshop was available and before final interim improvements were negotiated; that the rendering submitted was constructed before they received information regarding how the dualization of Kings Hwy. would occur with the landscape guidelines and shared-use path; that the rendering does provide an idea how the project would look from an aerial view; that they must create a corridor effect with landscaping and

shared-use path meandering through and integrate the project with the dualization of Kings Hwy. to create a corridor the byways would be pleased with; that they recognize it is a byway and the gateway into the City of Lewes; that a second through lane was added in the southbound direction; that after discussion of the project, the time of the dualization and the reduction in traffic, DelDOT did not support the interim improvements; that after further discussion and the developers willingness and desire to provide some temporary relief, DelDOT has agreed to interim improvements; that the improvements are slightly different from what was originally required in the October 7, 2021 letter; that DelDOT proposed additional requirements; that DelDOT's first requirement is the developer will mill an overlay approximately 3,500 linear feet of Kings Hwy.; that DelDOT's second requirement is to construct a rights-in and rights-out entrance on Kings Hwy.; that this will be located across from the Lewes property; that the entrances will align across from each other; that at that location DelDOT has proposed to make a round-about for the two entrances as part of the overall project; that the round-about is the reason the developer is agreeable to the rights-in and rights-out entrance during the interim condition; that the third DelDOT requirement was to maintain the entrance on Gills Neck Rd.; that no changes are required for this, as the entrance is designed for proposed amount of traffic for the project; that the developer is to improve Kings Hwy., Gills Neck Rd. and Cape Henlopen High School; that they will convert the through lane from Gills Neck Rd. onto Kings Hwy. into a dedicated left turn lane; that this will create two left turn lanes from Gills Neck Rd. onto Kings Hwy.; that the right turn lane will be converted to a through right turn lane; that this will allow traffic to go through to Cape Henlopen High School or turn right in the intersection; that they will be adding a second through lane in the southbound direction; that a separate right turn lane will remain; that they will be shifting the intersections roadway approximately 10-ft. into the site to accomplish the improvement; that there will be two through lanes in the southbound direction and a dedicated left turn lane going onto Gills Neck Rd.; that the dual through lane will continue south; that there will be a lane drop where the right hand through lane will become a dedicated right turn lane onto Clay Rd. in the interim condition; that a separate bicycle lane will be provided through the intersection; that they will also install a shared-use path from Cape Henlopen High School to Clay Rd. to complete pedestrian connectivity to Clay Rd.; that the developer will enter into an agreement to provide an equitable contribution to the dualization project; that the developer will dedicate 50-ft. of right of way from the center line of the road; that the developer will reserve an additional 30-ft. of right of way parallel to Kings Hwy. for the dualization of the project; that a 30-ft. dedication will occur along Gills Neck Rd.; that in addition to the reservation and dedicated right of way, a 15-ft. permanent easement will be provided for a shared-use path; that a shared-use path will be provided, wrap around and connect to the Big Oyster; that the developer will enter into an agreement to provide an equitable contribution to the Clay Rd. and Marsh Rd. intersection as part of the overall realignment project; that they will provide connections and cross-access easements between the onsite lots; that there is interconnectivity provided to the Cape Henlopen Medical Center and Big Oyster; that there will also be an interconnection into Lane Builders once the roundabout is installed; that they will provide bicycle, pedestrian and transit improvements to include the shared-use paths; that they will provide a Type 2 bus stop; that the developer had a meeting with select individuals of the Lewes Byway Committee; that the meeting was held prior to the release of the dualization plan; that during the meeting the developer committed to working with the committee on the shared use path, landscaping and fencing; that after the release of the dualization plan, the developer reached out to the Lewes Byway Committee to reconfirm their commitment; that DelDOT is equally



supportive of the development of the 10-ft shared-use path, landscaping and maintenance within the permanent easement; that the project was reviewed by PLUS on December 15, 2021; that the PLUS comments and responses can be found in Exhibit M; that the PLUS comments provided were general in nature and will comply with all regulatory requirements; that Davis, Bowen & Friedel, Inc. (DBF) prepared an Environmental Assessment and Public Facility Evaluation Report in accordance of County Code, Chapter 115-194.3; that the written responses can be located within Exhibit K; that they have analyzed all of the respected items; that all mitigation measures are consistent with the Comprehensive Plan; that DBF prepared a written response to items listed in Chapter 99-9C; that the responses can be located within Exhibit J; that the project is integrated into existing terrain and surrounding landscape; that the project does not contain wetlands or flood plains; that the project provides buffers to screen objectionable features; that the project prevents pollution of surface and groundwater; that the plan provides for vehicular and pedestrian movement; that the plan mitigates the effect on area roadways and public transportation and the project is compatible with otherland areas.

Ms. Stevenson questioned if the Applicant will be using the recommendations and plans of the Lewes Byway Commission, if the Applicant is agreeable to the proposals made in the TIS Review Letter, if swales would be placed along Kings Hwy. or a closed stormwater system, if she could see a rendering of the interim highway is proposed to look like, if there will be shoulders on the roadways once the improvements are built; that shoulders are a big concern for her since Kings Hwy. is a major roadway for ambulances; that she questions what the Applicant is doing to create more pervious surfaces and questioned extra parking possibilities; that she mentioned the adjacent multi-family housing offers a lot of additional parking; that since the Applicant is offering multi-family housing, her hope is the units would be workforce housing; that she believes younger families, who work in the area, would live there and more than likely will have family and friends who visit; that with no parking on the street, additional parking will be needed; that she questioned the interconnectivity to the property; that she questioned the reasoning for not promoting access from Kings Hwy; that Gills Neck Rd. is much smaller than Kings Hwy.; that she fears the plan will encourage 400 to 500 additional people to utilize Gills Neck Rd. to enter Lewes; that she questioned if the entrance from Gills Neck Rd. could be a right-in and right-out, prohibiting traffic to turn left onto Gills Neck Rd.; that she feels until improvements are made, people will attempt to take the back way of Gills Neck Rd. into Lewes and she questioned if the Applicant has had any discussions with the school district.

Mr. Hutt stated he is unsure if there is a defined plan, especially with the new plan of the roundabout; that the Applicant intends to work with the Byway Commission as the dualization process moves forward; that the Byway Commission was excited with the Applicant's proposal shown in the rendering; that the Byway Commission did want trees and boulevards; that the Applicant hopes to accomplish as much as they can within the remaining area; that the Applicant is agreeable to the proposals made in the TIS Review Letter; that DelDOT will regulate if there should be open or closed drainage system along Kings Hwy.; that they are learning what the proposed plans are for the dualization of Kings Hwy.; that he cannot speculate on what will be required and the Sussex County Engineering Department verified the calculations to ensure there is a balanced budget on what is proposed.

Mr. Bryan Behrens spoke on behalf of the Application, that he is the group engineer for DelDOT's project development for the south section; that he is in charge of the design of the Kings Hwy. dualization project; that proposed currently is open drainage, which will be swales adjacent to the roadway; that they did reach out to the Lewes Byways Commission ahead of the DelDOT public workshop to present their proposal; that he believes Lewes Byways Commission was similarly as enthusiastic about the proposal as DelDOT was; that they are proposing a shared-use path and landscaping, which is the same proposal as the Applicant, providing room for collaboration and he does not have a rendering of the highway during the interim improvements.

Mr. Lardner stated they only have a drawing to show what the proposed travel lanes will look like; that he does not have a rendering of what the improvements will look like; that he has a drawing showing where the travel lanes will be once the roadway is shifted; that all details will be worked out with Mr. McCabe and his staff as part of the review process; that there is still a lot more collaboration to go through of how the final lanes will look; that there will be two lanes heading southbound out of the City of Lewes, heading toward Dartmouth Dr.; that there will be shoulders on both sides the roadways, in the interim condition, and upon final construction; that the driveway material has not been finalized, as the homeowners need to be part of the conversation when discussing long-term maintenance; that there will be infiltration in all rear yard swales; that this will allow the back half of roof run off to drain into the rear yard swales with infiltration in them; that the roadways will have perforated piping; that this will allow the roadways to infiltrate as soon as the drainage hits the system; that drainage will infiltrate through the roadbed; that any runoff which still makes it to the infiltration ponds, will further infiltrate within the pond; that the pond will have a pre-treatment system on it; that this will further protect the wellheads; that their intent is to infiltrate at the source; that they will balance the budget to ensure they comply completely with the Wellhead Protection requirements; that they have proposed two parking spaces per unit; that there is a parking area by the clubhouse; that during non-business hours the parking lot of the Cape Henlopen Medical Center could be used; that he believes there is other opportunities for overflow parking elsewhere, however those areas are not reflected on the current site plan; that they do have an exit from the property to Big Oyster; that he can speak to Big Oyster's plan, as they have worked very closely with Mr. Hammer and the Big Oyster staff to ensure Big Oyster's and the Applicant's needs are both met; that the stub shown on the site plan is the interconnection to Big Oyster's proposed plan in the back; that they would have access to Big Oyster, through the roundabout, both in and out; that once the improvements are completed along Kings Hwy. they will have access to the dualized roundabout; that this will provide interconnectivity to Big Oyster; that collaborations will be ongoing as the Applicant and Mr. Hammer have been partners for a long time; that traffic accessing the project from Kings Hwy. would be required to cut through the residential section, in trying to keep the peaceful nature of the neighborhood; that they were attempting to separate the medical office commercial traffic, by only using the Gills Neck intersection; that commercial traffic can be heavy at times; that Gills Neck Rd. is not much smaller in the particular section being referred to; that traffic coming down Gills Neck Rd. toward Kings Hwy. would access the medical center by turning right, before reaching Kings Hwy; that the frontage of Gills Neck Rd. is adequately sized to handle the traffic when using the intersection, where as a subdivision street at 24-ft. wide is not designed for the commercial use; that he does not feel residents from the proposed community would take Gills Neck Rd. to access Lewes, as they will have access to Kings Hwy. as well as the Gills Neck Rd. intersection; that the potential for a right-in and right-out only

would be regulated by DelDOT; that DelDOT granted the access as a full access and entrance; that DelDOT prefers the access to be on the lower classification roadway rather than the high classification roadway; that this causes competing interests regarding the entrance; that it would be quicker for residents to take a right onto Kings Hwy. into Lewes than to take the back way through Gills Neck Rd.; that he does not understand how eliminating the left onto Gills Neck Rd. will achieve Ms. Stevenson's goal; that he reached out to the Superintendent and Director of Operations; that they did not want to provide a letter in support or opposition; that the school district was sent a letter with the plans; that they currently are and will continue coordinating with the school district regarding school bus stops.

Mr. Thomas Brockenbrough spoke on behalf of DelDOT in relation to the Application; that it is physically possible to create a no left turn onto Gills Neck Rd. from the project by widening Gills Neck Rd. and providing a median; that the construction of this will not be easy; that it will be costly, and it may be out of character with the Lewes Byway.

Ms. Wingate stated people wanting to make the left onto Gills Neck Rd. will most likely cause a lengthy wait, as there will not be a light at the location, causing people to avoid turning left and she would also like to see additional parking provided within the community.

Mr. Mears stated he also agrees with the need for additional parking; that he questioned if every proposed unit would have a garage and a garage will help with the parking issues.

Mr. Lardner stated every unit is proposed to have a garage. The Commission found that Mr. Tom Panetta spoke in opposition to the Application; that he is speaking on behalf of Lewes Board of Public Works; that he also lives in Lewes; that Lewes Board of Public Works opposes the Change of Zone request; that the five wells providing for the City of Lewes are located directly across the street from the project; that the proposed project along with the existing medical office complex building, the Village Center, the Village Center Cottages, along with 37 additional acres, sit directly over the Wellhead Protection Area; that this creates grave concern for them; that the Lewes Board of Public Works presented in front of the Planning & Zoning Commission before; that all of the water for Lewes and the service territories comes from the five wells; that the wells were replaced in the late 1950's to early 1960's; that DNREC has mentioned the placement of the wells is the most ideal locations for the Aquaphor; that they have been searching for redundant sites, but have been unsuccessful in finding a more suitable location; that the last study on the Wellhead Protection Area was performed in 2003; that since the study they have seen an increase in the pumping rate of 25%, from 400 to 500 million gallons per year; that the pumping is currently still within the permits; that Lewes has increased their pumping, but the surrounding wells have also increased pumping; that they have been in discussions with Geotech and DNREC questioning if the Wellhead Protection Area is currently sufficient as is; that the subject property and other properties mentioned, cover a third to a quarter of the Wellhead Protection Area; that the five wells drawn from 85-ft. to 100-ft. deep; that they are not very deep; that placing stormwater infiltration ponds directly within the Wellhead Protection Area, adjacent to the wells, does not allow much time to recover if something were to spill; that all of the nutrients from landscaping and surface contamination from the roads are going to be sent to the stormwater ponds; that he finds it hard to believe the site will be 44% of impervious coverage, given the density, roads, walkway, tennis courts and pool; that he had also spoke at the PLUS meeting; that the PLUS report submitted to Sussex County stated the pavement

should be pervious; that the plan shows the pavement as conventional hot mix; that the use of pervious pavement would greatly reduce the amount of water to be sent to the stormwater ponds; that the PLUS report also mentioned using rain gardens, filter strips and other best practices; that he did not see these proposed in the plans; that Sussex County, the City of Lewes and the Lewes Board of Public Works have already purchased the Jones Farm due to the concern for protecting the Wellheads; that collectively \$6,000,000.00 was spent to accomplish this; that with this project the remaining portion of the Wellhead Protection Area is in danger of being developed; that this is a cumulative issue, not being just the proposed project; that this issue needs to be looked at holistically; that the Lewes Board of Public Works has not issued a Readiness to Serve, for the electric for the project; that without a master plan, a holistic overview of all the lands along Kings Hwy., the wellhead will suffer a death by a thousand cuts and this will jeopardize everyone in Lewes, and all of the service territory.

Chairman Wheatley questioned if the property is located within the service area of Lewes Board of Public Works.

Ms. Stevenson questioned if Mr. Panetta had any suggestions as to how the project could make things better regarding the Wellhead Protection Area.

Mr. Robertson questioned if the Wellhead Protection Area is important to Lewes, what was the reasoning for Lewes not annexing the surrounding areas.

Mr. Panetta stated half of the property is located within the CPCN of Lewes Board of Public Works and the other half of the property is not; that the City of Lewes must agree to any service outside of the city limits; that he stated the City of Lewes wanted to attend the public hearing, but they had a Mayor and City Council meeting going on concurrently, which included all staff; that they intend to submit a formal letter to Planning and Zoning; that moving the stormwater pond out of the Wellhead Protection Area would help; that the stormwater pond is located within the worst possible area on the property; that the Wellhead Protection Area is located within the lower corner for the property; that the soils on the entire property are part of the recharge area; that they are having additional studies performed to confirm the true impact on the wells, as well as the private wells in the area; that the Village Center Cottages is located completely in the Wellhead Protection Area; that without looking at these projects holistically, decisions will be difficult to make and the City of Lewes does not have the right to annex properties without the owner applying for annexation first.

Mr. Robertson stated the public hearing will be closed for the Planning & Zoning Commission unless the Commission chose to hold the record open, however, public comments can be submitted for the public hearing before the County Council.

Chairman Wheatley questioned what the County Code states regarding the Wellhead Protection Area; that he questioned if there was a prior situation where the existence or location of the stormwater ponds caused adverse issues for a municipal water system and if the land was currently being tilled with chemicals.

Mr. Whitehouse stated Chapter 89 of the County Code focuses more on the site plan review rather than the use; that in any Wellhead Protection Area, with less than 35% impervious cover, there is no requirement; that there is a requirement an Environmental Assessment be submitted when 35% to

60% of impervious cover is proposed; that the Environmental Assessment must include an appropriate level of detail of how the area should be managed and development within the area is not prohibited within the 35% to 60% range, however, does require supporting technical analysis.

Mr. Panetta stated if the Commission performs a search they will find examples, such as a dry cleaning business contaminating wells with trichloroethylene; that there are issues with contaminants on roadways, such as hydraulic fluid and gasoline being washed into the stormwater ponds; that farmers apply fertilizer as required to meet the soil requirements; that this is different than a homeowner who applies fertilizer twice a year; the difference is a business operation versus residential use; that the Chesapeake and Coral Gables, Florida are controlling the amount of fertilizer being used for residential use and he feels this should be considered with the proposed project.

The Commission found Mr. Jay Tomlinson spoke by teleconference with questions regarding a potential construction date for the interim improvements for the proposed project, as the previous TIS referenced the former project; that he questioned if it was intended to have commercial businesses along the first floor and the possibility of leaving the record open.

Mr. Hutt stated he believes Mr. Tomlinson's concern originated from the statement within the TIS regarding the separation between retail business and professional office space.

Mr. Lardner stated the milestone for the proposed interim improvements is immediate, that the interim improvements are required to be installed and accepted before the first Certificate of Occupancy is granted for the project; that there will not be businesses along the first floor of the proposed professional office building; that the office building will be strictly for professional, dental and/or medical offices; that there will be no intent for retail or convenient stores; that with the original study they had proposed a 6,500 sq. ft. commercial shopping center; that this intent is where the initial 117,500 threshold originates from and the proposed project generates less traffic than the 117,500 trips, which is why they have agreed to perform the interim improvements immediately before the first Certificate of Occupancy. Ms. Wingate questioned the potential to move the location of the stormwater management pond. Ms. Stevenson questioned which direction the runoff would naturally run.

Mr. Lardner stated there is an opportunity to relocate the stormwater management pond; that it would require a redesign of the site, with a potential loss of units; that they have proposed recharge in excellent areas and Wellhead Protection Areas; that there have been conversations regarding impervious surfaces; that there are stormwater management practices within the Wellhead Protection Areas; that these are different practices to achieve the same result; that the Applicant has proffered for pretreatment of the system, should there be a leaking vehicle or a similar situation; that the runoff naturally runs away from the Wellhead Protection Area and this is stated within the report prepared by Mr. Cahill.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to Applications, 2022-01, C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC.

Upon there being no further questions, Chairman Wheatly closed the public hearing. At the conclusion of the public hearing, the Commission discussed the Applications.

In relation to Application 2022-01 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1967 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1968 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/U 2334 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Hopkins, and carried unanimously. Motion carried 5-0.

#### Minutes of the April 14, 2022 Planning & Zoning Commission Meeting

The Commission discussed the application which has been deferred since March 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/Z 1968 Henlopen Properties, LLC, for a Change in Zone from AR-1 Agricultural-Residential zoning to C-2 “Medium Commercial” zoning based upon the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.
2. The Applicant’s property is generally located at the intersection of Gill’s Neck Road and King’s Highway on the outskirts of the City of Lewes. It is next to an existing medical office building, across from Cape Henlopen High School and there are other businesses, commercial and institutional zonings, and uses in the immediate area. This is an appropriate location for C-2 zoning.
3. C-2 Zoning at this location near the intersection of Gill’s Neck Road and King’s Highway will benefit nearby residents of Sussex County by providing a convenient location for retail uses or consumer services.
4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
5. The site is in the “Coastal Area” according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.

7. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/Z 1968 Henlopen Properties, LLC, for the reasons and conditions stated in the motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson – Yea, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

**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: March 10<sup>th</sup>, 2022

Application: CZ 1968 Henlopen Properties, LLC

Applicant: Henlopen Properties, LLC  
4750 Owing Mills Boulevard  
Owing Mills, MD 21117

Owner: Mitchell Family, LLC  
1019 Kings Highway  
Lewes, DE 19958

Site Location: Lying on the north side of Gills Neck Rd. (S.C.R. 267)

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

Proposed Zoning: Medium Commercial (C-2) Zoning District

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Lewes Fire Department

Sewer: Sussex County

Water: Tidewater

Site Area: 3.041 acres +/-

Tax Map ID.: 335-8.00-37.00 (portion of)





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**Sussex County**

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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: March 2, 2022  
RE: Staff Analysis for CZ 1968 Henlopen Properties, LLC

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1968 Henlopen Properties, LLC to be reviewed during the March 10, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for part of Tax Parcel 335-8.00-37.00 (portion of) to allow for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Medium Commercial (C-2) Zoning District. The property is lying on the southeast side of Kings Highway (Rt. 9), approximately 0.11-mile northeast of the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267) The portion of the parcel to be rezoned consists of 3.041 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 of the subject property also contain the Future Land Use Designation of "Coastal Area." Properties further to the north and across Kings Highway to the west are located within the municipality of Lewes.

As outlined within the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided 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 also be allowed. In doing so, careful mixtures of homes with light commercial, office and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home. Major new industrial uses are not proposed in these areas.

The portion of this property is zoned Agricultural Residential (AR-1) Zoning District. Adjacent parcels to the north are also zoned Agricultural Residential (AR-1) Zoning District, as well as General Commercial (C-1) and Heavy Commercial (C-3). The properties to the north are zoned Medium Residential (MR) and the properties across Kings Highway and Gills Neck Road to the west and south are zoned Agricultural Residential (AR-1) Zoning District and Neighborhood Business (B-1).



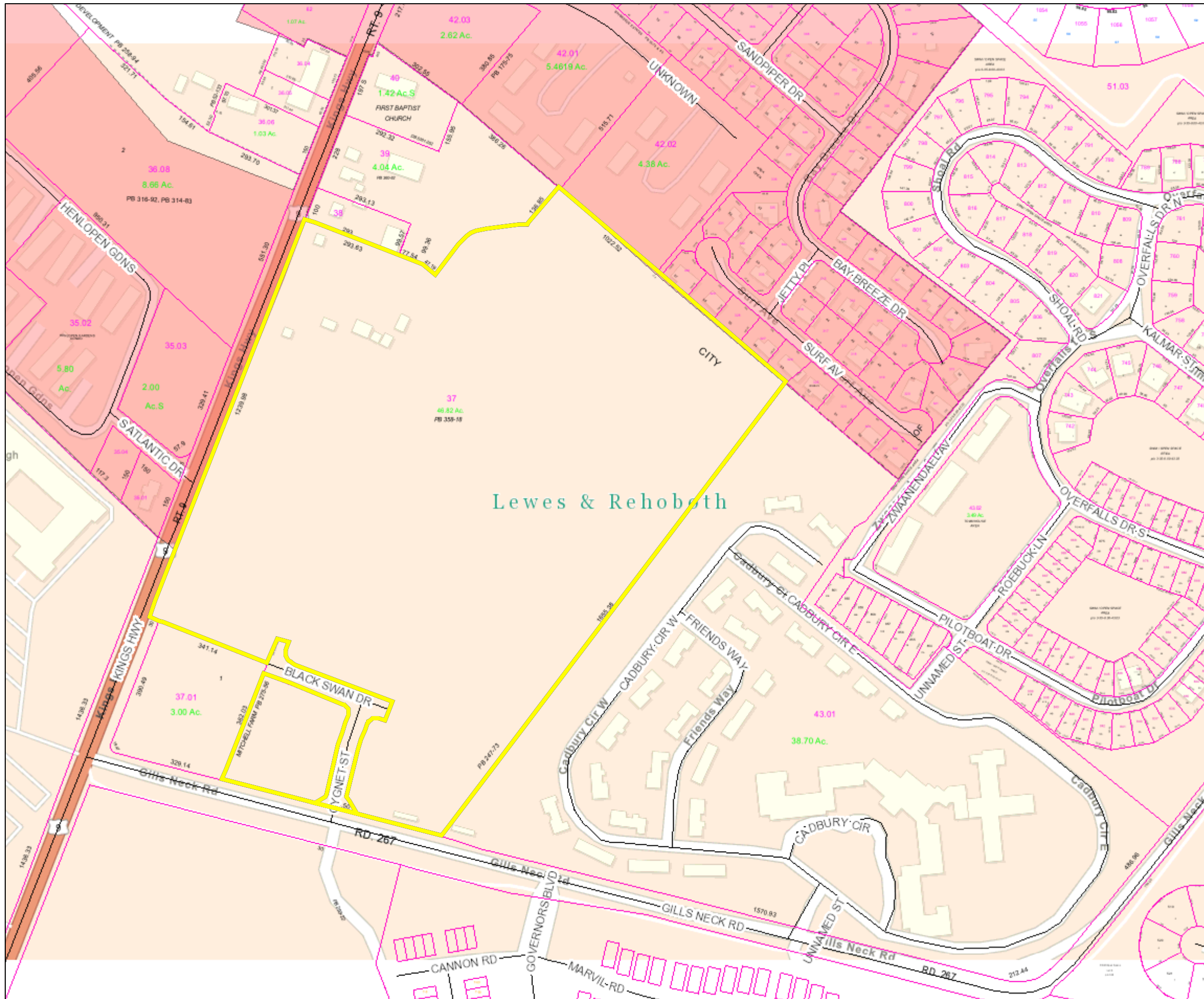
The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories,” the Medium Commercial (C-2) Zoning District is listed as an applicable zoning district in the Coastal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

Since 2011, there have been nine (9) Change of Zone applications within a 2-mile radius of the application site. The Change of Zone applications approved include Medium Residential (MR), Neighborhood Business (B-1), Heavy Commercial (C-3) and Medium Commercial (C-2) Zoning Districts.

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from an Agricultural Residential Zoning District (AR-1) to a Medium Commercial Zoning District (C-2) could be considered as being consistent with the land use, based on the size, scale, zoning and surrounding uses.



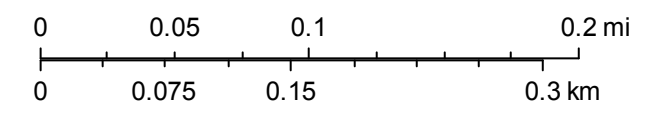
# Sussex County



<b>PIN:</b>	335-8.00-37.00
<b>Owner Name</b>	JEFF-KAT LLC
<b>Book</b>	5613
<b>Mailing Address</b>	1007 KINGS HWY
<b>City</b>	LEWES
<b>State</b>	DE
<b>Description</b>	SE/KINGS HWY
<b>Description 2</b>	RESIDUAL LANDS
<b>Description 3</b>	N/A
<b>Land Code</b>	

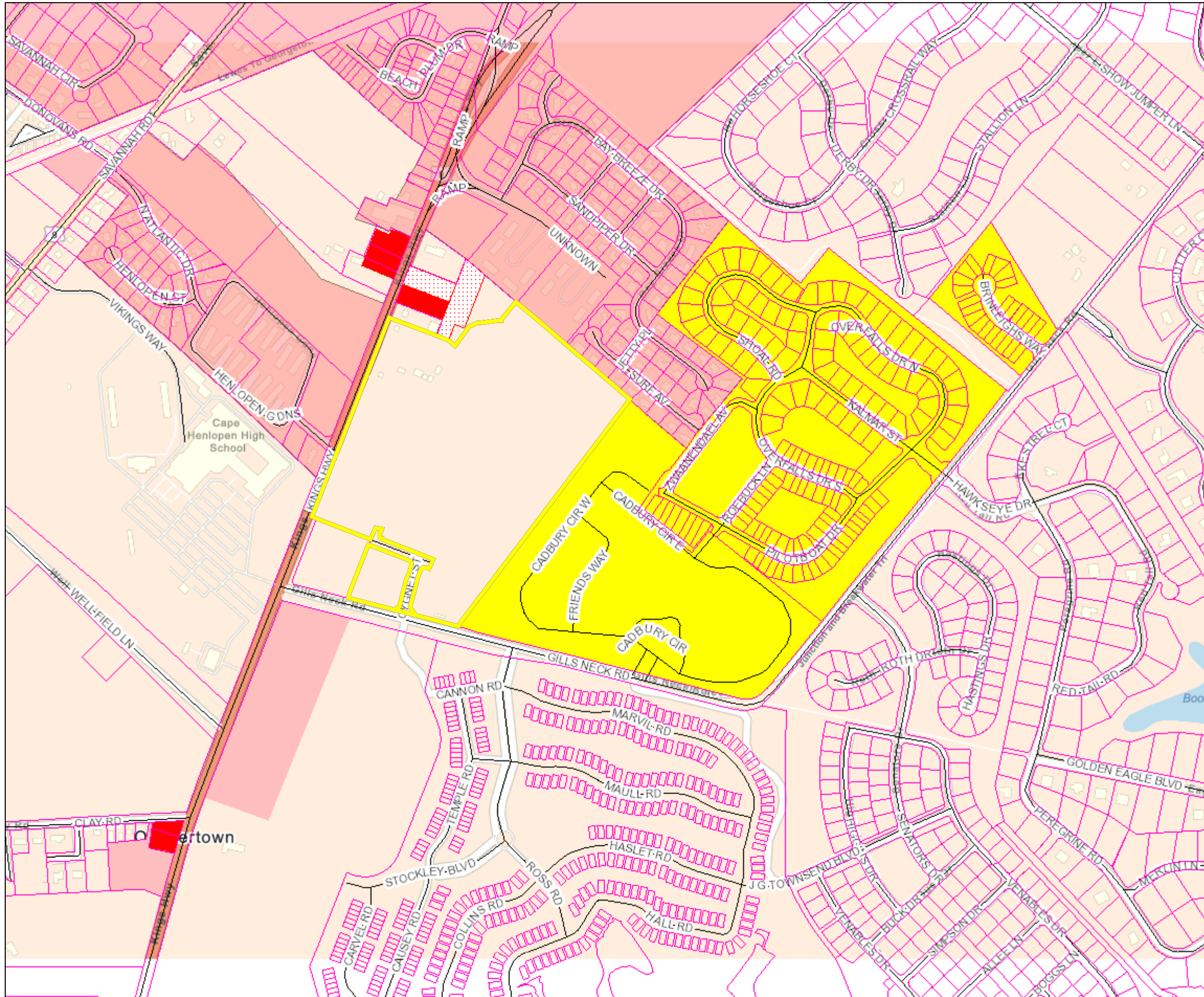
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  - Streets
  - Hundred Boundaries
  - County Boundaries
- Tax Ditch Segments**
  - Tax Ditch Channel
  - Pond Feature
  - Special Access ROW
  - Extent of Right-of-Way
  - Municipal Boundaries
  - TID

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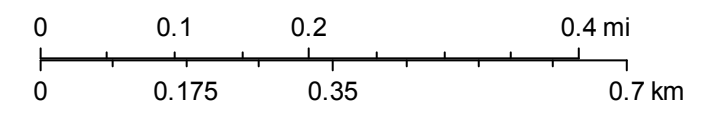
# Sussex County



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<b>Description</b>	SE/KINGS HWY
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<b>Description 3</b>	N/A
<b>Land Code</b>	

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   Override 1
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- Streets

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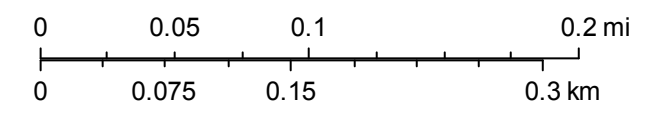
# Sussex County



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<b>Description 2</b>	RESIDUAL LANDS
<b>Description 3</b>	N/A
<b>Land Code</b>	

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- Tax Ditch Channel
- Pond Feature
- Special Access ROW
- Extent of Right-of-Way
- Municipal Boundaries
- TID

1:4,514



Re-Introduced: 2/22/22

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

**ORDINANCE NO. \_\_\_\_**

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

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

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

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

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

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

**Section 2. The subject property is described as follows:**

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

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

JAMIE WHITEHOUSE, AICP  
DIRECTOR OF PLANNING & ZONING  
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jamie.whitehouse@sussexcountyde.gov



**Sussex County**

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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 14, 2022

RE: County Council Report for C/U 2334 filed on behalf of Henlopen Properties, LLC

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The Planning and Zoning Department received an application (C/U 2334 filed on behalf of Henlopen Properties, LLC) for a Conditional Use for parcel 335-8.00-37.00 (portion of) for multi-family (267 units). The property is located within the Medium Residential (MR) Zoning District and is located on the southeast side of Kings Highway (Rt. 9) and the north side of Gills Neck Road (S.C.R. 267). The parcel size is 43.77 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on March 10, 2022. At the meeting of April 14, 2022, the Planning & Zoning Commission recommended approval of the application subject to 12 reasons stated and subject to 18 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of March 10, 2022, and April 14, 2022.

### Minutes of the March 10, 2022 Planning & Zoning Commission Meeting

#### C/U 2334 Henlopen Properties, LLC

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (267 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS.** The property is lying on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). 911Address: N/A. Tax Parcel: 335-8.00-37.00 (portion of).



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

Mr. Whitehouse advised the Commission that submitted into the record for C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC is the Applicant's Site Plan, the Applicant's Exhibit Booklet, the Traffic Impact Study (TIS), and the DelDOT response to the TIS, a letter from Sussex County Engineering Department Utility Planning Division, the PLUS Comments, the responses to the PLUS comments, a Cultural Resource Assessment, an Environmental Assessment, three letters of support, two letters of opposition and four mail returns.

The Commission found that Mr. David Hutt, Esq. with Morris James spoke on behalf of Applications 2022-01, C/Z 1967, C/Z 1968 and C/U 2334 for Henlopen Properties, LLC; that he is representing both the owners of the property, Mitchell Family, LLC and the Applicant, Henlopen Properties, LLC; that also present were Mr. Robert Mitchell, a member of the Mitchell Family, LLC, Mr. John Myer and Mr. Jon Hoffman, representatives of Henlopen Properties, LLC., Mr. Ring Lardner and Mr. Cliff Mumford, civil engineers with Davis, Bowen & Friedel, Inc.; Mr. Dennis Hughes, II, the traffic engineer with Davis, Bowen & Friedel, Inc., Mr. Steven Cahill, geologist, Mr. Edward Otter, archeologist and Mr. Mark Davidson, a principal land planner with Pennoni; that the current Applications were not the first Applications to be filed for the project; that the first proposed plan for the property was filed in April 2019; that the name of the project has changed several times; that the project was called "The Mitchell Farm" with the submission of the first Application; that the approved name became Zwaanendael Farm; that the property is currently known as Mitchell's Corner; that a number of things have changed since the Applications were filed; that the world experienced the COVID-19 Pandemic; that there has been a change in the directorship of Sussex County Planning & Zoning, from Ms. Janelle Cornwell to Mr. Jamie Whitehouse; that since the submission of the Application there have been numerous conversations and correspondence regarding the scheduling of the public hearings for the Applications; that in order to have a public hearing on a land use application, pursuant to the memorandum of understanding between DelDOT and Sussex County, a Traffic Impact Study (TIS) Review Letter was required; that the Applicant was awaiting the completion of the TIS Review Letter; that the initial response to the TIS Review Letter occurred October 2021; that the response was to the TIS performed for the initial Application; that the initial proposal had the Cape Henlopen Medical Center on the corner of Kings Hwy and Gills Neck Rd., C-3 Heavy Commercial properties along Kings Hwy., B-2 Business Community District properties located along Gills Neck Rd. and MR Medium-Density Residential located for the rest of the property, where apartments and other housing were proposed with a Conditional Use and Subdivision Application; that initially there was a total of five submitted applications; that since then, the applications have been reduced to four applications; that the current Applications received a Supplemental TIS Review letter; that the currently proposed Applications reduced the commercial impact of the project; that stated within the Supplemental TIS Review Letter, the Applications being heard are a trip generation reduction of almost 50% from the initial Applications; the subject property is located across the street from the Cape Henlopen High School; that next to the Cape Henlopen School is the Jack Lingo Real Estate office; that currently under construction is the Lewes Medical Campus, which is proposed to be an assisted living facility; that west of Gills Neck Rd. is the future location of the Village Center; that located on the same side as the subject property, at the corner of Gills Neck Rd. and Kings Hwy. is the Cape Henlopen Medical Center; that the Mitchell Family filed a previous Conditional Use Application (C/U 2112) in 2018 for the Cape Henlopen Medical Center; that C/U 2112 was for medical professional offices in a 39,000 sq. ft. building; that the Cape Henlopen



Medical Center is a good demonstration of the need for professional services within Sussex County as it serves many residents within the immediate area; that continuing down Kings Hwy, on the same side as the subject property, toward the City of Lewes, are the offices of Lane Builders; that the next property is the Big Oyster Brewery; that on the northern boundary of the property is Jefferson Apartments and Bay Breeze Estates, both of which are located within the City of Lewes; that on the eastern side of the subject property is The Moorings, formally known as Cadbury at Lewes; that the most detailed history of the project can be found within the Cultural Resource Assessment, prepared by Dr. Otter; that the majority of the mentioned culturally significant resources are found closer to Pot Hook Creek than the subject site; that the historical item mentioned is the existing farmhouse located on the subject property; that

the farmhouse is still occupied by Mr. Jerry Mitchell; that Dr. Otter's report mentioned the farmhouse,

outbuilding and additional structures require documentation before being removed from the property; that a condition proposed by the Applicant states the property and structures would be properly documented before removal; that the Applicant plans to have Dr. Otter perform the documentation before the removal of the farmhouse; that the subject property has been with the Mitchell Family since the late 1800's; that the first Mitchell family member was a Robinson; that if one looks at the George Robinson ownership in the late 1800's, that is when the Mitchell Family ownership began; that most recently Mr. Mitchell and his family have owned the 58-acre farm; that from 1998 until 2013 the property was located with the Agricultural Preservation; that with the development around the subject property, the farmland was becoming very difficult to farm, which resulted in the decision to sell the property; that as the Mitchell Family was working toward selling, they were approached by adjacent property owners; that several portions of the 58-acre parcel was sold to adjacent neighbors; that the portion to the rear of the property was sold to The Moorings, which was the subject of a recent Application Change of Zoning to Medium-Density Residential and to request an Residential Planned Community (RPC); that there was a portion sold to The Big Oyster, which was the subject of an application for rezoning from AR-1 to C-3; that the parcel, located on the corner of Kings Hwy. and Gills Neck Rd. was the subject of C/U 2112 for the Cape Henlopen Medical Center; that property most recently sold again sold to The Big Oyster Brewery for additional expansion; that the recently sold property will be the subject of a Change of Zone application, requesting rezoning from AR-1 to C-3, at the Planning & Zoning meeting on April 14, 2022; that after the pieces of lands were sold off, the property currently consists of 47-acres; that the current Applications request a Change of Zone, for approximately three acres, next to the site of the Cape Henlopen Medical Center; that the Change of Zone Application seeks to change the zoning designation from AR-1 to C-2 Medium Commercial; that an additional Change of Zone Application request to change the zoning classification of approximately 44-acres of the property from AR-1 to MR (Medium-Density Residential); that there is also a Conditional Use Application seeking approval for a multi-family use of the property, for 267 units, on the MR zoned portion of the property; that the final Application is a Subdivision application, which was necessary to create all the various component parts of the project; that currently the property is completely zoned AR-1; that immediately south of the proposed site is B-1 Neighborhood Business Zoning, which is the location of the Village Center Project; that moving closer toward Rt. 1, there is existing C-1 and B-1 properties at the corner of Clay Rd. and Kings Hwy.; that more toward the City of Lewes, the Big Oyster property is zoned C-1, with C-3

property immediately behind it; that across the street from the subject site are two properties, located within the City of Lewes, zoned as General Commercial; that immediately behind that property is R-5 Zoning, which is the City of Lewes' mixed residential zoning; that adjacent to those properties is the City of Lewes', CFHC Zoning, which is Community Facilities Health Care Zoning; that this is the site of the Lewes Senior Campus; that located closer to the City of Lewes is more General Commercial properties; that to the north side of the property is R-5, Mixed Residential for the City of Lewes; that also located near the subject property is R-2, Residential Low Density Zoning with the City of Lewes; that nearby, The Moorings, Breakwater and Admirals Chase, are located within the MR (Medium-Residential Zoning) with Sussex County; that the project is located within the Coastal Area according to the Future Land Use Map; that surrounding areas to the project are also located within the Coastal Area or a commercial area; that the Coastal Area is designated as one of the Sussex County's seven growth areas; that Chapter 4 of the Comprehensive Plan includes Table 4.5-2, which compares zoning districts applicable to Future Land Use categories; that both the C-2 (Medium Commercial District) and the MR Medium-Density Residential District are applicable zoning districts within the Coastal Area; that the County Code describes the purpose of the C-2 (Medium Commercial Zoning District) as a district which supports retail sales and performance of consumer services, permitting a variety of retail, professional and services businesses; that the district should be primarily located near arterial and collector streets; that the district accommodates community commercial users who do not have outside storage or sales; that the County Codes description of the C-2 Medium Commercial District exactly describes the purpose the Applicant desires with the proposed project; that the project proposes to provide additional professional and business services in an area where the services are needed; that this need is demonstrated best by the success of the Cape Henlopen Medical Center; that the previously approved Conditional Use for the Cape Henlopen Medical Center mirrors the purpose proposed for the property; that the developer hired an architect to design a building for the site; that the architect studied the architecture in the area; that the architect provided a letter explaining the proposed building, as shown on the rendering; that there are comments on record regarding the architecture along Kings Hwy. and how the proposed building does not match; that the architect described the architecture along Kings Hwy. as numerous architectural motifs in the context which may be evoked to rationalize any architectural style; that do to the various architectural styles along Kings Hwy. it is difficult to match any one of those; that the developer requested the architect consider the nearest architectural style and blend the building to those nearest to the property; that features from the Cape Henlopen Medical Center and Cape Henlopen High School, compliment those features while performing the same idea for the proposed townhomes along Kings Hwy.; that once the site plan was established, the Applicant requested Mr. Mark Davidson, Land Planner with Pennoni, to review the land plan; that the peer review provided by Mr. Davidson is included in the record; that the developer determined the square footage of all buildings in the surrounding area; that some of the buildings considered were Cape Henlopen High School at 367,000 sq. ft., Lewes Senior Living Campus at 223,000 sq. ft., The Moorings at 117,000 sq. ft., the future Village Center at 75,000 sq. ft. and Cape Henlopen Medical Center at 39,000 sq. ft.; that the building proposed for the project is smaller than almost all other studied buildings, being just slightly bigger than the Cape Henlopen Medical Center; that the proposed building is an appropriate size and scale for the area; that the County Code states commercial properties should be located along arterial and collector streets; that Kings Hwy. is a perfect match for this proposed use as it is considered a major arterial by Sussex County; that the

same process and considerations were made regarding the proposed rezoning of 44-acres to be MR Medium-Density Residential; that according to the Sussex County Code, the MR District is to provide for medium- density residential development in area which are, or expected to become, generally urban in character and where sanitary sewer and water supplies may or may not be available at the time of construction; that a permitted Conditional Use is for multi-family dwelling structures, which created the need for the Conditional Use application, which accompanies the Change of Zone application; that the purpose of a Conditional Use is to provide uses which are generally public or semi-public in character, being essential and desirable for the convenience and welfare; that because of the nature of the use, the importance to the relationship of the Comprehensive Plan and possible impact on neighboring properties and Sussex County, create the requirement for extra planning judgement on location and site plan; that housing is considered public or semi-public in character; that housing is desirable, particularly within the Coastal Area; that the purpose of the presented Applications are to provide for medium residential development, in areas which are becoming more urbanized; that there are townhomes and duplexes located within Governors, Admirals Chase, Breakwater, The Moorings and The Lewes Senior Living Campus; that within the City of Lewes, multifamily housing is offered at Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens; that Bay Breeze Estates is a single-family use, located within the R-2 zoning classification with the City of Lewes, that the density within Bay Breeze Estates is still three units to an acre; that Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens, within the City of Lewes, are all zoned R-5; that R-5 Zoning is the

City of Lewes' multifamily residential district, where the purpose is to provide a mix of housing types to include multifamily and affordable housing alternatives; that multifamily is located adjacent to the subject property, as well as across the street from the property; that in correspondence in the file, there is reference to the density for the project; that include in the project book, are the densities for the surrounding communities; that Dutchman's Harvest is 17 units to the acre; that Jefferson Apartments is 9.8 units to the acre; that The Moorings is 6.4 units to the acre; that Henlopen Gardens is 5.5 units to the acre; that Bay Breeze Estates is 3 units to the acre; when considering the Future Land Use Map and the densities of surrounding areas, the proposed density of 6.1 units to acre is consistent to the surrounding area; that the more intense uses should be located closer to the highway, decreasing in intensity moving further away from the highway; that this is accomplished by placing the townhomes and commercial area along Kings Hwy.; that moving closer to Bay Breeze Estates and The Moorings the uses become duplexes, which are a less intense use; that the Comprehensive Plan states lands within the Coastal Area should be able to accommodate both commercial and residential provided special environmental concerns are addressed; that medium to higher densities, between 4 to 12 units to the acre, can be appropriate in certain locations; that an appropriate location for this is where there is central water and sewer, when near a significant number of commercial uses and employment centers, when keeping with the character of the area, when situated along a main road or near a major intersection and where there is adequate level of service; that the project meets all of those characteristics; that the TIS Review Letter did state there are several intersections without adequate levels of service within the area; that the final solution to the issue is the dualization of Kings Hwy.; that waiting on the improvements would not be beneficial to the community or the project; that due to this, the

developer and DelDOT agreed upon interim improvements, to allow traffic to be improved for the time period it takes for DelDOT to complete the dualization project; that the proposed interim improvements are more than what is required within the Memorandum of Understanding between Sussex County and DelDOT; that the Memorandum of Understanding seeks to have a Level of Service D at intersections; that the most recent Memorandum of Understanding recognizes the Level of Service D is not always obtainable and this requirement may create an undue burden on a property owner looking to develop a property, given the prior development which has occurred in an area contributing to the existing level of service; that a level of service cannot be degraded by a project; that with the proposed interim improvements, there will be no degrading by the proposed project; that the improvements will provide and upgrading of service until DelDOT provides the final solution with the dualization of Kings Hwy.; that it would be unfair to request the last individual developing a property to fix all the issues; that in 2009 the need for the dualization of Kings Hwy. was recognized; that the improvements along Gills Neck Rd. have been accomplished; that during the February 23, 2022 workshop with DelDOT, it was said the estimate for the construction improvements was

\$23,000,000.00; that it would be an undue burden to require the last property owner to dualize Kings Hwy.; that although the Applicant cannot provide the dualization of Kings Hwy., they did desire to provide some temporary relief, which will be afforded through the interim improvements; that the developer did meet with the Lewes Byways Committee; that the developer agreed upon, as a Condition of Approval for the proposed project, the developer would maintain permanent easement areas and multi-modal path; that DelDOT is pushing the vast majority of the improvements onto the project side of Kings Hwy.; that the property is located within the Level 1 Investment area according to the State Strategies Map; that PLUS had no objection to the proposed project; that Investment Level 1 reflect areas which are already developed in an urban or suburban fashion, infrastructure is available and where future redevelopment or infill projects are expected; that State Strategies Map, Comprehensive Plan and the Zoning Code were all guideposts for the project's design and layout and he submitted proposed Findings and Conditions for the Application and a Willing and Able Letter from Tidewater Utilities.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is a professional engineer with Davis, Bowen & Friedel, Inc.; that the property is a total of 46.81-acres; that the portion of land requesting C-2 Zoning is located along Kings Hwy., adjacent to the Cape Henlopen Medical Center; that per DelDOT, Kings Hwy. is classified as an Other Principal Arterial, and furthermore identified as a major arterial roadway per No. 7 of the definition found in 115-4 of the County Code; that the remaining portion of land is approximately 43.77-acres and subject to the other three applications; that this portion of land also has frontage along Kings Hwy. and along Gills Neck Rd.; that Gills Neck Rd. is classified as a local road per DelDOT Functional Classification Map; that the layout of the site first began with a 20-ft. forested buffer along The Moorings, Bay Breeze and Jefferson Apartments; that this provides some additional open area to help establish the rear lot lines and allow for drainage; that this was how the lot lines were established for the townhomes and the duplexes; that they looked at the existing entrance, which is currently being utilized for Cape Henlopen Medical Center; that the developer desired to do more residential and move away from the grid street which currently exist; that they designed an arch entrance, which allows the service road to access both commercial properties; that this allows them

to avoid redesigning the entrance and roadway; that in doing this, it allowed the proposed area for a stormwater pond to serve the project; that they looked at how to best connect with the adjacent Big Oyster property; that Mr. Mitchell, the developer and Big Oyster have worked together on various land acquisitions and interconnectivity; that their goal was to separate the commercial traffic from Big Oyster from interacting with the residential traffic; that the same intent was to keep the commercial traffic from traveling through the residential area; that this was their motive for providing the direct connection to Gills Neck Rd.; that commercial traffic is heavier than residential traffic on a normal day; that they designed a mini round-about; that the round-about will be designed allowing vehicles of all types to navigate the circle; that the round-about will be reviewed by both the Fire Marshal and Sussex County Engineering; that once those spots were created, they then focused on a plan which offered a mixture of duplexes, 28-ft. wide and 24-ft. wide townhomes; that there are various prototypes offered within the proposed community; that the roads will be designed to Sussex County standards; that the right-of-way has been narrowed to 40-ft., which is allowable per County Code; that this allows them to bring the houses closer to the roadway, providing at least 20-ft between the sidewalk and the house; that this prevents vehicles from blocking the sidewalk; that No Parking signs will be added to prevent on street parking; that on street parking is always a concern of the Fire Marshal; that No Parking signs will allow enforcement to be occurred within the community if needed; that all lots were designed so no lots were backed up against each other; that all lots have some type of open space between them; that this will help facilitate drainage and landscaping; that sidewalks will be located on both sides of the road for all roadways within the community, with the exception of Road C; that the reasoning is the shared-use path is adjacent to the roadway; that it would not make sense to have a shared-use path and sidewalk next to each other; that active amenities will include a dog park, two mailcenters, a community center, a playground and sports courts for the community to use; that they have added some additional walking paths to promote pedestrian connectivity and walkability within the community; that stormwater management will be provided by infiltration through grass swales, which are located in the open area, to the rear of the lots, perforated pipes and an infiltration basin with the primary and secondary basins being located along Gills Neck Rd.; that higher volume storms, like the 10-yr. and 100-yr. storm events, will discharge via storm pipe through the lands of JG Townsend, which will discharge into a tidal discharge; that the plan was previously approved by Sussex Conservation District for the previous Application; that the pipe will still be able to be used for the current project; that the project does not contain any wetlands; that the project is not located within a flood plain; that the State Housing Preservation Office provided information regarding a known archeological site and some known prehistorical sites with high potential resources due to the known historic structures; that they hired Dr. Edward Otter to complete the Cultural Resource Assessment; that the Resource Assessment can be found in Appendix R of the Exhibit Booklet; that the existing buildings are proposed to be demolished; that Dr. Otter has confirmed he will perform the documentation for the existing buildings, should the Application receive approval; that about 6.34-acres of the project is located within the Wellhead Protection Area and must comply with Chapter 89 of the Sussex County Code; that Verdantas was hired to provide an Environmental Assessment Report; that there was a typo in the some calculations submitted into the record; that Post-Development calculations for Total Area is 9.34-acres and the Recharge Volume is 58-in.; that the total Post-Development, Recharge Volume for Stormwater Basin should have read 135,771 gallons; that with those correct numbers, the calculation remains the same as reported, which is 1,574,948 gallons; that the proposed impervious area with the 6.34-acres is

approximately 2.75-acres based on the current preliminary plan provided; that this equates to 44% of impervious coverage; that they always agreed to provide stormwater management for the Cape Henlopen Medical Center; that when they add in the Cape Henlopen Medical Center property the total impervious coverage becomes approximately 52%; that in accordance with Chapter 89 a Water Climatic Budget is required due to the project coverage being greater than 5% but less than 60%; that the Water Budget report can be found in Exhibit S of the Exhibit Booklet; that the budget shows there is a deficit of 2,646-sq. ft. of rooftop to balance the budget; that there is approximately 450,000-sq. ft. of rooftop available outside of the recharge area to balance the budget; that the project proposes to recharge more groundwater than what currently exists; that a pre-chamber system will be installed for debris and potential petroleum releases to help protect the ground water; that the pre-chamber will filter out the hydrocarbons; that the water quality will also be improved by converting the farm from its use of chemical applications to the proposed project; that Verdantas stated in their report, that the property as proposed can be constructed without adversely impacting the Lewes supply wells; that the property is located within the Sussex County Unified Sewer District; that the property will be served by a gravity sewer system, which will discharge to the Governors pump station; that the property may be served by both the City of Lewes Board of Public Works and Delaware Electric Cooperative as the parcel is split by both providers based on the map for electric territories; that water can be provided to the project by the City of Lewes Public Works or Tidewater Utilities; that both utilities have waterlines along the property frontage; that a CPCN will be required for either utilities; that Tidewater Utilities did provide a Willing & Able Letter to serve the project; that natural gas is available from Chesapeake Utilities, as they have a gas main along Gills Neck Rd.; that a Traffic Impact Study was prepared in 2019; that an addendum was prepared in April 2020 for the previous withdrawn Application; that the withdrawn Application consisted of 206,500 sq. ft. of medical office buildings, 60 single-family homes and 150 multi-family homes; that the TIS Review Letter was prepared on October 7, 2021; that the improvements included within that letter were right-of-way dedication, interim improvements and build-out improvements; that subsequent to the review letter, a new plan, which is currently being proposed was submitted to DelDOT and Sussex County; that as part of the submission the developer stated to DelDOT that despite the reduction of traffic of approximately 50%, they would abide by the recommendations from the original study; that after review of the request in the reduction of traffic, DelDOT did not require a new TIS; that DelDOT provided an amended study and a letter; that during the same time, DelDOT had sped up the design of the DelDOT US Rt 9., Kings Hwy., Dartmouth Dr. to Freeman Hwy., DelDOT Contract T202212901 or also known as the dualization of Kings Hwy.; that the dualization of Kings Hwy. was first identified in 2009 as part of a larger agreement involving projects which have all completed their construction and their portions of overall improvements; that those projects include Senators, Governors, Showfield and Whites Pond Meadow who will construct their portion in summer to fall of 2022; that the last remaining piece is the dualization of Kings Hwy.; that DelDOT held a public workshop on February 23, 2022, on their improvement project; that the developer was agreeable with the interim improvements; that the developer began working on various projects for the current public hearing before the information from the DelDOT workshop was available and before final interim improvements were negotiated; that the rendering submitted was constructed before they received information regarding how the dualization of Kings Hwy. would occur with the landscape guidelines and shared-use path; that the rendering does provide an idea how the project would look from an aerial view; that they must create a corridor effect with landscaping and

shared-use path meandering through and integrate the project with the dualization of Kings Hwy. to create a corridor the byways would be pleased with; that they recognize it is a byway and the gateway into the City of Lewes; that a second through lane was added in the southbound direction; that after discussion of the project, the time of the dualization and the reduction in traffic, DelDOT did not support the interim improvements; that after further discussion and the developers willingness and desire to provide some temporary relief, DelDOT has agreed to interim improvements; that the improvements are slightly different from what was originally required in the October 7, 2021 letter; that DelDOT proposed additional requirements; that DelDOT's first requirement is the developer will mill an overlay approximately 3,500 linear feet of Kings Hwy.; that DelDOT's second requirement is to construct a rights-in and rights-out entrance on Kings Hwy.; that this will be located across from the Lewes property; that the entrances will align across from each other; that at that location DelDOT has proposed to make a round-about for the two entrances as part of the overall project; that the round-about is the reason the developer is agreeable to the rights-in and rights-out entrance during the interim condition; that the third DelDOT requirement was to maintain the entrance on Gills Neck Rd.; that no changes are required for this, as the entrance is designed for proposed amount of traffic for the project; that the developer is to improve Kings Hwy., Gills Neck Rd. and Cape Henlopen High School; that they will convert the through lane from Gills Neck Rd. onto Kings Hwy. into a dedicated left turn lane; that this will create two left turn lanes from Gills Neck Rd. onto Kings Hwy.; that the right turn lane will be converted to a through right turn lane; that this will allow traffic to go through to Cape Henlopen High School or turn right in the intersection; that they will be adding a second through lane in the southbound direction; that a separate right turn lane will remain; that they will be shifting the intersections roadway approximately 10-ft. into the site to accomplish the improvement; that there will be two through lanes in the southbound direction and a dedicated left turn lane going onto Gills Neck Rd.; that the dual through lane will continue south; that there will be a lane drop where the right hand through lane will become a dedicated right turn lane onto Clay Rd. in the interim condition; that a separate bicycle lane will be provided through the intersection; that they will also install a shared-use path from Cape Henlopen High School to Clay Rd. to complete pedestrian connectivity to Clay Rd.; that the developer will enter into an agreement to provide an equitable contribution to the dualization project; that the developer will dedicate 50-ft. of right of way from the center line of the road; that the developer will reserve an additional 30-ft. of right of way parallel to Kings Hwy. for the dualization of the project; that a 30-ft. dedication will occur along Gills Neck Rd.; that in addition to the reservation and dedicated right of way, a 15-ft. permanent easement will be provided for a shared-use path; that a shared-use path will be provided, wrap around and connect to the Big Oyster; that the developer will enter into an agreement to provide an equitable contribution to the Clay Rd. and Marsh Rd. intersection as part of the overall realignment project; that they will provide connections and cross-access easements between the onsite lots; that there is interconnectivity provided to the Cape Henlopen Medical Center and Big Oyster; that there will also be an interconnection into Lane Builders once the roundabout is installed; that they will provide bicycle, pedestrian and transit improvements to include the shared-use paths; that they will provide a Type 2 bus stop; that the developer had a meeting with select individuals of the Lewes Byway Committee; that the meeting was held prior to the release of the dualization plan; that during the meeting the developer committed to working with the committee on the shared use path, landscaping and fencing; that after the release of the dualization plan, the developer reached out to the Lewes Byway Committee to reconfirm their commitment; that DelDOT is equally

supportive of the development of the 10-ft shared-use path, landscaping and maintenance within the permanent easement; that the project was reviewed by PLUS on December 15, 2021; that the PLUS comments and responses can be found in Exhibit M; that the PLUS comments provided were general in nature and will comply with all regulatory requirements; that Davis, Bowen & Friedel, Inc. (DBF) prepared an Environmental Assessment and Public Facility Evaluation Report in accordance of County Code, Chapter 115-194.3; that the written responses can be located within Exhibit K; that they have analyzed all of the respected items; that all mitigation measures are consistent with the Comprehensive Plan; that DBF prepared a written response to items listed in Chapter 99-9C; that the responses can be located within Exhibit J; that the project is integrated into existing terrain and surrounding landscape; that the project does not contain wetlands or flood plains; that the project provides buffers to screen objectionable features; that the project prevents pollution of surface and groundwater; that the plan provides for vehicular and pedestrian movement; that the plan mitigates the effect on area roadways and public transportation and the project is compatible with otherland areas.

Ms. Stevenson questioned if the Applicant will be using the recommendations and plans of the Lewes Byway Commission, if the Applicant is agreeable to the proposals made in the TIS Review Letter, if swales would be placed along Kings Hwy. or a closed stormwater system, if she could see a rendering of the interim highway is proposed to look like, if there will be shoulders on the roadways once the improvements are built; that shoulders are a big concern for her since Kings Hwy. is a major roadway for ambulances; that she questions what the Applicant is doing to create more pervious surfaces and questioned extra parking possibilities; that she mentioned the adjacent multi-family housing offers a lot of additional parking; that since the Applicant is offering multi-family housing, her hope is the units would be workforce housing; that she believes younger families, who work in the area, would live there and more than likely will have family and friends who visit; that with no parking on the street, additional parking will be needed; that she questioned the interconnectivity to the property; that she questioned the reasoning for not promoting access from Kings Hwy; that Gills Neck Rd. is much smaller than Kings Hwy.; that she fears the plan will encourage 400 to 500 additional people to utilize Gills Neck Rd. to enter Lewes; that she questioned if the entrance from Gills Neck Rd. could be a right-in and right-out, prohibiting traffic to turn left onto Gills Neck Rd.; that she feels until improvements are made, people will attempt to take the back way of Gills Neck Rd. into Lewes and she questioned if the Applicant has had any discussions with the school district.

Mr. Hutt stated he is unsure if there is a defined plan, especially with the new plan of the roundabout; that the Applicant intends to work with the Byway Commission as the dualization process moves forward; that the Byway Commission was excited with the Applicant's proposal shown in the rendering; that the Byway Commission did want trees and boulevards; that the Applicant hopes to accomplish as much as they can within the remaining area; that the Applicant is agreeable to the proposals made in the TIS Review Letter; that DelDOT will regulate if there should be open or closed drainage system along Kings Hwy.; that they are learning what the proposed plans are for the dualization of Kings Hwy.; that he cannot speculate on what will be required and the Sussex County Engineering Department verified the calculations to ensure there is a balanced budget on what is proposed.



Mr. Bryan Behrens spoke on behalf of the Application, that he is the group engineer for DelDOT's project development for the south section; that he is in charge of the design of the Kings Hwy. dualization project; that proposed currently is open drainage, which will be swales adjacent to the roadway; that they did reach out to the Lewes Byways Commission ahead of the DelDOT public workshop to present their proposal; that he believes Lewes Byways Commission was similarly as enthusiastic about the proposal as DelDOT was; that they are proposing a shared-use path and landscaping, which is the same proposal as the Applicant, providing room for collaboration and he does not have a rendering of the highway during the interim improvements.

Mr. Lardner stated they only have a drawing to show what the proposed travel lanes will look like; that he does not have a rendering of what the improvements will look like; that he has a drawing showing where the travel lanes will be once the roadway is shifted; that all details will be worked out with Mr. McCabe and his staff as part of the review process; that there is still a lot more collaboration to go through of how the final lanes will look; that there will be two lanes heading southbound out of the City of Lewes, heading toward Dartmouth Dr.; that there will be shoulders on both sides the roadways, in the interim condition, and upon final construction; that the driveway material has not been finalized, as the homeowners need to be part of the conversation when discussing long-term maintenance; that there will be infiltration in all rear yard swales; that this will allow the back half of roof run off to drain into the rear yard swales with infiltration in them; that the roadways will have perforated piping; that this will allow the roadways to infiltrate as soon as the drainage hits the system; that drainage will infiltrate through the roadbed; that any runoff which still makes it to the infiltration ponds, will further infiltrate within the pond; that the pond will have a pre-treatment system on it; that this will further protect the wellheads; that their intent is to infiltrate at the source; that they will balance the budget to ensure they comply completely with the Wellhead Protection requirements; that they have proposed two parking spaces per unit; that there is a parking area by the clubhouse; that during non-business hours the parking lot of the Cape Henlopen Medical Center could be used; that he believes there is other opportunities for overflow parking elsewhere, however those areas are not reflected on the current site plan; that they do have an exit from the property to Big Oyster; that he can speak to Big Oyster's plan, as they have worked very closely with Mr. Hammer and the Big Oyster staff to ensure Big Oyster's and the Applicant's needs are both met; that the stub shown on the site plan is the interconnection to Big Oyster's proposed plan in the back; that they would have access to Big Oyster, through the roundabout, both in and out; that once the improvements are completed along Kings Hwy. they will have access to the dualized roundabout; that this will provide interconnectivity to Big Oyster; that collaborations will be ongoing as the Applicant and Mr. Hammer have been partners for a long time; that traffic accessing the project from Kings Hwy. would be required to cut through the residential section, in trying to keep the peaceful nature of the neighborhood; that they were attempting to separate the medical office commercial traffic, by only using the Gills Neck intersection; that commercial traffic can be heavy at times; that Gills Neck Rd. is not much smaller in the particular section being referred to; that traffic coming down Gills Neck Rd. toward Kings Hwy. would access the medical center by turning right, before reaching Kings Hwy; that the frontage of Gills Neck Rd. is adequately sized to handle the traffic when using the intersection, where as a subdivision street at 24-ft. wide is not designed for the commercial use; that he does not feel residents from the proposed community would take Gills Neck Rd. to access Lewes, as they will have access to Kings Hwy. as well as the Gills Neck Rd. intersection; that the potential for a right-in and right-out only

would be regulated by DelDOT; that DelDOT granted the access as a full access and entrance; that DelDOT prefers the access to be on the lower classification roadway rather than the high classification roadway; that this causes competing interests regarding the entrance; that it would be quicker for residents to take a right onto Kings Hwy. into Lewes than to take the back way through Gills Neck Rd.; that he does not understand how eliminating the left onto Gills Neck Rd. will achieve Ms. Stevenson's goal; that he reached out to the Superintendent and Director of Operations; that they did not want to provide a letter in support or opposition; that the school district was sent a letter with the plans; that they currently are and will continue coordinating with the school district regarding school bus stops.

Mr. Thomas Brockenbrough spoke on behalf of DelDOT in relation to the Application; that it is physically possible to create a no left turn onto Gills Neck Rd. from the project by widening Gills Neck Rd. and providing a median; that the construction of this will not be easy; that it will be costly, and it may be out of character with the Lewes Byway.

Ms. Wingate stated people wanting to make the left onto Gills Neck Rd. will most likely cause a lengthy wait, as there will not be a light at the location, causing people to avoid turning left and she would also like to see additional parking provided within the community.

Mr. Mears stated he also agrees with the need for additional parking; that he questioned if every proposed unit would have a garage and a garage will help with the parking issues.

Mr. Lardner stated every unit is proposed to have a garage. The Commission found that Mr. Tom Panetta spoke in opposition to the Application; that he is speaking on behalf of Lewes Board of Public Works; that he also lives in Lewes; that Lewes Board of Public Works opposes the Change of Zone request; that the five wells providing for the City of Lewes are located directly across the street from the project; that the proposed project along with the existing medical office complex building, the Village Center, the Village Center Cottages, along with 37 additional acres, sit directly over the Wellhead Protection Area; that this creates grave concern for them; that the Lewes Board of Public Works presented in front of the Planning & Zoning Commission before; that all of the water for Lewes and the service territories comes from the five wells; that the wells were replaced in the late 1950's to early 1960's; that DNREC has mentioned the placement of the wells is the most ideal locations for the Aquaphor; that they have been searching for redundant sites, but have been unsuccessful in finding a more suitable location; that the last study on the Wellhead Protection Area was performed in 2003; that since the study they have seen an increase in the pumping rate of 25%, from 400 to 500 million gallons per year; that the pumping is currently still within the permits; that Lewes has increased their pumping, but the surrounding wells have also increased pumping; that they have been in discussions with Geotech and DNREC questioning if the Wellhead Protection Area is currently sufficient as is; that the subject property and other properties mentioned, cover a third to a quarter of the Wellhead Protection Area; that the five wells drawn from 85-ft. to 100-ft. deep; that they are not very deep; that placing stormwater infiltration ponds directly within the Wellhead Protection Area, adjacent to the wells, does not allow much time to recover if something were to spill; that all of the nutrients from landscaping and surface contamination from the roads are going to be sent to the stormwater ponds; that he finds it hard to believe the site will be 44% of impervious coverage, given the density, roads, walkway, tennis courts and pool; that he had also spoke at the PLUS meeting; that the PLUS report submitted to Sussex County stated the pavement

should be pervious; that the plan shows the pavement as conventional hot mix; that the use of pervious pavement would greatly reduce the amount of water to be sent to the stormwater ponds; that the PLUS report also mentioned using rain gardens, filter strips and other best practices; that he did not see these proposed in the plans; that Sussex County, the City of Lewes and the Lewes Board of Public Works have already purchased the Jones Farm due to the concern for protecting the Wellheads; that collectively \$6,000,000.00 was spent to accomplish this; that with this project the remaining portion of the Wellhead Protection Area is in danger of being developed; that this is a cumulative issue, not being just the proposed project; that this issue needs to be looked at holistically; that the Lewes Board of Public Works has not issued a Readiness to Serve, for the electric for the project; that without a master plan, a holistic overview of all the lands along Kings Hwy., the wellhead will suffer a death by a thousand cuts and this will jeopardize everyone in Lewes, and all of the service territory.

Chairman Wheatley questioned if the property is located within the service area of Lewes Board of Public Works.

Ms. Stevenson questioned if Mr. Panetta had any suggestions as to how the project could make things better regarding the Wellhead Protection Area.

Mr. Robertson questioned if the Wellhead Protection Area is important to Lewes, what was the reasoning for Lewes not annexing the surrounding areas.

Mr. Panetta stated half of the property is located within the CPCN of Lewes Board of Public Works and the other half of the property is not; that the City of Lewes must agree to any service outside of the city limits; that he stated the City of Lewes wanted to attend the public hearing, but they had a Mayor and City Council meeting going on concurrently, which included all staff; that they intend to submit a formal letter to Planning and Zoning; that moving the stormwater pond out of the Wellhead Protection Area would help; that the stormwater pond is located within the worst possible area on the property; that the Wellhead Protection Area is located within the lower corner for the property; that the soils on the entire property are part of the recharge area; that they are having additional studies performed to confirm the true impact on the wells, as well as the private wells in the area; that the Village Center Cottages is located completely in the Wellhead Protection Area; that without looking at these projects holistically, decisions will be difficult to make and the City of Lewes does not have the right to annex properties without the owner applying for annexation first.

Mr. Robertson stated the public hearing will be closed for the Planning & Zoning Commission unless the Commission chose to hold the record open, however, public comments can be submitted for the public hearing before the County Council.

Chairman Wheatley questioned what the County Code states regarding the Wellhead Protection Area; that he questioned if there was a prior situation where the existence or location of the stormwater ponds caused adverse issues for a municipal water system and if the land was currently being tilled with chemicals.

Mr. Whitehouse stated Chapter 89 of the County Code focuses more on the site plan review rather than the use; that in any Wellhead Protection Area, with less than 35% impervious cover, there is no requirement; that there is a requirement an Environmental Assessment be submitted when 35% to

60% of impervious cover is proposed; that the Environmental Assessment must include an appropriate level of detail of how the area should be managed and development within the area is not prohibited within the 35% to 60% range, however, does require supporting technical analysis.

Mr. Panetta stated if the Commission performs a search they will find examples, such as a dry cleaning business contaminating wells with trichloroethylene; that there are issues with contaminants on roadways, such as hydraulic fluid and gasoline being washed into the stormwater ponds; that farmers apply fertilizer as required to meet the soil requirements; that this is different than a homeowner who applies fertilizer twice a year; the difference is a business operation versus residential use; that the Chesapeake and Coral Gables, Florida are controlling the amount of fertilizer being used for residential use and he feels this should be considered with the proposed project.

The Commission found Mr. Jay Tomlinson spoke by teleconference with questions regarding a potential construction date for the interim improvements for the proposed project, as the previous TIS referenced the former project; that he questioned if it was intended to have commercial businesses along the first floor and the possibility of leaving the record open.

Mr. Hutt stated he believes Mr. Tomlinson's concern originated from the statement within the TIS regarding the separation between retail business and professional office space.

Mr. Lardner stated the milestone for the proposed interim improvements is immediate, that the interim improvements are required to be installed and accepted before the first Certificate of Occupancy is granted for the project; that there will not be businesses along the first floor of the proposed professional office building; that the office building will be strictly for professional, dental and/or medical offices; that there will be no intent for retail or convenient stores; that with the original study they had proposed a 6,500 sq. ft. commercial shopping center; that this intent is where the initial 117,500 threshold originates from and the proposed project generates less traffic than the 117,500 trips, which is why they have agreed to perform the interim improvements immediately before the first Certificate of Occupancy. Ms. Wingate questioned the potential to move the location of the stormwater management pond. Ms. Stevenson questioned which direction the runoff would naturally run.

Mr. Lardner stated there is an opportunity to relocate the stormwater management pond; that it would require a redesign of the site, with a potential loss of units; that they have proposed recharge in excellent areas and Wellhead Protection Areas; that there have been conversations regarding impervious surfaces; that there are stormwater management practices within the Wellhead Protection Areas; that these are different practices to achieve the same result; that the Applicant has proffered for pretreatment of the system, should there be a leaking vehicle or a similar situation; that the runoff naturally runs away from the Wellhead Protection Area and this is stated within the report prepared by Mr. Cahill.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to Applications, 2022-01, C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC.

Upon there being no further questions, Chairman Wheatly closed the public hearing. At the conclusion of the public hearing, the Commission discussed the Applications.

In relation to Application 2022-01 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1967 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1968 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/U 2334 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Hopkins, and carried unanimously. Motion carried 5-0.

#### Draft Minutes of the April 14, 2022 Planning & Zoning Commission Meeting

The Commission discussed the application which has been deferred since March 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/U 2334 Henlopen Properties, LLC, for 267 Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available. This conditional use application for multi-family units is in compliance with the purposes of the MR Zone.
2. Both central water and central sewer will be available to this site.
3. This site is the location of the Gill's Neck Road and King's Highway lighted intersection. DelDOT is also planning to improve the King's Highway Corridor in the near future. Multi-family development is appropriate for this property adjacent to these roadways and this intersection.
4. The property is in the immediate vicinity of other properties with a variety of business, commercial and institutional uses. The site is across from the Cape Henlopen High School campus. It is adjacent to the City of Lewes with nearby Mixed Residential, General Commercial, and Community Facilities zoning districts within the city. Nearby residential uses include Dutchman's Harvest within the City of Lewes with 17.7 units per acre; Jefferson Apartments within the City of Lewes with 9.8 units per acre; the Moorings at Lewes in Sussex County with 6.4 units per acre; and Henlopen Gardens in the City of Lewes with 5.5 units per acre. This conditional use at approximately 6 units per acre is consistent with other zoning and multi-family developments in the area.
5. There are no wetlands located on the property.

6. A small portion of the property is located within a Wellhead Protection Area. It will comply with the requirements of Chapter 89 of the Sussex County Code.
7. The Applicant commissioned an Environmental Assessment Report prepared by Verdantas that analyzed the geography and groundwater characteristics of the site. That study concluded that the proposed use, as designed and in compliance with Chapter 89 of the Sussex County Code and with the suggested conditions will not have an adverse impact upon the City of Lewes Wellheads that are off-site and across Kings Highway.
8. DelDOT has reviewed the proposed project and has determined under its vehicle trip standards that the development's 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.
9. DelDOT has issued and updated its Traffic Impact Study review letter for the project. That letter requires several offsite roadway improvements including, but not limited to, the construction of interim improvements to Kings Highway, the dedication of a substantial amount of additional right-of-way to DelDOT; equitable contributions to the US9, Kings Highway, Dartmouth Drive to Freeman Highway Project; and equitable contributions to the realignment of Old Orchard Road/Savannah Road/Westcoats Road Project.
10. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
11. 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.
12. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.
13. This recommendation is subject to the following conditions:
  - A. There shall be no more than 267 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. The developer shall also coordinate with the Lewes ByWays Committee on the design and landscaping within the ByWay corridor.
  - C. As proffered by the Applicant, the existing Mitchell family buildings shall be documented by an archeological study prior to their removal from the property.
  - D. All recreational amenities shall be completed within the development as follows:
    - i. The Community Center/Clubhouse, pool, and sports courts shall be completed on or before the 125<sup>th</sup> Building Permit; and
    - ii. The dog park shall be completed on or before the 150<sup>th</sup> Building Permit.
  - E. 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.
  - F. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.

- G. 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.
- H. Interior street design shall comply with or exceed Sussex County standards.
- 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, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday. No Saturday and Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- L. A 20-foot-wide forested buffer shall be installed along the perimeter of the development adjacent to Jefferson Apartments, Bay Breeze Estates, and The Moorings. This buffer area shall comply with the planning requirements for such a buffer as contained in Section 99-5 of the Sussex County Code.
- M. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas.
- N. The Applicant shall form a Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.
- O. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
- P. The development shall comply with the requirements of Chapter 89 of the Sussex County Code and the recommendations provided by Verdantas on page 9 of its Environmental Assessment Report dated February 2022. These recommendations shall be incorporated into the Final Site Plan, and they shall be restated on the Final Site Plan.
- Q. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- R. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried to recommend approval of C/U 2994 Henlopen Properties, LLC for the reasons and conditions stated in the motion. Motion carried 3-1.

Ms. Stevenson stated she was not opposed to the development; however, she is concerned about the testimony given by the Lewes Board of Public Works about the Wellhead Protection Area and safeguards that the Commission cannot control to protect the residents living on Gills Neck Rd.

The vote by roll call: Ms. Stevenson – Nay, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

**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: March 10<sup>th</sup>, 2022

Application: CU 2334 Henlopen Properties, LLC

Applicant: Henlopen Properties, LLC  
4750 Owing Mills Boulevard  
Owing Mills, MD 21117

Owner: Mitchell Family, LLC  
1019 Kings Highway  
Lewes, DE 19958

Site Location: Lying on the southeast side of Kings Hwy. (Rt. 9) and on the north side of Gills Neck Rd. (S.C.R. 267)

Current Zoning: Medium Residential (MR) Zoning District

Proposed Use: Multi-Family (267 units)

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Lewes Fire Department

Sewer: Sussex County

Water: Tidewater

Site Area: 43.777 acres +/-

Tax Map ID.: 335-8.00-37.00 (portion of)





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**Sussex County**

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## Memorandum

To: Sussex County Planning Commission Members  
From: Mrs. Christin Scott, Planner I  
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant  
Date: March 3, 2022  
RE: Staff Analysis for CU 2334 Henlopen Properties, LLC

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2334 Henlopen Properties, LLC to be reviewed during the March 10, 2022 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for a portion of Tax Parcel: 335-8.00-37.00 to allow for a multi-family (267 unit) to be located on the southeast side of Kings Highway (Rt. 9). The property is lying on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). The parcel consists of 43.777 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 of the subject property also contain the Future Land Use Designation of "Coastal Area." Properties further to the north and across Kings Highway to the west are located within the municipality of Lewes.

As outlined within the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided 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 also be allowed. In doing so, careful mixtures of homes with light commercial, office and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home. Major new industrial uses are not proposed in these areas.

The portion of this property is zoned Agricultural Residential (AR-1) Zoning District. Adjacent parcels to the north are also zoned Agricultural Residential (AR-1) Zoning District, as well as General Commercial (C-1) and Heavy Commercial (C-3). The properties to the north are zoned Medium Residential (MR) and the properties across Kings Highway and Gills Neck Road to the west and south are zoned Agricultural Residential (AR-1) Zoning District and Neighborhood Business (B-1).

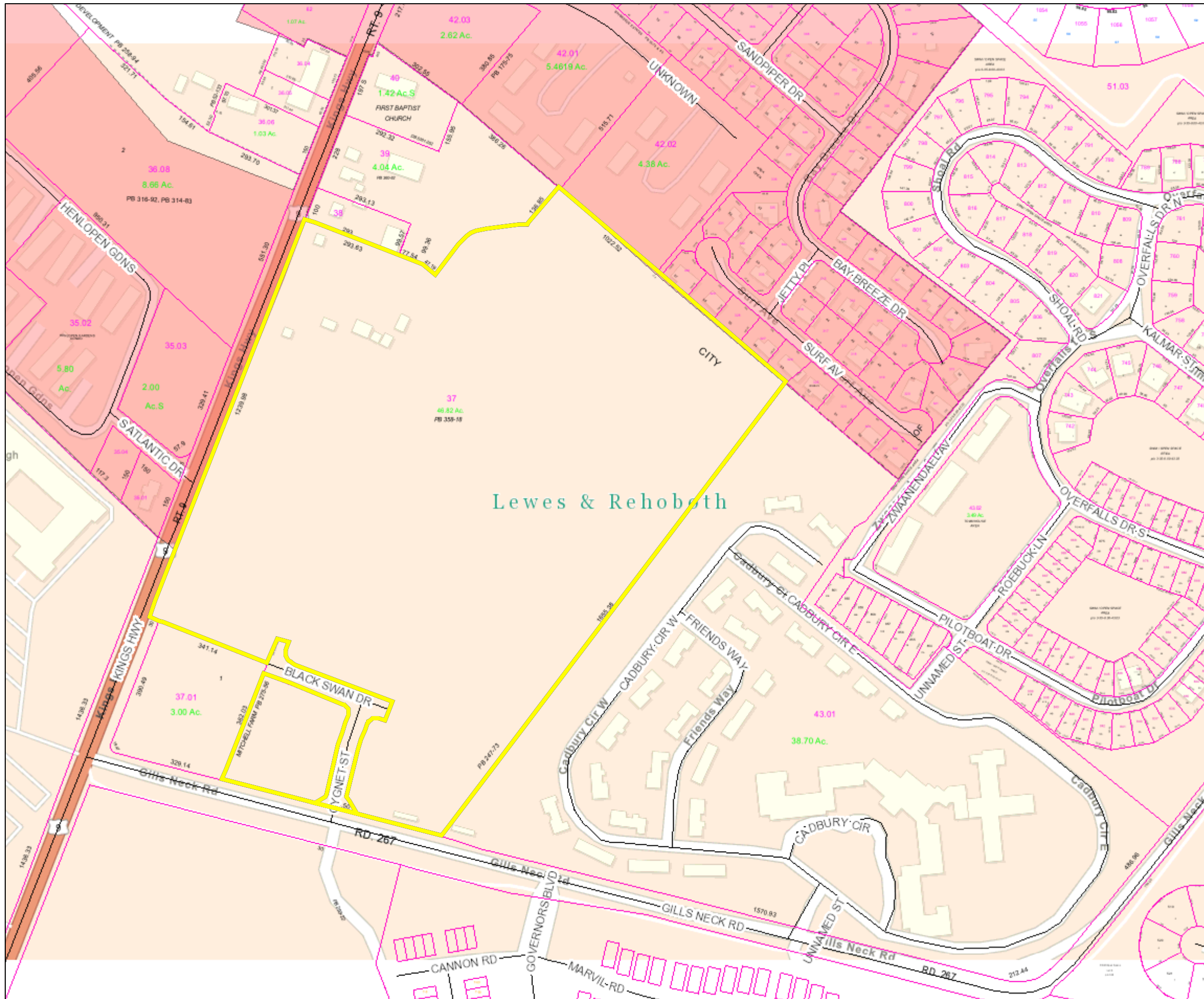


Since 2011, there have been nineteen (19) Conditional Use applications within a 1-mile radius of the project site. Please see the attached excel spreadsheet for more information regarding the previous Conditional Use Applications.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional use to allow for multi-family (267 units), subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.



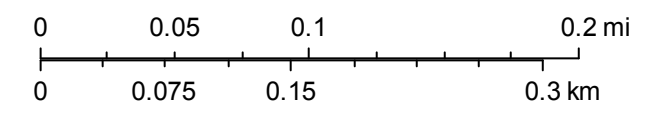
# Sussex County



<b>PIN:</b>	335-8.00-37.00
<b>Owner Name</b>	JEFF-KAT LLC
<b>Book</b>	5613
<b>Mailing Address</b>	1007 KINGS HWY
<b>City</b>	LEWES
<b>State</b>	DE
<b>Description</b>	SE/KINGS HWY
<b>Description 2</b>	RESIDUAL LANDS
<b>Description 3</b>	N/A
<b>Land Code</b>	

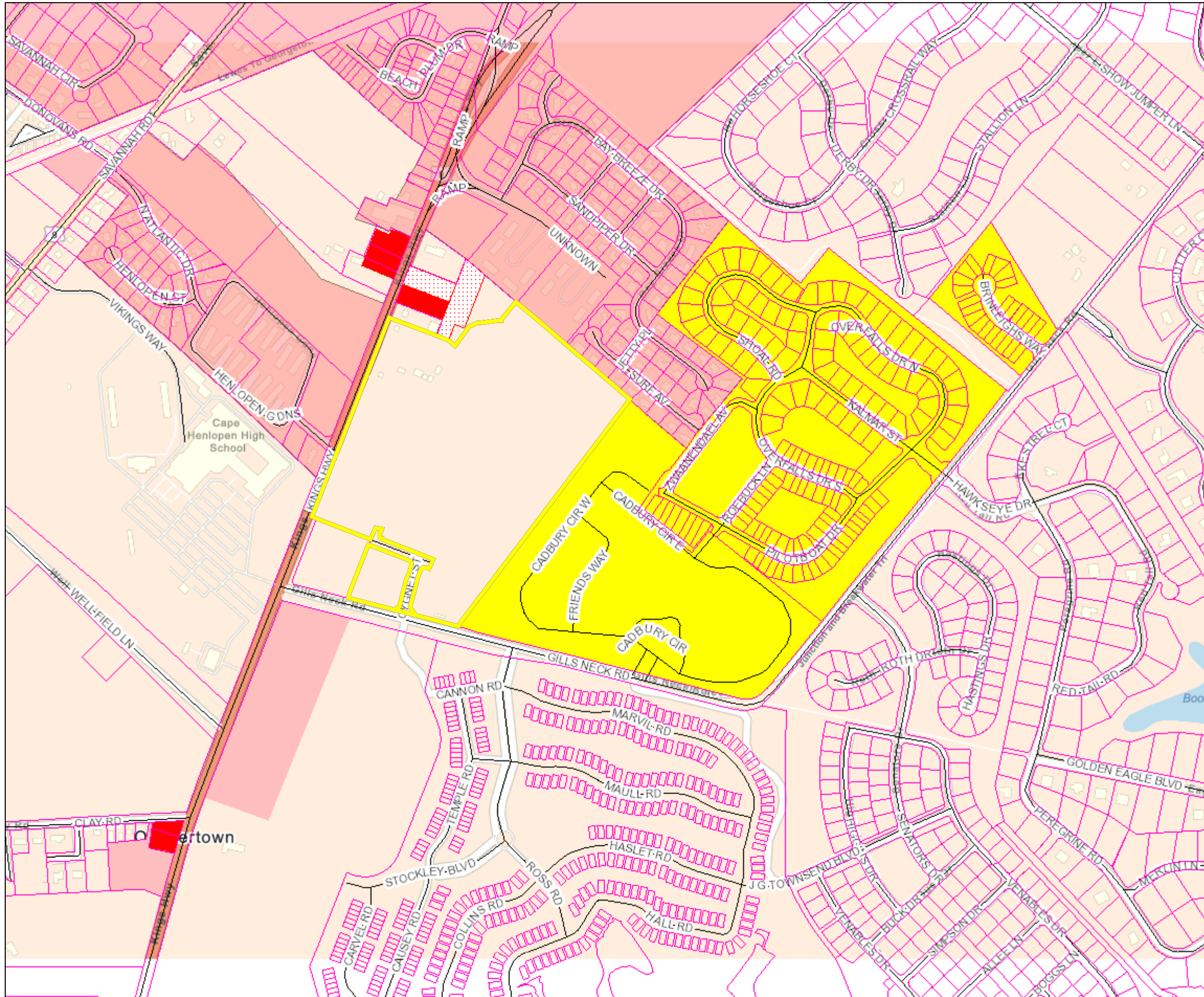
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  - Streets
  - Hundred Boundaries
  - County Boundaries
- Tax Ditch Segments**
  - Tax Ditch Channel
  - Pond Feature
  - Special Access ROW
  - Extent of Right-of-Way
  - Municipal Boundaries
  - TID

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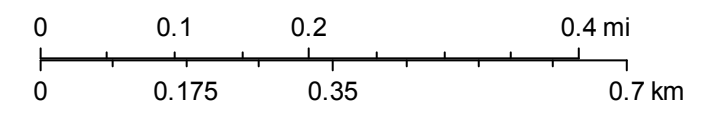
# Sussex County



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<b>State</b>	DE
<b>Description</b>	SE/KINGS HWY
<b>Description 2</b>	RESIDUAL LANDS
<b>Description 3</b>	N/A
<b>Land Code</b>	

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   Override 1
- Tax Parcels
- Streets

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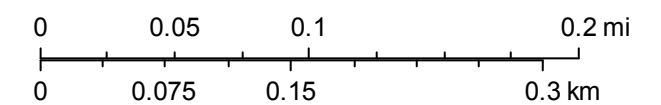
# Sussex County



<b>PIN:</b>	335-8.00-37.00
<b>Owner Name</b>	JEFF-KAT LLC
<b>Book</b>	5613
<b>Mailing Address</b>	1007 KINGS HWY
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<b>State</b>	DE
<b>Description</b>	SE/KINGS HWY
<b>Description 2</b>	RESIDUAL LANDS
<b>Description 3</b>	N/A
<b>Land Code</b>	

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- Override 1
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- Tax Ditch Segments**
- Tax Ditch Channel
- Pond Feature
- Special Access ROW
- Extent of Right-of-Way
- Municipal Boundaries
- TID

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Introduced: 2/1/22

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (267 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS**

WHEREAS, on the 5<sup>th</sup> day of January 2022, a conditional use application, denominated Conditional Use No. 2334 was filed on behalf of Henlopen Properties, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2334 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

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

**Section 1.** That Chapter 115, Article V, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2334 as it applies to the property hereinafter described.

**Section 2.** The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the southeast side of Kings Highway (Rt. 9) approximately 390 feet northeast of Gills Neck Road (S.C.R. 267) and on the north side of Gills Neck Road (S.C.R. 267) approximately 329 feet southeast of Kings Highway (Rt. 9) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 43.777 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.