

Sussex County Council Public/Media Packet

**MEETING:
May 24, 2022**

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**Sussex County Council
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(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

MAY 24, 2022

10:00 A.M.

***AMENDED on May 18, 2022 at 1:45 p.m.¹**

****AMENDED on May 19, 2022 at 11:50 a.m.²**

Call to Order

Approval of Agenda

Approval of Minutes – May 17, 2022

Reading of Correspondence

Public Comments

Consent Agenda

1. Use of Existing Sewer Infrastructure Agreement, IUA 1131
Seychelles, Ocean View Area

Todd Lawson, County Administrator

1. Fiscal Year 2023 – Budget Presentation
2. Discussion and Possible Introduction of Proposed Ordinances:

**“AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR
FISCAL YEAR 2023”**



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

“AN ORDINANCE TO AMEND CHAPTER 62, ARTICLE III, §§ 62-7 AND 62-8B AND CHAPTER 99 §§ 99-14 AND 99-39 OF THE CODE OF SUSSEX COUNTY RELATING TO THE ESTABLISHMENT OF FEES IN THE ANNUAL BUDGET”

“AN ORDINANCE ESTABLISHING ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR COLLECTION AND TRANSMISSION AND/OR TREATMENT AND CONNECTION CHARGES FOR ALL SUSSEX COUNTY WATER AND SANITARY SEWER DISTRICTS”

3. Various Board and Commission Appointments

4. Administrator’s Report

Hans Medlarz, County Engineer

1. Lewes Board of Public Works

Wastewater Treatment Facility – Long Range Planning Study

A. Approval of Co-funding

2. FY 2022 General Labor & Equipment Contract, Project 22-01

A. Balancing Change Order

B. One Year Extensions

Mark Parker, Assistant County Engineer

**1. FY 21 Ocean Outfall Inspection, Project G21-06
Repair/Inspection Actions**

John Ashman, Director of Utility Planning and Design Review

1. George, Miles & Buhr, Inc. – Miscellaneous Engineering Services

**A. Permission to Authorize Design & Bid Phase Contract
Sanitary Sewer Service for Oak Acres Community**

**B. Permission to Authorize Design & Bid Phase Contract
Sanitary Sewer Service for Pintail Pointe Community**

Old Business

1. 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])

2. **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])
3. **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])

Grant Requests

1. Mid-Atlantic Symphony Orchestra Society, Inc. for program expansion
2. Nanticoke River Arts Council for general operations

****3. Lewes Fire Department, Inc. for sUAS (Drone) program aid**

Introduction of Proposed Zoning Ordinances

Council Members' Comments

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

Possible action on Executive Session items

Recess

1:30 p.m.

An Appeal on the Sussex County Planning and Zoning Commission's decision to deny Subdivision Application No. 2021-06 – Coral Lakes (F.K.A. Coral Crossing)

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

Possible action on Executive Session items

Adjourn

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

² Per 29 Del. C. §10004 (e) (5) and Attorney General Opinion No. 13-IB02, this agenda was amended to address a matter which arose after the initial posting of the agenda but before the start of the Council meeting.

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on May 17, 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://sussexcountype.gov/council-chamber-broadcast>.

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

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

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

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

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

#

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 17, 2022

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, May 17, 2022, at 10:00 a.m., in Council Chambers, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 215 22
Approve
Agenda**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, 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 May 9, and 10, 2022 meeting were approved by consensus.

**Corres-
pondence**

There was no correspondence.

**Public
Comment**

There were no public comments.

Tribute

A Tribute was given to Ms. Lisa St. Clair from Tailbangers for being awarded Delaware Small Business Owner of the Year.

Tribute

A Tribute was given to Mrs. Jennifer McMillian from JennyGems for being awarded Delaware Woman-Owned Small Business Person of the Year.

**Adminis-
trator's
Report**

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

1. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Osprey Point –

**Administrator's
Report
(continued)**

Phase 1A (Construction Record), Ospery Point – Phase 5A (Construction Record) and Osprey Point – Old Landing Crossing/PS 290 Connection received Substantial Completion effective May 6th.

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

**Request to
Prepare &
Post
Notices/The
Estuary –
Phase 4 into
SCUSSD**

John Ashman, Director of Utility Planning and Design Review presented a request to prepare and post notices for The Estuary – Phase 4 Annexation of the Sussex County Unified Sanitary Sewer District (Miller Creek Area). The Engineering Department received a request from GMB, LLC on behalf of their client Estuary Development, LLC, the owners/developers of a project to be known as Estuary Phase 4. The request includes parcels 134-21.00-10.00, 10.01, 11.00 & 11.12, however, parcel 134-21.00-11.00 is already in the district. The project is proposed at 115 single family homes. The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates. The Engineering Department requests permission to prepare and post notices for a Public Hearing on the annexation of the area.

**M 216 22
Approve
Prepare &
Post
Notices/The
Estuary
Phase 4**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley that be it moved by the Sussex County Council that the Sussex County Engineering Department is authorized to prepare and post notices for The Estuary – Phase 4 Expansion of the Sussex County Unified Sanitary Sewer District to include parcels 134-21.00-10.00, 10.01 & 11.12 located on Millers Neck Road as presented on May 17, 2022.

Motion Adopted: 5 Yeas

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

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

**M 217 22
City of
Seaford**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$2,000 (\$1,500 from Mr. Vincent's Councilmanic Grant Account and \$500 from Mr. Rieley's Councilmanic Grant Account) to the City of Seaford for the Nanticoke Riverfest.

Motion Adopted: 5 Yeas

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

**M 218 22
Grace-N-**

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer to give \$5,000 (\$1,000 from each Councilmanic account) to Grace-N-Mercy

**Mercy
Ministries**

Ministries for their summer youth camp.

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/
Mulberry
Knoll/
General
Obligation
Bond**

A Public Hearing was held on 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”

Hans Medlarz, County Engineer explained that additional funding was required through the SRF program that was approved by the Water Infrastructure Council.

There were no public comments.

The Public Hearing and public record were closed.

**M 219 22
Adopt
Ordinance
No. 2850/
Mulberry
Knoll**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to Adopt Ordinance No. 2850 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”.

Motion Adopted: 5 Yeas

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

**Eisenhardt
Enterprises**

Hans Medlarz, County Engineer presented an approval for Eisenhardt Enterprises for the County’s Water Quality Enhancement Program for Council’s consideration.

**M 220 22
Approve
Eisenhardt
Enterprises
Retention**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer that be it moved based upon the recommendation of the Sussex County Engineering Department, that Eisenhardt Enterprises be retained for completion of the County’s Water Quality Enhancement Program and to issue a not to exceed purchase order in the amount of \$10,000.00.

Motion Adopted: 5 Yeas

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

PS No. 316 Abandonment Hans Medlarz, County Engineer presented information relating to the associated easement acquisition for Tax Parcel 234-12.00-260.00. In addition, Mr. Medlarz presented the PS No. 316 abandonment construction contract award for Council's consideration.

M 221 22 Approve PS No. 316 Abandonment Contract Award A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer that be it moved based upon the recommendation of the Sussex County Engineering Department, that the Wastewater Interconnect scope of work be extended to Bay Ridge Woods and be awarded to George & Lynch, Inc. for their proposal in the lump sum amount of \$88,817.00 and not to exceed contingent dewatering of \$18,272.00.

Motion Adopted: 5 Yeas.

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

EMS Public Safety Building/CO No. 13 Hans Medlarz, County Engineer presented Change Order No. 13 for the EMS Public Safety Building, Project C19-04 for Council's consideration. The change order includes a modification to the lobby to extend the wall as well as extension of some of the interior partition walls between offices to full height. This was requested for sound attenuation based on sensitive medical discussions.

M 222 22 Approve CO No. 13/EMS Public Safety Building A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer that be it moved based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 13 for contract C19-04, Sussex County Public Safety Building, be approved, for an increase of \$16,711.84.

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 Mr. Vincent introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 63.86 ACRES, MORE OR LESS"

Mr. Vincent introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1

Introduction of Proposed Ordinances (continued) **AGRIGULTURAL RESIDENTIAL DISTRICT FOR INDOOR AND OUTDOOR STORAGE OF HEATING AND COOLING EQUIPMENT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 4.03 ACRES, MORE OR LESS”**

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 SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 27.5 ACRES, MORE OR LESS”

Council Member Comments’ **The Proposed Ordinances will be advertised for Public Hearings.**
There were no Council Member comments.

Public Hearing/ Proposed Building Code Ordinance **A Public Hearing was held on a 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”.**

Andy Wright, Building Official reminded Council that the Proposed Ordinance was previously introduced. At this time, it is being brought forward for Council’s and the public’s input.

Public comments were heard.

Ms. Eul Lee spoke about fire danger due to many houses being built close together and the importance of fire sprinklers.

Mr. Rich Blake from Bay to Beach Builders provided information relating to the increased cost associated with fire sprinklers. Mr. Blake stated that on an average, it is just under \$3.00 per square foot for fire sprinkler installation. He added that cost is based on the house being on a public system. He shared that if the house is not on a public water system, the cost of a variable speed well pump would also need to be considered which is approximately another \$2,500. Therefore, on an average for a 2,500 square foot home, cost can be incurred of up to \$10,000. Another item to consider is the potential cost of increased homeowners insurance due to broken pipes, etc. Mr. Blake added that there will be additional state fire inspectors needed for reviewing, approving plans, and completing field inspections.

Mr. Schaeffer reported that he received a letter from Mike Ciabattoni, VP and Division Manager of Ryan Homes and NV Homes in reference to the Proposed Ordinance. Mr. Schaeffer shared that the letter references many of the same items that Mr. Blake discussed. Mr. Schaeffer entered the letter

in for the record.

The Public Hearing and public record were closed.

**M 223 22
Adopt
Ordinance
No. 2851/
Building
Code**

A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to Adopt Ordinance No. 2851 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”.

Mr. Vincent commented on fire sprinklers; he added that once facts are received, this Ordinance can be amended at any given time if desired.

Motion Adopted: 5 Yeas.

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

**Old
Business/
Proposed
Ordinance
to Amend
Chapter 99
and 115**

Mr. Moore read the short title of the Proposed Ordinance “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”.

**M 224 22
Approve PZ
Amend-
ments**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, be it moved that Sussex County Council amend the Drainage and Buffer Ordinance to include the amendments recommended by 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**

**M 225 22
Amend
Section
99-6H of the
Subdivision
Ordinance**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, be it moved that Sussex County Council amend the Drainage and Buffer Ordinance as amended by the Commission so that Section 2 of the Ordinance regarding Section 99-6 of the Subdivision Code includes an amendment to Section 99-6H with the following revisions to Section 99-6H so that H will now state:

H. When lands being subdivided contains wetlands, either state or federal or a Resource with Resource Buffers, the recorded restrictive covenants or declaration for the subdivision and the deeds to the lots to be conveyed [containing wetlands] shall include a disclosure statement that reads “This site contains regulated wetlands or a Resource with Resource Buffers

M 225 22
Amend
Section
99-6H of the
Subdivision
Ordinance
(continued)

governed by the Sussex County Zoning and Subdivision Codes. Activities within these wetlands may require a permit from the U.S. Army Corps of Engineers and/or the State of Delaware. Disturbance of a Resource or Resource Buffer may be a violation of the Sussex County Zoning and Subdivision Codes, for which penalties and other remedies may be imposed by Sussex County”.

Motion Adopted: 5 Yeas.

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

M 226 22
Amend
Section 99-
26 A (21)

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, be it moved that Sussex County Council amend the Drainage and Buffer Ordinance as amended by the Commission so that Section 6 of the Ordinance regarding Section 99-26 A (21) of the Subdivision Code includes the following sentence at the end of Section a thereof as follows: “In addition, the boundary shall be marked on the site itself with permanent markers and signage, with the location and type of signage depicted on the final plat” and by creating a new Section (i) thereof as follows “(i) That disturbance of the Resource Buffers on the site may result in penalties imposed pursuant to Section 115-193 K of the Sussex County Zoning Code”.

Motion Adopted: 5 Yeas.

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

M 227 22
Amend
Section 115-
193/Signage
& Markers

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, be it moved that Sussex County Council amend the Drainage and Buffer Ordinance as amended by the Commission so that Section 10 of the Ordinance regarding Section 115-193 of the Zoning Code includes an amendment to Section 115-193A to revise the heading for Subsection A so that it now states “Resource Buffer Widths” and adding the words “and Markers” and by adding a new subsection A 4 that states as follows “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 seven inches in size”.

Motion Adopted: 5 Yeas.

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

M 228 22
Amend

A Motion was made by Mr. Vincent, seconded by Mr. Hudson, be it moved that Sussex County Council amend the Drainage and Buffer Ordinance as

Section 115-193/Buffer Averaging amended by the Commission so that Section 10 of the Ordinance regarding Section 115-193 of the Zoning Code includes an amendment to Section 115-193 to revise Subsection B 1 and to add a new subsection B 2 (f) so that buffer averaging can only occur within buffers along the same resource so that Section B 1 now states as follows: “1. Resource Buffer width averaging may be utilized but only within Resource Buffers adjacent to the same Resource to adjust the required Zone B Resource Buffer width thereby allowing flexibility for the proposed development, so long as the overall square footage of the Zone B Resource Buffer is maintained” and to insert a new subsection B 2 (f) that states as follows “(f) The Zone B Resource Buffer averaging shall only occur within the Resource Buffer adjacent to the same Resource.”

Motion Adopted: 5 Yeas.

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

M 229 22 Amend Section 115-193/ Permitted Uses A Motion was made by Mr. Hudson, seconded by Mr. Vincent, be it moved that Sussex County Council amend the Drainage and Buffer Ordinance as amended by the Commission so that Section 10 of the Ordinance regarding Section 115-193C to revise Table 2 Resource Buffer Activities Permitted by Zone by amending cells 17 and 18 and adding a new cell 24. Cell 17 will now state as follows “17. 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”. Amending cell 18 so that it now states that extended detention dry and wet stormwater management ponds are not permitted in Zone B and adding a new cell 24 that states “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” are not permitted in Zone A and permitted in Zone B.

Motion Adopted: 5 Yeas.

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

M 230 22 Amend Section 115-193D 2 (b) A Motion was made by Mr. Rieley, seconded by Mr. Hudson, be it moved that Sussex County Council amend the Drainage and Buffer Ordinance as amended by the Commission so that Section 10 of the Ordinance regarding Section 115-193D 2 (b) to replace the word “native” with the word “natural” in the second line.

Motion Adopted: 5 Yeas.

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

**M 231 22
Amend
Resource
Buffer
Options**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, be it moved that Sussex County Council amend the Drainage and Buffer Ordinance as amended by the Commission so that Section 10 of the Ordinance regarding Section 115-193 of the Zoning Code includes an amendment to Section 115-193G so that Subsection G1 now states as follows 1. "A proposed development shall be permitted to utilize the following options, consistent with §115-193, Section B. Resource Buffer Width Averaging, to incentivize the retention of forests, but only for those Resource Buffers adjacent to Perennial Non-Tidal Rivers and Streams, Non-Tidal Wetlands Intermittent Streams" and in Subsection G1 (a) (b) (c), the phase "like zoned land" is replaced by the phase "a residential subdivision, residential conditional use or residential planned community".

Motion Adopted: 5 Yeas.

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

**M 232 22
Section 115-
193G/
Subsection
G2**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, be it moved that Sussex County Council amend the Drainage and Buffer Ordinance as amended by the Commission so that Section 10 of the Ordinance regarding Section 115-193 of the Zoning Code includes an amendment to Section 115-193G so that Subsection G2 now states as follows "2. A proposed development shall be permitted to utilize the following options to incentivize the retention or expansion of Resource Buffers or provide additional functional benefit of Resource Buffers forests, but only for those Resource Buffers adjacent to Perennial Non-Tidal Rivers and Streams, Non-Tidal Wetlands and Intermittent Streams" and in Subsection G2 (a) (i) (ii) and G2 (b) all references to Zone A are deleted and with the following sentences added to the end of Subsections G2 (a) (i) (ii) and G2 (c) (i) (2) adding "The area within this conservation easement shall adhere to the requirements of subsection D, herein and shall not be used for agricultural purposes".

Motion Adopted: 5 Yeas.

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

**M 233 22
Section 115-
193/Section
10 Subpara-
graph K**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, be it moved that Sussex County Council amend the Drainage and Buffer Ordinance as amended by the Commission so that Section 10 of the Ordinance regarding Section 115-193 of the Zoning Code include a new subparagraph K concerning violations and penalties as follows “K. (heading) Violations and Penalties, the owner of the land and any person or corporation who shall violate any provisions of this Section shall be subject to the following penalties. Separate violations or a series of violations may be combined to determine the total area where the violation occurred.

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

(b) Resource buffer rehabilitation and replanting in the area where the violation occurred, in accordance with a Mitigation Plan approved by the Director shall comply with the following:

- (i) For every tree removed or destroyed with a caliper of six inches or greater at breast height, there shall be at least three replacement trees planted within the buffer area.
- (ii) The replacement trees shall be a native species.
- (iii) The quality and size of the replacement trees shall be at least two inches caliper at breast height. Any tree that was removed or destroyed shall be replaced through the Mitigation Plan at a ratio of at least one inch per caliper at breast height for each inch of caliper removed. The property owner and/or party who violates this Section shall be responsible for the health and survival of the replacement trees, including regular necessary watering, for a minimum of two years and shall replace any trees that die within two years of planting.
- (iv) The replanting design shown within the Mitigation Plan shall provide adequate space for root and crown development; and

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

Motion Adopted: 5 Yeas.

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

**M 234 22
Section 115-
221B (19)/
Subsection
(a) & (j)**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson be it moved that Sussex County Council amend the Drainage and Buffer Ordinance as amended by the Commission so that Section 12 of the Ordinance regarding Section 115-221B (19) of the Zoning Code includes the following sentence to

**M 234 22
Section 115-
221B (19)/
Subsection
(a) & (j)
(continued)**

the end of Subsection (a) thereof as follows “In addition, the boundary shall be marked on the site itself with permanent markers and signage, with the location and type of signage depicted on the final site plan” and by creating a new subsection (j) thereof as follows “(j) that disturbance of the Resource Buffers on the site may result in penalties imposed pursuant to Section 115-193 K of the Sussex County Zoning Code”.

Motion Adopted: 5 Yeas.

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

**M 235 22
Adopt
Ordinance
No. 2852**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to Adopt Ordinance No. 2852 entitled “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” as amended upon the recommendations and amendments of the Planning and Zoning Commission and the amendments made today by County Council and for the following reasons:

1. This initiative has its origins in the 2018 Comprehensive Plan calling for code amendments to protect waterways and wetlands which are recognized as valuable open space of ecological importance. These goals, objectives and strategies of the Comprehensive Plan are identified in detail in the whereas clauses of the Ordinance.
2. A working group that included many different stakeholders with a variety of business, professional and academic backgrounds was convened over many months to establish the framework for amending Chapters 99 and 115 of the Code of Sussex County regarding resource protection, buffers and the maintenance of waterways and drainage areas. This Ordinance is a result of that effort along with input from County staff.
3. There is appropriate flexibility through averaging and incentives that is contained in the Ordinance. It also includes several incentives with the intent to preserve and protect the existing resources such as forested areas on both sides of a waterway when that is most beneficial. This will result in an improved protection of natural resources while providing design flexibility for future development.
4. This Ordinance strikes a proper balance between the protection of land values and the protection of resources. For instance, this Ordinance protects these resources in a way that should result in better residential development plans without materially affecting the density of residential development.
5. There has been a lot of public comment about the Ordinance during the public hearings while there was not significant opposition to the Ordinance as a whole, there were constructive comments made

M 235 22 **during the process. This Ordinance as amended reflects many of**
Adopt **those suggestions made during the public hearing process.**
Ordinance **6. This Ordinance will promote and protect the health, safety,**
No. 2852 **convenience, orderly growth and welfare of the inhabitants of Sussex**
(continued) **County.**

Motion Adopted: 5 Yeas.

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

M 236 22 **At 11:18 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley,**
Go Into **to recess the Regular Session and go into Executive Session for the purpose**
Executive **of discussing matters relating to pending/potential litigation, and land**
Session **acquisition.**

Motion Adopted: 5 Yeas.

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

Executive **At 11:26 a.m., an Executive session of the Sussex County Council was held**
Session **in the Basement Caucus Room to discuss matters relating to**
 potential/pending litigation, and land acquisition. The Executive Session
 concluded at 12:20 p.m.

M 237 22 **At 12:22 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson**
Reconvene **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

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

M 238 22 **A Motion was made by Mr. Rieley, seconded by Mr. Hudson to recess until**
Recess **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 239 22 **At 1:31 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson to**
Reconvene **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

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

Public **A Public Hearing was held on a Proposed Ordinance entitled “AN**
Hearing/ **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-**
CU2318 **1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONVENIENCE**
 STORE AND OFFICE BUILDING TO BE LOCATED ON A CERTAIN
 PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH
 HUNDRED, SUSSEX COUNTY, CONTAINING 3.305 ACRES, MORE
 OR LESS” Conditional Use No. 2318 filed on behalf of V&M, LLC
 (properties lying on the southeast corner of the intersection of John J.
 Williams Highway [Route 24] and Mulberry Knoll Road [S.C.R. 284] also
 on the southeast side of John J. Williams Highway [Route 24] and also on
 the southwest side of Mulberry Knoll Road [S.C.R. 284]) (911 Addresses:
 19429, 19425, 19405 & 19387 John J. Williams Highway & 19676, 19662,
 19646 & 19634 Mulberry Knoll Road, Lewes) (Tax Parcels: 334-12.00-
 108.00, 108.01, 109.00, 109.01, 110.00, 111.00, 111.01, 112.00)

The Planning and Zoning Commission held a Public Hearing on this
application on April 14, 2022, and on April 28, 2022, the Commission
recommended approval of the application for the eight reasons stated and
subject to the ten recommended conditions.

(See the minutes of the Planning and Zoning Commission dated April 14
and 28, 2022.)

Jenny Norwood, Planning and Zoning Manager, presented the application.

The Council found that Mr. Jim Fuqua, Esq. with Fuqua, Willard, Stevens
& Schab, P.A. spoke on behalf of Application C/U 2318 V&M, LLC via
telephone; that also present was Mr. Vincent Bifferato on behalf of the
Applicant and Mr. Zac Crouch, Engineer with Davis Bowen and Friedel,
Inc.; that there was an exhibit booklet submitted for the record; that it
contains related information; that the Conditional Use Application is for a
convenience store, fueling stations and office building on a 3.3-acre parcel;
that the site is located at the southwest corner of Rt. 24 and Mulberry Knoll
Rd. intersection; that the proposed site is comprised of eight separate tax
map parcels, which have been purchased by the Applicant; that the eight
parcels have been improved with several older homes and outbuildings;
that the land is mostly cleared; that the general surrounding area has
experienced significant population growth over the past decade; that there

Public
Hearing/
CU2318
(continued)

have been many new residential communities being developed in the area; that the trend of increasing population west of Rt. 1 and north and south of Rt. 24 resulted in the construction of Beacon Middle School within the Cape Henlopen School District; that Beacon Middle School is located to the land immediately adjacent to the west of the site; that the Love Creek Elementary School is located on the north side of Rt. 24, across from Beacon Middle School; that the State relocated the Delaware State Police Troop 7 Headquarters onto Mulberry Knoll Rd., on the north side of Rt. 24; that the Application was reviewed during the PLUS process on August 25, 2021; that a PLUS letter was issued by the Office of State Planning Coordination on September 22, 2021; that the site is located in the Investment Level 2 area according to the State Planning Office and the 2020 Strategies for State Policies and Spending Map; that Investment Level 2 reflects areas where growth is anticipated by County and State Plans in the near future; that State investments will support growth in the Investment Level 2 areas; that the PLUS letter further states the Office of State Planning has no objection to the Application; that the State Strategies document is not intended to be used as a land-use plan; that it is a guide to areas where the State plans to invest in infrastructure; that Delaware land-use authority has been delegated to the local governments; that land-use activity must comply with the Comprehensive Plan and the Zoning Ordinance of the local jurisdiction; that the 2019 Comprehensive Plan designated all of Sussex County as being in a growth area or in a rural area; that there are seven types of growth areas; that as indicated on the Future Land Use Map the site is located within the commercial growth area; that the plan describes the commercial growth area as areas for retail and services uses, which are mainly located along arterial roadways and highways; that commercial areas under the plan include commercial corridors, shopping centers and other medium and large commercial uses which are geared to vehicular traffic and not primarily targeted for the residents in the immediate and adjacent areas; that the parcels are zoned AR-1 (Agricultural Residential); that although a Change of Zone request for one of the parcels would be appropriate and consistent with the Comprehensive Plan, no zoning change is being requested, and the parcel's zoning designation will remain AR-1; that rather to seek rezoning of the property, the Applicant is requesting a Conditional Use approval for the specific proposed use; that the proposed use is for a 5,000 sq. ft. convenience store with fueling stations and a 12,000 sq. ft. office building; that a Conditional Use for the proposed use is authorized in the AR-1 Zoning District by the Zoning Ordinance; that there are two significant differences between a Change of Zone to a commercial use and a Conditional Use; that if land is rezoned to commercial, a wide variety of commercial uses are permitted by right currently or in the future; that a Conditional Use authorizes only the specific uses being requested; that a commercial rezoning cannot be issued limitations or conditions placed on the approval; that a Conditional Use allows the County to impose reasonable conditions of approval on the proposed use and the site plan layout; that Conditional Uses are typically of a public or semi-public character, being essential and desirable for the general convenience and welfare of the public; that the

**Public
Hearing/
CU2318
(continued)**

Zoning Ordinance indicates that Conditional Uses require planning judgement relating to the location, proposed use, possible impacts and the importance of the uses relationship to the County's Comprehensive Plan; that considering the nature of the area and the applicable land-use regulations, this particular site was chosen for this use for two main reasons; that the population growth in the general area has a great need for the uses which are essential and desirable for the general convenience and welfare of the public; that under the land-use regulations the site is located under Investment Level 2 within the State Plan, where growth is anticipated; that the State of Planning Coordination has no objection to the proposed use; that under the County Comprehensive Plan the site is located within a growth area; that the commercial growth area with the proposed use is specifically deemed appropriate; that central water will be provided by Tidewater Utilities, Inc.; that Tidewater does hold the CPCN to serve the area; that Tidewater Utilities, Inc. was previously granted a Conditional Use by Sussex County in November 2020 to construct a one million gallon elevated water storage tank on land located adjacent to the site; that the land is part of the Beacon Middle School property and owned by the Cape Henlopen School District; that the site will be served as part of the Sussex County unified sewer district; that the County Engineering Department confirmed that adequate capacity is available; that connection to the County Sewer District is required; that stormwater management facilities will be designed and constructed in accordance with DNREC regulations; that stormwater management will be reviewed and approved by the Sussex Conservation District; that all stormwater will be directed into the storm drainage network on the site; that they will be using best management practices; that there are no state regulated or federally regulated nontidal wetlands located on the site; that the entire site is located in Flood Zone X according to the FEMA Flood Insurance Rate Map; that the site is located out of the 100 Year Flood Plain; that the site is not located within a Wellhead Protection Area or an Excellent Groundwater Recharge Area; that fire protection would be provided by the Rehoboth Beach Fire Company; that the joint Rehoboth Beach/Lewes fire station is located nearby on Rt. 24; that as a result of the Service Level Evaluation Request DelDOT did determine a Traffic Impact Study (TIS) was warranted; that the site is located within the new Henlopen Transportation Improvement District (Henlopen TID); that normally a proposed commercial use within the TID would be required to pay a fee to DelDOT based on the square footage of the commercial use in lieu of performing a TIS; that because this commercial use was not part of the planning process when the TID was created, the Application was not eligible to pay the TID fee; that DelDOT did require the full Traffic Impact Study to be performed; that the Applicant requested David Bowen and Friedel, Inc. (DBF) prepare the TIS in accordance with DelDOT's requirements and directions; that there were already two active DelDOT projects underway within the study area, being the Rt. 24 and Mulberry Knoll Rd. to Rt. 1 project and the Rt. 24 and Love Creek to Mulberry Knoll Rd. project; that the DelDOT projects involve safety, operational and capacity improvements along Rt. 24; that the improvements include extending turn lanes, bicycle, and pedestrian

**Public
Hearing/
CU2318
(continued)**

improvements, and the widening of Rt. 24, which will provide two through lanes in both directions; that there will also be signalization with turn lanes at the Rt. 24 and Mulberry Knoll Rd. intersection adjacent to the site; that the proposed projects did create a practical complication to the Applicant's proposed use; that it did not make sense to have DelDOT complete improvements, which would be required to be modified or removed if the Conditional Use Application were approved; that DBF approached DelDOT regarding the issue; that DelDOT recognized the issue and agreed to enter into an agreement with the Applicant, dated August 12, 2021, to address the issue; that a copy of the agreement is included in the exhibit booklet; that the agreement with DelDOT is contingent on the Applicant's obtaining a Conditional Use approval for the proposed use; that the Applicant completes a Traffic Impact Study, which has been completed; that the Applicant obtain the required entrance plan approval from DelDOT, which would be a process after receiving approval; that as part of DelDOT's project, and the construction they are performing, DelDOT will construct a right-in and right-out entrance on Rt. 24 onto the site, with a right turn lane along the eastern side of Rt. 24; that the Applicant will reimburse DelDOT for all costs associated with the construction of the entrance, turn lane, and frontage improvements; that currently DelDOT is required to construct four existing entrances for the four tax map parcels that front Rt. 24, which are owned by the Applicant; that those entrances would be constructed at DelDOT's cost and expense; that if the Conditional Use were approved, the four entrances will no longer be necessary; that the agreement provides the Applicant will make a dedication to DelDOT for portions of the Rt. 24 frontage; that this is required by DelDOT for construction of their improvements of stormwater management facilities on the site related drainage from the road frontage improvements, entrance and turn lanes; that in addition to the agreement, there was a TIS performed, which was submitted to DelDOT; that DelDOT issued their TIS Review Letter on March 4, 2022; that as a result of the TIS Review the Applicant will be responsible for all requirements stated within the DelDOT agreement, improvements to Mulberry Knoll Rd. in both directions, within the limits of the site frontage to meet the DelDOT road standards, develop a full movement site access on Mulberry Knoll Rd. with a through lane and a right turn lane on southbound Mulberry Knoll Rd., improve the Rt. 24 and Mulberry Knoll Rd. intersection, beyond the DelDOT improvement projects, by extending the length of the plan northbound Mulberry Knoll Rd. left turn lane by an additional 40-ft. in length to better accommodate left turn movements related to the site; that the developer will dedicate a 15-ft. easement from the edge of the right of way to Mulberry Knoll Rd. frontage, construct a 10-ft. wide shared use path within the easement and a five foot buffer from the right of way; that there is no requirement to construct the same along the Rt. 24 frontage it is all part of current DelDOT project; that all improvements will include bicycle and pedestrian safety features with pavement markings and signage which is required by DelDOT; that the improvements will comply with ADA standards; that the developer will coordinate with the Delaware Transit Corporation regarding the design and construction of a 5'x 8' bus pad fronting on eastbound Rt.

**Public
Hearing/
CU2318
(continued)**

24; that there are two proposed access points to the site; that there is a right-in and right-out access from eastbound Rt. 24, located to the western side of the property; that there will be a full turn entrance from Mulberry Knoll Rd., located at the rear of the site; that the convenience store, centrally located on the site, will have 5,000 sq. ft. of floor area; that the store is setback approximately 200-ft. from the Rt. 24 DelDOT right of way; that directly in front of the store is the fuel dispensing area; that this area would have a total of 10 fuel dispensers, located under a canopy; that the fueling operation would be constructed and operated in compliance with all federal and DNREC safety regulations; that the office building would be located to the west of the convenient store; that the office building does have a similar setback from Rt. 24; that the office building would be a three-story building containing 12,000 sq. ft. of floor area; that the site would have a total of 75 parking spaces as required; that each building would have a designated loading area; that stormwater facilities would be located to the front northeast corner of the property; that the stormwater facilities will accommodate not only the drainage but also drainage from the DelDOT improvements performed in the area; that signage has not yet been determined; that the Applicant requests to have the type of signage as permitted within the commercial districts, in Section 115-159(5); that there will be a landscape tree buffer provided along the boundary of the site with the lands of the Cape Henlopen School District and to the Lands of Ralk Properties, LLC to the rear and side of the site; that there will be appropriate landscaping throughout the property as well; that a detailed Landscaping Plan will be prepared and submitted as part of the Final Site Plan Review; that on April 28, 2022, the Planning and Zoning Commission unanimously recommended approval of the application subject to conditions A through J; that all of the conditions are very appropriate and fully acceptable to the Applicant; that the site is located within Investment Level 2; that the State Planning Office has no objection; that there is extensive road improvements being constructed along Rt. 24 at the present time; that the intersection of Mulberry Knoll Rd. and Rt. 24 will become signalized; that all the improvements will accommodate the traffic impact in the area which has experienced significant growth and the site is designated as a commercial area in the 2019 Comprehensive Plan, where the proposed use is deemed to be appropriate.

There were no public comments.

The Public Hearing and Public Record were closed.

**M 240 22
Adopt
Ordinance
No. 2853
/CU2318**

A Motion was made by Mr. Schaeffer, seconded by Mrs. Green to Adopt Ordinance No. 2853 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONVENIENCE STORE AND OFFICE BUILDING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.305 ACRES, MORE OR LESS" for the reasons given by Planning and Zoning numbered 1 through 8 with

M 240 22
Adopt
Ordinance
No. 2853
/CU2318
(continued)

conditions 9 a-j as follows:

- 1. The site is at the intersection of Route 24 and Mulberry Knoll Road. Route 24 and this intersection are undergoing substantial improvements, with a traffic light to be installed at the intersection. This is an appropriate location for the proposed use.**
- 2. This location serves an area that has experienced residential growth. It is also near two relatively new schools and the recently constructed Troop 7. This Conditional Use will provide a convenient location for retail and automobile fueling for nearby residential developments as well as Route 24 traffic.**
- 3. The Applicant will be required to comply with all DelDOT entrance and roadway improvements as required by DelDOT's TIS Review Letter and DelDOT's Letter Agreement.**
- 4. The site will be served by central water and Sussex County sewer.**
- 5. The site is in the Commercial Area according to the current Sussex County Land Use Plan. This type of business is appropriate in this Area according to the Plan.**
- 6. The proposed Conditional Use lessens the congestion on area roads by providing appropriate commercial activities at the Route 24 and Mulberry Knoll Road intersection so that residents and visitors to the area can meet some of their commercial needs without having to travel to Route One or the Angola areas.**
- 7. The proposed Conditional Use meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.**
- 8. There was no opposition to this Application.**
- 9. This recommendation is subject to the following conditions:**
 - a. The use shall be for a 5,000 square foot convenience store with fueling stations and a 12,000 square foot office building.**
 - b. The Applicant shall comply with all entrance, intersection, and roadway improvements required by DelDOT.**
 - c. Fuel and petroleum products shall be stored and dispensed as required by all State and Federal requirements.**
 - d. All security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
 - e. Any dumpsters shall be screened from the view of neighboring properties and roadways. The dumpster locations shall be shown on the Final Site Plan.**
 - f. The Developer shall comply with all stormwater management requirements and the Final Site Plan shall contain the approval of the Sussex Conservation District.**
 - g. The site may have the signage permitted in the C-3 District.**
 - h. There shall be a landscape area along the site's common boundary with lands of the Cape Henlopen School District and lands of Ralk Properties, LLC to screen this site from these adjacent properties. A landscaping plan shall be submitted as part of the Final Site Plan.**

**M 240 22
Adopt
Ordinance
No. 2853
/CU2318
(continued)**

- i. The site shall comply with the parking requirements and calculations set forth in the Sussex County Zoning Code. The Final Site Plan shall clearly show these areas and all parking areas shall be clearly marked on the site.
- j. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & 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/
CZ1962**

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-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PORTION OF A PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.19 ACRES, MORE OR LESS” Change of Zone No. 1962 filed on behalf of Jeff-Kat, LLC (property lying on the east side of Kings Highway [Route 9] approximately 0.36 mile northeast of the intersection of Kings Highway [Route 9] and Gills Neck Road [S.C.R. 267]) (911 Addresses 1005 & 1007 Kings Highway, Lewes) (Tax Parcel: 335-8.00-39.00 [portion of])

The Planning and Zoning Commission held a Public Hearing on this application on April 14, 2022, and on April 28, 2022, the Commission recommended approval of the application for the eight reasons stated.

(See the minutes of the Planning and Zoning Commission dated April 14 and 28, 2022.)

Jenny Norwood, Planning and Zoning Manager, presented the application.

Mr. Rieley recused himself from this Application.

The Council found that Mr. Jeff Hamer spoke on behalf of his Application; that this the last parcel of the property that will probably be available to purchase so that he can continue to grow his operations; that the property is in a Level 1 growth area; that he has already purchased the subject property from the Mitchell Farm, LLC; that the developer has the rest of the property under contract; that there are no current plans for the parcel other than potentially parking employees further out; that his business provides farmers with spent grain; that he is an agricultural producer and produces agricultural products; that he is helping farmers meet their needs during a difficult time; that with the purchase of this property, it will allow him to have an interconnect to the new project that is proposed behind this parcel; that it will allow easier access to the property in the back; that it will also allow him to connect to a side road to allow the people that live behind

**Public
Hearing/
CZ1962**

the parcel connect backwards into the restaurant rather than going out onto Kings Hwy., that this will allow traffic to be off of Kings Hwy.

There were no public comments.

The Public Hearing and Public Record were closed.

**M 241 22
Adopt
Ordinance
No. 2854/
CZ1962**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2854 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 PORTION OF A PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.19 ACRES, MORE OR LESS" for the reasons given by Planning and Zoning as follows:

1. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices, and vehicle service stations.
2. The site is adjacent to the applicant's property which is currently used for a brewpub/restaurant. This location is appropriate for this type of zoning.
3. As stated by the Applicant, there will be interconnectivity between this site, the existing brewpub restaurant, as well as the adjoining property.
4. The expansion of the Applicant's C-3 zoning will improve the vehicle movement and parking on the entire site and the area in general.
5. The site will be served by central water and sewer.
6. The site is in the Coastal Area according to the Sussex County Land Use Plan. This type of commercial use is appropriate in these areas according to the Plan.
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. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion Adopted: 4 Yeas, 1 Absent

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

**M 242 22
Adjourn**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to adjourn at 2:10 p.m.

Motion Adopted: 4 Yeas, 1 Absent

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

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

Respectfully submitted,

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

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

EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT

Seychelles (Muddy Neck/Kent Apartments) – IUA1131

THIS AGREEMENT ("Agreement"), made this 24TH day of MAY 2022, by and between:

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

GULFSTREAM DEVELOPMENT, LLC a limited liability corporation and developers of a project known as **Seychelles (Muddy Neck/Kent Apartments)**, hereinafter called the "Developer."

WITNESSETH:

WHEREAS, Developer is developing a tract of land identified as Tax Map parcel 134-16.00-382.00 to be known as **Seychelles** ("Project") and;

WHEREAS, the Project is within the boundary of the Sussex County Unified Sanitary Sewer District (Ocean View 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 **16.00** additional equivalent dwelling units to County's existing sanitary sewer system and to utilize the existing transmission capacity in said system, Developer agrees to financial catch-up contribution in the net amount of **\$23,086.00** 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 will be required prior to beneficial acceptance of the on-site sewer collection system.
- (5) All the conditions of this agreement must be disclosed to any and all third-party purchasers of the project and/or part of the project prior to the time of settlement.

- (6) 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.
- (7) 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).
- (8) 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.
- (9) 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.
- (10) 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*.
- (11) 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.
- (12) 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.
- (13) 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.

- (14) 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.
- (15) 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.
- (16) 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.
- (17) 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.
- (18) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (19) 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.

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 **27 Atlantic Ave. Ocean View, Delaware 19970.**

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 GULFSTREAM DEVELOPMENT, LLC

By:  (Seal)
Robert Harris - Authorized Signatory

5-5-22 (DATE)

WITNESS:



Use of Existing Infrastructure Seychelles

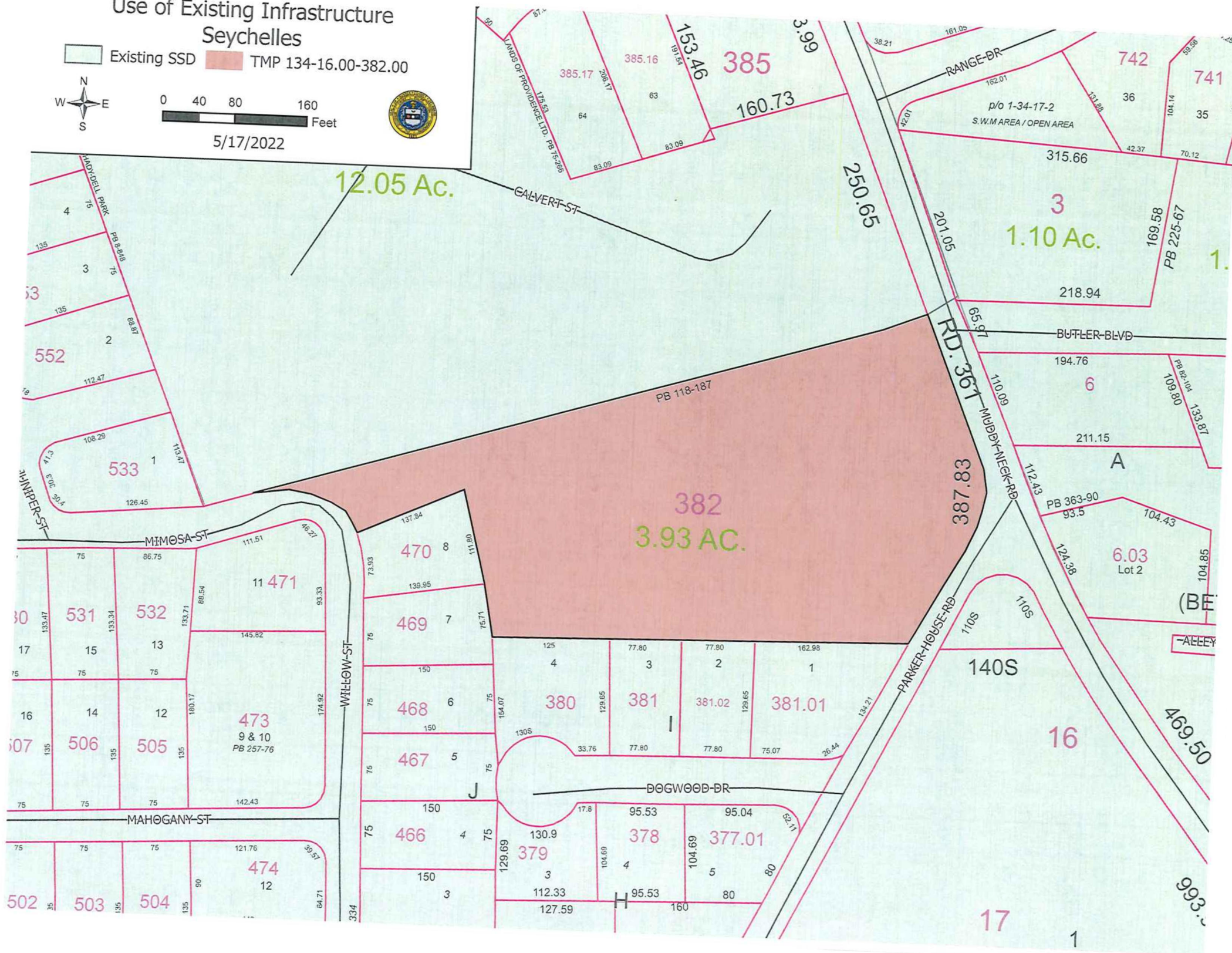
Seychelles

Existing SSD TMP 134-16.00-382.00



A horizontal number line is shown with tick marks at 0, 40, 80, and 160. The word "Feet" is written at the right end of the line. The segment between 40 and 80 is shaded gray.

5/17/2022



ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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

hans.medlarz@sussexcountysde.gov



Sussex County

DELAWARE
sussexcountysde.gov

Memorandum

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

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

RE: ***Lewes Board of Public Works (BPW)***
Wastewater Treatment Facility – Long Range Planning Study
A. Approval of Co-Funding

DATE: May 24, 2022

In July of 2016, County Council authorized agreement negotiations with other wastewater service providers for the utilization of existing unallocated wastewater treatment capacity. On September 20, 2016, Council approved the initial agreement with the Lewes Board of Public Works (LBPW) for wastewater treatment and disposal. It allowed for the transmission of a year-round base flow rate of up to 75,000 gallons per day into the BPW's system with a seasonal ramp up of up to 300,000 gallons per day during the fall/winter season at a rate of \$2.40/1,000 gallons.

As per the LBPW's request, the County utilized George, Miles & Buhr, Inc., the Board's Engineer of Record for the design of the proposed improvements. Following the design completion and permitting Council approved on August 29, 2017, LBPW's assistance request under the FY18 General Labor & Equipment Contract for a joint project portion on Gills Neck Road was successfully completed.

In the Spring of 2017, the City of Seaford and the LBPW requested to be part of the County's regional biosolids system, culminating in Council's approval of the Agreements on May 16, 2017 for the transportation and treatment of Class B biosolids at the Inland Bays RWF.

In March of 2018, the LBPW requested an amendment to the Agreement allowing LBPW's service area tie-in(s) to the County's system and on March 20, 2018, Council approved Amendment No. 1 allowing wastewater to be transmitted and treated in the most cost-effective manner with the billing to be accomplished on a net zero metering basis.

On September 26, 2018, the County presented a request to increase the flow contributions at a Board meeting. Subsequently, the Board instructed their Counsel to draw up a proposed Amendment No. 2, which was accepted by County Council on January 8, 2018.



The Agreement for Wastewater Services with the Lewes BPW always contained Article IX pertaining to capital project cooperation. It states: *“Prior to finalizing any construction bid documents for any future capital projects increasing treatment capacity, the LBPW and the County shall jointly develop Add Alternates, if needed, and either party may require an Add Alternate that will be solely funded by the requesting party. Any Add Alternates benefitting both parties shall be awarded by mutual written consent, and the improvements made through Add Alternate(s) shall be paid proportionally by each party.”*

Both parties were already planning for capital treatment plant improvements and expansions independently and the County Council committed substantial ARPA funding to the upgrade of wastewater treatment facilities in general and the Wolfe Neck RWF in particular. In this setting, the County Engineer was authorized to initiate discussion with the Board.

The LBPW was also already pursuing a long-range plan for the wastewater treatment plant’s future needs. The possible cooperation presents an opportunity to significantly reduce the LBPW’s future long-term capital costs concerning sustainability of the wastewater treatment plant, especially compared to other potential options. Therefore, the Board held a workshop for public discussion and input on March 31, 2022. As a result of the input, a proposal from GHD, Inc., the consultant already representing both entities, was requested.

The plan will be looking at the following three (3) options with variations:

1. Maintain wastewater treatment facility in its current flood plain location at its current capacity while “hardening” the perimeter to deal with climate change.
2. Relocate wastewater treatment facility outside of the flood plain, increase capacity to meet ultimate demand and investigate (i) land treatment disposal, (ii) continued Canal discharge and (iii) ocean outfall.
3. Relocate wastewater treatment facility to Wolfe Neck in a partnership with County using the same capacity assumptions while investigating (i) continued piped Canal discharge versus (ii) biological polishing.

The Agreement established a handshake point splitting capital responsibilities between the parties. Under options 1 & 2, all activities would occur on the Board’s side of the handshake point and the County would participate on the agreed upon prorated percentage. Under option 3, most of the transmission and all the treatment plant capital upgrades would occur on the County side of said point. This option also will require a new agreement detailing future operation and maintenance. The agreement in place with the City of Seaford could serve as a starting point, but no drafts have been prepared. The development of a draft document is anticipated to proceed in parallel with the long-range study. GHD will not develop neither a process nor cost for an upgraded Wolfe Neck RWF at this time. This was analyzed at 100% of the County’s expense if option 3 becomes the preferred option.

The Engineering Department is now requesting Council’s concurrence to fund 50% of the long-range study in the amount of \$124,250.00, contingent upon LBPW approval utilizing allocated ARPA.

Our ref: 12582813

May 18, 2022

Mr. Austin Calaman, General Manager
Lewes Board of Public Works
107 Franklin Avenue
Lewes DE 19958

Lewes Wastewater Treatment Facility – Long Range Planning Study – Contract No. XX

Dear Mr. Calaman

GHD is pleased to present this proposal for providing engineering related services for development of a Wastewater Treatment Facility Long Range Planning Study for the Lewes Board of Public Works (BPW). The project background, proposed scope of work, schedule, and fee are outlined below.

Background

The BPW owns and operates the Lewes BPW Wastewater Treatment Facility (WWTF), which is also known as the Howard Seymour Water Reclamation Facility and is located in Lewes, DE. The WWTF was originally constructed in 1950 and major refurbishments were completed in 2008, which included the installation of a membrane biofiltration process in the secondary treatment phase. Due to the low elevation of the existing facility, the BPW would like to evaluate options to mitigate impacts of sea level rise and flood/storm events as well as evaluate options to relocate the facility.

Scope

The following tasks will be completed for the WWTF Long Range Planning Study:

GHD will evaluate a total of six (6) options to increase the resilience of BPW's wastewater treatment to storm events and sea level rise. The following options will be evaluated:

Option Reference	Option Title	Notes
1	Existing WWTF Hardening	Evaluate the existing WWTF site to determine improvements necessary to mitigate treatment impacts from sea level rise, subsidence, storm events including flooding, power loss etc. Evaluation will at minimum include the following; Perimeter Dike around facility with stormwater/dewatering pumping station Raising Administration Building and parking areas Raising and or flood proofing of the Bio-solids unit processes On-site fuel storage for extended storm events/emergencies.
2 – a	Relocation & Spray Irrigation and/or RIBS	Perform an effluent disposal study to determine if a suitable site can be found to construct a new WWTF that can utilize either Rapid Infiltration Beds (RIBS) or spray irrigation technology for effluent disposal. For this conceptual evaluation, it is assumed that local zoning, soils, and topography maps would be reviewed. No soil/field testing or other intrusive investigation has been

Option Reference	Option Title	Notes
		included for this phase. This site evaluation will be limited to within 6 miles of the existing facility. Decommission the existing WWTF.
2 – b	Relocation & Utilization of Existing WWTP Outfall	Perform a siting study to construct a new WWTF but maintain the existing permitted outfall. A new force main will be required to transfer effluent from the new facility to the existing outfall. Decommission the existing WWTF.
2 – c	Relocation & New Ocean Outfall	Perform a siting study to construct a new WWTF which will discharge via a new ocean outfall. Decommission the existing WWTF.
3 – a	Partnership with Sussex County & Utilization of Existing WWTP Outfall	On the understanding that Sussex County can provide a suitably-sized site at a resilience elevation, evaluate the network upgrades required to transfer wastewater from the Lewes collection network to a new WWTP in Sussex County. Evaluate the feasibility of transferring treated flows back to the existing permitted, outfall in Lewes. GHD will not develop a cost for the new treatment facility at this time. Decommission the existing WWTF.
3 – b	Partnership with Sussex County & Biological Polishing	On the understanding that Sussex County can provide a suitably-sized site at a resilience elevation, evaluate the network upgrades required to transfer wastewater from the Lewes collection network to a new WWTP in Sussex County. Assume that the new WWTP effluent can be disposed-of within Sussex County. GHD will not develop a cost for the new treatment facility at this time. Decommission the existing WWTF.

For each of the options outlined above, GHD will perform the following analyses:

1. Siting study to identify suitable plots of land to meet the objectives of each option. Criteria for the siting study will include:
 - a. Existing land ownership
 - b. Existing land use
 - c. Zoning and permitting constraints
 - d. Site elevation and flood risk
 - e. Existing utilities
2. Preliminary hydraulic analysis to size major equipment:
 - a. Develop facility treatment capacity and effluent performance goals.
 - b. High level calculations, based on agreed average and peak flow rates, sufficient to determine the size of collection and/ or transfer pipelines and pumping requirements.
3. Project Lifecycle Cost analysis:
 - a. Assuming an overall project lifecycle of 25 years, develop Preliminary Capital Cost Estimates and 25-year Net Present Value (NPV) Operation & Maintenance Cost Estimates for each option.
 - b. The aim is to provide a like-for-like comparison of the total financial implications of each option to BPW. The cost estimates will only account for costs incurred by BPW directly, i.e., will exclude any costs incurred by Sussex County or other stakeholders.
4. Multi-Criterial Analysis (MCA) rate and assign scores to each option based only on the non-cost attributes:
 - a. The final MCA criteria will be developed and agreed with BPW, but may include:
 - i. Performance and environmental compliance.
 - ii. Operational flexibility and resource requirements.

- iii. Maintenance requirements and safety.
- iv. Constructability, site utilization and temporary disruption during construction phase.
- 5. The final MCA scoring and Project Lifecycle Costs will be used to assess the best value option for BPW, and will form the basis of GHD's recommendations.

Deliverables and Meetings

- 1. Draft and Final Report
 - a. Develop draft and final report, documenting GHD's findings, recommendations, and Project Lifecycle Costs and MCA Scoring for each option.
 - b. Incorporate all BPW's comments from the Draft Report and finalize the Report.
- 2. Deliverables
 - a. Meeting minutes for Kick-off and progress meetings.
 - b. Draft Report.
 - c. Meeting minutes for Draft Report Review Meeting.
 - d. Final Report.
- 3. Conduct a total of six (6) meetings
 - a. One (1) in person meeting to kick-off the project.
 - b. Three (3) virtual meetings to review progress and discuss preliminary findings.
 - c. One (1) in-person meeting to review the Draft Report and discuss the BPW's comments.
 - d. Prepare for and attend (1) public meeting to present the results of the study.

Schedule

GHD proposes the following schedule to complete the scope of services:

Task	Duration/Completion
Project Kick-off/Chartering Meeting	1 week from Purchase Order/NTP
Information Gathering / Site Visits	1 week from Project Kick-off Meeting (Dependent of operator availability)
Draft Report	12 weeks after Project Kick-off Meeting
BPW Review and Comment of Technical Memorandum (Review Meeting)	2 weeks after receipt of Draft Report
Final Report	2 weeks after receipt of BPW's comments

Assumptions

- 1. This analysis will be based on available record documents, GIS (e.g., O&M data) provided by the BPW and Sussex County, online sources, and additional feedback provided by the BPW and County as needed.
- 2. No survey, utility locating, geotechnical investigations, or other field investigations will be conducted in this scope.
- 3. No engineering services during design or construction are included.
- 4. All deliverables will be sent to the BPW electronically.
- 5. An assessment of the plant capacity in relation to projected growth is not included in the scope of this project. If required, a scope of works for this work will be provided by GHD as a separate proposal.

Fee

GHD can perform the scope of services as identified above on an hourly and expense basis, in accordance with our base contract, as follows:

Description	Engineering Cost
WWTF Long Range Planning Study	\$248,500
TOTAL	\$248,500

If you have any questions or need additional information, please do not hesitate to contact me at 301 518 8346.

Regards

Jeff Sturdevant

Principal

+1 240 206-6842

jeff.sturdevant@ghd.com

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

(302) 855-7370 T
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hans.medlarz@sussexcountysde.gov



Sussex County
DELAWARE
sussexcountysde.gov

Memorandum

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

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

RE: ***FY 2022 General Labor & Equipment Contract, Project 22-01***
A. Balancing Change Orders
B. First One (1) Year Extensions through 7/1/2023

DATE: May 24, 2022

Before FY 2017, Sussex County followed a traditional design, bid and build approach. However, the increased major capital project load associated with aging infrastructure required a more efficient delivery system. In response, Sussex County developed a competitively selected time and material, best value bid process.

The first General Labor & Equipment Contract was awarded to George & Lynch, Inc., on June 21, 2016, and was renewed on June 13, 2017, for an additional one-year period based on performance. It was re-advertised in the spring of 2018 again using the “best value” approach and an option for two (2) additional one-year periods at the same unit prices. On April 24, 2018, Council awarded the FY 2019 General Labor & Equipment Contract to George & Lynch, Inc.; on June 11, 2019, Council approved the first one-year contract extension through June 30, 2020, and on May 19, 2020, Council exercised the final one-year extension option.

The bid schedule for the FY 2022 General Labor & Equipment Contract was structured on the actual hours spent on labor and equipment over the immediately preceding 12-months. The contract was publicly advertised using the “best value” approach and on May 13, 2021, three (3) bids were received.

During evaluation of the weighted factors, it was determined that some submission of the schedule and response times appeared to be not justifiable, and verification could pose liability exposure to the County. Hence, on May 25, 2021, County Council rejected all bids for the FY 2022 General Labor & Equipment Contract and authorized a rebid.



The Engineering Department broke the anticipated task list into two bid packages. Bid Package A contained the standard work items while Bid Package B contained the specialized drilling and boring items. The project was readvertised and on July 2, 2021, bids were received from JJID, Inc. and George & Lynch, Inc.

George & Lynch, Inc. submitted a bid with a significantly higher point score for Bid Package B and on July 13, 2021, County Council awarded Bid Package B to George & Lynch, Inc. in the amount of \$1,140,617.00. The point spread is much closer for either an individual award of Bid Package A or a joint award of both packages with JJID, Inc. slightly ahead in the individual award and George & Lynch, Inc. slightly ahead in a possible joint award. Therefore, County Council awarded 50% of the average Bid Package A, in the amount of \$2,250,000, to both companies.

Since then, a significant scope of work has been accomplished mostly under the George & Lynch, Inc. Bid Package A. In addition to a number of emergencies, Pump Station No.4 in Dewey Beach experienced significant equipment failures forcing an accelerated schedule. This is a major rebuilding effort of the oldest pump station in the system was expected to exceed \$2.0 million in total. Council approved increasing George & Lynch, Inc.'s award amount by \$1.75 million via Change Order No. 1 on March 29, 2022. In the last two months additional crews were assigned to the Pump Station No. 4 project and several emergencies had to be addressed. Therefore, the Engineering Department recommends issuance of balancing Change Order No. 2 in the amount of \$600,000.00.

JJID, Inc. was mainly active in the 100+ acres agricultural "south" field regrading effort at the Inland Bays RWF with suitable material import now exceeding \$700,000. Council approved increasing JJID, Inc.'s award amount by \$0.5 million via Change Order No. 1 on March 29, 2022. Now the focus is on completely spreading and leveling South Field and South Hettie Field to get them ready for late spring planting. For this effort, additional crews and equipment were mobilized. Therefore, the Engineering Department recommends issuance of balancing Change Order No. 2 in the amount of \$650,000.00.

Construction on both contracts will cross over fiscal year lines and the Finance Department will internally perform the final balancing of projects costs to ensure they stay under the FY22 budgeted amounts. The stormwater, drainage, constructed wetland efforts at IBRWF and its associated grading have been fully designed and will be bid separately outside of the General Labor & Equipment Contract.

The General Labor & Equipment Contract is due to expire on July 1, 2022. As presented at the initial award, the contract allows for two (2) one-year extensions at the County's discretion. The contractors' performance is still quite satisfactory, and the first one-year extension is in the County's best interest.

Therefore, the Engineering Department recommends a one-year extension of Bid Package B to George & Lynch, Inc. in the amount of \$1,500,000.00 and a joint one-year extension of Bid Package A to JJID, Inc. and George & Lynch, Inc. in the amount of \$2,000,000.00 and 2,500,000.00 respectively for continued project completion as budgeted in the capital projects for the Environmental Services Division and the Coastal Airport through July 1, 2023 with scope changes to be presented to Council on a case by case basis.



SUSSEX COUNTY
CHANGE ORDER REQUEST

A. ADMINISTRATIVE:

1. Project Name: **FY 2022 G&L General Labor & Equipment Contract**
2. Sussex County Project No. 22-01
3. Change Order No. 2 – Bid Package A
4. Date Change Order Initiated - 5/19/22
5.
 - a. Original Contract Sum \$2,250,000.00
 - b. Net Change by Previous Change Orders \$1,750,000.00
 - c. Contract Sum Prior to Change Order \$4,000,000.00
 - d. Requested Change \$ 600,000.00
 - e. Net Change (No. of days)
 - f. New Contract Amount \$4,600,000.00
6. Contact Person: Hans Medlarz, P.E.
Telephone No. (302) 855-7718

B. REASON FOR CHANGE ORDER (CHECK ONE)

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | 1. Differing Site Conditions |
| <input type="checkbox"/> | 2. Errors and Omissions in Construction Drawings and Specifications |
| <input type="checkbox"/> | 3. Changes Instituted by Regulatory Requirements |
| <input checked="" type="checkbox"/> | 4. Design Change |
| <input type="checkbox"/> | 5. Overrun/Underrun in Quantity |

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

C. BRIEF DESCRIPTION OF CHANGE ORDER:
Pump Station 4 project and several emergencies.

D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?

Yes X No _____

E. APPROVALS

1. George & Lynch, Inc., Contractor

Signature Date

Representative's Name in Block Letters

2. Sussex County Engineer

Signature Date

3. Sussex County Council President

Signature Date



SUSSEX COUNTY
CHANGE ORDER REQUEST

A. ADMINISTRATIVE:

1. Project Name: **FY 2022 JUID General Labor & Equipment Contract**
2. Sussex County Project No. 22-01
3. Change Order No. 2 - Bid Package A
4. Date Change Order Initiated - 5/19/22
5.
 - a. Original Contract Sum \$2,250,000.00
 - b. Net Change by Previous Change Orders \$ 500,000.00
 - c. Contract Sum Prior to Change Order \$2,750,000.00
 - d. Requested Change \$ 650,000.00
 - e. Net Change (No. of days)
 - f. New Contract Amount \$3,400,000.00
6. Contact Person: Hans Medlarz, P.E.
Telephone No. (302) 855-7718

B. REASON FOR CHANGE ORDER (CHECK ONE)

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | 1. Differing Site Conditions |
| <input type="checkbox"/> | 2. Errors and Omissions in Construction Drawings and Specifications |
| <input type="checkbox"/> | 3. Changes Instituted by Regulatory Requirements |
| <input checked="" type="checkbox"/> | 4. Design Change |
| <input type="checkbox"/> | 5. Overrun/Underrun in Quantity |

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

C. BRIEF DESCRIPTION OF CHANGE ORDER:

Additional crews for spreading and leveling South Field and South Hettie Field to prepare for late spring planting.

D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?

Yes X No _____

E. APPROVALS

1. JJID, Inc., Contractor

Signature Date

Representative's Name in Block Letters

2. Sussex County Engineer

Signature Date

3. Sussex County Council President

Signature Date

ENGINEERING DEPARTMENT

J. MARK PARKER, P.E.
ASSISTANT COUNTY ENGINEER

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Sussex County

DELAWARE
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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: J. Mark Parker, P.E., Assistant County Engineer

RE: ***FY 21 Ocean Outfall Inspection, Project G21-06***
A. Repair/Inspection Actions

DATE: May 24, 2022

The Ocean Outfall system located between Bethany Beach and Middlesex Beach discharges treated wastewater from the South Coastal Regional Wastewater Facility (SCRWF) into the Atlantic Ocean. Special Condition No. 8 of the Facility's current NPDES Permit No. DE 0050008 states; "The permittee shall visually inspect the ocean outfall structure prior to May 31, 2021, and every 5 years thereafter." These inspections confirm proper condition and function of the Ocean Outfall system, with repairs performed if necessary. The last inspection performed was in 2016.

For the current inspection period, the Engineering Department assembled a list of five (5) pre-qualified vendors to perform the inspection work and an Invitation to Bid with a Specifications package was distributed on October 10, 2020. The Bid Schedule for the project was developed to establish a Base Bid for the inspection work, and an Add/Alternate Bid for any necessary repairs that are identified as well as a detailed inspection of the interior of one of the system access manholes.

On October 28, 2020 a total of three (3) bids were received. TNJ Marine, Inc. of Atlantic Highlands, New Jersey submitted the low Base Bid of **\$69,250.00**. Following a review of the bid information, the Engineering Department recommended and Council approved awarding the project to TNJ Marine, Inc. It was decided to wait until the following Spring to perform the inspection to take advantage of more optimal underwater viewing conditions. The inspection was subsequently performed during the early part of May 2021, with the final Inspection Report being submitted on July 2, 2021.



Inspection Results

The results of the inspection were generally favorable. Diving conditions were recorded as being very good, and much better than during past inspections performed by the same company. Exposed portions of the outfall pipeline, structural supports, and two diffuser legs were all noted to be in good condition. Interior inspection of one of the access manholes, which had not been done as part of past inspections, also revealed good conditions. Functionality assessment of the diffuser legs was positive, and the overall outfall system was noted to be working effectively and efficiently.

Regarding the visible portions of the system cathodic protection, some of the bonding wires on the structural supports along the portion of the force main and diffuser legs were noted to be missing or damaged, and anode deterioration was documented to be generally in the 25% to 50% range.

Recommended Actions

- A) System Repairs: Based on the results of the inspection, the Engineering Department will be pursuing minor system repairs consisting of replacement of missing/damaged bonding wires and worn anodes. In addition, the two remaining blind flanges on the diffuser leg ports will be removed in order to obtain full system operational capacity. The repairs will be performed by a qualified marine contractor.
- B) System Observations: The inspection report noted that a portion of the sheet piling that had been used during original system installation was observed during the underwater inspection within shallower waters. The location relative to shore and/or depth of the sheeting was not noted by the inspection company, but was documented as *potentially being near or within the surf zone*. These conditions were not noted as part of past inspections, and may possibly be a reflection of visibility conditions being so favorable during this inspection.

To mitigate a potentially hazardous situation, the Engineering Department will pursue hiring a specialty diving vendor to document the exact location of the exposed sheet piling. Following this, any necessary actions will be determined.

C) Pipeline Cathodic Protection Upgrade

Background: The Ocean Outfall system was originally constructed in 1977 and its corrosion protection system had a target design life of forty (40) years. At this point, we are beyond the intended design life of the system. The corrosion protection system consists of a high-grade protective coating of all structural components as well as cathodic protection for the buried pipeline, helix anchors and the exposed pipe supports.

While the cathodic protection devices on the exposed pipe support structures can be inspected as part of the underwater inspection, and replaced if necessary, the cathodic protection system along the primary outfall pipe buried beneath the sea floor cannot. Presently, three conductors, connected at different locations, serve as the primary negative structure connection critical for completing the cathodic protection circuit. We have learned from past inspections of the cathodic protection component that electric current

induction through the system is reduced because two of the three conductors are showing high resistance readings indicating potential connectivity failure.

At the recommendation of the Engineering Department, Council previously approved on 07/21/2021 the use of two marine Subject Matter Expert firms to form a qualified Design-Build Team to identify further design and repair implementation actions related to the cathodic protection system and pipeline outfall system. The qualified Design-Build Team recommended and approved consists of GHD Group for design services and Specialty Underwater Services for inspection/construction services.

GHD Group subsequently produced a design solution that addressed the need for an additional redundant negative structural connection along the outfall pipe without requiring offshore construction activities, resulting in significant savings. Due to access simplicity, the design solution was implemented thru use of our T&M Contractor in early Spring 2022 and conductivity measurements are currently being taken to confirm the effectiveness of the repairs completed.

The remaining recommended actions from the Outfall Inspection, noted as (A) and (B) above, still need to be performed. An updated proposal was obtained from the approved marine contractor Specialty Underwater Services to complete this work following the Spring timeframe of this year. The attached proposal dated 04/06/2022 represents all services needed to complete the underwater repairs and additional sea floor observations including final reporting. The Engineering Department recommends approval of the proposal in the amount of **\$64,250.00** and issuing notice-to-proceed for the work ASAP.

04/06/22

To: Sussex County Engineering Department
2 The Circle PO Box 589, Georgetown, DE. 19947

Attn: Mark Parker, P.E. - Assistant County Engineer

Re: **Bethany Beach Ocean Outfall – Underwater Inspection & Construction Services**

Specialty Underwater Services (SUS) is pleased to provide our Proposal for furnishing the supervision labor, equipment and consumables necessary to perform the work for the above referenced project for the following

PRICING

Pricing to complete the scope of work outlined below shall be as follows:

Item No.	Description	Estimated Quantity ¹	Unit	Unit Price	Estimated Total ¹
1	Mobilization ²	1	WEEK	\$1,500.00	\$1,500.00
2	4 Person Dive Team w/boat, video, & hydro (12 Hours ST) ³	5	DAYS	\$12,550.00 ⁸	\$62,750.00
3	Inspection Report ⁶	1	EACH	Included	Included

Estimated quantities/totals included for budgetary/planning purposes only. Actual quantities for services performed shall apply.

² Lump sum mobilization fee covers consecutive days onsite or only one round trip from SUS yard. Additional mobilization fees may apply for non-consecutive days on site or if there is no secure place to safely stow equipment onsite overnight.

³ Twelve (12) hour minimum charge per day including boat travel to and from the jobsite/boat launch when applicable.

⁴ Overtime to be charged for all hours over twelve (12) hours per work day, sixty (60) hours per work week, weekends and emergency work scheduled within twenty-four (24) hours. Twelve (12) hour minimum charge per day, including boat travel to and from the jobsite/boat launch when applicable, shall apply to all weekend and emergency work.

⁵ Dive inspection videos to be provided via USB/SD drive at no additional charge.

⁶ Inspection report will be provided and will detail our findings.

⁷ List of consumable prices included below. Consumables not specifically listed shall be charged at cost plus fifteen (15) percent unless otherwise agreed upon.

⁸ Unit pricing based on non-prevailing wage rates.

Estimated Total: \$64,250.00

SCOPE OF WORK

The following Scope of Work (SOW) shall be used as a basis for this Proposal:

- SOW for all call-out work shall be the responsibility of the Customer and reviewed with SUS.
 - SUS to provide tools/equipment/materials necessary to complete the SOW.
- Remove existing blind flanges on end diffuser pipes – one on the North leg and one on the South leg (end).
- Reattach all noted missing/ damaged bonding wires on pipe diffuser pile bents.
- Perform observations of the sea bottom over the outfall pipe from the physical shoreline to a point offshore that would normally be characterized as being within the surf zone, including up to and just beyond the location of manhole #2. Due to notations in the inspection report of possibly observing sheet piling protruding from the sea bed. Report locations and details with height from sea floor and water depth to top of sections.
- Video of all repairs made and observations performed.
- A report and video of findings will be provided.

ASSUMPTIONS & QUALIFICATIONS

This Proposal is based upon the following assumptions and qualifications:

1. Unobstructed access to the jobsite for SUS trucks, trailers, dive equipment and/or dive vessel.
2. SUS is an active member of the Association of Diving Contractors. All diving operations will
3. be in accordance with the following: SUS Diving Operations Safe Practices Manual; Latest Edition of the ADC Consensus Standards for Commercial Diving and Underwater Operation; 46 CFR Part 197 USGC Rules for Commercial Diving Operations; 29 CFR Part 1910 OSHA Rules for Commercial Diving Operations; U.S. Navy Diving Manual, latest revision, Volumes 2 and 5; and EM385-1-1 USACE Regulations for Commercial Diving Operations, if applicable. All SUS diving personnel are trained in First Aid, CPR/AED, Emergency Oxygen Administration and OSHA site worker classes.

EXCLUSIONS

The following items are specifically excluded from this Proposal:

1. Material costs associated with tasks outside the SOW outlined above or otherwise listed under Consumable Materials.
2. CP System wires & connections.
3. Costs associated with providing Performance and Payment Bonds.
4. Site safety training or other safety related requirements by the Owner.
5. Any permits, licenses, right-of-ways or easements.
6. All maintenance and protection of vehicular, pedestrian and other traffic, if applicable. This includes all policemen, signs, lights, markers, barricades, temporary roads, ramps, crossings, flagmen and/or inspectors.



SPECIALTY UNDERWATER SERVICES

35 Stahl Point Road • Curtis Bay, MD 21226 • 443-992-4731 • 443-320-0533

www.specialtyunderwater.com

EOE/Drug Free Employer



CONDITIONS OF PROPOSAL:

- Payment shall be made within thirty (30) days of invoice date. Retainage is not applicable. Payment to SUS will not be contingent upon the Customer receiving payment from Owner. Payments withheld for more than thirty (30) days will be subject to a 1-1/2% service charge per month.
- This Proposal is valid for thirty (30) days after the Proposal date. SUS reserves the right to adjust prices to reflect current market conditions after thirty (30) days.
- SUS shall not be responsible for delay, liquidated or other consequential damages. SUS will not at any time be held responsible for damage to existing overhead or underground utilities, asphalt, concrete work, building facades, overhangs or other structures. SUS will administer extreme care at all times in regard to the above items. It is the responsibility of the Customer or Owner to notify local utilities or underground exploration agencies before mobilization.
- Standard insurance coverage included as part of this Proposal:
 - General Liability - \$1,000,000.00 each occurrence, \$2,000,000.00 Aggregate
 - Workers Compensation - \$1,000,000.00
 - USL&H - \$1,000,000.00
 - Jones Act - \$1,000,000.00
 - Increased limits or other insurance can be provided at an additional cost.
- Due to constant unknown circumstances, changed conditions and subsequent delays related to our type of work, SUS will not promise nor guarantee schedule dates and will not be held responsible for delays incurred due to differing conditions. SUS will not be held responsible for delays due to weather breakdowns, strikes, delays by others, or reasons beyond our control. In no event shall SUS be held liable to Customer for any direct, indirect, incidental, special, punitive, consequential, or liquidated damages, even if SUS has been advised of the possibility of such damages.
- SUS will not accept back charges unless previously agreed to in writing and signed by representatives of SUS.
- Any dispute arising in connection with this Proposal shall be resolved by arbitration in the County in which the Project is located in accordance with the rules of the American Arbitration Association.
- We reserve the right to be present for any meetings pertaining to our scope of work.

SCHEDULE:

The work specified in the Proposal will be performed in accordance with a mutually agreed upon schedule. Delays are compensable if not the fault of SUS.

Acceptance and validity of this Proposal is contingent upon the incorporation of these terms and conditions and scope inclusions and exclusions into any standard subcontract agreement, or, this Proposal with these terms and conditions and scope inclusions and exclusions will act as the contract between Customer and SUS. Upon Proposal acceptance, please complete and return checked (☒) items below that are included as part of this Proposal.

- ☒ COI Request Form
☐ Certified Payroll Form



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In lieu of a separate subcontract agreement, the terms and conditions specified herein must be accepted by the Customer. By executing this Proposal, the Customer certifies that it is fully familiar with, and expressly consents to, all terms and conditions contained in this Proposal.

Printed Name: _____ Signature: _____

Title: _____ Date: _____

Thank you for the opportunity to submit our Proposal. Please contact us if you have any questions.

Regards,
Brad Long
Specialty Underwater Services



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COI REQUEST FORM

Date of Request _____

COMPANY REQUESTING COI: _____

YOUR PROJECT NO: _____

CERTIFICATE HOLDER: _____

CERTIFICATE HOLDER ADDRESS: _____

LIMITS OF INSURANCE REQUIRED (if different from standard SUS coverage limits):

GL: _____

WC _____

UMBRELLA: _____

AUTO: _____

NOTICE OF CANCELLATION (Y/N): _____ NUMBER OF DAYS: _____

WAIVER OF SUBROGATION (Y/N): _____

LIST ANY ADDITIONAL INSURED THAT YOU WANT INCLUDED ON THE COI:



SPECIALTY UNDERWATER SERVICES

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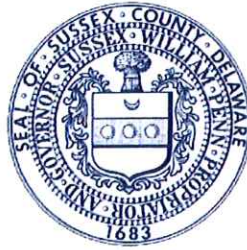
www.specialtyunderwater.com

EOE/Drug Free Employer



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: ***Sewer Service to Oak Acres (Miller Creek)***
Permission to authorize design
File: MC-10.03.07

DATE: May 24, 2022

On February 5, 2008, the Engineering Department held a public hearing before council for the Bayard Expansion of the Miller Creek Sanitary Sewer District. Residents from Tanglewood/New Marydel and Oak Acres appeared and question council on the possibility of their communities being included in the boundary. The Engineering Department was tasked with collecting information from the residents and reporting back the next week. On February 12, 2008, the Engineering Department came back to council with information on the community poll. Council included only those parcels responding in New Marydel and all of Tanglewood and Oak Acres.

The turn in the economy affected the construction of infrastructure that was to be built by the developers of the Estuary to serve the area. Now the project is moving forward, and main infrastructure will soon be available for the Oak Acres Community. The Engineering Department has reached out to GMB one of the County's Misc. Consultants for a price to design the gravity infrastructure to serve the community, GMB has designed the Estuary Phase 4 infrastructure. The County has agreed to a cost share agreement with the developer for the pumpstation required to serve their phase 4 and the Oak Acres Community. At this time, the Engineering Department would like to request permission to authorize GMB to design the gravity collection system for Oak Acres to connect to the pumpstation. The infrastructure will serve (55) parcels, the contract is an hourly contract with a not to exceed amount of \$68,940.00.



■ ■ ■ ■

ARCHITECTS
ENGINEERS

206 WEST MAIN STREET
SALISBURY, MD 21801
PH: 410.742.3115
PH: 800.789.4462
FAX: 410.548.5790

SALISBURY
BALTIMORE
SEAFORD

www.gmbnet.com

■ ■ ■ ■

JAMES H. WILLEY, JR., P.E.
PETER A. BOZICK, JR., P.E.
CHARLES M. O'DONNELL, III, P.E.
A. REGGIE MARINER, JR., P.E.
JAMES C. HOAGESON, P.E.
STEPHEN L. MARSH, P.E.
DAVID A. VANDERBEEK, P.E.
ROLAND E. HOLLAND, P.E.
JASON M. LYTLE, P.E.
CHRIS B. DERBYSHIRE, P.E.
MORGAN H. HELFRICH, AIA
KATHERINE J. MCALLISTER, P.E.
W. MARK GARDOCKY, P.E.
ANDREW J. LYONS, JR., P.E.

JUDY A. SCHWARTZ, P.E.
W. BRICE FOXWELL, P.E.

JOHN E. BURNSWORTH, P.E.
VINCENT A. LUCIANI, P.E.
AUTUMN J. WILLIS
CHRISTOPHER J. PFEIFER, P.E.

May 9, 2022
Revised May 17, 2022

Sussex County Engineering Department
2 The Circle
PO Box 589
Georgetown, DE 19947

Attn: Mr. John Ashman
Director of Utility Planning

Re: Proposal for Civil Engineering Professional Services
Oak Acres Sanitary Sewer Extension

Dear John:

George, Miles & Buhr, LLC (GMB) is pleased to present this proposal for sanitary sewer design for the Oak Acres development located in Frankford, Delaware. Our proposal is more particularly described as follows.

PROJECT LOCATION

Oak Acres Development inclusive of the following streets: White Oak Drive, Red Oak Drive, and Pin Oak Drive located in Frankford, DE. The development is adjacent to The Estuary.

PROJECT DESCRIPTION

GMB, as the engineer of record for The Estuary, has been requested to provide design phase services for the design of a gravity sanitary sewer collection system for Oak Acres which will connect to a terminal cleanout located 40 ft. north of the proposed pump station for Phase 4 of The Estuary. The gravity sewer shall be designed to meet Sussex County's latest standard details dated 12/30/2021.

SCOPE OF SERVICES:

A. Design Phase Services

1. Kickoff meeting to review the project and contract agreement.
2. Site survey to establish horizontal and vertical control, and prepare base drawings showing topographic contours and locations of existing structures and site features i.e., entrances, pavement, woods line, ditches, culverts, etc. as needed to prepare a base drawing. Proposed fee is based upon surveying within the Right-of-Way (ROW) and miscellaneous survey beyond the ROW to verify the design meets adequate sewer depth at identifiable, critical site locations.
3. Coordinate with a Geotechnical Subconsultant for soil borings to provide soil analysis and verify the presence of ground water.

4. Prepare 30% preliminary sewer design concept and submit to SCED for review and comment.
5. 30% Design Meeting with SCED to review the proposed sewer layout. Once the preliminary design concept is approved, GMB will proceed with completing the design. Any changes to the approved preliminary design concept resulting in redesign are not included and will be performed as additional services upon written authorization by the Owner.
6. Prepare and submit to SCED for review and comment 60% design documents inclusive of sewer plans and profiles, construction and standard County details, draft specifications, proposed maintenance of traffic (MOT) plan, and preliminary construction cost estimate. Note: Proposed MOT plan is based on a single lane closure and does not include any road or pedestrian detours.
7. Prepare and submit to SCED for review and comment 90% design documents which addresses the 60% review comments and includes the Erosion and Sediment Control plans and details, updated specifications, and an updated construction cost estimate.
8. At the 90% submittal stage, submit to the following permitting and review agencies: Sussex Conservation District for linear disturbance, DNREC for Authorization to Construct, and DelDOT Utility Permit; to be submitted by SCED, GMB to provide assistance.
9. Address the 90% review comments and resubmit to the review agencies and SCED 100% Contract Documents.

B. Bid Phase Services

1. Assist SCED with the advertisement to bid. SCED to place the advertisement in the appropriate newspapers.
2. Assist SCED with issuing the contract documents to prospective contractors, and maintain a record of those that have received the documents.
3. Attend and chair the pre-bid meeting and distribute meeting minutes.
4. Prepare and issue addenda as necessary.
5. Respond to potential bidder's questions.
6. Review bids received and prepare bid tabulation.
7. Provide SCED with a letter of recommendation to award.

C. Construction Phase Services – Not included; a separate proposal can be provided.

EXCLUSION, ASSUMPTIONS, AND CONSIDERATIONS

- Excludes value engineering or substantial modification of the 30% approved submittal.
- Assumes the proposed sewer will be located in the pavement within the middle of the travel lane. All streets are classified as suburban roads maintained by DelDOT.
- Proposed MOT plan is based on a single lane closure and does not include any road or pedestrian detours. Streets are narrow with little to no room to install gravity sewer outside the edge of pavement.
- SCED to coordinate pavement corings with DelDOT to determine the required pavement restoration section.
- Assume the two (2) remote parcels along White Oak Drive will be served by low pressure sewer and individual residential grinder units.
- Maximum of three (3) easement exhibits.
- Excludes wage rate determination. This is best to be obtained at the time of bidding since rates typically change yearly around March 15th.
- Permitting and application fees are excluded. Permitting fees are estimated as: DNREC NOI \$195, SCD \$575, and DNREC \$825.
- Advertisement fees are excluded.
- Construction Administration, and Inspection services are excluded from the proposed fee.
- It is assumed that wetlands do not exist.
- It is assumed residential drinking water is provided by individual wells.
- Any item not specifically indicated herein is excluded from this agreement.

FEE SUMMARY

We propose to provide the above defined Design Phase Services in accordance with EJCDC, EXHIBIT C - COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates per the following breakdown of fees:

Design Phase Services

Sewer Design:	\$ 55,300.00
Bidding	\$ 5,000.00
Geotechnical:	\$ 6,140.00
Reimbursable Expenses:	<u>\$ 2,500.00</u>
Subtotal	\$ 68,940.00

TOTAL DESIGN PHASE SERVICES FEE: \$68,940.00

This proposal is valid for a period of sixty (60) days at which time GMB reserves the right to modify the fee and/or schedule.

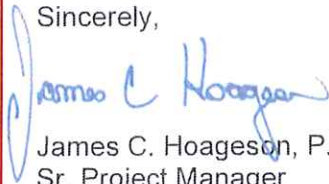
SCHEDULE

We propose to begin the Preliminary Design for this project within four (4) weeks upon receipt of this signed proposal. We estimate seven (7) to eight (8) months to complete 90% documents and submit to SCED and the various permitting and review agencies. Once the plans are submitted to the various permitting and approval agencies, we are no longer in control of the schedule. We will maintain communication with the agencies to facilitate the review process.

If this proposal meets with your approval, please execute in the space provided below and return one (1) copy to our office as acceptance and notification to proceed.

If you have any questions, do not hesitate to call me. We thank you for this opportunity.

Sincerely,



James C. Hoageson, P.E.
Sr. Project Manager

JCH/slh

APPROVED BY SUSSEX COUNTY ENGINEERING:

By: _____

Printed Name: _____

Date: _____

Title: _____

Phone Number: _____

Email Address: _____

ELECTRONIC PROPOSAL

■ ■ ■ ■

ARCHITECTS
ENGINEERS

206 WEST MAIN STREET
SALISBURY, MD 21801

PH: 410.742.3115

PH: 800.789.4462

FAX: 410.548.5790

SALISBURY
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www.gmbnet.com

■ ■ ■ ■

DATE: August 16, 2018
Revised September 18, 2018

GMB NO:

TO: Sussex County Engineering
Department
P.O. Box 589
Georgetown, DE 19947

RE: Sewer Design
Tanglewood & New Marydel
Drive

ATTN: Mr. John Ashman

PROJECT DESCRIPTION: Sewer design and permitting for Tanglewood Community and New Marydel Drive, adjacent to the Estuary project.

SCOPE OF WORK:

Survey Wild Oak Drive and New Marydel Drive right-of-way to right-of-way. Research and identify utilities and property lines. Prepare Base Plan. Survey potential ditch crossing.

Evaluate potential connection options for New Marydel Drive.

Prepare construction plan set for sewer extension at Tanglewood and New Marydel Drive. Design shall be based on The Estuary as-built. Submit plans to Sussex County Engineering Department for review and approval. Submit plans to DNREC for review and approval. Prepare DelDOT Utility Construction Permit documentation and submit to Sussex County Engineering.

Based on map exhibit submitted by John Ashman on August 14, 2018, it appears that the homes along Wild Oak Drive, and the adjoining parcels to the Estuary, can be served by gravity sewer. Per John Ashman email dated 8/29/2018, evaluate different options for New Marydel Drive.

FEE/CONTRACT TERMS: We estimate an engineering fee of \$20,820.00. We propose a time and material contract. We will bill monthly per the attached Schedule of Hourly Rates and Expenses, based on the amount of work performed. The attached General Conditions apply to this agreement.

Please sign below to execute this agreement and return to my attention via email. This shall serve as our authorization to proceed with the requested services.

SUBMITTED BY: Stephen L. Marsh, P.E., Sr. Vice-President

ACCEPTED FOR THE OWNER:

BY:

Signature

Printed Name

DATE: _____

TITLE: _____

TELEPHONE NO: _____

EMAIL: _____

If acceptable, please print this form, sign, FAX to 410.548.5790 and mail the original. Thank you.

SCHEDULE OF HOURLY RATES & EXPENSES

HOURLY RATES

Effective January 1, 2018

CLASSIFICATION	HOURLY RATE
Senior Project Director	\$ 175.00 - \$ 200.00
Project Director	\$ 150.00 - \$ 175.00
Senior Project Manager	\$ 125.00 - \$ 150.00
Project Manager	\$ 105.00 - \$ 135.00
Assistant Project Manager	\$ 105.00 - \$ 125.00
Senior Project Engineer/Architect/Landscape Arch	\$ 105.00 - \$ 125.00
Project Engineer/Architect/Landscape Arch	\$ 95.00 - \$ 120.00
Graduate Engineer/Architect/Landscape Arch	\$ 85.00 - \$ 115.00
Senior Designer	\$ 80.00 - \$ 120.00
Designer	\$ 65.00 - \$ 90.00
CADD Operator	\$ 60.00 - \$ 75.00
Construction Representative	\$ 80.00 - \$ 110.00
Resident Project Representative (RPR)	\$ 55.00 - \$ 100.00
Project Coordinator	\$ 65.00 - \$ 90.00
Surveyor	\$ 95.00 - \$ 125.00
Survey Crew Chief	\$ 70.00 - \$ 110.00
Survey Technician	\$ 40.00 - \$ 70.00
Administrative/IT Support	\$ 40.00 - \$ 85.00
GIS Specialist	\$ 60.00 - \$ 85.00
Senior Technician	\$ 50.00 - \$ 90.00
Technician	\$ 30.00 - \$ 50.00

EXPENSES

All items per each, unless noted.

Internal:

Photocopies:

Black & White	\$ 0.20
Color	\$ 0.50

Prints/Plots:

Black & White/Color	\$ 0.50 /s.f.
Mylar	\$ 2.00 /s.f.

Travel:

Mileage	\$ 0.545/mile*
Subsistence (Meals & Lodging)	At Actual Cost

Overnight/Immediate Delivery

At Actual Cost

Survey Crew Rates

2 person crew	\$ 130.00/hour
3 person crew	\$ 150.00/hour

Other:

Electronic Media Copies/Transfers/File	\$ 300.00/file
Website Project File Sharing	\$ 1.00/MB/month
Construction Management Software	\$ 200.00/month
Surveying Equipment/Total Station Only	\$ 35.00 /day
Surveying Equipment/Total Station + GPS Unit	\$ 150.00 /day

* To be adjusted annually on January 1, in accordance with the Internal Revenue Service Directives



GEORGE, MILES & BUHR, LLC

GENERAL CONDITIONS

(Effective July 1, 2018)

AGREEMENT

The term "Agreement" refers to the undertaking by George, Miles & Buhr, LLC ("GMB") to perform Services described in the attached Proposal and these General Conditions. The Agreement shall become effective upon acceptance by Client of the attached Proposal and General Conditions, which when acknowledged in writing, are authorization to proceed. The Agreement is between Client and GMB, and their respective partners, divisions, affiliates, members, successors and assigns, both of whom promise not to transfer or assign any interest in the Agreement without the other party's written consent. The Agreement supersedes all prior written proposals or negotiations and is conditioned upon Client's acceptance of these General Conditions. No modification of the terms of the Agreement or General Conditions shall be valid unless authorized in writing by both parties. If additional services are required by Client, GMB will provide the services when authorized in writing and documented to do so by Client.

FEES, RETAINER

Any estimate of the fees and expenses that GMB expects to incur in providing Client with services outlined in the attached Proposal is not a maximum or lump sum fee. Client understands and agrees that the final billing may be more or less than the estimate. Fees for services will be adjusted if there are changes to the scope or schedule, as defined in the Proposal including supporting drawings, schedules and exhibits. If GMB does not have an established relationship with the Client, a retainer will be requested approximating the value of services for a minimum of sixty (60) days and will be credited to the final invoice. A Schedule of Hourly Rates & Expenses is attached to and incorporated as part of the Proposal. Unless otherwise noted, all proposals are valid for a period of 90 days from the date of the proposal.

INVOICES

Invoices are due upon receipt. If an invoice is outstanding beyond thirty (30) days of the invoice date, interest will be charged at a rate of one percent (1%) per month and GMB reserves the right to stop providing services and to withdraw all permit applications. Further, if GMB has to refer any delinquent billing to an attorney for collection, Client agrees to pay GMB its reasonable attorney's fees and expenses of collection, to include, without limitation, all litigation related expenses and expert witness fees, plus 25%.

EXPENSES

Client agrees to pay GMB for internal expenses in accord with Schedule of Hourly Rates and Expenses charged for those items that are specific to the project, including, but not limited to, subcontracted consultants, permit fees, reproduction expenses, renderings, models, etc. GMB will invoice external expenses at cost plus 10%.

LIABILITY & CLAIMS

Client agrees to limit GMB's liability related to errors and omissions to an amount not to exceed the total fee for the project or GMB's available professional liability insurance coverage for that year, whichever is less. GMB will not be responsible for any liabilities arising from Client's negligent acts or errors, or from any entity whose conduct is not subject to GMB's control. Client acknowledges the inherent risks associated with construction. GMB will provide services with a standard of care exercised by licensed architects and engineers. At least 30 days prior to making any claim against GMB, Client agrees to provide GMB a Certificate of Merit issued by an architect or engineer, licensed by the state in which the project is located, specifically describing

every error or omission which the issuer believes to be a violation of the standard of care. If Client makes a claim or brings legal action against GMB for any services under this Agreement, and fails to prevail, Client agrees to pay all legal and other expenses incurred by GMB in its defense, including, but not limited to, attorney's fees, court costs, expert witness fees, etc.

INSTRUMENTS OF SERVICE

All work products, including those in electronic form, prepared by GMB and GMB's consultants are Instruments of Service for use solely with respect to this project. The Client shall be permitted to authorize Contractor, Subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the work. Any unauthorized use of the Instruments of Service shall be at the Client's sole risk and without liability to GMB and GMB's consultants. No alterations shall be made to the Instruments of Service by the Client and/or any representative of the Client without the written permission of GMB and GMB's consultants. Copies of electronic media, if requested and approved, will be invoiced to the Client and due upon receipt.

APPROVALS

GMB has no control over governments and their agencies in granting approvals. Therefore, GMB cannot guarantee the timeframe for, or the cost of services incidental to, obtaining approvals from governments or governmental agencies. If the type or level of services as originally defined are revised or changed during our assignment, the fee for our services from that point forward will be subject to negotiation.

TERMINATION/SUSPENSION OF WORK

Client or GMB each may terminate the Agreement with fifteen (15) calendar days written notice; Client agrees to pay for all services provided by GMB up to the date of termination. Project delays and suspension of the project for more than 30 days, may result in additional cost to resume work. Client agrees to pay such costs before work resumes if said delays are attributable to the Client.

CONSTRUCTION SAFETY

Client agrees to require general or subcontractor to indemnify, defend and hold GMB harmless against claims arising from unsafe site conditions.

CONSTRUCTION ESTIMATES

GMB has no control over the cost of labor, materials, equipment and services provided by others or over the contractor's methods of determining prices and does not warrant or guarantee construction estimates.

CONSTRUCTION SCHEDULES

GMB has no control over the means, methods and techniques of construction employed by contractors, the timing of government approvals or the delivery of materials and equipment. The Client agrees that any construction schedule prepared by GMB is approximate and will not be the basis for a claim.

HAZARDOUS MATERIALS

Client agrees to defend, indemnify and hold GMB harmless for any and all liabilities, claims, costs and expenses, including, but not limited to, litigation expenses, attorney's fees, and expert witness fees, which relate in any way to the presence of any hazardous or toxic materials on the project.

GOVERNING LAWS; VENUE

The Agreement shall be interpreted in accordance with the laws of the State of Maryland. The venue for any dispute arising out of the Agreement shall be, at the sole discretion of GMB, the Circuit Court for Wicomico County, Maryland or the federal courts within the State of Maryland.

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
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FAX	(302) 855-7799



Sussex County

DELAWARE

sussexcountype.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: ***Sewer Service to Pintail Pointe***
Permission to Authorize Design & Bid Phase Contract
File: PP 4.02

DATE: May 24, 2022

January 2021 the Engineering Department and elected officials started receiving calls pertaining to the large on-site system failure serving the Pintail Pointe Community. On March 29, 2021, the Engineering Department presented to the Pintail Pointe Owners Association (PPOA) a short-term and a long-term remediation approach. The short-term required an interim sewer operations and transition agreement which was executed on March 30, 2021, allowing temporary repairs and County operational assistance under a reimbursement arrangement. Subsequently, Sussex County applied to DNREC for an on-site system permit modification which was received and implemented. The long-term sewer district creation required a Public Hearing and a referendum. A successful referendum in June 2021 created the Pintail Pointe Area of the Sussex County Unified Sanitary Sewer District.

The Engineering Department would like to abandon the existing onsite treatment and disposal system. This will be accomplished by converting the existing pumpstation that feeds the disposal beds into a new pumpstation that will pump the wastewater to an existing regional forcemain located along Route 1 near Hudson Road. This will include the extension of the forcemain from the onsite disposal area to Route 1 (approximately 2000')

At this time, the Engineering Department would like to request permission to authorize GMB, one of the County's miscellaneous consultants, to design the new pumpstation and forcemain for Pintail Pointe to connect to the existing regional forcemain. The infrastructure will serve (39) parcels, the contract is an hourly contract with a not to exceed amount of \$81,450.00.



■ ■ ■ ■

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PETER A. BOZICK, JR., P.E.
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May 12, 2022
Revised May 16, 2022

Sussex County Engineering Department
2 The Circle
PO Box 589
Georgetown, DE 19947

Attn: Mr. Randy Duplechain

Re: Proposal for Engineering Professional Services
Pintail Pointe Pump Station & Force Main Extension

Dear Randy:

George, Miles & Buhr, LLC (GMB) is pleased to present this proposal for a pump station design and force main extension for the Pintail Pointe development located in Milton, Delaware. Our proposal is more particularly described as follows.

PROJECT LOCATION

Pintail Pointe Development inclusive of the following streets: Finch Lane and Caspian Circle located in Milton, DE off Hudson Road.

PROJECT DESCRIPTION

Pintail Pointe development is served by an onsite treatment plant and disposal field. The disposal field is no longer functioning to the original design standards. The County has installed additional disposal beds in the reserve areas to help alleviate any potential issues. It is the recommendation of the Sussex County Engineering Department to abandon the onsite treatment and disposal area. This is proposed to be accomplished by converting the existing onsite pump station that feeds the onsite treatment plant into a new pump station that will pump wastewater to a connection point to an existing regional force main located along Route 1 at the intersection with Hudson Road. Part of this design will require extending the existing Pintail force main from the onsite disposal area to Route 1, approximately 2,000 feet.

SCOPE OF SERVICES:

A. Design Phase Services

1. Kickoff meeting to review the project and contract agreement.
2. Site survey to establish horizontal and vertical control, and prepare base drawings showing topographic contours and locations of existing structures and site features i.e., entrances, pavement, woods line, ditches, culverts, etc. as needed to prepare a base drawing. Proposed fee is based upon surveying within the Right-of-Way (ROW) along Hudson Road and miscellaneous survey within the Pintail Pointe development which is mainly related to the disposal and the wastewater treatment areas.

3. Coordinate with a Geotechnical Subconsultant for soil borings to provide soil analysis and verify the presence of ground water.
4. Perform hydraulic calculations to preliminarily size the proposed pump. Based on conversation with both SCED and Artesian, the calculation will involve evaluating two scenarios:
 - (1) The frictional head loss, based on the design flowrate for Pintail Pointe, from the proposed pump station to the tie-in connection along Route 1 and the head loss within the approximately 30,000 feet of existing force main, and the static head based on a discharge elevation of 42 ft.
 - (2) Same evaluation as defined in the first scenario with the exception the flowrate to be evaluated in the existing force main will be based on a velocity of 2 ft/sec. It is anticipated to meet various flow conditions within the manifold force main that a variable frequency drive will be required.
5. Review existing wet well for proposed mechanical means only, to determine if the existing structure is of adequate depth and diameter for the proposed pumps and control levels. Make a recommendation to either reuse or replace.
6. Perform a preliminary review of the available onsite power, existing control cabinet and generator, and make a recommendation for reuse and/or replace.
7. Prepare 30% preliminary design concept and submit to SCED for review and comment. This will include the proposed pump selection, wet well configuration, suggested electrical upgrades and/or improvements, and force main alignment.
8. 30% Design Meeting with SCED to review the proposed layout. Once the preliminary design concept is approved, GMB will proceed with completing the design. Any changes to the approved preliminary design concept resulting in redesign are not included and will be performed as additional services upon written authorization by the Owner.
9. Prepare and submit to SCED for review and comment 60% design documents inclusive of plans and profiles, construction and standard County details, demolition plan, temporary bypass plan, draft specifications, proposed maintenance of traffic (MOT) plan, and preliminary construction cost estimate. Note: Proposed MOT plan is based on a single lane closure and does not include any road or pedestrian detours.
10. Prepare and submit to SCED for review and comment 90% design documents which addresses the 60% review comments and includes the Erosion and Sediment Control plans and details, updated specifications, and an updated construction cost estimate.
11. At the 90% submittal stage, submit to the following permitting and review agencies: Sussex Conservation District for linear disturbance, DNREC for

Authorization to Construct, and DeIDOT Utility Permit; to be submitted by SCED, GMB to provide assistance.

12. Address the 90% review comments and resubmit to the review agencies and SCED 100% Contract Documents.

B. Bid Phase Services

1. Assist SCED with the advertisement to bid. SCED to place the advertisement in the appropriate newspapers.
2. Assist SCED with issuing the contract documents to prospective contractors, and maintain a record of those that have received the documents.
3. Attend and chair the pre-bid meeting and distribute meeting minutes.
4. Prepare and issue addenda as necessary.
5. Respond to potential bidder's questions.
6. Review bids received and prepare bid tabulation.
7. Provide SCED with a letter of recommendation to award.

- C. Construction Phase Services – Not included, a separate proposal can be provided.

EXCLUSION, ASSUMPTIONS, AND CONSIDERATIONS

- Excludes value engineering or substantial modification of the 30% approved submittal.
- Excludes structural evaluation of the existing wet well and existing force main and gravity sewer.
- Excludes hydraulic analysis of the manifold force main beyond the two scenarios mentioned in this proposal.
- Assumes the proposed force main along Hudson Road will be located within the Right-of-Way.
- Proposed MOT plan is based on a single lane closure and does not include any road or pedestrian detours.
- Maximum of three (3) easement exhibits.
- Excludes wage rate determination. This is best to be obtained at the time of bidding since rates typically change yearly around March 15th.
- Permitting and application fees are excluded. Permitting fees are estimated as: DNREC NOI \$195, SCD \$575, and DNREC \$825.
- Advertisement fees are excluded.
- Construction Administration and Inspection services are excluded from the proposed fee.

- It is assumed that wetlands do not exist.
- Any item not specifically indicated herein is excluded from this agreement.

FEE SUMMARY

We propose to provide the above defined Design Phase Services in accordance with EJCDC, EXHIBIT C - COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates per the following breakdown of fees:

Design Phase Services

PS and FM Design:	\$ 58,750.00
Bidding	\$ 5,000.00
Geotechnical (HCEA):	\$ 4,200.00
Electrical (Keystone):	\$ 11,000.00
Reimbursable Expenses:	<u>\$ 2,500.00</u>
Subtotal	\$ 81,450.00

TOTAL DESIGN PHASE SERVICES FEE: \$81,450.00

This proposal is valid for a period of sixty (60) days at which time GMB reserves the right to modify the fee and/or schedule.

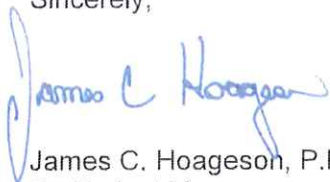
SCHEDULE

We propose to begin the Preliminary Design for this project within two (2) weeks upon receipt of this signed proposal. We estimate five (5) to six (6) months to complete 90% documents and submit to SCED and the various permitting and review agencies. Once the plans are submitted to the various permitting and approval agencies, we are no longer in control of the schedule. We will maintain communication with the agencies to facilitate the review process.

If this proposal meets with your approval, please execute in the space provided below and return one (1) copy to our office as acceptance and notification to proceed.

If you have any questions, do not hesitate to call me. We thank you for this opportunity.

Sincerely,



James C. Hoageson, P.E.
Sr. Project Manager

JCH/slh

APPROVED BY SUSSEX COUNTY ENGINEERING:

By: _____

Printed Name: _____

Date: _____

Title: _____

Phone Number: _____

Email Address: _____

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
(302) 855-7878 T
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Sussex County

DELAWARE
sussexcountye.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: May 20, 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).

The County Council held a public hearing on April 26, 2022. A motion was made to defer action on the application for a period of two weeks to May 6th for the Lewes Board of Public Works and any other member of the public to submit their reports on the well head protection issue. Subsequent to that, the Applicant would have an additional period of time until May 20th to submit any response to that.

Below are the minutes from the Planning & Zoning Commission meetings of March 10, 2022, and April 14, 2022. Also below is a link to the Council Council meeting minutes of April 26, 2022:

[Sussex County Council Minutes for Meeting of April 26, 2022](#)



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

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).

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 other land 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 are 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 plans 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

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 5th 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

DELAWARE
sussexcountype.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: May 20, 2022

RE: County Council Report for C/Z 1968 filed on behalf of Henlopen Properties, LLC

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).

The County Council held a public hearing on April 26, 2022. A motion was made to defer action on the application for a period of two weeks to May 6th for the Lewes Board of Public Works and any other member of the public to submit their reports on the well head protection issue. Subsequent to that, the Applicant would have an additional period of time until May 20th to submit any response to that.

Below are the minutes from the Planning & Zoning Commission meetings of March 10, 2022, and April 14, 2022. Also below is a link to the Council Council meeting minutes of April 26, 2022:

[Sussex County Council Minutes for Meeting of April 26, 2022](#)



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

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).

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 other land 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 are 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 plans 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

Re-Introduced: 2/22/22

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

ORDINANCE NO. ____

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

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

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

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

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

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



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: May 20, 2022

RE: County Council Report for C/U 2334 filed on behalf of Henlopen Properties, LLC

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).

The County Council held a public hearing on April 26, 2022. A motion was made to defer action on the application for a period of two weeks to May 6th for the Lewes Board of Public Works and any other member of the public to submit their reports on the well head protection issue. Subsequent to that, the Applicant would have an additional period of time until May 20th to submit any response to that.

Below are the minutes from the Planning & Zoning Commission meetings of March 10, 2022, and April 14, 2022. Also below is a link to the Council Council meeting minutes of April 26, 2022:

[Sussex County Council Minutes for Meeting of April 26, 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).

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 areas 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 included 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 other land 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 are 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 plans 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 placed 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 125th Building Permit; and
 - ii. The dog park shall be completed on or before the 150th 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

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 5th 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.

Council Grant Form**Legal Name of
Agency/Organization**

Mid-Atlantic Symphony Orchestra Society Inc.

Project Name

Performance support

Federal Tax ID

52/2038928 ✓

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 bring professional, classical Symphonic music to the Eastern Shore. This symphony is dedicated to providing classical music to patrons living on the Eastern Shore in venues in Rehoboth and Ocean View Delaware, Ocean City Maryland and Easton Maryland.

Address

P.O box 3381

Address 2**City**

Easton

State

Md

Zip Code

21601

Contact Person

Mary Lou Tietz

Contact Title

Development Officer

**Contact Phone
Number** 13025390793

**Contact Email
Address** maryloutietz@yahoo.com

**Total Funding
Request** \$1000

**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?** 3500

**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?** 15

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

**Program Category
Other**

Primary Beneficiary Category Other

Beneficiary Category Other Adults ages 18 through 80

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 1800

Scope The Mid Atlantic Symphony has expanded its programming into the Rehoboth area this year so that concerts are being held not only at Mariners Bethel in Ocean View as was the case for several years, but now at Epworth Church in Rehoboth and Cape Henlopen in the Lewes area in order to have room for expanded audiences. We are raising funds to address this increase, which is at a cost of about \$8300 to the orchestra.
A \$1000 contribution will help us meet this need as this fiscal year winds down and we approach a new season where we expect even larger audience participation.

Religious Components

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) 6,300.00

Description Personnel

Amount	2,400.00
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Description	Rent
--------------------	------

Amount	3,800.00
---------------	----------

Description	Equipment
--------------------	-----------

Amount	1,100.00
---------------	----------

Description	Supplies
--------------------	----------

Amount	1,000.00
---------------	----------

Description	
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Amount	
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Description	
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Amount	
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Description	
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Amount	
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Description	
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Amount	
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TOTAL EXPENDITURES	8,300.00
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TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	-2,000.00
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Name of Organization	Mid Atlantic Symphony
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**Applicant/Authorized
Official** Mary Lou Tietz

Date 05/07/2022

**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 with any questions.

Vincent.
(OK) 5.13

Council Grant Form

**Legal Name of
Agency/Organization**

Nanticoke River Arts Council ✓

Project Name

Gallery 107 general operating support

Federal Tax ID

74-325-9770 ✓

Non-Profit

Yes

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

No

**Organization's
Mission**

Our organization is dedicated to promoting the appreciation, practice, and enjoyment of all visual and performance art in Western Sussex County, and to advance creative endeavors, educate, and engage our community in cultural experiences. We continue to strive to be an economic and vital part of our downtown and to encourage economic activity in the surrounding area.

Address

324 High Street

Address 2

City

Seaford

State

DE

Zip Code

19973

Contact Person

Christina Darby

Contact Title President

Contact Phone Number 302-629-4321

Contact Email Address chrisdarby@att.net

Total Funding Request \$5000.00

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

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

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

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

Program Category (choose all that apply) Cultural, Educational

Program Category Other

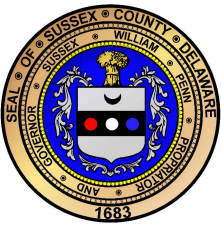
Primary Beneficiary Category	Other
Beneficiary Category Other	Tourists and residents
Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program	400
Scope	There are no other art galleries or art education facilities in the Seaford area. We feel our organization provides a cultural and educational experience for residents and tourists alike drawing visitors to downtown and supporting the economy. The gallery is an all volunteer organization with no paid employees, and all work is accomplished by its members. Gallery 107 is located downtown and provides space for local artists to show and sell their work. Art classes for children and adults are available and very popular with area residents. Since our inception, we have been active in and a contributing part of our community.
Religious Components	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	0.00
Description	Rent

Amount	1,400.00
Description	Electric
Amount	1,400.00
Description	Internet
Amount	1,150.00
Description	Security
Amount	550.00
Description	Telephone
Amount	625.00
Description	Insurance
Amount	875.00
Description	Miscellaneous including office supplies
Amount	2,475.00
Description	
Amount	
TOTAL EXPENDITURES	8,475.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	-8,475.00
Name of Organization	Nanticoke River Arts Council

**Applicant/Authorized
Official** Christina Darby

Date 05/13/2022

**Affidavit
Acknowledgement** Yes



SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

SECTION 1 APPLICANT INFORMATION

ORGANIZATION NAME:

PROJECT NAME:

FEDERAL TAX ID:

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:

ADDRESS:

(CITY)

(STATE)

(ZIP)

CONTACT PERSON:

TITLE:

PHONE:

EMAIL:

TOTAL FUNDING REQUEST:

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)

Fair Housing
Infrastructure¹

☐ Health and Human Services
☐ Other _____

Cultural
Educational

BENEFICIARY CATEGORY

Disability & Special Needs
Elderly Persons
Minority

Victims of Domestic Violence
Low to Moderate Income²
Other _____

Homeless
Youth

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.

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

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

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

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

SECTION 4: BUDGET

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

SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the _____ 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.**

Eric Reifsnnyder

Applicant/Authorized Official Signature

Date

/s/ Dale Magee

Witness Signature

Date

Completed application can be submitted by:

Email: gjennings@sussexcountype.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.

Eric Reifanyder
Applicant/Authorized Official Signature

Title

/S/ Dale Magee
Witness Signature

Date

To Be Introduced: 05/24/22

Council District 2: Mrs. Green
Tax I.D. No. 230-12.00-39.00
911 Address N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 39.33 ACRES, MORE OR LESS

WHEREAS, on the 7th day of February 2022, a conditional use application, denominated Conditional Use No. 2347 was filed on behalf of TPE DE SU94, 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. 2347 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. 2347 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 Cedar Creek Hundred, Sussex County, Delaware, and lying on the east side of North Old State Road (S.C.R. 213), approximately 0.10 mile north of intersection of Haflinger Road (S.C.R. 625), and being more particularly described in the attached legal description prepared by Becker Morgan, said parcel containing 39.33 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: 05/24/22

Council District 1: Mr. Vincent
Tax I.D. No. 432-8.00-11.00
911 Address N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 50.69 ACRES, MORE OR LESS

WHEREAS, on the 7th day of February 2022, a conditional use application, denominated Conditional Use No. 2348 was filed on behalf of TPE DE SU124, 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. 2348 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. 2348 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 Little Creek Hundred, Sussex County, Delaware, and lying on the southeast side of Sharptown Road (Rt. 24), approximately 0.20 mile northeast of Airport Road (S.C.R. 494), and being more particularly described in the attached legal description prepared by TPE Development, LLC said parcel containing 50.69 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.