



Sussex County Council Public/Media Packet

**MEETING:
June 7, 2022**

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**Sussex County Council
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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

JUNE 7, 2022

1:00 P.M.

Call to Order

Approval of Agenda

Approval of Minutes – May 24, 2022

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

1. Administrator's Report

Hans Medlarz, County Engineer

1. Artesian Wastewater Management Inc.

A. Bulk Wastewater Services Agreement – Credit Adjustment

B. Bulk Wastewater Services Agreement for the Delaware Coastal Business Park & Airport – Satisfaction of Connection Fee

2. Appraisal Services Contract Extension Request



- 3. South Coastal WRF Treatment Process Upgrade No. 3 & Rehoboth Beach WTP Capital Improvement Program, Phase 2**
 - A. General Construction, Project C19-11, Change Order No. 23**
 - B. Electrical Construction, Project C19-17, Change Order No. 18**

Grant Requests

- 1. Children’s Beach House, Inc. for Youth Development Program**
- 2. Millsboro Historical Society for Godwin School maintenance**
- 3. Greater Georgetown Chamber of Commerce for Pathways to Aviation Program**
- 4. Rehoboth Summer Children’s Theatre for operating expenses**
- 5. Town of Millsboro for Interceptor Power Bike program**

Introduction of Proposed Zoning Ordinances

Council Members’ Comments

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

Possible action on Executive Session items

1:30 p.m. Public Hearings

Change of Zone No. 1933 filed on behalf of Route 54 Limited Partnership

“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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.62 ACRES, MORE OR LESS” (property lying on the south side of Lighthouse Road [Route 54], approximately 0.39 mile east of Johnson Road [S.C.R. 390]) (911 Address: 33006 Lighthouse Road, Selbyville) (Tax Parcel: 533-18.00-59.00)

Change of Zone No. 1934 filed on behalf of Bunting Holdings, LLC

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.18 ACRES, MORE OR LESS” (property is a landlocked parcel of land lying on the south side of Lighthouse Road [Route 54] approximately 0.39 mile east of Johnson Road [S.C.R. 390] (911 Address: N/A) (Tax Parcel: 533-18.00-58.00)

Change of Zone No. 1980 filed on behalf of MARS-RE, LLC

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.91 ACRES, MORE OR LESS” (property lying on the south side of Atlantic Avenue [Route 26] approximately 475 ft. east of Powell Farm Road [S.C.R. 365]) (911 Address: 34464 Atlantic Avenue, Ocean View) (Tax Parcel: 134-11.00-191.00)

Change of Zone No. 1956 filed on behalf of Jeffrey Behney

“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 GUMBORO HUNDRED, SUSSEX COUNTY, CONTAINING 10.546 ACRES, MORE OR LESS” (property lying northeast of the intersection of E. Line Road [S.C.R. 419] and Parker Road) (911 Address: 38531 Parker Road) (Tax Parcel: 333-15.00-20.00)

Conditional Use No. 2341 filed on behalf of Caden Oplinger

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FARM TRACTOR AND TRUCK REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 20 ACRES, MORE OR LESS” (property lying on the southeast side of Shawnee Road [Route 36] approximately 0.23 mile south of Abbotts Pond Road [S.C.R. 620]) (911 Address: N/A) (Tax Parcel: 130-6.00-22.00)

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on May 31, 2022 at 4:15 p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

The meeting will be streamed live at <https://sussexcountyde.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://sussexcountyde.gov/agendas-minutes/county-council>.

#

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 24, 2022

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, May 24, 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 243 22
Approve
Agenda**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, 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 17, 2022 meeting were approved by consensus.

**Corres-
pondence**

There was no correspondence.

There were no public comments.

**Public
Comment**

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

**M 244 22
Approve
Consent
Agenda**

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

Motion Adopted: 5 Yeas

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

**FY 2023
Budget
Presentation**

Mr. Lawson and Mrs. Jennings presented the proposed \$294.1 million budget for Fiscal Year 2023.

Mr. Lawson noted that the economic constraints including rising inflation and supply chain limitations are having an affect on the County. Yet, local activity including the residential building market and the demand for County services remains at an all-time high. As a result of these and other factors, the development of the FY23 budget was one of the most difficult in recent years. He added that while the real estate market remains very healthy, the County is starting to see the building related activities taper slightly. In FY21, the County experienced record-breaking numbers for building permits and has now seen a decrease in activity in FY22 as it ends. The County is projected to process 8% fewer permits in FY23 as compared to FY22. However, the base line for the building market continues to outpace by 18% from the last peak which was in 2006. So, while the year-to-year activity is trending down, the market baseline remains in an overall strong position. Mr. Lawson reported that the proposed FY23 budget is \$294.1 million which represents an overall increase of \$16.1 million. The increase is being driven by inflation with cost drivers being fuel, insurance, equipment, utilities, and supplies. As a result of these monumental increases, the decision had to be made to exclude new incentives and limit purchases to constrain the County's already expanding budget. The County's charges for services were reviewed and any unnecessary spending was trimmed. These efforts allow the County to continue to provide the services its residents and visitors come to expect while not passing onto the taxpayers the additional cost of general operations.

Mr. Lawson noted that the County receives a bulk of its revenue each year from both property taxes and Realty Transfer Taxes known as RTT; with RTT being the largest revenue resource. In recent years, the use of RTT funding has grown to the point that RTT previously accounted for under 25% of the County's revenue; this year, it is approaching 40%. Mr. Lawson stated this is a trend that the County needs to address while looking to the future. Mr. Lawson added that relying on RTT for operations presents a risk due to the nature of the funding. In this year's budget, RTT is \$7.9 million beyond FY22's original budget and is approximately 60% of what was collected in FY21. While a trend shows that the FY23 amount is a short-term attainable level, it remains at a level that is above of what was actually collected only 6 years ago. Although RTT is the single greatest source of revenue, it is limited to the County's most critical services including paramedics, fire and ambulance companies, police, 9-1-1 dispatchers, economic development, assessment, and public works. Thus, we continue to keep pace with the population and demand for our critical services through the use of RTT. However, should RTT drop below anticipated levels, it is likely at some point in the future the County will need to seek additional revenue from the taxpayers. It is important to note that most of the revenue could be affected by economic factors out of our control. The pandemic, supply chain interruptions, national labor shortages and global inflation are prime examples.

**FY 2023
Budget
Presentation
(continued)**

Mr. Lawson highlighted some of the County’s successes of the current fiscal year: reinstated the paramedic student program at DelTech; completed the first full year of the call-taking model at the 9-1-1 Center, which required processing 124,792 9-1-1 calls; assisted more than 245 households with housing repairs; organized successful referendums establishing Pintail Pointe and North Georgetown sewer areas; distributed 1,690 COVID-19 home testing kits; closed ExciteSussex Loans in the amount of \$1.1 million – retaining 144 jobs to date; continued to fund the Western Sussex Business Park underway; phase II of the Delaware Coastal Business Park is underway; finalized the lease on a 7-acre lot at the Delaware Coastal Business Park, bring the number of tenants to four; implanted a new tracing process for the reopened civil ticketing complaints; partnered with Delaware Division of Libraries to circulate MiFi devices and Chromebooks allowing students and employees that need computer access to succeed; implanted the County’s first Transportation Improvement District generating over \$3.9 million in written agreements; invented a permit dashboard with DelDOT to track applications and streamline communication; recorded a total of 80,579 documents, highest year on record; turnaround time for electronic filings averaged 12 minutes or less; completed 23 Existing Wastewater Use Agreements totaling \$1.5 million and implanted a new “open checkbook” software for the public to see real-time expense reporting. Mr. Lawson noted that the complete list of successes are included in the budget presentation and can be viewed on the County’s website.

Mr. Lawson discussed various one-year activity showing years 2020, 2021 and 2022 projected activity. The activities discussed included constable complaints tracked, building code inspections, bills issued annually, deed documents recorded, register of will revenue, water and sewer EDUs, Miss Utility tickets, utility inspections and sewer annexations completed.

Mr. Lawson showed a graph representing 20 years of activity for building, dwelling and residential permits. Mr. Lawson pointed out that a tapering off is projected for these types of permits.

Mrs. Jennings noted that as a government entity, the County is not protected from inflation costs which is seen throughout this budget.

The budget summary is as follows:

**FY 2023
Budget
Presentation
(continued)**

| Fund | 2022 Original Budget | 2022 Revised Budget | 2023 Proposed Budget | Difference from Original |
|-----------------------|-----------------------------|----------------------------|-----------------------------|---------------------------------|
| General Fund | \$77,719,321 | \$89,935,321 | \$85,635,830 | \$7,916,509 |
| Capital Projects – GF | \$25,750,000 | \$31,306,000 | \$28,370,000 | \$2,620,000 |
| Water Fund | \$1,750,817 | \$1,750,817 | \$2,006,649 | \$255,832 |
| Sewer Fund | \$45,777,826 | \$45,777,826 | \$51,313,948 | \$5,536,122 |
| Capital Projects – WS | \$72,250,000 | \$72,250,000 | \$72,200,000 | (\$50,000) |
| Pension | \$9,266,448 | \$9,266,448 | \$9,281,168 | \$14,720 |
| American Rescue Plan | \$45,495,460 | \$45,495,460 | \$45,340,373 | \$(155,087) |
| Total | \$278,009,872 | \$295,781,872 | \$294,147,968 | \$16,138,096 |

Mrs. Jennings presented revenue highlights of the FY23 budget:

- **No increase in taxes; \$32.4 million in reserves are being used in the General Fund and Capital Budgets; \$30.4 million is RTT reserves**
- **Tax revenue is up \$602,000, or 4.0%**
- **Building related revenues are up to \$2.5 million, or 21%**
- **Realty Transfer Tax Revenue is up to \$7.9 million, or 31.7% compared to original budget**
- **Change in library fees, planning and zoning charges, EMS special event fee and the bulk water rate**
- **\$35 annual increase in water rates (\$15 of Rehoboth water and \$20 for other operating cost)**
- **\$24 annual increase in sewer rates**
- **4 sewer areas will see a decrease in assessment rates**

Mrs. Jennings shared the expense highlights of the FY23 budget:

- **Very few operational initiatives are proposed due to the increase in cost for daily operations**
- **Additional Trooper through a MOU with the State of Delaware**
- **EOC improvement**
- **Paramedic equipment replacements**
- **I.T. equipment purchase**
- **Increased public safety support (new employees and additional fire funding)**

The cost drivers in the FY23 budget include:

- **Employment costs**
- **Repairs and maintenance contracts**
- **Reassessment project**
- **Insurance (liability, cyber, vehicle, workers’ comp., etc.)**
- **Utilities (including fuel)**

Mrs. Jennings noted that most of these items have to do with public safety and the cost drivers have to do with inflation.

Mrs. Jennings reported that building related revenue has seen an increase.

**FY 2023
Budget
Presentation
(continued)**

For RTT, there is \$32.8 million included in the FY23 budget. Mrs. Jennings shared pie charts showing how much the budget is relying on RTT funding. In the original budget for FY22, 32% of RTT funding was used to balance the budget; in the amended FY22 budget, 41% of RTT funding was used. In the proposed FY23 budget, 38% RTT funding is being used to balance the budget.

Mrs. Jennings shared the RTT expenses for the FY23 proposed budget. In the FY21 budget, RTT was used 100% for public safety. In the FY22 budget, 94% was used for public safety, 5% for economic development and 1% for public works. In the proposed FY23 budget, RTT expenses are budgeted for 86% public safety, 10% assessment, 3% economic development and 1% public works.

Mrs. Jennings then discussed restrictive reserves. She noted that in 2018, the savings were starting to be spent. In FY23, it is planned to use \$917,000 of reserves.

Mrs. Jennings reported that it is being proposed to increase all late fees for overdue materials for libraries to \$0.25. Currently, books are \$0.10 and DVD's are \$1.00. This would maintain uniformity and standardization across all libraries in Sussex County. The independent libraries and their Board of Trustees have voted unanimously for this change in fee structure.

Another proposal is to increase the special event fee for EMS from \$60 to \$75 and EOC from \$40 to \$50 with contracts that are entered into after July 1, 2022. Mrs. Jennings noted that this fee has not change since 2018 and the cost to send a paramedic using OT and our vehicle is no longer being covered by the current charges.

The Planning and Zoning Department is also proposing to increase or add charges for services. The increases include conditional use, change of zone and board of adjustment applications. Other charges such as minor subdivisions code changes are adjusted as well. Mrs. Jennings explained that the fees do not adequately cover the cost of the requested services. A summary of the proposed changes are as follows:

| Description | Current Charge | New Charge |
|--|---------------------|---|
| Minor subdivision (1 – 5) | \$0 | \$0 - \$200 plus \$20/lot |
| Lot adjustment/consolidation | \$0 | \$150 |
| Variance application | \$400 | \$500 - \$800 |
| Amend Comp Plan/Zoning Ordinance | \$0 | \$1,000 |
| Conditional Use | \$500 | \$500 - \$1,000 plus \$50/dwelling unit |
| Major Subdivision Application | \$500 plus \$10/lot | \$1,000 plus \$50/dwelling unit |
| Commercial Site Plan Review (by right applications within an approved zoning district) | \$0 | \$100/1,000 SF capped at \$5,000 |

**FY 2023
Budget
Presentation
(continued)**

Mrs. Jennings reported the larger general fund expenditures by function: public safety (31.3%), grant-in-aid (25.8%), general government (23.1%), library (4.2%), planning and zoning (3.9%), community development (3.5%), constitutional offices (3.2%), engineering (2.6%) and economic development (2.4%).

Mrs. Jennings noted the following budgeted expenditures: employment costs (49.7%), grant-in-aid (25.8%), contractual services/utilities (11.2%), programs and projects (4.6%), supplies/fuel (2.9%), machinery and equipment (2.3%), professional services (2.1%), other financing uses (0.9%) and training and travel (0.5%).

Mrs. Jennings shared that there are 16 new positions included in this budget. The majority of the positions (14) have to do with public safety. In this budget, there are 4 additional dispatchers and 4 additional paramedics. Also included is starting back up the Del Tech program with 6 paramedic students. Additionally, there are positions in engineering, human resources, marriage bureau and community development. Mrs. Jennings noted that some of these positions are being funded with ARPA funds which are temporary funds. If it is desired to keep them once those funds run out, RTT funds can then be used. There is also a part-time position being added in Economic Development to help with the kitchen incubator. Mrs. Jennings showed a chart displaying staff from 2009 until now. She noted that the increase of staff members mostly has to do with public safety.

Mrs. Jennings discussed grant-in-aid: public safety (\$10.2 million), economic development (\$3.5 million), libraries (\$2.8 million), community assistance (\$1.7 million), open space (\$1.4 million) and accommodation tax eligible expense (\$2.0 million).

Mrs. Jennings reviewed public safety; there is an increase of about \$1.2 million over the FY22 budget. As previously mentioned, the State Police is going up to include an additional trooper to make it 23 funded by Sussex County. Local Law Enforcement is staying the same and Fire/BLS has increased. The increase is based on a request from SCVFA for \$36,400 per company to help with EMT wages and \$25,500 for CAD equipment for their special operations vehicle. Mrs. Jennings noted that funding for public safety comes from RTT and the pass-through building permit fire service fee.

Mrs. Jennings reviewed the sewer funds; it has increased year over year. This year, the sewer budget is seeing a \$6 million increase, mostly due to inflation. Mrs. Jennings shared how the sewer fund is supporting the increase. She further explained that it is being done by multiple ways. First, some requested purchases were forgone, an increase is being requested in the service charge of \$24/year (8.1% increase), as expansion occurs, new services are coming on and increasing the use of connection fees. The current rate is \$296; the proposed rate is \$320.

**FY 2023
Budget
Presentation
(continued)**

Mrs. Jennings reviewed the assessment rates; they are decreasing in some areas. She further explained that as we continue to grow our system, this debt in each area will be brought down.

Mrs. Jennings reviewed the water funds; the major increases are repairs and maintenance and the Ellendale Artesian contract to repair the Dewey Beach water tower. Mrs. Jennings explained how the water fund is supporting the increase. These include: using some savings, adding an EDU for every irrigation system (24), 4 new connections plus Ellendale's revenue, increase the cost per EDU by \$35 annually, fire service fee created last year, tower rents increased and penalty and interest income. The current rate is \$342; the proposed rate is \$377.

Mrs. Jennings reviewed GF capital revenue sources: reserves (\$26,292,500), intergovernmental grants (\$2,027,500) and interest (\$50,000).

Mrs. Jennings reviewed GF capital expenditures. She noted that due to property acquisitions, Administration costs are higher than airport and business. Typically, airport and business are the highest cost. She added that when the budget was amended last year for open space to preserve land, there is about \$3 million left over. In addition, \$3 million was added for this year, therefore, there is a total of \$6 million for open space for purchases made by the County.

Mrs. Jennings reviewed sewer and water capital expenditures; many are ongoing projects.

The budget book and presentation can be found on the County's website at www.sussexcountyde.gov. Budget comments can be sent to budget@sussexcountyde.gov.

Mr. Rieley introduced the Proposed Ordinance entitled "AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2023"

Mr. Rieley introduced the Proposed Ordinance entitled "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"

Mr. Rieley introduced the Proposed Ordinance entitled "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"

The Proposed Ordinances will be advertised for a Public Hearings, which will be held on June 21, 2022.

Board and Commission Appointments

Mr. Lawson presented various board and commission appointments for Council's consideration. The Aging Committee has two appointments; one by Mr. Hudson – Linda Forte which is a reappointment for a term to conclude May 2023 and one by Mr. Schaeffer – Scott Phillips who is returning to the committee for a term to conclude May 2023. For the Board of Adjustments, Mr. Vincent has a reappointment of Kevin Carson for a term to conclude June 2025, Mr. Schaeffer has a reappointment of Jeffrey Chorman for a term to conclude June 2025 and Mr. Rieley's has a reappointment of John Hastings for a term to conclude of June 2025. The Farmland Preservation Advisory Board has one appointment from Mrs. Green of Jennifer Scott for a term to conclude May 2026. In addition, Mr. Lawson explained that the Farmland Preservation Advisory Board requires one member from the Council to serve as Chairman; it is his understanding that the Council would like to appoint Mr. Rieley to that role. For the Library Advisory Board, Mr. Schaeffer has an appointment of Candace Collette Vessella for a term to conclude June 2026 and Mrs. Green's has an appointment of Dorothy Rowan for a term to conclude June 2026. For the Planning and Zoning Commission, Mr. Vincent has a reappointment of Bob Wheatley for a term to conclude June 2025.

M 245 22 Approval of Various Board and Commission Appointments

A Motion was made by Mr. Hudson, seconded by Mr. Rieley that be is moved that Sussex County Council approves the various appointments to the select boards and commissions 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

Administrator's Report

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

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, Coastal Station – Phase 2 (Construction Record) and Sycamore Chase (FKA Willow Run) – Phase 1.1 (Construction Record) received Substantial Completion effective May 16th and May 19th, respectively.

2. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for April 2022 is attached listing the number of violent crime and property

Administrator's Report (continued)

crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 191 troopers assigned to Sussex County for the month of April.

3. Holiday and Council Meeting Schedule

A reminder that County offices will be closed on Monday, May 30th, to observe the Memorial Day holiday. In addition, Council will not meet on Tuesday, May 31st. The next regularly scheduled Council meeting will be held on Tuesday, June 7th at 10:00 a.m.

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

**LBPW
WWTF
Planning
Study**

Hans Medlarz, County Engineer presented a request for co-funding for the Lewes Board of Public Works Wastewater Facility long range planning study for Council's consideration. The request is to fund 50% of the long-term planning study.

**M 246 22
Approve
LBPW
WWTF
Planning
Study**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley that be it moved, based upon the recommendation of the Sussex County Engineering Department, that County Council approve to fund 50% of a long-range study for the Lewes Board of Public Works, in the amount of \$124,250.00, contingent upon the Lewes Board of Public Works approval utilizing allocated ARPA.

Motion Adopted: 5 Yeas

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

**FY 2022
General
Labor &
Equipment**

Hans Medlarz, County Engineer presented a balancing change order for FY 2022 General Labor and Equipment Contract, Project 22-01 for Council's consideration. Mr. Medlarz explained that the contract was broken out into two bid packages; bid package A included the general responses and bid package B included the specialized drilling, jacking and boring, etc. Therefore, there are two contract extensions based on performance.

**M 247 22
Approve
JJID/
Contract
Extension**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley that be it moved, based upon the recommendation of the Sussex County Engineering Department that Change Order No. 2 of JJID's bid package A, for contract #22-01, FY22 general labor and equipment, be approved, which increases the contract amount by \$650,000 for a new total of \$3,400,000 and to approve the first one-year contract extension in the amount of up to \$2,000,000, at the unit prices previously bid.

Motion Adopted: 5 Yeas

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

**M 248 22
G&L/
Contract
Extension**

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. 2 of George & Lynch's bid package A, for contract #22-01, FY22 general labor and equipment, be approved, which increases the contract amount by \$600,000 for a new total of \$4,600,000 and to approve the first, one-year contract extension in the amount of up to \$2,500,000 at the unit prices previously bid.

Motion Adopted: 5 Yeas

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

**M 249 22
Approve
G&L Bid
Package B**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson that be it moved, based upon the recommendation of the Sussex County Engineering Department that Council approve George & Lynch's Bid Package B, for contract #22-01, FY22 General Labor & Equipment contract, for the first, one-year contract extension in the amount of up to \$1,500,000.00, at the unit prices previously bid.

Motion Adopted: 5 Yeas

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

**FY21 Ocean
Outfall
Inspection**

Mark Parker, Assistant County Engineer presented repair and inspection actions for the FY21 Ocean Outfall Inspection, Project G21-06 for Council's consideration. Mr. Parker explained that there are some additional repairs needed to the exposed portion of the pipeline at the ocean floor as well some additional observations in the surf zone.

**M 250 22
Approve
FY21 Ocean
Outfall**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, that be it moved upon the recommendation of the Sussex County Engineering Department, that the proposal from Specialty Underwater Services for repair and addition inspections services related to the Ocean Outfall System in the amount of \$64,250 be approved.

Motion Adopted: 5 Yeas

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

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

**GMB/
Design &
Bid
Phase/Oak
Acres**

John Ashman, Director of Utility Planning and Design Review requested permission to authorize GMB to design the gravity collection system for Oak Acres to connect the pumpstation. The infrastructure will serve 55 parcels and will be an hourly contract.

**M 251 22
Approve
Design &
Bid
Phase/Oak
Acres**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley that be it moved upon the recommendation of the Sussex County Engineering Department, that the engineering services agreement with George, Miles & Buhr be approved in the amount not to exceed \$68,940 for the design, permitting and bidding phases of Sussex County project S22-24, Oak Acres.

Motion Adopted: 5 Yeas

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

**GMB/
Design &
Bid Phase/
Pintail
Pointe**

John Ashman, Director of Utility Planning and Design Review requested permission to authorize GMB to design the new pumpstation and force main for Pintail Pointe to connect to the existing regional force main. The infrastructure will serve 39 parcels and will be an hourly contract.

**M 252 22
Approve
Design &
Bid Phase/
Pintail
Pointe**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson that be it moved upon the recommendation of the Sussex County Engineering Department, that the engineering services agreement with George, Miles & Buhr be approved in the amount not to exceed \$81,450 for the design, permitting and bidding phases of Sussex County project S21-16, Pintail Pointe.

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/
CZ1967**

Mr. Whitehouse presented a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDNETIAL 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" filed on behalf of Henlopen Properties, LLC. Mr. Whitehouse reminded Council that a public hearing was held before them on April 26, 2022. At the conclusion of that hearing, a motion was made to defer action on the application for a period of two weeks to May 6th to allow the

Lewes Board of Public Works and any other member of the public to submit their reports on the wellhead protection issue. Subject to that, the applicant would have an additional period of time until May 20, 2022 to submit any response to that document. Mr. Whitehouse confirmed that both of those documents were submitted in time as per the date specified in Council's motion and have been circulated in paperless packets.

**M 253 22
Close Public
Record/
CZ1967**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to close the record for a Proposed Ordinance entitled "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".

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/
CZ1968**

Mr. Whitehouse presented a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS" filed on behalf of Henlopen Properties, LLC. Mr. Whitehouse reminded Council that a public hearing was held before them on April 26, 2022. At the conclusion of that hearing, a motion was made to defer action on the application for a period of two weeks to May 6th to allow the Lewes Board of Public Works and any other member of the public to submit their reports on the wellhead protection issue. Subject to that, the applicant would have an additional period of time until May 20, 2022 to submit any response to that document. Mr. Whitehouse confirmed that both of those documents were submitted in time as per the date specified in Council's motion and have been circulated in paperless packets.

**M 254 22
Close Public
Record/
CZ1968**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to close the record for a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS".

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/
CU2334**

Mr. Whitehouse presented a Proposed Ordinance entitled “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” filed on behalf of Henlopen Properties, LLC. Mr. Whitehouse reminded Council that a public hearing was held before them on April 26, 2022. At the conclusion of that hearing, a motion was made to defer action on the application for a period of two weeks to May 6th to allow the Lewes Board of Public Works and any other member of the public to submit their reports on the wellhead protection issue. Subject to that, the applicant would have an additional period of time until May 20, 2022 to submit any response to that document. Mr. Whitehouse confirmed that both of those documents were submitted in time as per the date specified in Council’s motion and have been circulated in paperless packets.

**M 255 22
Close Public
Record/
CU2334**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to close the record for a Proposed Ordinance entitled “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”.

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 256 22
Mid-
Atlantic
Symphony**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,000 (\$500 from Mr. Schaeffer’s Councilmanic Grant Account and \$500 from Mr. Hudson’s Councilmanic Grant Account) to the Mid-Atlantic Symphony Orchestra Society, Inc. for their program expansion.

Motion Adopted: 5 Yeas

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

**M 257 22
Nanticoke**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$2,000 (\$2,000 from Mr. Vincent’s Councilmanic account) to Nanticoke

River Arts Council

River Arts Council for general operations.

Motion Adopted: 5 Yeas

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

**M 258 22
Lewes Fire
Department,
Inc.**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to give \$2,000 (\$1,000 from Mr. Schaeffer's Councilmanic Grant Account, \$500 from Mr. Hudson and Mr. Rieley's Councilmanic Grant Accounts) to Lewes Fire Department, Inc. for sUAS (Drone) program aid.

Motion Adopted: 5 Yeas

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

**Introduction
of Proposed
Ordinances**

Mrs. Green introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A 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"

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 50.69 ACRES, MORE OR LESS"

**Council
Member
Comments'**

The Proposed Ordinances will be advertised for Public Hearings.

There were no Council Member comments.

**M 259 22
Go Into
Executive
Session**

At 11:17 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to pending/potential litigation, and land acquisition.

Motion Adopted: 5 Yeas.

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

Executive Session **At 11:30 a.m., an Executive session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to potential/pending litigation, and land acquisition. The Executive Session concluded at 11:57 a.m.**

M 260 22 Reconvene **At 12:01 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to come out of Executive Session and into Regular Session.**

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 261 22 E/S Action/Parcels 2022-H, I, J **A Motion was made Mr. Schaeffer, seconded by Mr. Hudson to authorize the County Administrator to negotiate, enter into a contract and proceed to closing on parcels identified as 2022-H, 2022-I and 2022-J.**

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 262 22 Recess **A Motion was made by Mr. Hudson, seconded by Mrs. Green to recess until 1:30 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**

M 263 22 Reconvene **At 1:30 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson to come out of recess back 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**

Appeal of Denial of Subdivision Application No. 2021-06/ Coral Lakes **The Council considered 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).**

Mr. Vincent introduced The Honorable Charles H. Toliver, IV, Superior Court Judge Retired, who presided over the appeal hearing and ruled on matters of procedure.

**Appeal of
Denial of
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

Judge Toliver reported that today hearing is an appeal by Schell Brothers, LLC represented by Ms. Mowery, Mr. Moyer and Mr. Micha from Richards, Layton & Finger. The respondent is the Sussex County Planning and Zoning Commission represented by Mr. Robertson from Parkowski, Guerke and Swayze.

Judge Toliver reviewed the basic matters of procedure for the appeal hearing. Judge Toliver reported that he met with Counsels on or about May 5th to outline the procedures. In addition, both sides submitted written submissions and the Planning and Zoning Counsel had the first opportunity to respond to what had already been filed on May 13th. Schell Brothers then replied on May 19th. He advised that subdivision appeals are totally based on the record and that no new evidence would be allowed. The record reflects that the last submission to start the process was on January 18, 2022. There was a hearing on January 27, 2022, at which time a decision was deferred. A further hearing was conducted on February 10, 2022, where the matter was presented again. On March 7, 2022, there was a request to grant application due to the failure to comply with the 45-day rule. On March 10, 2022, the denial of the application to approve. The appeal was completed on April 4, 2022, within the 30-day period of time. The standard is clear, was Commission's decision to resolve the orderly and logical review of the evidence and did it involve the proper interpretation and application of the law and/or chapter of the law involved. Judge Toliver stated that he considers there are three errors of law. One being there was no automatic approval and the 45-day period had expired, second being that there is a failure to act upon the motion to grant it following the request and the third being a failure to state a basis for the decision; there was no basis for the denial due to all of the criteria having been met according to the appellants.

Kate Mowery, Attorney at Richards, Layton & Finger, P.A. was in attendance to present the Appeal on behalf of the Appellant, Schell Brothers, LLC. Also in attendance with her was Jeff Moyer, Phil Micha from Richards, Layton & Finger as well as Jon Horner, Counsel from Schell Brothers. In addition, engineers from GMB were also present who have been working on the project.

Ms. Mowery stated that the question here is whether the Commission's March 10, 2022, denial of Schell's preliminary subdivision plat was the result of an orderly and logical review of the evidence and involved the proper interpretation and application of the law. Ms. Mowery added that on both points, the Commission fell far short in this circumstance. The Commission did not perform an orderly and logical review of the evidence and did not apply the proper interpretation and application of the law. Ms. Mowery noted that the Council members are sitting in a different role than they normally do. In this situation, the members are here to apply the law to the facts and review the Commission's decision to determine if it applies to County Code and State Statue.

Appeal of Denial of Subdivision Application No. 2021-06/ Coral Lakes (continued)

Ms. Mowery stated that in the determination today, the Council has full discretion to reverse the decision of the Planning and Zoning Commission which is what she is advocating. Ms. Mowery referenced Subdivision Code 99-39(B)(2)(b) which states “the Council may reverse a decision upon: a finding that the Commission made an error in its interpretation of the applicable sections of this Chapter; or the Commission’s findings and conclusions were not the results of an orderly and logical review of the evidence and the applicable provisions of this chapter”.

Ms. Mowery discussed the timeline of the Application. On November 25, 2020, was the initial submission of Schell Brothers preliminary plat application. On January 18, 2022, Schell provided application materials in support of approval of its Plat to the Commission pursuant to Rule 15.3.1 of the Rules of the Planning and Zoning Commission [10 days prior to the hearing]. January 27, 2022, a public hearing was held on the preliminary plat application and Commission deferred a decision. February 10, 2022, the Commission deferred assessment and no assessment was scheduled for February 17, 2022, which was the next scheduled meeting of the Commission. On March 7, 2022 [48 days from 1/18 submission] Schell wrote to Commission pursuant to 9 Del. C 6811 requesting that the Commission deem the Plan approved because it had been over 45 days since submission. On March 10, 2022, Commissioner Stevenson moved for approval of the plat, explained how the evidence in the record supported the motion, the motion was seconded and then denied in a vote 4-1 with no findings or conclusions provided in support of the denial. On April 4, 2022, Schell Brothers appealed to the Council with transcript. June 3, 2022 is the deadline for a decision from Council pursuant to Subdivision Code 99-39(B)(2)(c) [60 days from date of transcript].

Ms. Mowery mentioned that the March 10th was a shock to many involved; what appeared to happen was that the Commission yielded to the opinions of a small but vocal group of individuals that had opposed Schell’s project. She added that there was no basis provided under the law for denial. Ms. Mowery noted that almost two-thirds of the opposition letters submitted to the Commission in opposition were from just three communities adjacent to Coral Lakes. The opposition letters that were received did not provide a reason for denial. All of the requirements of the subdivision and zoning codes were met and there is not a disagreement on that in the Commission’s response. Ms. Mowery noted that political whims and personal opinions have no place in the Commission’s subdivision considerations.

During the March 10th meeting, Mr. Robertson correctly explained that there are guardrails to protect applicants and ensure a fair process in the subdivision process. One of those guardrails is 9 Del. C. § 6811 which has been referred to as of the 45-day requirement. This code section states, “the Commission shall approve or disapprove a plat within 45 days after the submission thereof; otherwise, such plat shall be deemed to have been approved and a certificate to that effect shall be issued by the Commission

**Appeal of
Denial of
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

upon demand”. Ms. Mowery noted that the importance of this is so that applications do not sit for a long period of time in limbo and ensure that all applicants receive a fair process.

Ms. Mowery stated that the Delaware Supreme Court has also spoken on other guardrails that define the Commission’s power and discretion to approve or disapprove a subdivision plat. Ms. Mowery referenced the *Tony Ashburn vs. Kent County Regional Planning Commission* case. In this case, the Delaware Supreme Court explained that the Commission acts in a quasi-judicial capacity in terms of subdivision applications and does not have unfettered discretion to deny and otherwise legally conforming subdivision application. In addition, the Commission must review the application and if within compliance with the codes, approve it. She added that it does have some discretion in taking in consideration different factors, but those would be considered in terms of conditions on the approval. If the code is not met, then it can be denied. In this situation, everything met the code and yet, the application was denied. The Delaware Superior Court gave reasons for these guardrails in the *Tony Ashburn vs. Kent County Regional Planning Commission* decision. Ms. Mowery read the following from the decision “When people purchase land zoned for a specific use, they are entitled to rely on the fact that they can implement that use provided the project complies with all of the specific criteria found in ordinances and subject to reasonable conditions which the Planning Commission may impose in order to minimize any adverse impact on nearby landowners and resident. To hold otherwise would subject a purchaser of land zoned for a specific use to the future whim or caprice of the Commission by clothing it with the ability to impose ad hoc requirements on the use of land not specified anywhere in the ordinance. The result would be the imposition of uncertainty on all landowners respecting whether they can safely rely on the permitted uses conferred on their land under the zoning ordinances”. Ms. Mowery stated that in this case, the Commission’s decision did just that; left Schell Brothers with a lot of uncertainties with respect if they could rely on their permitted uses conferred on their land. She added that this was after Schell had spent substantial time and resources on its application.

Ms. Mowery stated that the Commission is aware of these guardrails. In addition, during the March 10th meeting, Mr. Robertson correctly defined these guardrails on Schell’s application. During that meeting, Mr. Robertson stated “subdivisions are by Delaware Code and Delaware Law, the Delaware Supreme Court as a matter of fact, they are governed by the County subdivision and zoning code”. She added that if it is a permitted use and meets all of the requirements of the specific code, the zoning of the subdivision code is permitted. In addition, it is conditioned on certain aspects but that also has to be based upon the record. She added that Mr. Robertson added that a lot of people feel like it should be approved in this location, or it shouldn’t be approved because there is too much traffic, or it shouldn’t be approved because there are other subdivisions in the area, or they just don’t want it and believe the land should be left vacant. Ms. Mowery further explained that Mr. Robertson explained to the Commission

**Appeal of
Denial of
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

that is not what the law says, he then went on to explain the Commission's guardrails and to reiterate that a decision cannot be based on opinions. Instead, the Commission must review the evidence in the record against the zoning and subdivision codes and if compliance, approve the application. Ms. Mowery noted that the Commission did not heed that advice and went through those guardrails and instead it appears they took their judicial caps off and put legislative caps on. Due to those reasons, it is grounds for a reversal today.

Ms. Mowery discussed what she believes to be three errors that were made by the Commission. The first argument is the Commission's failure to approve or disapprove Schell's preliminary plat within 45-days of its submission pursuant to 9 Del. § 6811 as an error of law and a failure to logically and orderly review the evidence. There was also an error in not deeming the plat approved when Schell demanded it be so after 45 days. Ms. Mowery further explained that Schell submitted their original application in November 2020 and the final materials and support were submitted on January 18, 2022. As of March 7, 2022, which was 48 days after the January submission, the Commission had not approved or disapproved the plat. So, Schell reached out to the Commission asking the plat to be deemed approved and the Commission did not do so. Ms. Mowery stated that was a clear violation of the DE Code as previously discussed. Schell's interpretation is based on the expressed language that submission of a plat is exactly that; the date the plat is submitted to the Commission which in their view is November 2020 and at the very latest, January 18, 2022. Ms. Mowery stated that the Commission's view is that they acted within the 45-day window because the submission does not occur until the close of the record after a public hearing and there were less than 45 days between the close of the record on January 27th and decision on March 10th. Ms. Mowery stated that the Commission's interpretation does not follow the expressed language of the code. Ms. Mowery stated that there is no support for that position. In addition, language is being added in to suggest that the Commission should approve or disapprove a plat within 45-days after the submission and public hearing thereof which is not in the statute, the Sussex County Code or the Commission's procedures. In fact, the sources that the Commission cites are in support of Schell's position. In the subdivision code, the procedures are laid out, where the submission is separate in part of the public hearing. In Section 99-8, the title states "Submission of the Preliminary Plat" which lays out the process for submitting your preliminary plat. In the next Section 99-9, the title is "Public Hearing on Preliminary Plat Approval or Disapproval". Ms. Mowery pointed out that it is another separate section on Public Hearing; there is nothing that suggests that one has to be completed in order for there to be a submission.

Ms. Mowery stated that there is good reason for this, the Commission's interpretation would basically allow it to hold open the record for as long as they wanted. In the Commission's response, it states that there may be questions or allow public comment, this means that the hearing could remain open as long as they wish; that would deny procedural due process

**Appeal of
Denial of
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

to the applicants as previously discussed. The Commission also argued that it is not practical to have the submission of the plat application in November 2020 be the deadline to trigger the 45-day deadline rule because there is too much work to be done. Ms. Mowery stated that if the procedure that is required as part of the subdivision application takes longer than 45 days, then they need to be amended and are in violation of the Delaware Code as presented. For these reasons, it is apparent that the Commission erred in its application of the Delaware Code and interpreted the Subdivision Code in violation of the Delaware Code and did not proceed with an orderly or logical review of the evidence. Ms. Mowery stated that the remedy is approval by Council of Schell's plat application as the application was submitted to the Commission. For this violation, the 45-day requirement, the remedy is reversal; approval of the plat as submitted. Ms. Mowery explained that there is nothing else provided in this code provision for any other remedy other than being deemed approved as submitted. She added that remanding here does not make sense; it would further violate the 45-day requirement set by the Delaware Code and extend the time Schell's application is in limbo.

The second argument for Schell on the appeal is that all of the requirements were met of the Subdivision and Zoning Codes and the Commission did not approve the plat. This is a legal error under Supreme Court law and a failure to proceed with an orderly and logical review. As explained earlier, the Commission's power to review land use applications was delegated by the General Assembly but also has some guardrails. She added that the Commission did not stay in those guardrails. Ms. Mowery reviewed the "guardrails", per Commission counsel: Guardrails are set on the Commission's consideration of a subdivision. It cannot be "based on opinions. It has to be made based on the record and applying that record to the law." (pp.171-72). If the project meets all requirements of the zoning and subdivision codes then it is permitted. (p. 169)

As a result of this clear misapplication of the Sussex County Code and illogical review, the Council has the discretion per 99-39(B)(2)(b) to reverse the Commission's denial and approve Schell's application. Ms. Mowery stated that it should be approved as submitted since no reasons were given for denial. In addition, the motion itself presented by the Commission stated all of the reasons Schell met all of the requirements of the subdivision and zoning codes. For the denial, there were no reasons given to the extend the Council wishes to place conditions on the cluster subdivision, it is proposed that the Council include only those submitted by Schell in its Coral Lakes proposed conditions of approval submitted on January 18th. Ms. Mowery stated that remand is inappropriate because there is nothing to fix on remand. All of the evidence has been gathered, questions have been answered, opposition heard, and the record was closed. Therefore, to send it back down for another hearing is only prejudicial to Schell who has already put forward its entire presentation in support of its application.

The third argument in Schell's appeal is that the Commission provided no

**Appeal of
Denial of
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

findings and conclusions for its denial of their preliminary plat rendering their decision illogical and not orderly. This is a violation of 9 Del. C. § 6811, Section 15.4 of the Commission’s Rules of Procedure and procedural due process. The Commission did not argue that it did provide any findings and conclusions in support or denial and the record provides reasons for approval including the Commission’s motion itself. The only remedy is reversal, the Commission had a complete record and a chance to issue its decision by applying the law to evidence which they failed to do properly. Ms. Mowery stated that Schell should not be punished for the Commission’s failure to follow the law.

Ms. Mowery provided reasons that reversal is required which were previously discussed. Here based on the record and the Commission’s action, it is a clear-cut situation where reversal is necessary to address the errors.

Mr. Rieley asked if Ms. Mowery was suggesting that if it was remanded back to the Planning and Zoning Commission, that there would be no possibility that they could deny the application. Ms. Mowery replied that she believes that it should not be remanded at all because the hearing was closed. In addition, the Commission stated that no additional questions were needed and a motion to approve the plat was made. Everything included in the record was in support of the plat application being approved and all of the subdivision and zoning ordinances were met.

Mr. Schaeffer asked what rule was not met when the Commission did not provide reasons for their vote. Ms. Mowery replied 9 Del. C. §6811, it says “the grounds of disapproval by any plat shall be stated upon the records of the Commission and a copy of such statement shall be furnished to applicant.” Mr. Schaeffer asked if the debate and decision prior to the vote considered a reason for denial or approval. Ms. Mowery replied no, that is prior to the actual disapproval itself.

Vince Robertson, attorney for the Sussex County Planning and Zoning Commission and Parkowski, Guerke and Swayze came forward to present on behalf of the Planning and Zoning Commission. Mr. Robertson stated that the 45-day requirement was the heart of this and how the County processes any subdivision application. Mr. Robertson added that it is the Commission’s position that they have been complaint with State Code in that regard. There was reference in Schell’s submission that there was a conflict with County Code, however, this is all driven by Title 9. Mr. Robertson explained that State Code Title 9 establishes both the trigger date and a great deal of the prehearing processes; Chapter 99 fills in the gaps in what is set out in Title 9. Mr. Robertson explained that Section 69-61B establishes the “TAC” (Technical Advisory Committee), it discusses sending out these subdivision applications to other state agencies for review. Title 9, Section 6962 talks about DelDOT and the interplay between Sussex County and DelDOT on a subdivision application. Mr. Robertson explained the substantial lift for the County, DelDOT, applicant and the engineers

**Appeal of
Denial of
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

involved. He added that it often includes a TIS review letter that does not come back quickly due to a lot of technical work and negotiations that go into them. Mr. Robertson emphasized that you have to read Section 68-10 and 68-11 not by themselves but with the other provisions of the State Code.

Mr. Robertson pointed out that you must then have staff review; the argument is that if the plat is compliant, it must be approved. Mr. Robertson explained that you are not able to just take someone's word that it is complaint, there has to be a staff review that occurs to ensure that the plat submitted is complaint with the County's subdivision code. Then, there are public notices requirements that have to be met per Section 68-11. This requirement includes publishing in two newspapers in general circulation which takes about 3 to 4 weeks of lead time to make newspaper deadlines to hit the hearing dates. In addition, there are FOIA requirements that must be complied with in terms of agendas. Mr. Robertson referenced Title 9 Section 68-11 which states "no plat shall be acted on by the Commission without affording a hearing thereon as outlined in Section 68-12 of this title and notice of the time and place of which must be sent by registered mail, etc.". Despite what Schell has argued that the public hearing is not part of the submission, the language in Section 68-11 references that you have to have a public hearing. In that same section, it discusses the 45-days, therefore, when all of that is read together, the logical conclusion is that the 45-days starts after the closure of the public record on any application for a subdivision. Mr. Robertson stated that even if it was possible that all of that could occur within 45-days, last minute information and data would be dealt with and a meaningful hearing, deliberation and vote would be just about impossible.

For the 10-day rule if applied, it would shrink that timeline even further because then you would be down to essentially 35 days to gather all of your information and know what it is. In addition, the applicant would need to present a meaningful submission and public hearing to the Commission and be able to make a presentation that makes sense. In this case, this was not a 10-lot subdivision, it was a 315-lot subdivision. Mr. Robertson explained that it would be difficult to gather all of that data within 45-days, make a public hearing and have one shot at it because there would not be an opportunity to defer taking action to consider all of the information that was thrown at everyone in 45-days. Mr. Robertson stated that it does not make sense from a statute point of view or a commonsense point of view.

Mr. Robertson added in addition, there is a pipeline of applications going on that makes it even further impractical. Mr. Robertson stated that Schell suggested that the 10-day rule in the Planning and Zoning Commission's rules is the date of submission. Mr. Robertson replied that is not so, it is the closure of the public record and there is some language in that rule that supports that. The first point is that it states in the rule "it applies to information to be presented in support of an application". Mr. Robertson added that has to do what is going to be relied upon during that public hearing to include the notebook, power points, etc. so that the Commission

**Appeal of
Denial of
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

has the information, and the public has the opportunity to review it. Mr. Robertson explained that the reason behind that is so that there is a good public discourse and that the Commission is not sandbagged with information at the last minute that nobody is aware of and not able to be prepared for. The second point under that rule states “whatever is provided must be given to the Commission secretary not later than 10 calendar days prior to the meeting of the Planning and Zoning Commission at which the application is to be presented and heard”. Mr. Robertson pointed out that this also means that this sets the last possible day for providing the information; it does not state the earliest possible day for providing that information. So, under Schell’s argument that the 10-day rule applies in the Planning and Zoning Commissions rules, if that is the case, anyone could submit documents 46-days prior to the hearing and then on the day prior to hearing, notify the Commission that the 45-days have expired so their submission must be approved without ever having a public hearing on the application. In addition, the applicant can gain the system by providing its information 46-days for example prior to the hearing and then claim that it’s application could be approved which does not make sense.

Mr. Robertson explained that this is the due process impact of what is being dealt with in this case. There is another element of due process that is important here and that is of the public. On these subdivisions, public hearings must be held to ensure that the law is complied with and participants in that public hearing process are members of the public. So, the 45-day requirement rule cannot be interpreted in a way to exclude the public from participating in the process.

Mr. Robertson added that if the 45-day rule requirement is used that Schell is arguing for, a due process violation would be received. This would occur potentially because not only not having a public hearing but that 45-days might run in the midst of the public hearing. A complete record is needed to be able to decide in favor of or against a subdivision application. Mr. Robertson noted that often times there is information missing from a subdivision application; the complete information is not received from DeIDOT or the information from DeIDOT is not understood because additional information is required. Due to timing or unclear information, there may be questions regarding septic feasibility or sewer capacity for a subdivision. In addition, there are questions that come out of the PLUS review process which occurs frequently. Mr. Robertson stated that if we were to stop this process because of some 45-day date circled on a calendar without holding the record open to get answers to these questions, a disservice to the public, ourselves and the applicant have been completed. He added that it would almost force the Commission to act on something with an incomplete record which may not shine a favorable light on an applicant. Therefore, it is in everyone’s best interest to have a complete record that can possibility be made with regard to these hearings.

A discussion was held about the interpretation of the 45-day rule.

**Appeal of
Denial of
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

Mr. Robertson stated that there is only one logical conclusion that complies with due process, the provisions of all of Title 9 not just 68-11, although 68-11 does require a public hearing; that the closure of the public hearing and the closure of the record is the date of submission which triggers the start of that 45-day period. In addition, he believes that there is no dispute that the Commission acted within 45-days of the close of the public record. It is the Commission's opinion that when the record closed, that 45-day clock started to run and they acted on the 42nd day, therefore, it was compliant.

Mr. Robertson spoke about the matter of remanding this matter back to the Commission violating the 45-day rule because it extends it even further. He stated that he disagrees with that because Section 68-11 talks about approval or disapproval occurring within 45-days. He added that the disapproval occurred within the 45-days; it happened on the 42nd day which ends the calculation of 45-days.

Mr. Robertson stated that the vote itself did follow an extensive public hearing with information presented by all sides. The Commissioners were engaged in that process throughout the questions and discussions that were raised by them. The motion was read, and Mr. Robertson gave his explanation of the law which he stands by; the vote was taken and was voted down 4-1. However, it is the Commission's opinion that the vote technically complied with the requirements in that it failed to receive those 3 votes. Under the Commission's rules, whenever there is a failure to receive 3 votes, that motion is deemed to be disapproved. Under the rules of the Commission, there was that vote and it failed because it did not get the 3 votes. Mr. Robertson pointed out that nobody has claimed that there was an error in the hearing itself. For example, nobody is suggesting that there was evidence that was considered that should not have been or that was evidence that was outside of the record was considered in the vote or anything improper with regard to the hearing itself.

Mr. Robertson suggested that the remand go back to the Commission and be limited to the vote itself in accordance with the well-established law in subdivisions and not be a complete do over of the entire hearing since the hearing itself is not an issue.

Mr. Robertson stated that the 45-day requirement is a long-standing process that Sussex County has adhered to and was also done in this case. The only logical outcome is that the 45-day starts when the record is closed, otherwise, that is not consistent with all of Title 9 and the process that is necessary in these hearings. In addition, it violates the due process of the Commission, public and an applicant. It was a 4-1 vote denial that complied with all of the rules of the Commission.

Mr. Schaeffer asked if the Commission offered the applicant a written decision after the hearing. Mr. Robertson replied that he does believe so unless staff did. Mr. Whitehouse added that the minutes of the meeting were typed up and published in the Commission's usual way. However,

**Appeal of
Denial of
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

there was not written decision given to the applicant.

Ms. Mowery came forward in response to Mr. Robertson's statement. Ms. Mowery stated there is no basis in a statute that submission is after a public hearing. She added that the statute is clear and not subject to interpretation; the Commission is offering reasonable interpretation which she does not agree with; the statute should be applied as stated. With respect to the implications that Mr. Robertson spoke about, Ms. Mowery stated that she is not in disagreement that the different processes should occur. However, they have to happen within 45-days of the submission to be within the statute. She added that the work could be done prior to submission as a solution. There are ways that the Commission could have drafted its code that the work could get done within the 45-days or get done prior to submission and then the 45-days would cover the hearing and public comment that is being suggested that needs to occur. Or if the work has not been done, the application could be denied. Ms. Mowery stated that she believes that it is not fair to say that because there is a lot of procedure to happen and a lot of processes to occur that a statute is not applied as written. With respect to the 10-day rule, it is Schell's position that the submission of the application occurred in November 2020 which was the submission of its original application. The January submission was the last possible date where there is a submission to the Commission; that date was being used as a back up date. With respect to the public's constitutional rights, there is circumstances that the public does not have a protectable constitutional right. So that argument would be legally incorrect. Ms. Mowery stated that just because there was a vote does not show orderly and logical review of the evidence itself. In addition, the way in which votes are being taken before the Commission has recently changed and decisions are now being provided along with the votes which suggests that it was not properly done previously. Ms. Mowery shared the reasons that reversal is required as previously discussed.

Judge Toliver stated that the hearing is concluded.

**M 264 22
Go Into
Executive
Session**

At 2:22, a Motion was made by Mr. Hudson, seconded by Mr. Rieley to go into Executive Session to discuss pending/potential litigation.

Motion Adopted: 5 Yeas,

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

At 2:26 p.m., an Executive session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to potential/pending litigation. The Executive Session concluded at 2:50 p.m.

**M 265 22
Reconvene**

At 2:53 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to come out of Executive Session 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**

Mr. Moore and Judge Toliver reported that there is a motion to be presented.

President Vincent gave the gavel to Vice President Hudson.

**M 266 22
Subdivision
Application
No. 2021-06/
Coral Lakes**

A Motion was made by Mr. Vincent, seconded by Mr. Rieley, this is an appeal of the Planning and Zoning Commission's (the "Commission") denial of a subdivision application (the "Application") for Coral Lakes Subdivision No. 2021-06 (the "Subdivision") filed by Schell Brothers, LLC (the "Appellant"). The standard of review for appeals from Commission decisions does not permit Council to substitute its own opinion for that of the Commission, nor does it permit a rehearing of what was before the Commission. It was a hearing of record and the Council's review is limited to that record.

In reviewing the Commission's decision on appeal, Sussex County Code, § 99-39B.(2) states that:

"[t]he Council shall review the record of the hearing before the Commission and shall make a determination as to whether the Commission's decision was the result of an orderly and logical review of the evidence and involved the proper interpretation and application of the chapter...."

Sussex County Code, § 99-39D. further states that:

D. The standard of review to be applied by the Council is that a decision approving or disapproving a plat shall be upheld unless the appellant can demonstrate that the Commission made an error in its interpretation of the applicable sections of the Subdivision Ordinance and/or that the Commission's findings and conclusions were not the result of an orderly and logical review of the evidence and the applicable provisions of the Subdivision Ordinance.

The Delaware Supreme Court held that the Commission's consideration of subdivision plan applications acts in a manner that is "partly in a ministerial and partly in a judicial capacity" [and, therefore, on appeal the appealing body must] determine whether the decision is supported by substantial evidence and is free from legal error. Substantial evidence 'means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Tony Ashburn & Son, Inc. v. Kent County Regional Planning Comm'n, 962 A.2d 235, 239 (Del. 2008). The Council's review is "limit[ed] to correcting errors of law and determining

**M 266 22
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

whether substantial evidence exists to support the [Commission's] findings of fact" and that "[w]hen substantial evidence exists, [the Council] will not reweigh it or substitute [its] own judgment for that of the [Commission]." See *Rehoboth Art League, Inc. v. Board of Adjustment of the Town of Henlopen Acres*, 991 A.2d 1163, 1166 (Del. 2010).

Therefore, if there is substantial evidence that demonstrates the Commission's decision was based on an orderly and logical review of the evidence and the law was accurately applied, the Council must uphold the Commission's approval.

I will now review the issues before Council as outlined by Judge Tolliver and referenced in the parties' submissions in support of their respective positions.

I believe the Commission acted upon the Application within 45 days of its submission.

In its Attachment to Notice of Appeal ("Notice of Appeal"), Appellant alleges that the Plan should have been automatically approved when the Commission did not act on the Plan 45 days after it had been submitted. See Notice of Appeal, ¶¶1, 16-17, 21-23. Appellant's argument is based on 9 Del. C. § 6811, which states in part:

"[t]he Commission shall approve or disapprove a plat within 45 days after the submission thereof, otherwise such plat shall be deemed to have been approved and a certificate to that effect shall be issued by the Commission upon demand."

Appellant calculated this 45-day window based on its determination that January 18, 2022 constitutes its "submission" date which was, in fact, ten (10) days prior to the January 27, 2022 public hearing date at which time the record was closed. Interestingly, for purposes of this appeal, Appellant did not consider the initial Application submission date (November 25, 2020) as the date which would trigger the 45-day period.¹ For the reasons set forth below, I find the Commission's argument in the Commission's Response to be compelling. See generally, Commission's Response, pp. 4-10.

The Commission's Response explains that this date would have been unrealistic and contrary to its longstanding practice that, "the Commission has never considered the 45 Day Requirement to start on any day other than the date that the record closes on the subdivision's public hearing, since no other date is feasible." See Commission's Response, p. 9, FN 10. The Commission would not have received vital information from various

¹ However, Appellant noted in a footnote that, "Schell arguably submitted a plat over a year prior to the January 18, 2022 date when Schell submitted its plat application for approval to the Commission." See Notice of Appeal, p. 4, FN 2. See also Notice of Appeal, p. 7, FN 3.

**M 266 22
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

sources which are required under the Sussex County Code and Delaware Code², as well as additional input sought and received during the process.³ The Commission's position is further bolstered by Rule III of the Delaware Supreme Court's, "Supreme Court Internal Operating Procedures" which supports construing "submission" as the date upon which all evidence is before the Court.⁴

The Commission cannot be charged with making its decision on a Plan until such time as all steps in the process have been completed, including the public hearing, and the record has been closed. If construed as Appellant alleges, the 45 Day Requirement would have commenced on January 18, 2022. This interpretation would have required the Commission to begin the review and deliberation process prior to the public hearing, which is a great source of information on a variety of issues from various sources that may affect the property subject to the Plan and during which the record is sometimes left open for receipt of additional information from agencies or staff. It would be antithetical to begin the review process before the Commission is in possession of all relevant facts, supporting documents and comments from various agencies, staff and the like.

On March 10, 2022, the Commission voted to deny the Plan by a 4 to 1 vote. See, Notice of Appeal, p. 5, ¶ 18; Commission's Response, p. 3. This vote took place 42 days after the record was closed, which is clearly within the 45-day window.

I believe the Commission engaged in an orderly process; however, there is no evidence of a logical review of the record.

Appellant alleges that the Commission's conclusion was not the result of an orderly and logical review of the evidence and applicable provisions of the subdivision ordinance. See Notice of Appeal, p. 15. I agree, in part. A

² The Commission's Response outlined the steps required of the Applicant following the Application's initial submission. These steps include, but are not limited to:

- a. Planning and Zoning staff ("P&Z Staff") review of the plat for conformity with the zoning district, the Code and Comprehensive Plan. *See Sussex County Code*, § 99-8B. *See also* Commission's Response, p. 6.
- b. P&Z Staff's referral of the plat to its "Technical Advisory Committee ("TAC") for comment and recommendation" (*see Sussex County Code*, § 99-8B.), noting that "TAC includes, but is not limited to DeIDOT, DNREC, the State Fire Marshal, the County Engineer, the local school districts and several other state and county agencies and departments." *See Sussex County Code*, § 99-4. This is mandated by 9 *Del. C.* § 6962(b). *See also* Commission's Response, p. 6.
- c. DeIDOT's contribution to the process alone includes a Preliminary Traffic Analysis, followed by a Traffic Impact Study, if required by DeIDOT. *See* Commission's Response, p. 7.

³ Appellant obtained additional input from a variety of other sources. *See* Commission's Response, p. 8 as confirmed in Schell's Exhibit Book (*citation omitted*).

⁴ *Supreme Court Internal Operating Procedures, Rule III*, states:

"Each Justice is obligated to decide all assigned matters within 90 days of submission ... For cases where oral argument is scheduled, a matter is deemed submitted on the later of the date of the oral argument or the completion of the supplemental briefing."

Emphasis added.

**M 266 22
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

public hearing was held on January 27, 2022. As set forth in the Commission’s Response, at the hearing and during deliberations, the Commission reviewed the submitted documentation and discussed a variety of issues pertaining to the site, including, but not limited to, wetlands, drainage on the adjacent site, interconnectivity, stormwater design, DelDOT issues, adjacent developments, an archeological study, the adjacent airplane landing strip, and more.⁵ However, to be logical, it is tantamount to the process that all evidence be reviewed and analyzed such that the parties are clear as to the reasons for the Commission’s decision. We were unable to determine how the evidence was analyzed, because the Commission failed to provide any reasons in support of its vote. Therefore, while the process itself was orderly, it is not clear that the review was logical.

I believe the Commission erred when it failed to provide adequate reasons for its denial of the Application.

Appellant alleges that the Commission erred by failing to provide reasons in support of its vote to deny the Application. Specifically, Appellant stated: [T]he Commission only provided findings and conclusions to support a motion to approve Schell’s Plat, yet ultimately voted against that motion and disapproved Schell’s Plat. As a result, the Commission has provided no findings and conclusions to support disapproval of Schell’s Plat in clear violation of 9 Del. C. § 6811 which requires the grounds of disapproval to be stated upon the record of the Commission and a copy of such statement to be furnished by Schell.

See Notice of Appeal, p. 1. Appellant further notes that the Commission’s own Rules of Procedure require the Commission to provide a written decision.

15.4 Following a decision by the Commission on an application, a copy of the written decision shall be sent to the applicant, or the agent or attorney for the applicant.

While the Commission engaged in an orderly review process, the decision does not reflect a logical review, because the Commission failed to provide any reasons in support of its vote to deny. In fact, the Commission’s own attorney drafted proposed findings (Tr., pp. 157-167) and then on the record gave opinion as to those findings. His advice was ignored. Tr., pp. 168-172.

The law is well-settled in Delaware that the zoning bodies must provide reasons to support its vote. Country Preservation Association of Kent County v. Kent County Levy Court, 1991 WL 153063, at 3 (Del. July 26, 1991), is similar to this matter in that the councilmembers, “made no

⁵ See generally, Commission Response, pp. 10-12 (citing Transcript of January 27, 2022 hearing (“Tr.”), pp. 43-52, 102-103, 146-153, 157.

**M 266 22
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

statements as to the reasons for their votes.” In *Country Preservation*, the Court cited *Tate v. Miles*, 503 A.2d 187 (Del. Jan. 9, 1986), in which “the Supreme Court stated that the zoning body must ‘[create] a record or [state] on the record its reasons for a zoning change....’” *Tate* at 191. As cited in *Country Preservation*, the Delaware Supreme Court in *New Castle County v. BC Development Associates*, 567 A.2d 1271, 1276 (1989), discussed this requirement in more detail, stating:

Tate allows [the zoning body] a measure of flexibility. [The zoning body] need not draft a detailed statement of findings of fact and conclusions of law in order to explain a given zoning regulation. However, insofar as [the zoning body] simply “creates a record” and relies upon that record to justify its decision, the record must prove to be an adequate substitute for a more formal explanation. Thus, [the zoning body’s] reasons must be clear from the record. If several possible explanations for a given decision appear on the record, the reviewing court must not be left to speculate as to which evidential basis [the zoning body] favored. (footnote omitted).

Country Preservation, at 1. The bottom line is that, “it is not enough that the [zoning body’s] decision appears reasonable or that there was evidence to support those who decided to vote [a certain way on] the rezoning application. The record must establish the basis for the [zoning body’s] decision. *Id.*

We now need to review the remedies available to Council. Following the Appeal hearing and Council’s consideration of all facts and evidence before it, Sussex County Code, § 99-39B. (2) provides that Council may rule as follows:

If the Council finds that the Commission misapplied or misinterpreted the applicable sections of this chapter or that its findings were not the result of an orderly and logical review of the evidence and the applicable provisions of this chapter:

(a) The Council may send the matter back to the Commission for further review and consideration and, if the Council considers it necessary, it may direct that the Commission hold a new hearing, specify the time period within such hearing shall be held and direct the Commission to issue a written decision containing findings and conclusions following the rehearing [, or]

(b) The Council may reverse a decision only upon a finding that the Commission made an error in its interpretation of the applicable sections of this Chapter; or the Commission’s findings and conclusions were not the result of an orderly and logical review of the evidence and the applicable provisions of this chapter.

Sussex County Code, § 99-39B. (2)

Even though the record is before Council and the Appellant has provided its reasons in support of a reversal of the Commission’s decision, I believe

**M 266 22
Subdivision
Application
No. 2021-06/
Coral Lakes
(continued)**

that, because it is the public body which heard all of the evidence and reviewed the record in total, resolution of this matter is within the Commission's purview. This is especially important to determine whether the Appellant met all of the criteria required for approval. As such, I believe that a reversal is not the appropriate remedy. For the reasons above, I find as follows:

1. That the Planning and Zoning Commission timely considered and ruled on the Application and did not violate the 45 Day Requirement.
2. That the Commission engaged in an orderly process such that the Applicant filed the Application, the Commission received and reviewed the comments and reports from various state agencies, the public, etc., a public hearing was held, and the Commission discussed the issues before it; and
3. That the Commission did not provide the required written reasons that would permit this body to determine whether there was a logical review of the Application.

Therefore, for the reasons above which are considered a part of this motion, I move that this matter be remanded to the Commission for further consideration of the entire record, all evidence and facts of this Application in open session, to consult with its legal counsel, take a public vote thereon, with instructions to clearly state in the record reasons in support of the Commission's vote and, in accordance with 9 Del C. § 6811 and the Commission's Rules of Procedure, Section 15.4, to issue a written decision containing findings and conclusions that are consistent with the law. This process shall be completed on or before August 31, 2022.

Motion Adopted: 3 Yeas, 2 Nays

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

The gavel was given back to President Vincent.

**M 267 22
Adjourn**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to adjourn at 3:05 p.m.

Motion Adopted: 5 Yeas

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

Respectfully submitted,

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

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

ENGINEERING DEPARTMENT

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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

RE: *Artesian Wastewater Management, Inc.*
A. Bulk Wastewater Services Agreement Credit Adjustments
B. Bulk Wastewater Services Agreement for the Delaware Coastal Business Park & Airport - Satisfaction of Connection Fee

DATE: June 7, 2022

In July of 2016, the Engineering Department presented a comprehensive proactive wastewater infrastructure planning approach for utility coordination between wastewater service providers in the North Coastal Planning Area. Hence, avoiding duplication of capital expenditures and utilization of existing sewer transmission and treatment capacity. Subsequently County Council authorized agreement negotiations with other wastewater service providers for the utilization of available, existing wastewater treatment capacity and on August 30, 2016, approved the original agreement with Artesian Wastewater Management, Inc. Other agreements with municipal providers have followed since then.

The approach of allowing the most cost-effective transmission and treatment of wastewater, represented by the tier style service system has been incorporated by ordinance in the County Code, Chapter 110 and the 2018 Sussex County Comprehensive Plan.

On January 29, 2019, Council approved Addendum No. 1 to the Agreement, expanding the exchange to treated effluent with a 4 to 1 exchange ratio with wastewater for balancing purposes. In addition, it established a ten-year term allowing for better long-term planning.

On September 10, 2019, Council approved Addendum No. 2 making the county's pretested land available for a potential spare Artesian disposal area if needed in exchange for utilization of Artesian full effluent disposal quantity at the Stonewater Facility up to 450,000 gpd. In addition, it extended the term to twenty-five-years, matching the term at the Wolfe Neck lease with the State.



The physical connection to the Artesian facility was completed and tested in January of 2020. Prior to commencement of the discharge, DNREC requested Artesian to file an authorization to operate, which was submitted on February 11, 2020. In addition, DNREC required a technical memorandum of understanding between the utilities on how to share operational responsibilities which was submitted on February 22, 2020. On July 1, 2020, DNREC issued the modified operations permit. Due to the extended time required to obtain the permit modifications, Council on June 2, 2020, approved Addendum No.3 delaying the required annual true up of flows until the end of fiscal year 2021.

The DNREC operations permits contain general statements about the “source” of the wastewater to be treated such as a specific County sewer district area or a specific subdivision. With all utilities moving towards regionalization of their respective systems this identification is obsolete and DNREC suggested updating the “wastewater” definition in the 2016 Bulk Wastewater Services Agreement. On November 10, 2020, County Council approved Addendum No.4 revising the definition accordingly.

In early June 2021, Artesian Wastewater Management, Inc. submitted a letter outlining their challenges to obtain DNREC construction permits under the State and Federal Covid-19 mandates. The delays in the construction of wastewater infrastructure resulted in difficulties to further interconnect the systems and better balancing of flows between the parties. The Engineering Department agreed with that assessment and Council approved Addendum No.5, extending the true up until the end of fiscal year 2022.

The Delaware Coastal Business Park, as well as the entities located at the Coastal Airport along Rudder Lane, currently receive wastewater treatment services from the Town of Georgetown under the May 15, 2018 agreement. Given the limited availability of municipal sewer capacity, it had an allowance for the surrender of capacity under Article VIII by redirecting it to alternate wastewater service provider with twelve (12) months prior notice.

In the summer of 2018, the Town and County Councils approved an addendum to the Agreement regarding the potential capacity surrender for both parties allowing the Town the option to also gain capacity beyond the County flows without initial capital contribution, while allowing the County to recuperate all capital funds over the life of the investment.

The Engineering Department presented a 3-way Bulk Wastewater Services Agreement with Artesian Wastewater Resources, Inc. providing alternate transmission and treatment at the same metered user rate as the Town of Georgetown. The service handshake point will be at the intersection of Park Avenue and the railroad. The County would not be subject to any sewer connection charges but instead contribute \$750,000 towards the extension of the transmission system to the handshake point. Once the capacity is transferred, it will trigger the issuance of the applicable sewer impact fee credits as set forth in the Town of Georgetown Code at the time of the Notice to Surrender.

The Agreement allows for cost effective alternative transmission and treatment while at the same time offering the Town some capacity relief. It was approved by Council and the Town and executed in February of 2019.

In late summer of 2021, the Inland Bays RWF experienced significant algae growth in the effluent storage lagoons. The algae poses clogging problems for spray nozzles but worse, it causes matting in rapid infiltration systems such as the one utilized by Artesian under the Bulk Wastewater Agreement. Not being able to discharge as much effluent as anticipated further impeded the flow imbalance. Therefore, Artesian suggested the following two adjustment actions:

1. Adjustment of the amounts owed by Artesian Wastewater Management, Inc. to Sussex County under the 2016 Bulk Services Agreement for the period from July 1, 2019 through June 30, 2022, by the sum owed by Sussex County under paragraph 3(a) "Connection Fees" of the 2019 3-way Bulk Services Agreement.
2. Approve Addendum No. 6 to the 2016 the Bulk Wastewater Services Agreement with Artesian addressing possible future impairment to the Artesian RIB system(s).

The proposed adjustment actions were developed in cooperation with the Engineering & Finance Departments and both request approval by Council of the "Credit Adjustment Letter Agreement" as well as Addendum No. 6 to the Bulk Wastewater Services Agreement.



OVER **115** YEARS OF SUPERIOR SERVICE

Artesian Water Company



Artesian Wastewater Management



Artesian Utility Development



Artesian Water Pennsylvania



Artesian Water Maryland



Artesian Wastewater Maryland

May 24, 2022

VIA U.S. MAIL

Hans Medlarz
Sussex County Administrative Office Building
2 The Circle, 3rd Floor
P.O. Box 589
Georgetown, DE 19947

RE: Credit Adjustment

Dear Hans:

Artesian Wastewater Management, Inc. proposes that each party (namely, Sussex County and Artesian Wastewater Management, Inc.) to the Bulk Wastewater Services Agreement, dated August 30, 2016, as amended (the "2016 Bulk Services Agreement") and the Bulk Wastewater Services Agreement for the Delaware Coastal Business Park and Airport, dated February 7, 2019 (the "2019 Bulk Services Agreement", and together with the 2016 Bulk Services Agreement, the "Agreements") apply a \$750,000 credit adjustment for services rendered to and for each party to reflect amounts owed under the Agreements as noted below.

2016 Bulk Services Agreement

Paragraph 6(e) of the First Addendum to the 2016 Bulk Services Agreement, dated February 7, 2019, states that:

"On June 30th of each calendar year beginning on June 30, 2017, the parties shall exchange any and all reports of their metered flows for the previous year (July 1 to June 30) measured at the parties' respective connection points and compare the annual totals for each party in order to engage in an annual true-up process. If either party's flows to the other party exceeds 500,000 gallons, then that party shall be responsible for paying for the amount of annual flow exceeding 500,000 gallons at the rate of \$8.00 per thousand gallons...."

The measurement and "true-up" period from July 1, 2019 through June 30, 2020 was extended from July 1, 2019 through June 30, 2022 by subsequent addendums, up to and including the Fifth Addendum to the Bulk Services Agreement, dated July 12, 2021. The current accrued amounts owed Sussex County by Artesian Wastewater Management, Inc. is \$825,336.31 as of April 30, 2022.

2019 Bulk Services Agreement

Paragraph 3(a) "Connection Fees" of the 2019 Bulk Services Agreement states that:

"Sussex County shall pay an initial connection fee of \$750,000 upon completion of the installation of the force main from the Park, along Delaware Route 9 to Delaware Route 5..."

Reconciliation

The \$750,000 credit adjustment will reduce amounts owed by Artesian Wastewater Management, Inc. to Sussex County under the 2016 Bulk Services Agreement for the period from July 1, 2019 through June 30, 2022, which sum will be due to Sussex County as provided in the 2016 Bulk Services Agreement. The \$750,000 credit adjustment will satisfy Sussex County's obligations under paragraph 3(a) "Connection Fees" of the 2019 Bulk Services Agreement.

If you are in agreement with this proposal, please have the appropriate Sussex County official sign below.

Very truly yours,



David B. Spacht

President

Artesian Wastewater Management, Inc.
664 Churchmans Road
Newark, Delaware 19702

SUSSEX COUNTY, DELWARE

By: _____

Name/Title: _____

Date: _____

ADDENDUM NO. 6 TO THE
BULK WASTEWATER SERVICES AGREEMENT
Between
ARTESIAN WASTEWATER MANAGEMENT, INC.
And
SUSSEX COUNTY

WHEREAS, on August 30, 2016 the parties entered into a Bulk Wastewater Services Agreement (“Agreement”) regarding exchange of Wastewater; and

WHEREAS, on February 7, 2019 the parties signed Addendum No. 1 to the Agreement; and

WHEREAS, on or about September 19, 2019 the parties signed Addendum No. 2 to the Agreement; and

WHEREAS, on or about June 9, 2020 the parties signed Addendum No. 3 to the Agreement; and

WHEREAS, on or about December 10, 2020 the parties signed Addendum No. 4 to the Agreement; and

WHEREAS, on or about July 12, 2021 the parties signed Addendum No. 5 to the Agreement; and

WHEREAS, both parties desire to further amend the Agreement as set forth herein;

NOW THEREFORE, Sussex County Council (“County”) and Artesian Wastewater Management, Inc. (“Artesian”) agree to further amend the Agreement as follows:

1. By adding subparagraph h. under Section 2. Purpose as follows:

h. The County shall discharge only compliant water to Artesian’s rapid infiltration basins (RIBs).

(i) **Repairs.** In the event that the County discharges water that damages or impacts the infiltration rate of the RIBs, the County agrees to compensate Artesian for any commercially reasonable costs incurred by Artesian, including but not limited to the cost of materials and labor, in connection

with Artesian's repair and/or restoration of the RIBs. These repairs do not include regular periodic maintenance functions required under the permit. Compensation may be in the form of issuance of a credit for annual flow or direct payment to Artesian. A credit for annual flow issued in connection with this subparagraph shall not be subject to the carry-over restriction of subparagraph e of this Section 2.

(ii) **Make Whole.** For the duration of the repairs of the RIBs the County shall be charged for 450,000 gallons of flow for each day that such interference or capacity reduction remains in effect (a "Reduced Capacity Day"), regardless of the number of gallons actually sent by the County on such days.

2. All other terms and conditions of the Agreement as previously amended remain unchanged.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have set their hands and seals the day stated below.

Attest:

**ARTESIAN WASTEWATER
MANAGEMENT, INC.**

Joseph A. DiNunzio, Secretary
STATE OF DELAWARE :

By: _____(SEAL)
David B. Spacht, President

: SS.

COUNTY OF NEW CASTLE :

BE IT REMEMBERED, that on the ____ day of _____, 2022, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, David B. Spacht, known to me personally to be the President of Artesian Wastewater Management, Inc. and, in that capacity, he executed this Addendum No. 6 To the Bulk Wastewater Services Agreement in his own hand for the corporation.

Notary Public

Attest:

SUSSEX COUNTY, DELAWARE

Clerk, Sussex County Council

By: _____(SEAL)
Michael, H. Vincent, President

STATE OF DELAWARE :

: SS.

COUNTY OF NEW CASTLE :

BE IT REMEMBERED, that on the ____ day of _____, 2022, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Michael H. Vincent, known to me personally to be the President of Sussex County Council and, in that capacity, he executed this Addendum No. 6 To the Bulk Wastewater Services Agreement in his own hand for the corporation.

Notary

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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

hans.medlarz@sussexcountyde.gov



Sussex County
DELAWARE
sussexcountyde.gov

Memorandum

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

FROM: Hans Medlarz, P.E. County Engineer

RE: *Appraisal Services Contract Extension Request*

DATE: June 7, 2022

It was determined in early 2016, that the County overall and the Engineering Department in particular utilized sufficient appraisal services to seek a contract through the Delaware Code large professional service procurement process, thus a Request for Proposals (RFP) was advertised. As this was the first contract for appraisal services, the contract was for a one-year period to ensure its sufficiency before committing to a long-term contract. Council awarded W.R. McCain & Associates the contract on July 19, 2016. This contract is due to expire August 1, 2017.

A Request for Proposals (RFP) was readvertised in June 2017 for appraisal services to be provided on an as needed basis for a one (1) year period, with the option to renew annually, for up to five (5) years. The services included, but are not limited to, inspecting and investigating properties to provide certified appraisal reports for fee simple land acquisitions and any type of easement in support of engineering projects.

The RFP was directly sent to six (6) firms, advertised in two local newspapers and on the Sussex County Website. One (1) proposal was submitted by W.R. McCain & Associates, which met the minimum qualifications of the RFP. On July 25, 2017, Council approved a contract with W.R. McCain & Associates with the option to renew for up to five (5) years.

This contract is due to expire August 1, 2022. As the previous RFP gained no interest aside from W.R. McCain, the County Engineer reached out to another prominent appraisal firm to gauge their interest in submitting a proposal. At this time, they were not interested. Therefore, the Engineering Department recommends extending the current appraisal services contract with W.R. McCain for one (1) additional year, at which time we would re-evaluate the feasibility of advertising the RFP.



ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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

hans.medlarz@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

RE: ***South Coastal WRF Treatment Process Upgrade No.3 & Rehoboth Beach WTP Capital Improvement Program, Phase 2***
A. General Construction, Project C19-11 Change Order No. 23
B. Electrical Construction, Project C19-17, Change Order No. 18

DATE: June 7, 2022

In summary, the South Coastal WRF Treatment Process Upgrade No.3 encompasses the following components and statuses:

- a. Effluent Forcemain Relocation/Replacement; Completed in fall of 2019.
- b. Influent Forcemain Consolidation; Completed in May of 2020.
- c. Drainage Network Rerouting;
This scope was not included in the base bid. After cost comparison between the General Labor & Equipment Contract versus a change order under Ronca's general construction contract; Council awarded the stand alone Change Order Request 554-001 to Ronca & Sons, Inc. in the amount of \$104,592.96 on March 10, 2020. The construction was completed in July 2020.
- d. **General Construction Project C19-11**; awarded on December 17, 2019, to M.F. Ronca & Sons, Inc.

On March 10, 2020, Council authorized Change Order No.1 in the net amount of \$97,294.31 for deletion of the record drawing requirement and the modification of the RBWTF influent forcemains.



On May 12, 2020, Council authorized credit Change Order No. 2 in the amount of (\$12,705.00) eliminating an explosion proof motor requirement.

On July 28, 2020, Council approved credit Change Order No. 3 in the combined amount (\$9,764.30) for use of County surplus materials.

Change Order No.4 in the amount of \$871,000.00 for the repairs of partial failures at the two City of Rehoboth's wastewater treatment plant oxidation ditch systems was also approved on July 28, 2020. M.F. Ronca & Sons, Inc. completed the scope in May of 2021 and the County increased the flow contribution to the City's plant.

On December 15, 2020, County Council approved Change Order No. 6 for steel framing repairs in the first oxidation ditch on a time & material basis up to \$10,500.00 in addition to the concrete repairs conducted per the awarded contingent unit price schedules.

The County initiated RFP-019 for interior headworks piping modifications and RFP-023 covering the addition of a cross connection between the existing 14-inch process drain header for Aeration Tank Nos. 1-4 and the new header for the Aeration Tank Nos. 5-8. On September 22, 2020, Council approved Change Order No.5 in the combined amount of \$32,991.66.

GHD issued RFP-031 for the installation of plug valves on each of the 12-inch recycle influent pipes to be connected to the existing Aeration Tank Nos. 1-4 and to the new Aeration Tank Nos. 7-8. On December 15, 2020, Change Order No. 7 was approved for said shut off valves in the amount of \$31,974.51.

The new South Coastal aeration basin had to be connected to the existing large diameter sludge return piping requiring a forward flow stoppage. Minimizing the joint risk M. F. Ronca proposed a line stop approach under Change Order No. 8. Since it also gained construction efficiency, they offered to only charge for the subcontractor work.

In the spring of 2021, the Rehoboth Beach WTP oxidation ditch rehabilitation was receiving expansive attention including:

- Contingent Unit Price Concrete Repairs, Bid Items F-19 & F-20
- Steel Repairs authorized under Change Order No. 6
- Steel Coatings authorized as part of Change Order No. 4

In addition, all of the leaking expansion joints have been repaired under a time & material approach. On March 9, 2021, County Council approved Change Order Nos. 8 and 9 in the respective amounts of \$34,765.50 and \$45,600.00.

Only one of the two headworks vertical influent pipes has a shut off valve and Environmental Services requested a second valve. In addition, two of the existing headworks slide gates were compromised in need of replacement. On

May 25, 2021, Council approved Change Order No. 10 in the aggregate amount of \$34,160.64.

The County initiated RFP-039 addressing modifications to two slide gates avoiding conflict with the new air piping. In addition, it was discovered during the rehabilitation work in the grit tanks, that the existing influent chutes to the stacked tray grit removal systems were significantly compromised. On June 22, 2021, Council approved Change Order No. 11 in the aggregate amount of \$59,557.16.

The design team initiated RFP-038 for exhaust duct modifications associated with the new turbo blowers and RFP-041 correcting the elevation difference in the headworks cross channel. On July 13, 2021, Council approved Change Order No. 12 to M.F. Ronca & Sons in the aggregate amount of \$14,700.07.

The contract as bid includes concrete repairs to the City's headworks and influent splitter box. With the structures by-passed and accessible, the full extent of the damage required an alternative approach detailed in RFP-037 including full demolition of the upper level as well as the channel between it and the splitter box. GHD, the City Engineer and the County Engineer supported the approach, and the change order was within budget of the City's financing arrangements previously approved by the City and County elected officials. Therefore, Council approved Change Order No. 13 to M.F. Ronca & Sons in the amount of \$1,043,243.92 on August 10, 2021.

The City requested M.F. Ronca & Sons' assistance in the wetwell cleaning of the State Rd. pump station to allow a full evaluation in preparation of the upgrade design. In addition, the City requested to modify the air intake for B-10 Building ventilation from a roof mount to an existing window opening. On November 30, 2022, County Council approved Change Order No. 14 in the aggregate amount of \$7,380.37.

Upon exposure of the normally submerged piping at the oxidation ditches, GHD formulated an initial repair scope for the influent, return sludge & air piping including replacement of valves and fittings. It was subsequently reduced and Michael F. Ronca & Sons, Inc. proposed to perform the modified repair scope for \$324,996.81. GHD, the City Engineer and the County Engineer supported the modified approach. However, this amount is not within budget of the City's financing arrangements previously approved. The City will pay for this change order directly out of City funds. County Council approved Change Order No. 15 on January 11, 2022, subject to direct payment by the City. Since then, it was determined that the pipe support configuration for the replacement of oxidation ditch influent piping at the City's WTP required additional supports and RFP-056 was issued. Michael F. Ronca & Sons, Inc. proposed to perform the expanded repair scope for \$ \$8,992.49. County Council approved Change Order No. 17 to M.F. Ronca & Sons in the amount of \$8,992.49 on January 25, 2022.

GHD's design scope included a separate task for the hydraulic transient analysis of the South Coastal effluent force under various pumping scenarios. After County approval of the findings, GHD issued RFP-052 for replacing air valves on the effluent force main and installing additional air valves at new locations. This work scope was not known at time of base bid and hence not included. On January 11, 2022, County Council issued Change Order No. 16 to M.F. Ronca & Sons in the amount of \$88,132.23.

The South Coastal RWF's return sludge pumping station has three (3) pumps, two of which have been upgraded. The third unit recently experienced a failure, and the Environmental Services requested replacement of the pump and piping to be integrated in the project as per RFP-053. Michael F. Ronca & Sons, Inc. proposed Change Order No. 18 in the amount of \$ 31,101.61, which Council approved on January 25, 2022.

Under RFP-053 the Environmental Services staff requested replacement of two (2) compromised pumps and rail systems in the existing filtrate return pump station in the filter building. Under RFP-057 the City staff requested new fiberglass baffles and a guide bracket assembly to replace the original wooden baffle assembly located in the flow splitter box. M.F. Ronca & Sons proposed to complete the work for \$90,081.84 and \$8,132.66 respectively which Council approved on February 8, 2022, via Change Order 19.

The City requested M.F. Ronca & Sons' assistance in the installation of a lintel above the screen chute complete with control joints limiting vertical cracking. Ronca proposed to complete this work for \$7,426.59.

Starting in 2021, Environmental Services started experiencing more frequent malfunctions and alarm call outs with the influent screens at the Inland Bays RWF. In addition, a reduction in screen bar opening from ¼-inch to 3/16-inch opening will help the facilities sludge accumulation. The units were commissioned in the fall of 2010 and normally have a 15-year service life. The Engineering Department requested the assistance of Michael F. Ronca & Sons, Inc. and their investigation revealed that a full replacement could be accomplished for \$ 253,417.58, which was only 10% more expensive than a full rebuilt. Therefore, County Council approved Change Order No. 20 in the aggregate amount of \$260,844.17 on March 8, 2022 for the replacement in kind of two screens at Inland Bays and the masonry work at the City's plant.

The South Coastal facility requires alkalinity adjustments. In the past caustic soda was used however with the upgrade project the approach was switched to magnesium hydroxide. The as bid design included an innovative low energy consumption type Enviromix gas mixing system with a performance guarantee which was not met at start up. Therefore, the design approach was switched to a traditional impeller type mixing system. Michael F. Ronca & Sons, priced the modification including the full contract credits relating to the original

Enviromix system and on March 29, County Council approved Change Order No. 21 in the aggregate amount of \$45,989.72.

The FY2022 Environmental Services budget included roof repairs of the South Coastal administration building and conversion of an existing pole building to an electrical panel shop. M. F. Ronca & Sons already has subcontractors in their scope of work who perform this type of work. They priced the building modification and selectively investigated the roof conditions. The roof dating to the original construction needs full replacement and has areas of compromised decking. Due to market volatility, long lead times and anticipated incremental increases in roofing material (membrane & tapered insulation) costs, pricing includes a material escalation allowance. Upon delivery of roofing materials final costs will be incorporated in a corrective change order reflecting actual material increases. Roof decking replacement will be performed at a unit cost of \$25.00 per SF incorporated into the corrective change order. On May 10, 2022, Council approved Change Order No. 22 in the aggregate amount of \$306,692.52 for pole building enclosure and admin building roof replacement followed by a later corrective change order adjusting unit costs and material pricing.

Environmental Services initiated RFP-067 for painting of the original 1970s mechanical building pump room and M. F. Ronca & Sons proposed to perform the work for \$7,893.90. The Engineering Department requests Council's acceptance of Change Order No. 23 in the amount of \$7,893.90.

- e. **Electrical Construction Project C19-17**; awarded on December 17, 2019, to BW Electric, Inc.

On February 4, 2020, Council awarded Change Order No.1 in the credit amount of (\$759,374.80) mostly for changes to the conduit materials. A second credit change order was approved on March 10, 2020, in the amount of (\$6,800.00) for ductbank modifications.

On April 7, 2020, Council approved Change Order No.3 in the not to exceed amount of \$235,637.33 for DP&L requested changes to the utility power service entrance location at the RBWTP.

On May 12, 2020, Council authorized Change Order No.4 in the amount of \$11,350.00 for reconstruction of the original electrical equipment in South Coastal's sludge handling building electrical room.

On July 28, 2020, Council approved Change Order No.5 in the combined amount of \$37,830.00 for the removal of an existing electrical handhole and duct bank and the modification of the duct bank between the DP&L utility switching pedestal and the transformer.

On September 22, 2020, Council approved Change Order No.6 in the amount of \$16,550.00 for the change of the sewer service for the return sludge building No. 2 from a gravity drain to a pumped approach.

On September 22, 2020, Council approved Change Order No. 7 in the not to exceed amount of \$307,300.00 for the City's oxidation ditch complete electrical equipment replacement. This change order had an allowance for sensor replacements which proved too low and required an increase of \$6,582.80. Council approved the modification to Change Order No. 7 on November 10, 2020.

On November 10, 2020, Council approved Change Order No. 8 in the aggregate amount of \$2,249.00 covering RFP-027, RFP-028, RFP-029 & RFP-030. GHD has concluded that RFP-029 can be rescinded in its entirety. Therefore, the scope of work in the Sludge Building reverts to the Drawings, as modified by Change Order No. 4 associated with RFP-016. However, on December 15, 2020, Council approved the modification reducing Change Order No. 8 by \$9,040.00 for a modified net total credit of (\$6,791.00).

On February 9, 2021, Council approved Change Order No. 9 in the aggregate amount of \$30,554.00 covering RFPs-032 & 033. The first RFP provided upsized control panels, conduit and conductors associated with the two (2) Jet Mixing Pump VFDs while the second dealt with a modified temporary electrical feeder arrangement and a redirection of the medium voltage loop.

On August 10, 2021, Council approved Change Order No. 10 in the aggregate amount of \$7,320.00 covering RFP- 035 for waterproofed convenience receptacles at the return sludge building's pump room and RPP-040 for additional site lighting in the area of the generator and blower buildings.

On October 12, 2021, Council approved Change Order No. 11 in the aggregate amount of \$47,328.70 covering the City's initiated RFPs-042 & 44. The first one replaces the deteriorated pull box at building B-10 with a stainless steel one and the second one addresses modifications to the garage feeder.

Also on October 12, 2021, Council approved Change Order No. 12 in the amount of \$4,779.38 covering RFP-045 for modification to the aeration basin lighting out of operational safety concerns.

On January 11, 2022, County Council issued Change Order No. 13 in the aggregate amount of \$20,018.56 for City initiated RFPs -043 & 049. The first one relates to the electrical control requirements for a booster pump in Building T-1. The second one addresses rewiring of the two (2) level sensors and dissolved oxygen probes at the oxidation ditches.

Also On January 11, 2022, County Council issued Change Order No. 14 in the credit amount of (\$6,485.87) for the elimination of four valve actuators.

The City's lighting in the headworks building and the panelboard in the chemical building are compromised by corrosion and City staff requested replacement as per RFP-050. The County Environmental Services and IT staff reanalyzed the facility's fiber optic cabling needs and requested inner duct modifications under RFP-059. BW Electric proposed to make the changes for \$12,018.72 and \$16,100.70 respectively and on February 8, 2022, Council issued Change Order No. 15 in the aggregate amount of \$28,119.42.

On March 29, 2022, County Council issued Change Order No. 16 in the aggregate amount of \$52,003.13 for the DP&L metering modifications at the City's plant and dedicated VFD cabinet ventilation.

The following RFPs were requested by Environmental Services over the last two months:

1. RFP-064 for float-controlled effluent pump backup control panel in the event of a failure in the digital pump control system or level transmitter in the amount of \$29,895.13.
2. RFP-065 for the demolition and replacement of the original 1970s lighting in the Headworks Pump Room, Headworks Grit Dewatering Room, Mechanical Building Pump Room, and outdoor wallpacks around perimeter of Mechanical Building in the amount of \$80,099.11.
3. RFP-066 for additional circuits and conduits associated with a conveyor warning alarm in the Cake Storage Building, and for separation of 120 VAC circuits from 24 VDC circuits originating in Cake Storage Building in the amount of \$3,090.30.
4. RFP-068 for the electrical work associated with replacing the compressed gas mixing system with a mechanical mixing system in the amount of \$83,738.84. This is the companion change order to Michael F. Ronca & Sons' Change Order No. 21 for the mechanical work.
5. RFP-069 for a change in the existing 6-way DB-5A allowing for the MH-47 to be eliminated at a credit of (\$7,500.00).

On May 10, 2022, Council approved BW Electric, Inc.'s Change Order No. 17 in the aggregate amount of \$189,323.38.

The pumps and rail systems in the existing filtrate return pump station were upgraded under Change Order No. 18 by M. F. Ronca & Sons. RFP-060 covers the electrical and control upgrades associated with that station. This work was not part of the original plant upgrade scope. BW Electric, Inc. proposes to complete the work for \$92,713.82. In order to address operator safety and access cameras as well as network access points, proposals were requested at aeration tanks 5-8 requiring a series of additional conduits and pull boxes. BW Electric, Inc. proposes to complete the work for \$50,362.91. The Engineering Department requests Council's approval of Change Order No. 18 to BW Electric, Inc in the aggregate amount of \$143,076.73.

- f. Mobile Belt Filter Press; awarded on January 7, 2020, Council to Kershner Environmental Technologies. The unit was deployed at the Inland Bays RWF, reducing legacy lagoon solids accumulation and at the LBPW Plant, reducing digester volumes and currently stationed at South Coastal in anticipation of the aeration basin transfer.
- g. DP&L direct expenses; on February 4, 2020, Council approved the electric utility service relocation contract with the utility.
- h. The Rehoboth Beach WTP was built on a municipal landfill and Council approved a stand-alone competitive purchase order to Melvin L. Joseph Construction Company, Inc. for material hauling & screening on July 14, 2020.

The updated expenses associated with the South Coastal WRF Treatment Process Upgrade No.3 & Rehoboth Beach WTP Capital Improvement Program; Phase 2 are summarized in the attached spreadsheet.



**SUSSEX COUNTY
CHANGE ORDER REQUEST**

A. ADMINISTRATIVE:

1. Project Name: **SCRWF Treatment Process Upgrade No. 3 & RBWTP Capital Improvement Program, Phase 2 – General Construction**
2. Sussex County Project No. C19-11
3. Change Order No. 23
4. Date Change Order Initiated - 6/7/22
5.
 - a. Original Contract Sum \$39,526,400.00
 - b. Net Change by Previous Change Orders \$3,536,421.45
 - c. Contract Sum Prior to Change Order \$43,062,821.45
 - d. Requested Change \$ 7,893.90
 - e. Net Change (No. of days) 0
 - f. New Contract Amount \$43,070,715.35
6. Contact Person: Hans Medlarz, P.E.
Telephone No. (302) 855-7718

B. REASON FOR CHANGE ORDER (CHECK ONE)

1. Differing Site Conditions
2. Errors and Omissions in Construction Drawings and Specifications
3. Changes Instituted by Regulatory Requirements
4. Design Change
5. Overrun/Underrun in Quantity

6. Factors Affecting Time of Completion

7. Other (explain below):

C. BRIEF DESCRIPTION OF CHANGE ORDER:

Mechanical building pump room painting.

D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?

Yes No

E. APPROVALS

1. M.F. Ronca & Sons, Inc., Contractor

Signature Date

Representative's Name in Block Letters

2. Sussex County Engineer

Signature Date

3. Sussex County Council President

Signature Date



Request for Proposal

| | | | |
|---|--|------------------------|--------------|
| Project Title | SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2 | | |
| Owner | Sussex County, Delaware | | |
| Contract No. | C19-11: General Construction | GHD Project No. | 11121182 |
| Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order. | | | |
| RFP No. | 067 | | |
| RFP Subject | Mechanical Building Pump Room Paint | | |
| Issued By | S. Clark | Issue Date | Apr. 7, 2022 |

Description of proposed changes:

Submit a proposal to prepare and paint the walls of the Mechanical Building Pump Room using Coating System C-3 as specified in Section 09900, using the corresponding products from the approved shop drawing, and a color to be confirmed by Sussex County (coordinate in the field).

Michael F.
RONCA
& Sons, Inc.

TELEPHONE 610/759-5100
FACSIMILE 610/746-0974



CONTRACTORS

179 Mikron Road, Bethlehem, PA 18020

May 13, 2022

Mr. Steven Clark, P.E.
GHD
16701 Melford Boulevard, Suite 330
Bowie, MD 20715

Re: Sussex County
SCRWF-RBWWTP CIP Phase 2 Upgrades
Proposed Change Order Request No. 554-033
SCRWF MB Pump Room Painting

Dear Mr. Clark:

Please consider this writing to be Michael F. Ronca & Sons, Inc.'s formal change order request for performance of the above referenced work, in the amount of Seven Thousand Eight Hundred Ninety Three Dollars and 90 Cents.....(\$7,893.90).

Enclosed for your review is a corresponding breakdown of costs.

Should this change order request be acceptable as provided, please prepare the appropriate change order documentation and forward the same to our office for further processing. Until then, should you have any questions, or require additional information, please do not hesitate to contact me.

Regards,

Scott Wachinski

Project Manger

cc: HO file 554
Hans M. Medlarz, P.E. – Sussex Co.
David A. Ronca – M.F. Ronca

Sussex County - SCRWF-RBWTP CIP Phase 2 Upgrades

PCOR 554-033 SCRWF MB Pump Room Painting

5/13/2022

CHANGE ORDER SUMMARY

Item 1 Painting of SCRWF Mechanical Building Pump Room Walls Utilizing Coating System C as Specified in Section 09900 in Accordance with GHD Issued RFP-067.

| | |
|--|-------------------|
| Labor | \$0.00 |
| Materials | \$0.00 |
| Equipment | \$0.00 |
| Subcontract | \$7,518.00 |
| Subtotal | \$7,518.00 |
| Contractor Overhead & Profit @ 0% (Direct Credit) | \$0.00 |
| Contr. Overhead & Profit on Subcontr. @ 5% | \$375.90 |
| Item Total | \$7,893.90 |
| Change Order Total | \$7,893.90 |

Sussex County - SCRWF-RBWWTP CIP Phase 2 Upgrades

PCOR 554-033 SCRWF MB Pump Room Painting

5/13/2022

| <u>Item</u> | <u>Description</u> | | | | | | |
|-------------|---|------------|-------------|------------------|--------------|--------------------|------------|
| Item 1 | Painting of SCRWF Mechanical Building Pump Room Walls Utilizing Coating System C as Specified in Section 09900 in Accordance with GHD Issued RFP-067. | | | | | | |
| | Labor: | <u>Qty</u> | <u>Unit</u> | <u>Unit Cost</u> | <u>Total</u> | | |
| | | | | \$0.00 | \$0.00 | Labor Total: | \$0.00 |
| | Materials: | <u>Qty</u> | <u>Unit</u> | <u>Unit Cost</u> | <u>Total</u> | | |
| | | | | \$0.00 | \$0.00 | Material Total: | \$0.00 |
| | Equipment: | <u>Qty</u> | <u>Unit</u> | <u>Unit Cost</u> | <u>Total</u> | | |
| | | | | \$0.00 | \$0.00 | Equipment Total: | \$0.00 |
| | Subcontract: | <u>Qty</u> | <u>Unit</u> | <u>Unit Cost</u> | <u>Total</u> | | |
| | Painting Subcontractor | 1.00 | LS | \$7,518.00 | \$7,518.00 | Subcontract Total: | \$7,518.00 |
| | | | | | | Item Total: | \$7,518.00 |

Letter of Transmittal

To: Ronca - Scott Wachinski

Transmittal #: 052

Date: 5-12-22

Job: South Coastal Regional Wastewater Facilities
Rehoboth Beach WWTP

Subject:

WE ARE SENDING YOU

- Attached Under separate cover via the following items:
 Shop drawings Prints Plans Samples
 Copy of letter Change order Specifications Change Request

| Document Type | Copies | Date | No. | Description |
|-----------------------|--------|---------|--------|----------------------------|
| Proposed Change Order | | 5-12-22 | PCO 27 | RFP-067 MB Pump Room Paint |

THESE ARE TRANSMITTED as checked below:

- For approval Approved as submitted Resubmit ___ copies for approval
 For your use Approved as noted Submit ___ copies for distribution
 As requested Returned for corrections Return ___ corrected prints
 For review and comment Other
 FOR BIDS DUE PRINTS RETURNED AFTER LOAN TO US

Remarks:

Copy To:

From: George Conners
Phone: 610-844-8531
E-mail: gcc@uipcl.com

Signature: _____

To: Scott Wachinski

Company: MF Ronca & Sons

Fax #: 610-746-0974 Phone #: 610-759-5100

From: George Conners Direct Phone: (610) 844-8531 Email: gcc@uipcl.com

Bid Date 12-May-22 3:00 PM Submitted Date 12-May-22

Project: South Coastal & Rehoboth Beach STP Upgrade - PCO 27

Addenda Received:

Our Proposal includes the following:
Per Plans and Specification as shown for the Divisions listed below,

Base Bid by Specification Section:

| <u>Division</u> | <u>Description of Work (Listed by Area)</u> | <u>Amount</u> |
|---|---|----------------|
| 9900 - Painting, | MB Pump Room | \$7,203 |
| General Conditions, Submittals, Contingency and Punch Out | | \$314 |
| TOTAL PROPOSED AMOUNT | | \$7,518 |

Alternates:

| <u>Number</u> | <u>Description of Work</u> | <u>Add</u> | <u>Deduct</u> |
|---------------|----------------------------|------------|---------------|
| | | | |
| | | | |
| | | | |

Exclusions/Notes:
Proposal is based on a 40-hour workweek, Electricity and water shall be supplied by others, Heat and containment for working in inclement weather has not been included. ambient and substrate temperature must be within the product manufacturers recommendations, Exclude all lead and asbestos abatement, Exclude painting of instrument panels and electrical conduit,

Above proposed amount is based on that all work must be substantially completed before 10-Aug-23
Any work beyond the above stated date may be subject to a price increase.

| | <u>Yes</u> | <u>No</u> | | <u>Yes</u> | <u>No</u> |
|-----------------------|------------|-----------|-------------------------|------------|-----------|
| Bonds Included? | | XX | Materials & Labor | XX | |
| Proposal Valid for | 30 | Days | Labor Only | | XX |
| Per Plans & Specs? | XX | | Terms 2% NET 10, NET 15 | XX | |
| Certified MBE or WBE? | | XX | Retainage Held @ 5% | XX | |
| Visited Job-Site? | | XX | Crew Days | | 3 |

3810 Drane Field Rd, suite 3. Lakeland, Florida 33811 Phone (863) 686-2320 Fax (863) 686-1954



Request for Proposal

| | | | |
|---|--|------------------------|--------------|
| Project Title | SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2 | | |
| Owner | Sussex County, Delaware | | |
| Contract No. | C19-11: General Construction | GHD Project No. | 11121182 |
| Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order. | | | |
| RFP No. | 067 | | |
| RFP Subject | Mechanical Building Pump Room Paint | | |
| Issued By | S. Clark | Issue Date | Apr. 7, 2022 |

Description of proposed changes:

Submit a proposal to prepare and paint the walls of the Mechanical Building Pump Room using Coating System C-3 as specified in Section 09900, using the corresponding products from the approved shop drawing, and a color to be confirmed by Sussex County (coordinate in the field).



TNE MEC

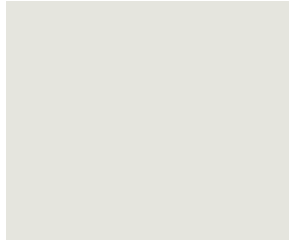
COLORBOOK



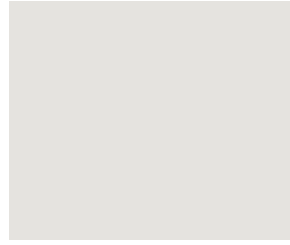
WHITES



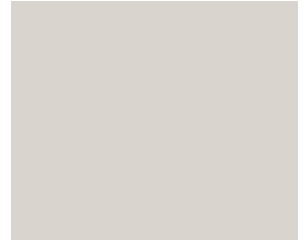
00WH Tnemec White ▲
LRV 84%



06WH Albatross ▲
LRV 82%



07WH Winter Mist ▲
LRV 80%



08WH Acropolis ▲
LRV 72%



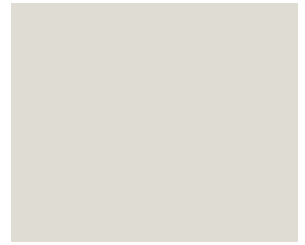
01WH Ash White ▲
LRV 84%



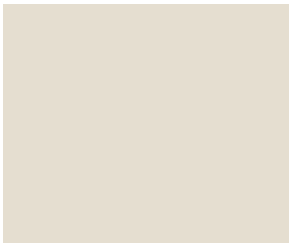
02WH Iceberg ▲
LRV 84%



03WH Daisy ▲
LRV 75%



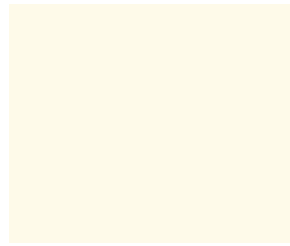
04WH Silver Pearl ▲
LRV 76%



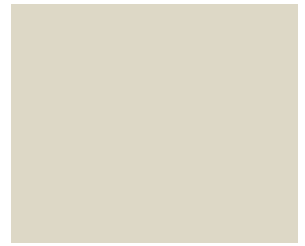
12WH Milkweed ▲
LRV 78%



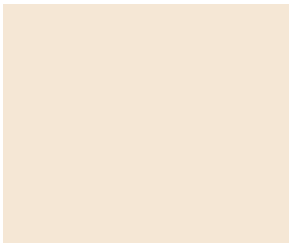
13WH French Vanilla ▲
LRV 73%



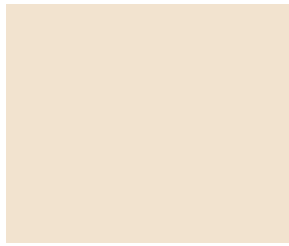
14WH Veiled ▲
LRV 78%



15WH Aspen ▲
LRV 72%



15BR Pale ▲
LRV 83%



22BR Nova ▲
LRV 81%



57BR Cloud ▲
LRV 75%

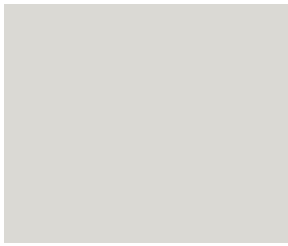


79BR Coliseum ▲
LRV 67%

NOTE: Colors represented are digital reproductions of actual standards and will vary in appearance due to differences in monitor and video card output. These digital representations should not be used to finalize color selection(s). Please contact your local Tnemec Coatings Consultant for color-accurate samples or for assistance with suitable primer and finish coat selections and color matching.

LRV = Light Reflectance Value ▲ Standard color and gloss warranty is available in this color for Fluoronor and HydroFlon products. Other colors may be included. Contact your Tnemec representative for more information.

GRAYS



30GR Comet ▲
LRV 75%



24GR Lightpole ▲
LRV 62%



43GR Constellation ▲
LRV 71%



37GR Gradation ▲
LRV 65%



25GR Grey Day ▲
LRV 46%



31GR Slate Gray ▲
LRV 61%



57GR Aluminum ▲
LRV 46%



38GR Dove Gray ▲
LRV 58%



33GR Gray – ANSI No. 61 ▲
LRV 33%



32GR Light Gray – ANSI No. 70 ▲
LRV 44%



46GR Sinker ▲
LRV 26%



39GR Pigeon ▲
LRV 42%



35GR Black ▲
LRV 4%



34GR Deep Space ▲
LRV 12%



48GR Moon Shadow ▲
LRV 10%

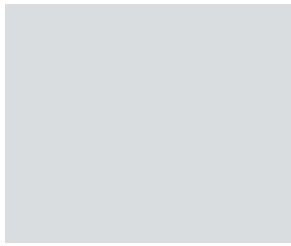


41GR Hammerhead ▲
LRV 17%

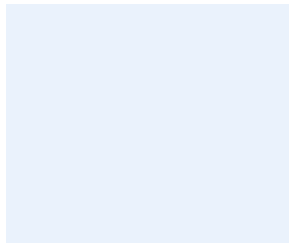
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BLUES



57BL Steam ▲
LRV 76%



15BL Tank White ▲
LRV 83%



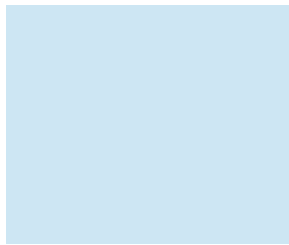
22BL Spring Rain ▲
LRV 76%



37BL Teardrop ▲
LRV 70%



59BL Seaspray ▲
LRV 55%



29BL Springwater ▲
LRV 75%



23BL Robin's Egg ▲
LRV 72%



39BL Delft Blue ▲
LRV 60%



61BL Blue Ribbon ▲
LRV 32%



09BL Cold Wind ▲
LRV 65%



25BL Fountainbleu ▲
LRV 50%



40BL Pika Blue ▲
LRV 41%



55BL Mysterious ▲
LRV 15%



11BL Canal Blue ▲
LRV 45%



26BL Clear Sky ▲
LRV 40%



41BL Lagoon ▲
LRV 24%



63BL Navy Blue ▲
LRV 9%



14BL Cadet Blue ▲
LRV 11%



28BL Pond
LRV 18%

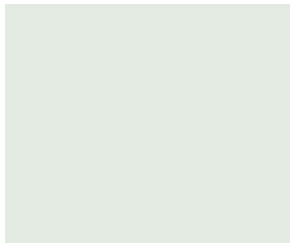


42BL Blue Channel ▲
LRV 19%

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GREENS



78GN Cumulus ▲
LRV 81%



92GN Marshall Green ▲
LRV 74%



106GN Bottle Green ▲
LRV 74%



51GN Sage ▲
LRV 72%



94GN Moonseed ▲
LRV 57%



108GN Ginger Mist ▲
LRV 58%



37GN Irish Spring ▲
LRV 71%



52GN Aztec Grass ▲
LRV 63%



96GN Zucchini ▲
LRV 27%



110GN Clover ▲
LRV 31%



10GN Aqua Sky ▲
LRV 71%



54GN Granny Smith ▲
LRV 38%



28GN Shannon's Isle ▲
LRV 13%



90GN Brahm Grass ▲
LRV 24%



13GN Mermaid ▲
LRV 29%



56GN Moss ▲
LRV 21%



21GN Fairway ▲
LRV 15%



91GN Balsam ▲
LRV 14%



14GN Bluegrass ▲
LRV 15%

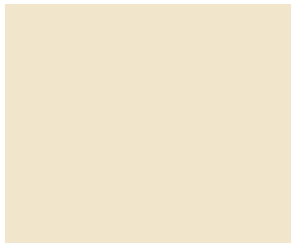


112GN Foliage ▲
LRV 11%

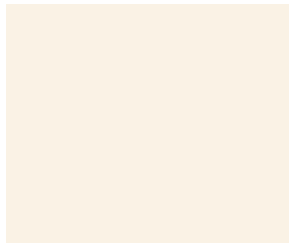
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BEIGES, TANS AND REDS



01BR Warm Sun ▲
LRV 78%



64BR Bisque ▲
LRV 82%



44BR Beige ▲
LRV 66%



10RD Barely Blush
LRV 64%



22YW Barbados ▲
LRV 72%



65BR Rock Slide ▲
LRV 67%



46BR Stable Brown ▲
LRV 46%



12RD Desert Rose
LRV 27%



03BR Washed Khaki ▲
LRV 61%



66BR Dust Bowl ▲
LRV 61%



05RD Hometown ▲
LRV 33%



14RD Red Clay ▲
LRV 14%



04BR Desert Sands ▲
LRV 51%



68BR Twine ▲
LRV 42%



23BR Sahara ▲
LRV 65%



07RD Terra Cotta ▲
LRV 11%



06BR Amber Canyon ▲
LRV 32%



70BR Worn Path ▲
LRV 16%



25BR Honey Roast ▲
LRV 48%

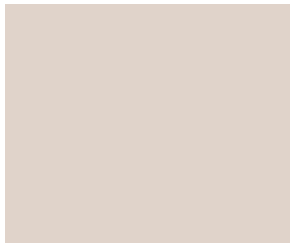


28RD Monterrey Tile
LRV 8%

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BROWNS AND YELLOWS



50RD Bare Beige ▲
LRV 74%



72BR Sand Dunes ▲
LRV 70%



01YW Sunfresh ▲
LRV 84%



08YW Lemonwater ▲
LRV 84%



81BR Lumberg ▲
LRV 49%



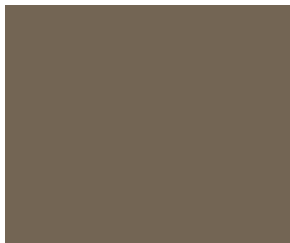
74BR Clay ▲
LRV 48%



03YW Oat Straw ▲
LRV 73%



10YW Flaxseed ▲
LRV 80%



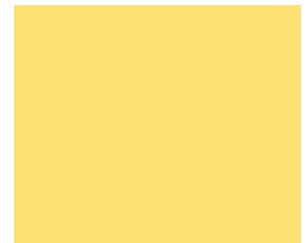
83BR Kindling ▲
LRV 20%



76BR Dried Timber ▲
LRV 22%



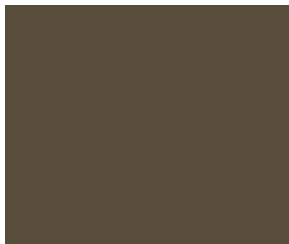
52BR Chamois ▲
LRV 62%



11YW Daffodil
LRV 76%



85BR Medium Bronze ▲
LRV 9%



77BR Coffee Grounds ▲
LRV 12%



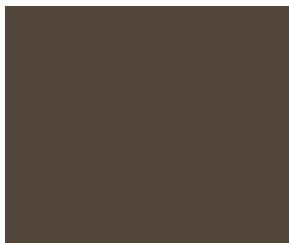
53BR Tiki Wood ▲
LRV 46%



12YW Corncob
LRV 72%



86BR Dark Bronze ▲
LRV 6%



84BR Weathered Bark ▲
LRV 11%



62BR Acorn ▲
LRV 22%



05YW Grapefruit ▲
LRV 59%

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BRIGHT AND SAFETY COLORS



14YW **Canary Yellow**
LRV 64%



04SF **Tangerine Orange/Safety**
LRV 29%



10SF **Deep Blue Sea** ▲
LRV 15%



14SF **Purple Rain/Safety**
LRV 17%



02SF **Lemon Yellow/Safety** ▲
LRV 53%



06SF **Candy Apple Red/Safety** ▲
LRV 14%



11SF **True Blue/Safety** ▲
LRV 18%



13SF **Purple Mountain's Majesty**
LRV 12%



03SF **Bright Yellow**
LRV 43%



07SF **Chilean Red**
LRV 9%



12SF **Purple Haze** ▲
LRV 8%



09SF **Spearmint Green/Safety** ▲
LRV 27%



05SF **International Orange**
LRV 17%



71RD **Old Glory Red**
LRV 16%



78BL **Old Glory Blue**
LRV 7%



08SF **Hunter Green** ▲
LRV 8%

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T N E M E C

Tnemec Company Incorporated 6800 Corporate Drive Kansas City, Missouri 64120-1372 1-800-TNEMEC1 Fax: 1-816-483-3969 www.tnemec.com

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**SUSSEX COUNTY
CHANGE ORDER REQUEST**

A. ADMINISTRATIVE:

1. Project Name: **SCRWF Treatment Process Upgrade No. 3 & RBWTP Capital Improvement Program, Phase 2 – Electrical Construction**
2. Sussex County Project No. C19-17
3. Change Order No. 18
4. Date Change Order Initiated - 6/7/22
5.
 - a. Original Contract Sum \$22,178,674.00
 - b. Net Change by Previous Change Orders (\$31,209.29)
 - c. Contract Sum Prior to Change Order \$22,147,464.71
 - d. Requested Change \$ 143,076.73
 - e. Net Change (No. of days) 40
 - f. New Contract Amount \$22,290,541.44
6. Contact Person: Hans Medlarz, P.E.
Telephone No. (302) 855-7718

B. REASON FOR CHANGE ORDER (CHECK ONE)

1. Differing Site Conditions
2. Errors and Omissions in Construction Drawings and Specifications
3. Changes Instituted by Regulatory Requirements
4. Design Change
5. Overrun/Underrun in Quantity

6. Factors Affecting Time of Completion

7. Other (explain below):

C. BRIEF DESCRIPTION OF CHANGE ORDER:

Electrical and control upgrades to the filtrate return pump station. Additional conduits and pull boxes at aeration tanks 5-8.

D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?

Yes No

E. APPROVALS

1. B.W. Electric, Inc., Contractor

Signature Date

Representative's Name in Block Letters

2. Sussex County Engineer

Signature Date

3. Sussex County Council President

Signature Date



Request for Proposal

| | | | |
|---|--|------------------------|--------------|
| Project Title | SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2 | | |
| Owner | Sussex County, Delaware | | |
| Contract No. | C19-17: Electrical Construction | GHD Project No. | 11121182 |
| Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order. | | | |
| RFP No. | 060 | | |
| RFP Subject | Sludge Building Drain Pumps | | |
| Issued By | D. Murray | Issue Date | May 19, 2022 |

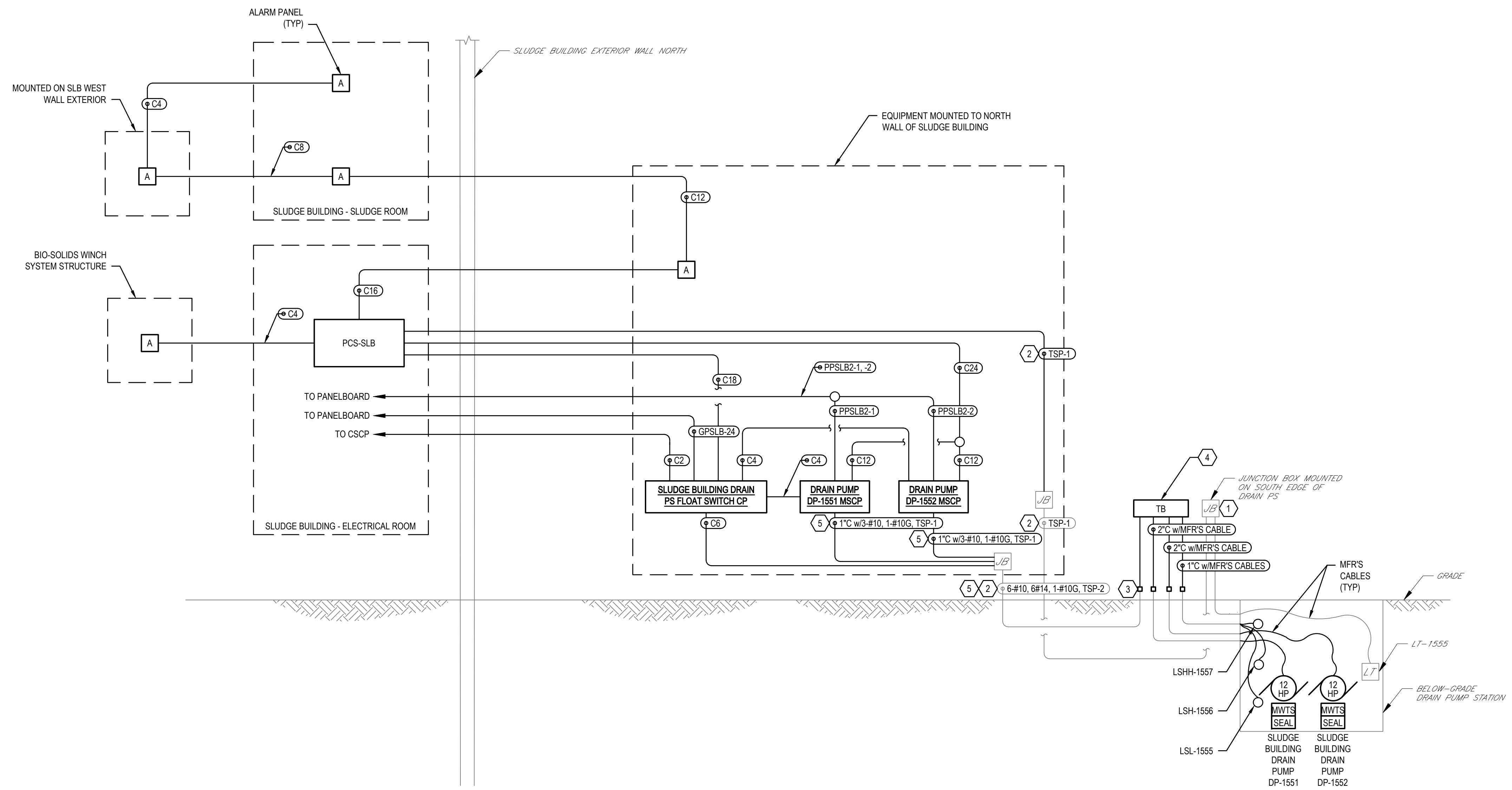
Description of proposed changes:

Contractor is requested to submit a proposal for the electrical work to replace the Sludge Building Drain Pumps:

1. Provide motor starter control panel (MSCP) built by the CSI for each drain pump and mount on the exterior of the Sludge Building. Refer to attached figure E4224A for elementary diagram of MSCPs. This diagram is to be used in lieu of Drain Pump DP-1551 Motor Starter Elementary Diagram shown on Drawing SC-E4224. MiniCAS relay is furnished by General Contractor and turned over to Electrical Contractor for installation.
2. Motor starters that were originally intended for DP-1551 and DP-1552 in motor control center MCC-SLB with elementary diagram shown on Drawing SC-E4224 shall be spare starters. Relabel MCC compartment doors accordingly.
3. Provide Sludge Building Drain Pump Station Float Switch Control Panel built by the CSI and mount on the exterior of the Sludge Building adjacent to new MSCPs. Refer to attached Figure E4206A for elementary diagram on CP.
4. Install the two spare 35A/3-pole circuit breakers listed in Section 16470-1.08-A in PPSLB2 and provide motor feeder circuits with #10 conductors from PPSLB2 to each MSCP.
5. Replace "Drain Pump Station Power" junction box at drain PS as shown on attached conduit riser diagram on Figure E2205A with terminal box.
6. Provide a free-standing EMR per Detail 6 on Drawing E6003 at the drain PS to mount the terminal box. Reattach existing sign currently mounted on existing Drain Pump Station Power JB to the new EMR.
7. Repurpose the five alarm panels furnished by the CSI under Submittal 17190-07 originally intended for conveyor startup warning alarm as follows:
 - Change the strobe from red to amber.
 - Change panel nameplates to "DRAIN PS HIGH LEVEL ALARM PANEL NO.1" (2,3,4,5)
 - Provide field terminals to enable wiring of a normally open contact from the float switch CP in parallel with a normally open contact from PCS-SLB.
8. Mount the the five Drain PS Alarm Panels in the following locations. Coordinate exact locations and mounting height in the field with County and Engineer:
 - On exterior of north wall of Sludge Building facing the Drain PS



- On exterior of west wall of Sludge Building facing the Lagoons
 - On interior of west wall of biosolids winch system structure
 - Inside Sludge Room on east wall of Control Room
 - Inside Sludge Room on south wall.
9. Provide new conduits and conductors shown on attached Figure E2205A. Provide new seal fittings for conduits that enter the wet well. The conduit riser diagram on Figure E2205A replaces Sludge Building Drain Pump Station – Conduit Riser Diagram shown on Drawing E2205.
10. Provide float switches LSL-1555, LSH-1556, and LSHH1557 with new mounting assembly.



1 SLUDGE BUILDING DRAIN PUMP STATION - CONDUIT RISER DIAGRAM
SCALE: NTS

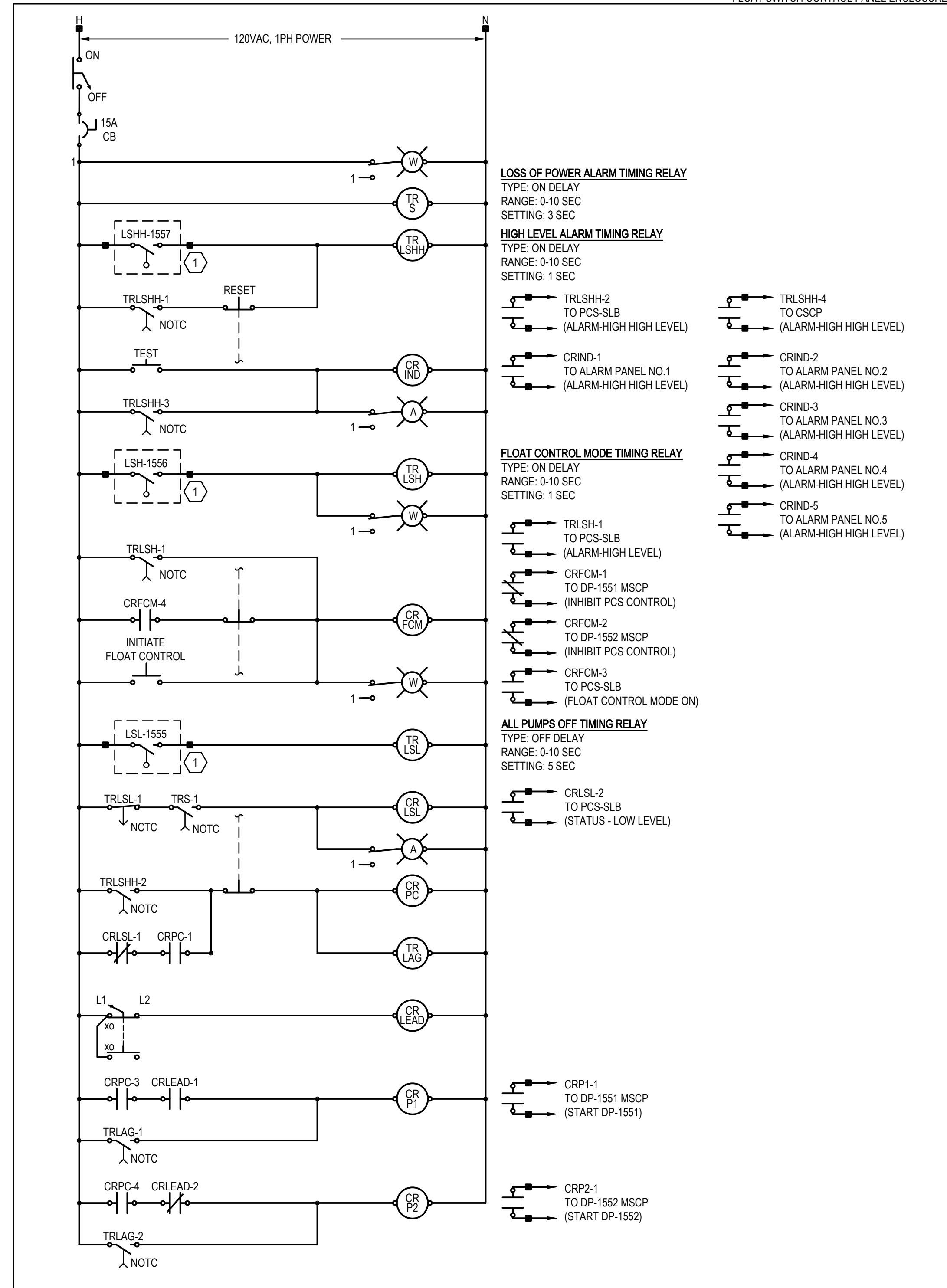
DRAWING NOTES:

- ① SPLICE NEW CIRCUIT CONDUCTORS TO EXISTING EQUIPMENT CABLES IN EXISTING JUNCTION BOX AT PUMP STATION.
- ② PROVIDE NEW CONDUCTORS IN EXISTING CONDUIT.
- ③ TRANSITION FROM NEW TO EXISTING CONDUIT. PROVIDE ADAPTOR OR FITTING AS REQUIRED.
- ④ REPLACE EXISTING JUNCTION BOX MOUNTED ON SOUTH EDGE OF DRAIN PS WITH A TERMINAL BOX AND PROVIDE NEW EQUIPMENT MOUNTING RACK. PROVIDE TERMINALS TO TRANSITION FROM FLOAT AND MOTOR CABLES TO HARD-WIRED CONDUCTORS. ATTACH EXISTING SIGN TO NEW EQUIPMENT MOUNTING RACK.
- ⑤ PROVIDE TSP FOR SEAL/MOTOR OVERTEMP SIGNAL TO MINICAS.

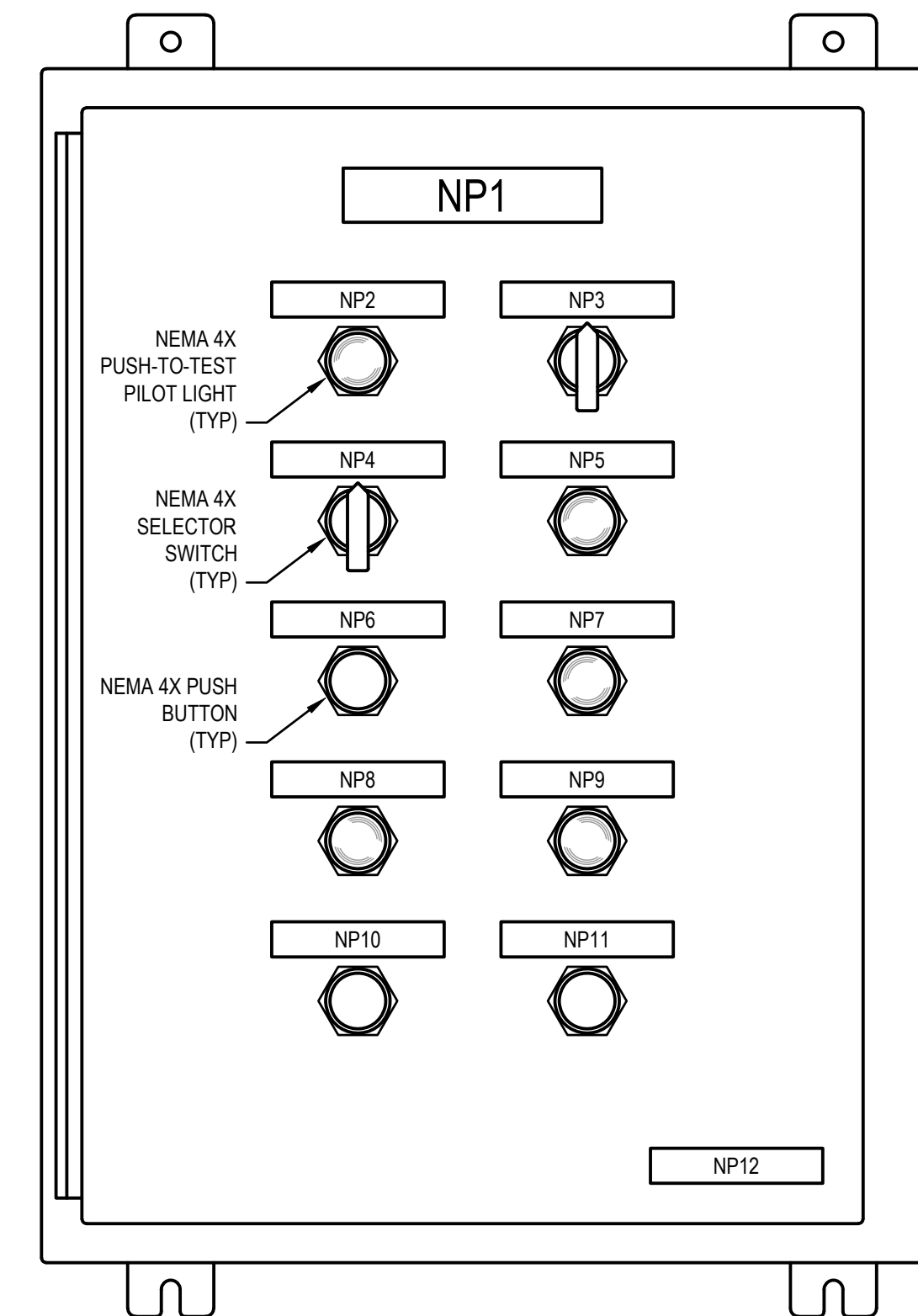


SUSSEX COUNTY, DELAWARE
SCRWF NO. 3 AND RBWWTP CIP PHASE 2
UPGRADES
FIGURE E2205A
CONDUIT RISER DIAGRAM

Project No. 11121182
Report No. RFP-060
Date 5/19/2022



1 SLUDGE BUILDING DRAIN PUMP STATION FLOAT SWITCH CONTROL PANEL - ELEMENTARY DIAGRAM
SCALE: NTS



2 SLUDGE BUILDING DRAIN PUMP STATION FLOAT SWITCH CONTROL PANEL - ELEVATION
SCALE: NTS

NAMEPLATE LEGEND

- NP1: SLUDGE BUILDING DRAIN PUMP STATION FLOAT SWITCH CONTROL PANEL
- NP2: CONTROL POWER ON
- NP3: CONTROL POWER ON/OFF
- NP4: LEAD PUMP SELECTOR
- NP5: FLOAT CONTROL MODE ON
- NP6: INITIATE FLOAT CONTROL
- NP7: HIGH LEVEL
- NP8: PUMP ON LEVEL
- NP9: LOW LEVEL
- NP10: RESET
- NP11: TEST ALARM LIGHTS
- NP12: WARNING: THIS EQUIPMENT IS POWERED BY MULTIPLE SOURCES

NOTES:

1. EQUIPMENT SHOWN IN THE ENCLOSURE IS FOR GENERAL INFORMATION ONLY. ALL COMPONENTS/DEVICES MAY NOT BE SHOWN FOR BREVITY. CONTRACTOR SHALL COORDINATE FINAL SIZE AND ARRANGEMENT OF THE ENCLOSURE. REFER TO SPECIFICATIONS FOR ADDITIONAL REQUIREMENTS.
2. ALL ACCESSORIES AND MODIFICATIONS TO THE ENCLOSURE SHALL MAINTAIN THE NEMA RATING OF THE ENCLOSURE AFTER FABRICATION AND INSTALLATION.

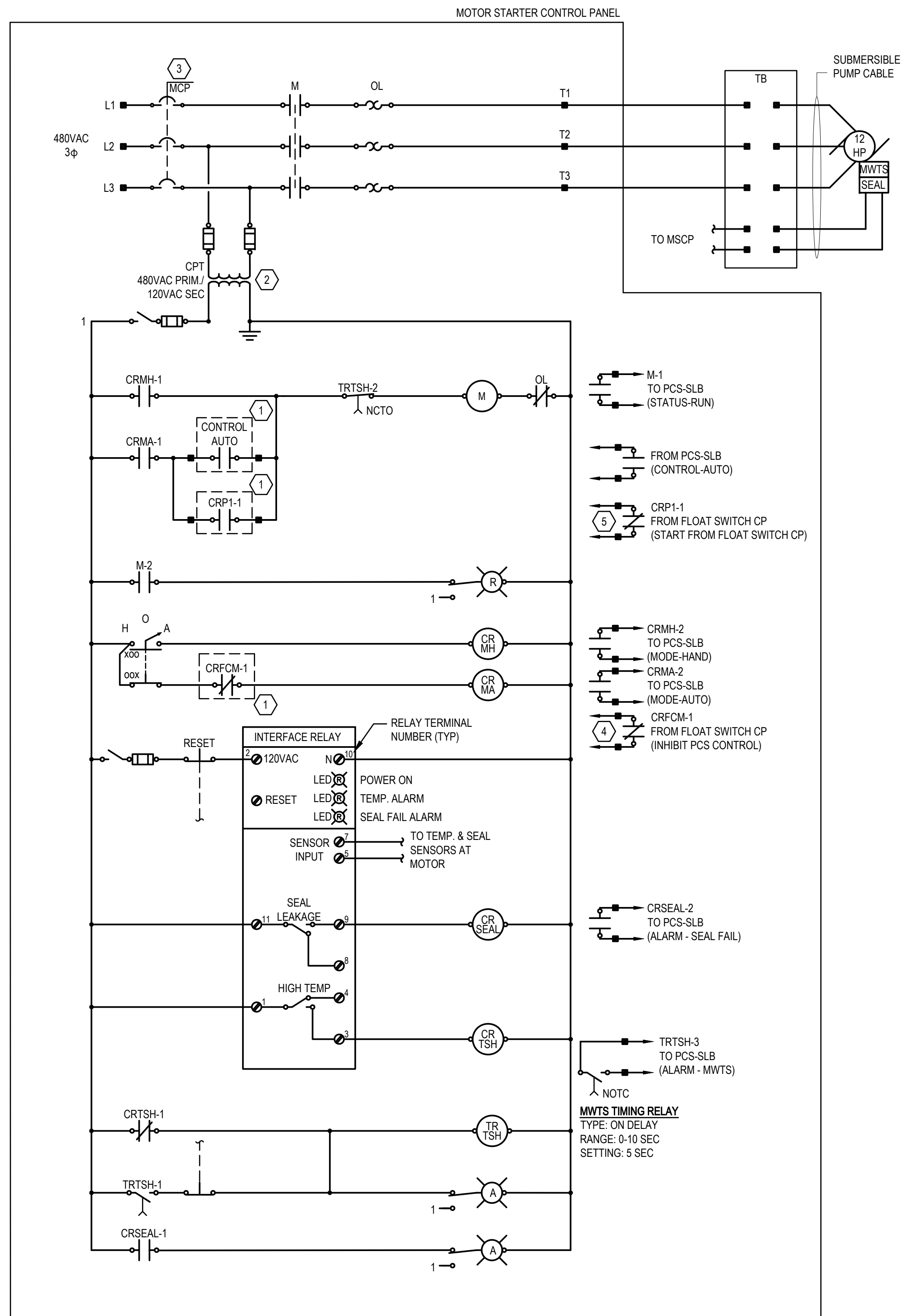
DRAWING NOTES:

- 1 LOCATED IN SLUDGE BUILDING DRAIN PUMP STATION WET WELL.

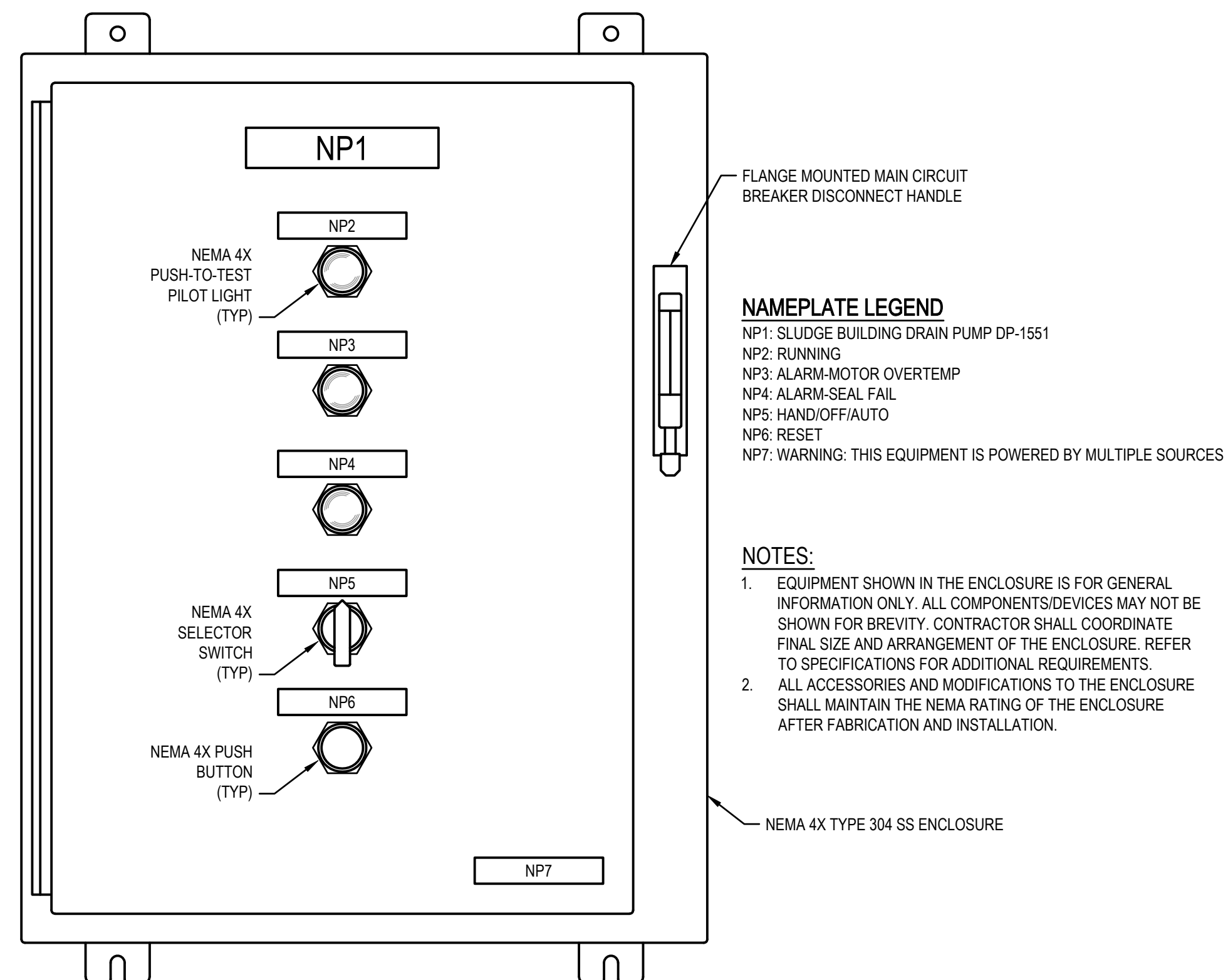


SUSSEX COUNTY, DELAWARE
SCRWF NO. 3 AND RBWTP CIP PHASE 2
UPGRADES
FIGURE E4206A
FLOAT SWITCH CONTROL PANEL
ELEMENTARY DIAGRAM

Project No. 1121182
Report No. RFP-060
Date 5/19/2022



1 SLUDGE BUILDING DRAIN PUMP DP-1551 MSCP - ELEMENTARY DIAGRAM
SCALE: NTS, TYP FOR SLUDGE BUILDING DRAIN PUMP DP-1552 MSCP



2 SLUDGE BUILDING DRAIN PUMP DP-1551 MSCP ELEVATION
SCALE: NTS, TYP FOR SLUDGE BUILDING DRAIN PUMP DP-1552 MSCP

- DRAWING NOTES:**
- ① FIELD DEVICE: EQUIPMENT OR COMPONENT LOCATED REMOTE FROM STARTER.
 - ② CONTROL POWER TRANSFORMER (CPT): CPT SHALL BE SIZED TO POWER ALL COMPONENTS IN CONTROL CKT.
 - ③ MCP SIZING: ALL MOTOR CIRCUIT PROTECTORS SHALL BE SELECTED BY MFR. SPARE MCP RATINGS SHALL BE SIZED BASED ON LARGEST RATING ASSOCIATED WITH THE LISTED NAMEPLATE RATING.
 - ④ CRFCM-2 FOR DP-1552.
 - ⑤ CRP2-1 FOR DP-1552.

| | | |
|--|---|--|
| | SUSSEX COUNTY, DELAWARE SCRWF NO. 3 AND RBWTP CIP PHASE 2 UPGRADES FIGURE E4224A MSCP ELEMENTARY DIAGRAM | Project No. 11121182 Report No. RFP-060 Date 5/19/2022 |
|--|---|--|



15342 S. DuPont Hwy
Harrington DE 19952

Office: 302.566.6248
Fax: 302.566.6251

Bryon Warren
President
302-270-5719

Email(s):
office@bwelectricinc.com
estimates@bwelectricinc.com

June 1, 2022

Subject: SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2 RFP No. 60

Dear Mr. Medlarz,

Our price to perform the electrical work associated with the above project is based on RFP No. 60. Our price does not include the use of Prevailing Wages. Our price is **\$92,713.82** and includes the following:

Description of proposed changes:

Contractor is requested to submit a proposal for the electrical work to replace the Sludge Building Drain Pumps:

1. Provide motor starter control panel (MSCP) built by the CSI for each drain pump and mount on the exterior of the Sludge Building. Refer to attached figure E4224A for elementary diagram of MSCPs. This diagram is to be used in lieu of Drain Pump DP-1551 Motor Starter Elementary Diagram shown on Drawing SC-E4224. MiniCAS relay is furnished by General Contractor and turned over to Electrical Contractor for installation.
2. Motor starters that were originally intended for DP-1551 and DP-1552 in motor control center MCC-SLB with elementary diagram shown on Drawing SC-E4224 shall be spare starters. Relabel MCC compartment doors accordingly.
3. Provide Sludge Building Drain Pump Station Float Switch Control Panel built by the CSI and mount on the exterior of the Sludge Building adjacent to new MSCPs. Refer to attached Figure E4206A for elementary diagram on CP.

4. Install the two spare 35A/3-pole circuit breakers listed in Section 16470-1.08-A in PPSLB2 and provide motor feeder circuits with #10 conductors from PPSLB2 to each MSCP.
5. Replace “Drain Pump Station Power” junction box at drain PS as shown on attached conduit riser diagram on Figure E2205A with terminal box.
6. Provide a free-standing EMR per Detail 6 on Drawing E6003 at the drain PS to mount the terminal box. Reattach existing sign currently mounted on existing Drain Pump Station Power JB to the new EMR.
7. Repurpose the five alarm panels furnished by the CSI under Submittal 17190-07 originally intended for conveyor startup warning alarm as follows:
 - Change the strobe from red to amber.
 - Change panel nameplates to “DRAIN PS HIGH LEVEL ALARM PANEL NO.1” (2,3,4,5)
 - Provide field terminals to enable wiring of a normally open contact from the float switch CP in parallel with a normally open contact from PCS-SLB.
8. Mount the the five Drain PS Alarm Panels in the following locations. Coordinate exact locations and mounting height in the field with County and Engineer:
 - On exterior of north wall of Sludge Building facing the Drain PS
 - On exterior of west wall of Sludge Building facing the Lagoons
 - On interior of west wall of biosolids winch system structure
 - Inside Sludge Room on east wall of Control Room
 - Inside Sludge Room on south wall.
9. Provide new conduits and conductors shown on attached Figure E2205A. Provide new seal fittings for conduits that enter the wet well. The conduit riser diagram on Figure E2205A replaces Sludge Building Drain Pump Station – Conduit Riser Diagram shown on Drawing E2205.
10. Provide float switches LSL-1555, LSH-1556, and LSHH1557 with new mounting assembly.

If this RFP is accepted, we are requesting 20 days be added to the contract.

Exclusions

1. No permit fees.
2. No cutting.
3. No patching or painting.
4. No liquidated damages.

This price is good for thirty (30) days only.

Sincerely,

Jason R. Walters
B. W. Electric, Inc.
Superintendent
JRW/



Micro-Tech Designs, Inc.

4312 Black Rock Rd., Suite 1
Hampstead, MD 21074-2641
Phone (410) 239-2885
Fax (410) 239-3736

QUOTE

We're In Control

June 1, 2022

Mr. Jason Walters
BW Electric, Inc.
15342 S. DuPont Highway
Harrington, DE 19952
(302) 566-6248
fax:

Re.: SCRWF Upgrade No.3 & RBWWTP Beach RFP-
060 Sludge Drain Pumps

Dear Mr. Walters,

We are pleased to quote on the following scope of work for the above project:

- (2) Two Drain Pump MSCP's with required equipment per RFP-060
 - Rated Nema 4X 304 SS
 - Control & Power equipment per diagrams
- Float Switch Panel
 - Rated Nema 4X 304 SS
 - Control equipment per diagrams
- (5) Updating the Alarm Panels that are on site currently.
 - Replace existing strobe light with Amber light
 - Replace existing Nameplates
 - Wiring mods from float switch
- Float Switches
 - LSL-1555, LSH-1556, LSHH-1557 & required Mounting Bracket
- Submittals
- Startup
- O&M

No field installation

Lot Price \$34,055.00 + tax if applicable

The above quotation is valid for 30 days

If there are any questions concerning the above, please contact me. I look forward to working with you and your staff on this and future projects.

Sincerely,
Micro-Tech Designs, Inc.

Wes Martin Jr.

**#SCRWF Upgrade No.3 and RBWWTP CIP Upgrade Phase 2 : RFP No. 060
Totals (Summary) - Bid Summary: Default**

| | |
|---|--------------------|
| Material | |
| Non-Quoted | \$17,434.46 |
| Quotes | 35,055.00 |
| Sales Tax (0.00%) | 0.00 |
| Total Material | \$52,489.46 |
| Labor | |
| Direct (368.92 hours @ \$70.00) | \$25,824.40 |
| Non-Productive Labor | 0.00 |
| Total Labor (368.92 hours) | \$25,824.40 |
| Direct Job Expenses | \$0.00 |
| Tools and Miscellaneous Materials | 0.00 |
| Subcontracts | 0.00 |
| Job Subtotal (Prime Cost) | \$78,313.86 |
| Overhead (10.00%) | 7,831.39 |
| Profit (5.00%) | 4,307.26 |
| Job Total | \$90,452.51 |
| Bond | |
| Bond | 2,261.31 |
| Job Total with Bond | \$92,713.82 |
| Actual Bid Price | \$92,713.82 |
| Material to Direct Labor ratio: 0.67 | |
| Prime Cost per square foot | \$0.00 |
| Job Total per square foot | \$0.00 |
| Actual Bid Price per square ft | \$0.00 |
| Labor cost per square foot | \$0.00 |
| Labor hours per square foot | 0.00 |
| Gross Profit % | 15.53 |
| Gross Profit \$ | \$14,399.96 |
| Net Profit % | 7.08 |



Request for Proposal

| | | | |
|---|--|------------------------|---------------|
| Project Title | SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2 | | |
| Owner | Sussex County, Delaware | | |
| Contract No. | C19-17: Electrical Construction | GHD Project No. | 11121182 |
| Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order. | | | |
| RFP No. | 70 | | |
| RFP Subject | SCRWF Aeration Tanks 5-8 Electrical Changes | | |
| Issued By | D. Murray | Issue Date | May. 10, 2022 |

Description of proposed changes:

Provide additional conduits at Aeration Tanks 5-8 identified in RFIs 094,95,97:

RFI-094

- Provide conductors from GPBB2 to receptacles shown on the plans.

RFI-095

- Provide 1" conduit from PPBB2 to PB-BB2-3.
- Provide 3/4" conduit from GPBB2 to PB-BB2-1.
- Provide 3/4" conduit from GPBB2 to PB-BB2-3.

RFI-097

- Provide 2-#12, 1-#12G conductors between GPBB2 and camera power pull box.
- Provide 2-CAT6 cables between PCS-BB2 and camera CAT6 pull box.
- Provide 1" conduit between PB-BB2-4 and PCS-BB2.
- Provide 1" conduit between PB-AT562 and signal pull box.



15342 S. DuPont Hwy
Harrington DE 19952

Office: 302.566.6248
Fax: 302.566.6251

Bryon Warren
President
302-270-5719

Email(s):
office@bwelectricinc.com
estimates@bwelectricinc.com

June 3, 2022

Subject: SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2 RFP No. 70 REVISED

Dear Mr. Medlarz,

Our price to perform the electrical work associated with the above project is based on RFP No. 70. Our price does not include the use of Prevailing Wages. Our price is **\$50,362.91** and includes the following:

Description of proposed changes:

Provide additional conduits at Aeration Tanks 5-8 identified in RFIs 094,95,97:

RFI-094

Provide conductors from GPBB2 to receptacles shown on the plans.

RFI-095

Provide 1" conduit from PPBB2 to PB-BB2-3.
Provide 3/4" conduit from GPBB2 to PB-BB2-1.
Provide 3/4" conduit from GPBB2 to PB-BB2-3.

RFI-097

Provide 2-#12, 1-#12G conductors between GPBB2 and camera power pull box.
Provide 2-CAT6 cables between PCS-BB2 and camera CAT6 pull box.
Provide 1" conduit between PB-BB2-4 and PCS-BB2.
Provide 1" conduit between PB-AT562 and signal pull box.

If this RFP is accepted, we are requesting 20 days be added to the contract.

Exclusions

1. No permit fees.
2. No cutting.
3. No patching or painting.
4. No liquidated damages.

This price is good for thirty (30) days only.

Sincerely,

Jason R. Walters
B. W. Electric, Inc.
Superintendent
JRW/

**#SCRWF Upgrade No.3 and RBWWTP CIP Upgrade Phase 2 : RFP No. 070
Totals (Summary) - Bid Summary: Default**

| | |
|---|--------------------|
| Material | |
| Non-Quoted | \$19,771.84 |
| Quotes | 0.00 |
| Sales Tax (0.00%) | 0.00 |
| Total Material | \$19,771.84 |
| Labor | |
| Direct (325.27 hours @ \$70.00) | \$22,768.90 |
| Non-Productive Labor | 0.00 |
| Total Labor (325.27 hours) | \$22,768.90 |
| Direct Job Expenses | \$0.00 |
| Tools and Miscellaneous Materials | 0.00 |
| Subcontracts | 0.00 |
| Job Subtotal (Prime Cost) | \$42,540.74 |
| Overhead (10.00%) | 4,254.07 |
| Profit (5.00%) | 2,339.74 |
| Job Total | \$49,134.55 |
| Bond | |
| Bond | 1,228.36 |
| Job Total with Bond | \$50,362.91 |
| Actual Bid Price | \$50,362.91 |
| Material to Direct Labor ratio: 0.46 | |
| Prime Cost per square foot | \$0.00 |
| Job Total per square foot | \$0.00 |
| Actual Bid Price per square ft | \$0.00 |
| Labor cost per square foot | \$0.00 |
| Labor hours per square foot | 0.00 |
| Gross Profit % | 15.53 |
| Gross Profit \$ | \$7,822.17 |
| Net Profit % | 7.08 |

South Coastal RWF & Rehoboth Beach WTF Upgrade

6/7/2022

| Vendor/Contract | Description | Contract Value |
|-------------------------------------|---|----------------|
| Michael F. Ronca & Sons, Inc. | SCRWF/RBWTP General Construction | 43,070,715.35 |
| BW Electric Inc. | SCRWF/RBWTP Electrical Construction | 22,292,541.44 |
| BW Electric Inc. CO#3 | DP&L Service Entrance Modification Conduit System | 235,637.33 |
| BW P.O. | Soil Screening @ Rehoboth Plant | 4,504.50 |
| City of Rehoboth | Direct Payment for repairs to piping in oxidation ditches | 324,996.81 |
| GHD | Amd 11 - SCRWF Expansion to 10mgd - Planning & Concept | 241,938.68 |
| | Amd 12 - SCRWF Expansion Construction Docs | 2,240,280.73 |
| | Amd 13 - Value Engineering | 95,080.15 |
| | Amd 14 - Rehoboth WTP Capital Improvement Program Upgrade Phase 2/Joint Project with SCRWF Expansion | 398,410.63 |
| | Amd 16 - Ocean Outfall Discharge Modeling & Wetlands Delineation for SCRWF and Add'l Design Services for Rehoboth WTP Capital Improvement Program | 181,089.72 |
| | Amd 18 - RBWTP CIP Upgrade Phase 2 - Add'l Design | 172,153.01 |
| | Amd 19 - SCRWF Upgrade 3 Add'l Design | 108,073.71 |
| | Amd 20 - SCRWF Upgrade 3/RBWTP Upgrade Phase 2 Construction Engineering | 6,589,558.49 |
| Core & Main | Influent FM Consolidation Materials | 339,944.59 |
| Core & Main | Effluent FM Pipeline Materials | 227,603.39 |
| Delmarva Power | Improve service entrances for both projects. Payment not distributed. | 175,000.00 |
| G&L | FM Consolidation & Influent Consolidation Phase II | 973,229.04 |
| G&L Work- Effluent Relocation | | 316,635.20 |
| G&L Work - RB Treatment Plant | Parking Lot Repavement | |
| Kershner Environmental Technologies | Belt Press | 295,000.00 |
| Melvin Joseph | Material Screening | 80,000.00 |
| DSWA | Loading, Hauling & Disposal of Debris | 33,000.00 |
| | Hauling of Rehoboth Oxidation Ditch Remnants | 39,663.15 |
| Totals | | 78,435,055.92 |

Council Grant Form

Legal Name of Agency/Organization Children's Beach House INC.

Project Name Youth Development Program

Federal Tax ID 51-0070966 ✓

Non-Profit Yes

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

Organization's Mission The mission of Children's Beach House is to improve the lives of children, youth, families and communities by helping them to identify, understand and utilize their own strengths, talents and resources

Address 1800 Bay Ave

Address 2

City Lewes

State DE

Zip Code 19958

Contact Person Barry Goodinson

Contact Title Director of Strategic Planning & External Relations

Contact Phone Number 703-606-4948

Contact Email Address bgoodinson@cbhinc.org

Total Funding Request 10,000

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

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

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

If YES, approximately what percentage of the project's funding does the Council grant represent? 4.2

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

Program Category Other

Primary Beneficiary Category Youth

Beneficiary Category Other

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 120

Scope

Define Target Population. Please be specific and include demographic information, geographic location, etc. Since 2006, CBH's Youth Development Program (YDP) has served children, ages 7-18, with cognitive, academic, social, and interpersonal challenges that are caused by speech or language delays and auditory processing issues. A majority of communication challenges have no known biological cause. It is generally felt that environmental conditions, such as poverty, limited parental education and parental history of speech, language, and/or learning problems account for most SLIs with no known underlying biological cause. As a result, higher concentrations of speech and language impairments can be found among poorer populations. (Bishop 2001; Stromswold 1998). Because of the higher rate of SLIs among poorer children, CBH gives preference to children living in poverty. As such, more than half of the children enrolled in the Youth Development Program are considered poor (i.e., receive free or reduced school lunches). The Youth Development Program currently has a capacity of 75 children. Of these, 14 (13%) live in Kent County.

In addition to academic challenges, speech and language disorders can have a devastating effect on children socially

and emotionally. According to the National Council on Disability, students with visible and non-visible disabilities are subject to more bullying than non-disabled peers (Carter and Spencer, 2006), and students with disabilities are disproportionately likely to face peer rejection (Martlew & Hodson, 1991; Whitney, et al, 1994; and Hodges and Perry, 1996).

Many students with communication disabilities have significant social skills challenges, either as a core trait of their disability or as a result of social isolation due to segregated environments and/or peer rejection. A 2002 study of U.S. mothers found that 94% of children with a diagnosis of Asperger's Syndrome faced peer victimization (Little, 2002), with a broad range of different types of victimization, including emotional bullying (75%), gang attacks (10%) and nonsexual assaults to the genitals (15%). A 2003 study found that 34% of students who report taking medication for Attention Deficit Hyperactivity Disorder face bullying victimization at least 2-3 times a month, a substantial increase over the rate of bullying victimization from other students surveyed (Unnever and Cornell, 2003). A Canadian study (Langevin, Bortnick, Hammer and Wiebe, 1998) examined the relationship between stuttering and being selected as a target for bullying and found that at least 59% of students studied were bullied about their stuttering, with the bullying taking place at least weekly.

CBH's Youth Development Program (YDP) is an integrated program for children, 7 to 18, with speech or language delays and auditory processing issues or who live in under-resourced homes. The program consists of:

1. Year-round case management;
2. After-school and weekend activities;
3. Summer camp

* Year-Round Case Management

Each child is assigned a Family Engagement Coordinator. The objective is to create a nexus around which CBH develops a resource-rich constellation of services and relationships that meet each child's social, developmental, emotional, academic, and other needs. Family Engagement Coordinators partner with educators and parents to assess each child's academic and non-academic needs, identifying the child's and family's strengths and challenges. Throughout the year, Family Engagement Coordinators work with children and families to set and achieve specific goals. During the school year, these largely focus on specific academic milestones, as well as social and interpersonal goals. As the school year winds down, the focus turns to summertime goals, which will be pursued during each child's time at CBH's summer camp.

* After-School and Weekend Activities

During the school year, the Youth Development Program hosts a series of weekend enrichment programs at the CBH facility in Lewes, DE. Held from October to May, these weekend gatherings offer program participants opportunities to deepen their connections with fellow program participants and help them develop new skills and interests. During the week, children participate in after school programs, mentoring activities, and tutoring sessions.

* Summer Camp

Located on three acres of shoreline, the Lewes camp's central feature is the Beach House, a 25,000 square foot building. The facility also includes a freshwater swimming pool, playground, climbing walls, low ropes course, volleyball court, carpentry shop, arts and crafts room. These activities are specifically geared toward helping campers secure development assets essential for social, moral, emotional, physical, and cognitive growth.

**Religious
Components**

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) 176,790.00

Description Salaries

Amount 117,142.00

Description Benefits

Amount 28,978.00

Description Professional Fees & Services

Amount 22,050.00

Description Program Food/Supplies, Telephone, Postage

Amount 19,990.00

Description Occupancy/Maintenance

Amount 32,995.00

Description Program Transportation/Meetings

Amount 12,945.00

Description

Amount

Description

Amount

TOTAL EXPENDITURES 234,100.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -57,310.00

Name of Organization Children's Beach House

**Applicant/Authorized
Official** Barry Goodinson

Date 05/13/2022

Affidavit Yes

Acknowledgement

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Rieley
OK 5.19

Council Grant Form

| | |
|---|--|
| Legal Name of Agency/Organization | Millsboro Historical Society ✓ |
| Project Name | Jacob Godwin School |
| Federal Tax ID | 51-0313038 ✓ |
| Non-Profit | Yes |
| Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.) | No |
| Organization's Mission | To provide an educational and historical setting for community individuals to visit for multiple purposes. This requires maintaining the grounds and building for necessary maintenance and repairs. |
| Address | 23235 Godwin School Road |
| Address 2 | |
| City | Millsboro |
| State | Delaware |
| Zip Code | 19966 |
| Contact Person | Mrs. Margaret Mitchell |
| Contact Title | Vice President |

Contact Phone Number 302-934-6820

Contact Email Address 54maggie@mchsi.com

Total Funding Request \$6,000.00

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

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

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, Other

Program Category Other Historical

Primary Beneficiary Category Other

Beneficiary Category Other All

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 250

Scope

Godwin School is a historical landmark and serves as an icon for the setting in which students learned through 1936 and with the continued support of the Sussex County Council will be able to maintain and make improvements as necessary.

Over the past two years, the Council has awarded Godwin School \$6,000 and \$3,000, respectively. The Society members have worked to reduce expenses of security, building insurance, power washing and termite inspection in 2021. Termite inspection is a must expense for 2022 as well as power washing, painting and groundskeeping.

Therefore, we are requesting a minimum of \$6,000 so we can fully maintain Godwin School.

To warrant our request, we are inviting County Council Members for an individual tour of the grounds and building or to attend our semi-annual open house events.

Mr. Arthur E. Cathell, Secretary/Treasurer
23344 Godwin School Road
Millsboro, DE 19966

**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 Absolute Security

Amount 0.00

Description Delaware Electric Coop.

Amount 0.00

Description State Farm Insurance

Amount 0.00

Description Grass Cutting

Amount 0.00

Description Portrait Restoration

Amount 0.00

Description Franchise Fee

Amount 0.00

Description Memorial

| | |
|--|-----------------------------------|
| Amount | 0.00 |
| Description | Bank Service Charges |
| Amount | 0.00 |
| TOTAL EXPENDITURES | 0.00 |
| TOTAL DEFICIT FOR PROJECT OR ORGANIZATION | 0.00 |
| Name of Organization | Millsboro Historical Society |
| Applicant/Authorized Official | Margaret Mitchell, Vice President |
| Date | 05/18/2022 |
| Affidavit Acknowledgement | Yes |

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Rieley
OK 5.19.

Council Grant Form

| | |
|---|---|
| Legal Name of Agency/Organization | Georgetown Chamber of Commerce Greater Georgetown Chamber of Commerce |
| Project Name | Pathways to Aviation @ Wings & Wheels |
| Federal Tax ID | 51-0245808 ✓ |
| Non-Profit | Yes |
| Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.) | No |
| Organization's Mission | Linking Business & Community |
| Address | 827 E Market Street |
| Address 2 | PO Box 1 |
| City | Georgetown |
| State | DE |
| Zip Code | 19947 |
| Contact Person | Linda Price |
| Contact Title | President/CEO |

Contact Phone Number 3028561544

Contact Email Address director@georgetowncoc.com

Total Funding Request 3000.00

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 | Youth |
| Beneficiary Category | Other |
| Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program | 1500 |
| Scope | <p>The Pathways to Aviation Program at Wings & Wheels is directed at Middle and High School Students to provide them a chance to learn about various opportunities in Aviation available to them (corporate, military, educational, etc). We put the kids in front of military aircraft, DSP and military warbirds along with corporate companies that have a variety of aviation related opportunities, as well as local schools that have aviation programs. (Del State University and Del Tech & possibly Embry Riddle this year). The hope is to engage hearts and minds in the aviation field. It is also our hope this year to be able to provide some <u>scholarships</u> for the kids in attendance.</p> |
| Religious Components | n/a |
| Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) | 1,500.00 |

| | |
|---------------------------|---------------------|
| Description | Scholarships |
| Amount | 3,000.00 |
| Description | Lunch for attendees |
| Amount | 500.00 |
| Description | |
| Amount | |
| Description | |
| Amount | |
| Description | |
| Amount | |
| Description | |
| Amount | |
| Description | |
| Amount | |
| Description | |
| Amount | |
| TOTAL EXPENDITURES | 3,500.00 |

| | |
|--|--------------------------------|
| TOTAL DEFICIT FOR PROJECT OR ORGANIZATION | -2,000.00 |
| Name of Organization | Georgetown Chamber of Commerce |
| Applicant/Authorized Official | Linda Price |
| Date | 05/18/2022 |
| Affidavit Acknowledgement | Yes |

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Council Grant Form

| | |
|---|---|
| Legal Name of Agency/Organization | Rehoboth Summer Children's Theatre ✓ |
| Project Name | Summer Season 2022 |
| Federal Tax ID | 51-0292158 ✓ |
| Non-Profit | Yes |
| Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.) | No |
| Organization's Mission | The Rehoboth Summer Children's Theatre provides theatrical programs of enrichment, education and entertainment for family members of all ages. We are dedicated to bringing excellent professional performances to locations throughout Lower Delaware, as well as creative dramatics programs for youth. |
| Address | PO Box 871 |
| Address 2 | |
| City | Rehoboth Beach |
| State | DE |
| Zip Code | 19971 |
| Contact Person | Steve Seyfried |

Contact Title Managing Director

Contact Phone Number 302-227-6766

Contact Email Address rehobothchildrenstheatre@gmail.com

Total Funding Request 1130.00

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

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

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

If YES, approximately what percentage of the project's funding does the Council grant represent? 9

Program Category (choose all that apply) Cultural, Educational

Program Category Other

Primary Beneficiary Category Youth

Beneficiary Category Other

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 2250

Scope One of the main activities of the Rehoboth Summer Children's Theatre each year is a professional touring production. This year the play Puss in Boots will travel to many of the Sussex County libraries. In addition the show will be performed at the Lewes Canalfront Park, The Freeman Stage in Selbyville and on the Green in Dover. These programs reach into every corner of Sussex County, providing free, professional theatre for parents and children to enjoy together.

Religious Components

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) 10,970.00

Description Personnel

Amount 10,000.00

Description Equipment & Royalties

Amount 1,200.00

Description Travel Milage

Amount 900.00

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

TOTAL EXPENDITURES 12,100.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -1,130.00

Name of Organization Rehoboth Summer Children's Theatre

Applicant/Authorized Official Steve Seyfried

Date 05/18/2022

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.

Rieley

OK 5.23.

Council Grant Form

Legal Name of Agency/Organization

Town of Millsboro ✓

Project Name

Interceptor Power Bike

Federal Tax ID

51-6000390 ✓

Non-Profit

Yes

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

No

Organization's Mission

The Millsboro Police Department is committed to enhancing the quality of life by creating a safe environment in partnership with the community we serve.

Address

322 Wilson Highway

Address 2

City

Millsboro

State

Delaware

Zip Code

19966

Contact Person

Jamie Burk

Contact Title

Town Manager

Contact Phone Number 3029348171

Contact Email Address jamieb@millsboro.org

Total Funding Request

~~5,000~~ [#] 3895 *cyHall.*

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) Other

Program Category Other Public Safety

| | |
|--|---|
| Primary Beneficiary Category | Youth |
| Beneficiary Category Other | |
| Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program | 7000 |
| Scope | Add an electric bike to the current police bike program. Our bike program helps to deter crime within Millsboro while increasing community policing and visibility of the Millsboro PD. |
| Religious Components | |
| Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) | 0.00 |
| Description | |
| Amount | |
| Description | |
| Amount | |

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

TOTAL EXPENDITURES 0.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** 0.00

Name of Organization Town of Millsboro

**Applicant/Authorized
Official** Jamie Burk

Date 05/20/2022

Affidavit

Yes

Acknowledgement

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

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE TEXT AND MAPS OF CHAPTER 13 (MOBILITY ELEMENT) OF THE COMPREHENSIVE PLAN IN ADDITION TO AMENDMENTS TO THE EXISTING AND FUTURE LAND USE MAPS OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-16.00-50.02, 235-22.00-441.00, AND 235-22.00-442.00.

WHEREAS, on November 30th, 2021, the Sussex County Planning and Zoning Office received an application for a Comprehensive Plan Amendment Request to amend the Existing and Future Land Use Map elements of the Comprehensive Plan to change the Area designations of Sussex County Parcel No. 235-16.00-50.02, 235-22.00-441.00 (2.79 Ac. part thereof), and 235-22.00-442.00) (the “Property”).

WHEREAS, the request received on November 30th, 2021 also included a request to amend the text and maps within the Comprehensive Plan to recognize the Property’s airport use.

WHEREAS, the Property is designated as being within the Low-Density Area as set forth in the Future Land Use Map identified as Figure 4.5-1 in the Plan, and is also designated as being within the Utilities and Recreation areas as set forth in the Existing Land Use Map identified as Figure 4.2-1 in the Plan.

WHEREAS, the Existing Land Use Map element of the 2008 Comprehensive Plan designated Parcel No. 235-16.00-50.02, Parcel No. 235-22.00-442.00 and part of Parcel No. 235-22.00-441.00 (2.79 Ac. part thereof), as being within an Industrial Area; and

WHEREAS, Sussex County Council desires to adopt this Ordinance amending the Existing and Future Land Use Maps of the Plan with minor amendments to the text and maps within the plan; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan is hereby amended to change the Area designation of Sussex County Parcel No. 235-16.00-50.02, 235-22.00-441.00 (2.79 Ac. part thereof), and 235-22.00-442.00 from the Low-Density Area to the Industrial Area. The Sussex County

Parcel No. 235-16.00-50.02, 235-22.00-441.00 (2.79 Ac. part thereof), and 235-22.00-442.00 so changed are identified in Exhibit A, attached hereto and incorporated herein.

Section 2. The Existing Land Use Map identified as Figure 4.2-1 of the Sussex County Comprehensive Plan is hereby amended to change the Area designation of Sussex County Parcel No. 235-16.00-50.02, 235-22.00-441.00 (2.79 Ac. part thereof), and 235-22.00-442.00 from the Utilities and/or Recreation area to the Industrial Area.

Section 3. The maps within Chapter 13 (Mobility Element) are amended as follows:

- Figure 13.1-1: Overview of Sussex County Transportation System is hereby amended to add the Airports icons as shown in Exhibit B
- Figure 13.2-8: Airports, Ferries and Navigable Waterways is hereby amended to add the Airports icons as shown in Exhibit C

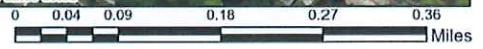
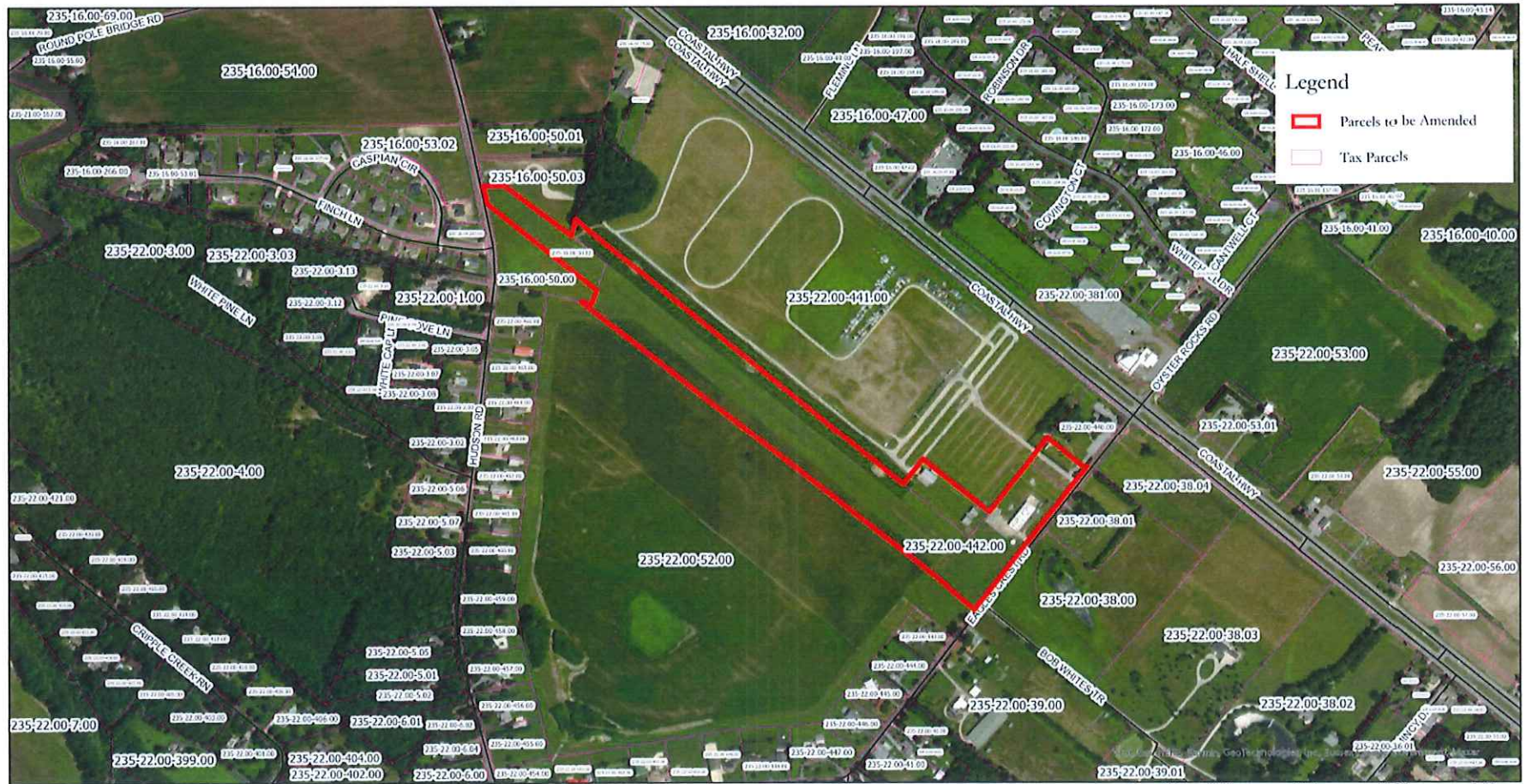
Section 4. This Ordinance shall also take effect following its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

TO BE INTRODUCED




EXHIBIT A:
Potential Comprehensive Plan
Amendment Parcels



Sussex County



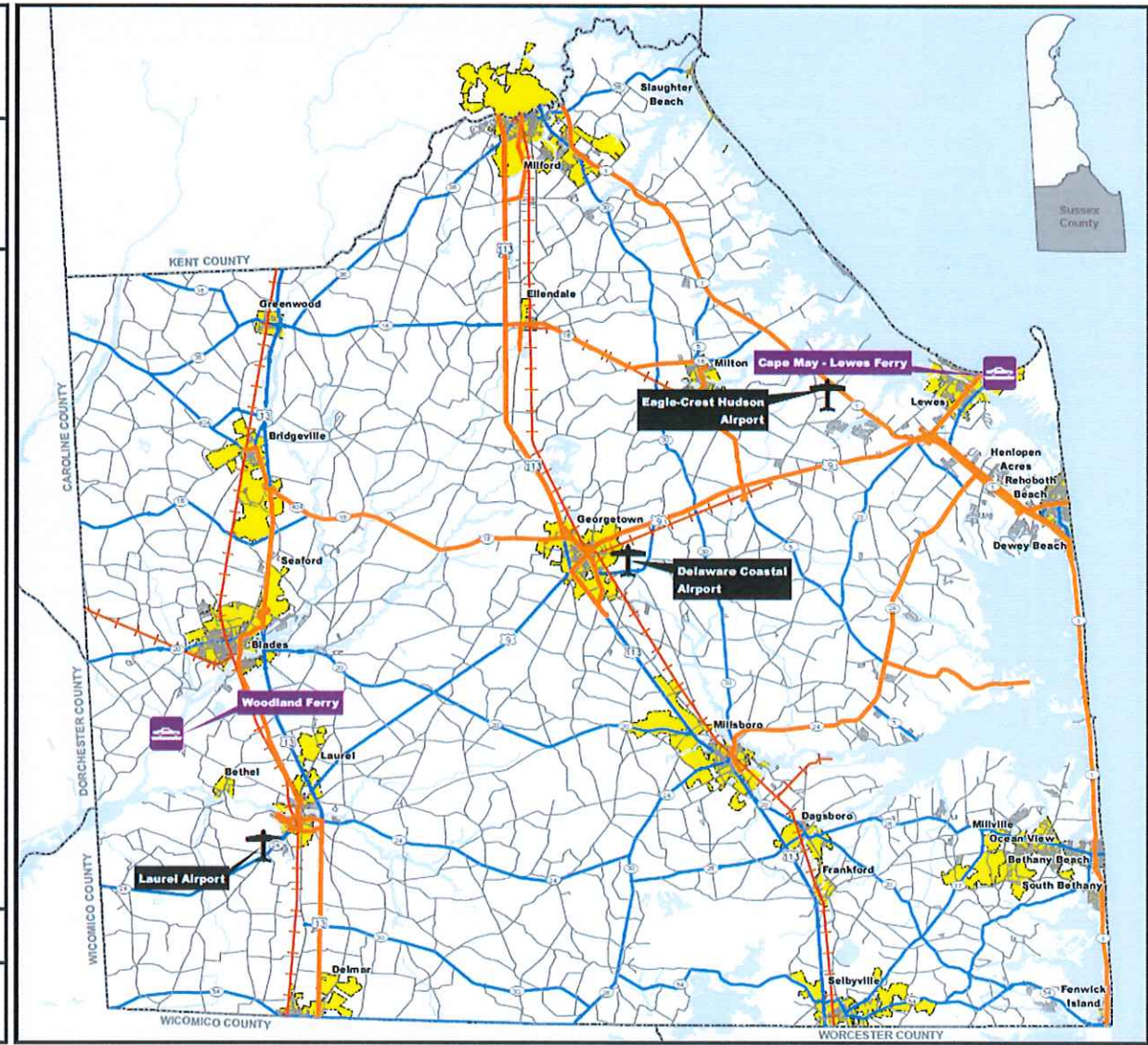
Sussex County Transportation Network

-  Airports
-  Ferry
-  Transit Routes
-  Freight Rail
-  Major Roads
-  Other Roads
-  Towns

Sources: DE FirstMap, Sussex County Mapping Dept. Delaware Department of Transportation, Bureau of Transportation Statistics (RITA/BTS) National Transportation Atlas Databases (NTAD) 2006.





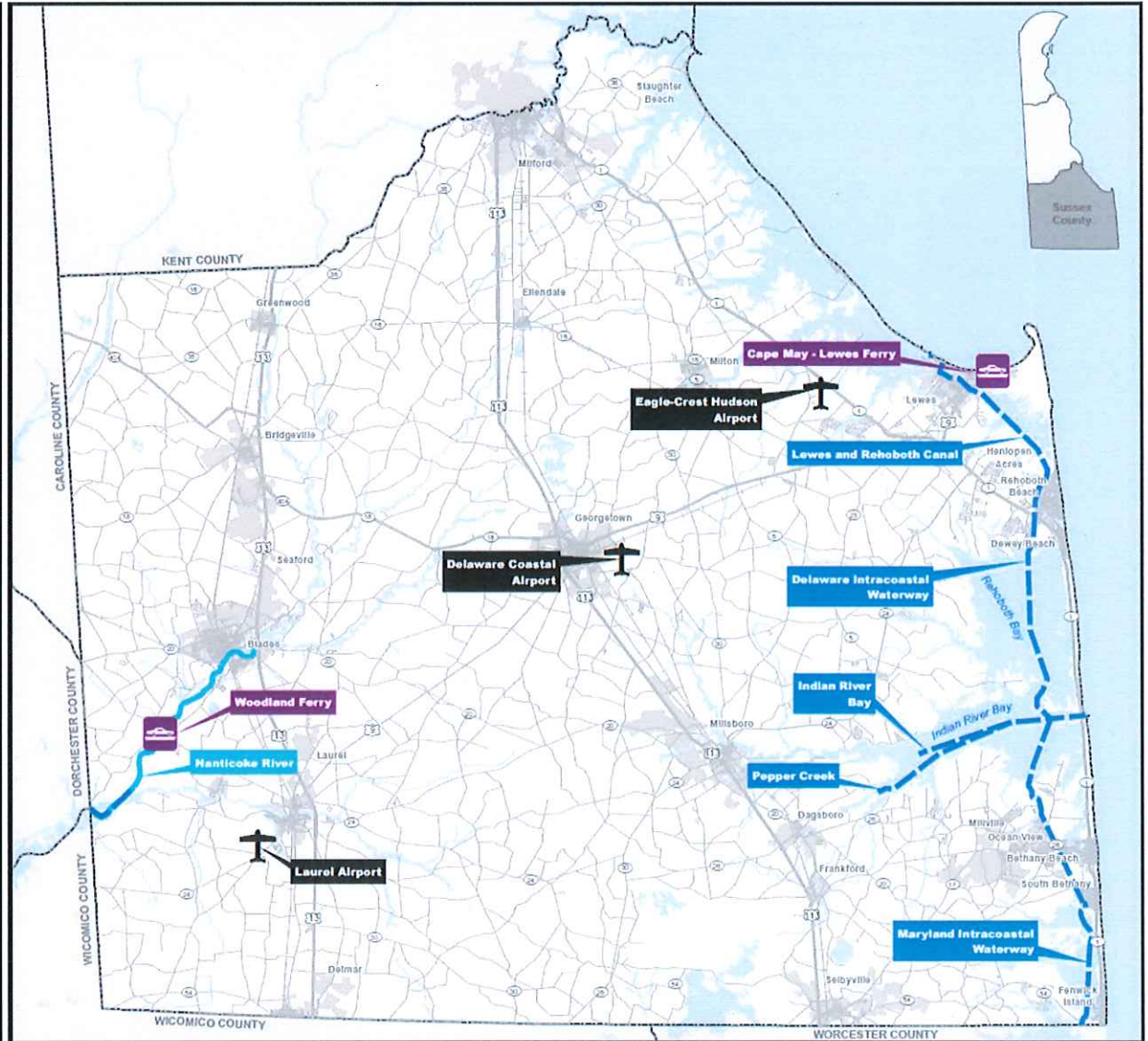


Sussex County Airports, Ferries, & Navigable Waterways

-  Airports
-  Ferry
-  National Waterway Network
-  Nanticoke River (Navigable Section)
-  County Boundaries
-  Municipalities

Sources: DE FirstMap, Sussex County Mapping Dept. Delaware Department of Transportation, Bureau of Transportation Statistics (RITA/BTS) National Transportation Atlas Databases (NTAD) 2006.

AECOM



To Be Introduced: 6/7/22

Council District 4: Mr. Hudson
Tax I.D. No.: 533-11.00-27.04
911 Address: 37033 Sweet Meadow Lane, Selbyville

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 (AGRICULTURAL RESIDENTIAL DISTRICT) FOR A HORSE-RIDING ACADEMY WITH OVERNIGHT ACCOMODATIONS AND ASSOCIATED AGRICULTURAL ACTIVITIES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.0 ACRES, MORE OR LESS

WHEREAS, on the 20th day of December 2022, a conditional use application, denominated Conditional Use No. 2331 was filed on behalf of Sweet Meadows Riding Academy; 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. 2331 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. 2331 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on Sweet Meadow Lane on the north side of Deer Run Road (S.C.R. 388) approximately 0.5 mile southwest of Zion Church Road (Rt. 20) and being more particularly described in the attached legal description prepared by Parsons & Weidman, P.A., said parcel containing 5.0 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: 6/7/22

Council District 4: Mr. Hudson
Tax I.D. No.: 134-11.00-152.00
911 Address: 34371 Vines Creek Road, Dagsboro

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.83 ACRES, MORE OR LESS

WHEREAS, on the 21st day of February 2022, a zoning application, denominated Change of Zone No. 1974 was filed on behalf of Gregory T. White and Patricia P. White; 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. 1974 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-3 Heavy Commercial District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the northeast side of Vines Creek Road (Rt. 26) approximately 278 ft. northwest of Powell Farm Road (S.C.R. 365) and being more particularly described in the attached legal description prepared by Raymond E. Tomasetti, Jr., said parcel containing 2.83 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.

To Be Introduced: 6/7/22

Council District 4: Mr. Hudson
Tax I.D. Nos.: 134-11.00-107.00 and 108.00
911 Addresses: 34360 & 34376 Vines Creek Road, Dagsboro

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR MEDIUM RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.64 ACRES, MORE OR LESS

WHEREAS, on the 21st day of February 2022, a zoning application, denominated Change of Zone No. 1975 was filed on behalf of Gregory T. White and Patricia P. White; 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. 1975 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 [MR Medium 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 Baltimore Hundred, Sussex County, Delaware, and lying on the southwest side of Vines Creek Road (Rt. 26) approximately 379 ft. northwest of Powell Farm Road (S.C.R. 365) and being more particularly described in the attached legal description prepared by Raymond E. Tomasetti, Jr., said parcel containing 3.64 ac., more or less.

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

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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: June 3, 2022

RE: County Council Report for C/Z 1933 filed on behalf of Route 54 Limited Partnership

The Planning and Zoning Department received an application (C/Z 1933 filed on behalf of Route 54 Limited Partnership) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District. The property is located at 3306 Lighthouse Road, Selbyville. The change of zone is for 1.62 Acres, more or less.

The Planning and Zoning Commission held a public hearing on April 28, 2022. At the meeting of May 12, 2022, the Commission recommended approval of the application for the 8 reasons as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meetings of April 28, 2022 and May 12, 2022.

Approved Minutes of the April 28, 2022 Planning & Zoning Commission Meeting

Ms. Wingate recused herself from the Applications and left Council Chambers.

C/Z 1933 Route 54 Limited Partnership

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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.62 ACRES, MORE OR LESS. The property is lying on the south side of Lighthouse Road (Route 54), approximately 0.39 mile east of Johnson Road (S.C.R. 390). 911 Address: 33006 Lighthouse Road, Selbyville. Tax Parcel: 533-18.00-59.00.



Mr. Whitehouse advised the Commission, that submitted into the record for both Applications was the staff analysis, PLUS comments, property survey, DelDOT Service Level Evaluation Response, a letter from Sussex County Engineering Department Utility Planning Division; the Site Plan, one mail return for both Applications and zero comments.

The Commission found that Mr. Daniel Bunting spoke on behalf of the Applications, C/Z 1933 Route 54 Limited Partnership and C/Z 1934 Bunting Holdings, LLC; that he will be consolidating both presentations into one; that both parcels are contiguous and lying within the Coastal Area; that the Applicant's seek a C-2 (Medium Commercial) rezoning of the properties; that the proposed Applications are considered an infill rezoning; that currently there is C-1 (General Commercial) to the east and west of the property; that the property to the left is the location for the Bunting Construction office; that the subject property, owned by Route 54 Limited Partnership currently has a 1970's single-family home located on site; that the three acre property owned by Bunting Holdings, LLC is a landlocked agricultural parcel; that both properties have been placed through the PLUS process; that both Applications have received no objection from DelDOT or DNREC; that the C-2 Zoning is an applicable zone within the Coastal Area according to the Comprehensive Plan; that they feel both Application rezoning requests are proper rezoning considering the surrounding areas, as well as what the proposed rezoning could provide for the area in regards to the property location near residential subdivisions; that the proposal for commercial zoning will support future and existing residential homes in the area; that both Applicants have no immediate plans for the site; that due to this, there was no Site Plan submitted with the Application and their rezoning requests are simply to plan ahead.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to C/Z 1933 Route 54 Limited Partnership or C/Z 1934 Bunting Holdings, LLC.

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

At the conclusion of the public hearings, the Commission discussed both Applications.

In relation to Application C/Z 1933 Route 54 Limited Partnership. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0. Ms. Wingate abstained.

Draft Minutes of the May 12, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application, which had been deferred since April 28, 2022.

Mr. Mears moved that the Commission recommend approval of C/Z 1933 for Route 54 Limited Partnership for a Change in Zone from AR-1 Agricultural-Residential Zoning to C-2 "Medium Commercial" Zoning based on 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 located along Lighthouse Road, also known as Route 54. It is surrounded by other properties that are zoned C-1 General Commercial. This rezoning makes one connected block of commercial zoning in this area of Lighthouse Road.
3. C-2 Zoning at this location in the middle of the existing C-1 Zoning along Lighthouse Road will benefit nearby residents and visitors 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. This 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. No parties appeared in opposition to this rezoning application.
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 by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/Z 1933 Route 54 Limited Partnership for the reasons stated in the motion. Motion carried 4-0.

The vote by roll call; Ms. Stevenson – yea, Mr. Hopkins – yea, Mr. Mears – yea, Chairman Wheatley – yea

PLANNING & ZONING COMMISSION

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



Sussex County

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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: April 28th, 2022

Application: CZ 1933 Route 54 Limited Partnership

Applicant: Route 54 Limited Partnership (c/o Mr. Daniel Bunting)
32996 Lighthouse Rd
Selbyville, DE 19975

Owner: Route 54 Limited Partnership
32996 Lighthouse Rd
Selbyville, DE 19975

Site Location: 33006 Lighthouse Road, Selbyville. The property is lying on the south side of Lighthouse Road (Route 54), approximately 0.39 mile east of Johnson Road (S.C.R 390).

Current Zoning: AR-1 – Agricultural Residential District

Proposed Zoning: C-2 – Medium Commercial District

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Roxana Volunteer Fire Company

Sewer: Septic

Water: Artesian

Site Area: 1.62 acres +/-

Tax Map ID.: 533-18.00-59.00



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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Ms. Lauren DeVore, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and applicant
Date: March 28th, 2022
RE: Staff Analysis for CZ 1933 Route 54 Limited Partnership

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1933 Route 54 Limited Partnership to be reviewed during the April 28, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcel 533-18.00-59.00 to allow for a change of zone from an Agricultural Residential (AR-1) District to a Medium Commercial (C-2) District. The parcel is lying on the south side of Lighthouse Road (Route 54) approximately 0.39 mile east of Johnson Road (S.C.R 390) at 33006 Lighthouse Road in Selbyville, Delaware. The parcel to be rezoned contains 1.62 acres +/-.

Further Site Considerations

It should be noted that there is a Tax Ditch (and associated Tax Ditch ROW,) which runs along the southern portion of the property. The Tax Ditch ROW is measured 50-ft from the centerline of the ditch. No improvements may be located within these areas.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the subject property has a land use designation of "Coastal Area." The properties to the east, south, and northeast across Lighthouse Road (Route 54) also have the land use designation of "Coastal Area." The properties to the west and northwest have a land use designation of "Developing Area"

As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided that special environmental concerns are addressed. A range of housing types should be permitted in Coastal Areas, including single-family homes, townhouses, and multi-family units. Retail and office uses are appropriate, but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-use development should all be allowed. In doing so, careful mixtures of homes with light commercial, office and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home. Major new industrial uses are not proposed in these areas. (Sussex County Comprehensive Plan, 4-15).



Conversely, Developing Areas are newer, emerging growth areas that demonstrate the characteristics of developmental pressures. Most of the proposed Developing Areas are adjacent to municipalities, within or adjacent to potential future annexation areas of a municipality, or adjacent to Town Centers. A range of housing types are appropriate in Developing Areas, including single family homes, townhouses, and multi-family units. In selected areas and at appropriate intersections, commercial uses should be allowed. A variety of office uses would be appropriate in many areas. Portions of the Developing Areas with good road access and few nearby homes should allow for business and industrial parks. Appropriate mixed-use development should also be allowed. In doing so, careful mixtures of homes with light commercial and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home (Sussex County Comprehensive Plan, 4-14).

Zoning Information

The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories”, the Medium Commercial (C-2) Zoning District is listed as an applicable Zoning District within the “Coastal Area” (Sussex County Comprehensive Plan, 4-25).

The property is zoned Agricultural Residential (AR-1) District. The adjacent parcels to the east and west of the subject property are zoned General Commercial (C-1) District. The properties located to the south and north across Lighthouse Road are zoned Agricultural Residential (AR-1).

It should be noted that the property directly to the south is also seeking a rezoning from Agricultural Residential (AR-1) District to a Medium Commercial (C-2) District under Change of Zone 1934 Bunting Holdings, LLC

Existing Change of Zone Applications within the Vicinity of the Subject Site

Since 2011, there have been three (3) Change of Zone applications within a 1-mile radius of the application site. The first application is for Change of Zone No. 1711 James Moses for a change of zone from an Agricultural Residential (AR-1) Zoning District and General Commercial (C-1) Zoning District to a Commercial Residential (CR-1) Zoning District. The application was approved by the Sussex County Council on February 14th, 2012 and the change was adopted through Ordinance No. 2241. The second application is for Change of Zone No. 1896 Fenwick Commons, LLC for a change of zone from an Agricultural Residential (AR-1) Zoning District to Medium Density Residential (MR) Zoning District. The application was approved by the Sussex County Council on January 14, 2020 and adopted through Ordinance No. 2700. The last application is for Change of Zone No. 1917 Iacchetta Development Corporation for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Medium Commercial (C-2) Zoning District. The application was approved by the Sussex County Council on August 11, 2020 and adopted through Ordinance No. 2731.

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from an Agricultural Residential (AR-1) District to a Medium Commercial (C-2) District could be considered as being consistent with the land use, area zoning and surrounding uses.

| Change of Zone Applications (w/in a 1 mile radius of the subject site)* | | | | | | | | |
|--|----------------------------------|-----------------------|------------------------|-------------------------|------------------------------|--------------------|-------------------------|-------------------------|
| Application Number | Application Name | Current Zoning | Proposed Zoning | P&Z Decision | P&Z Decision Date | CC Decision | CC Decision Date | Ordinance Number |
| CZ 1711 | James Moses | AR-1 & C-1 | CR-1 | Recommended Approval | 1/26/2012 | Approved | 2/14/2012 | 2241 |
| CZ 1896 | Fenwick Commons, LLC | AR-1 | MR | Recommended Approval | 12/12/2019 | Approved | 1/14/2020 | 2700 |
| CZ 1917 | Iachetta Development Corporation | AR-1 | C-2 | Recommended Approval | 7/23/2020 | Approved | 8/11/2020 | 2731 |

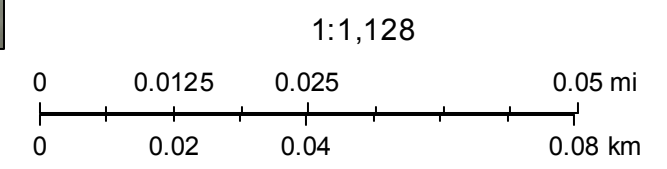


Sussex County



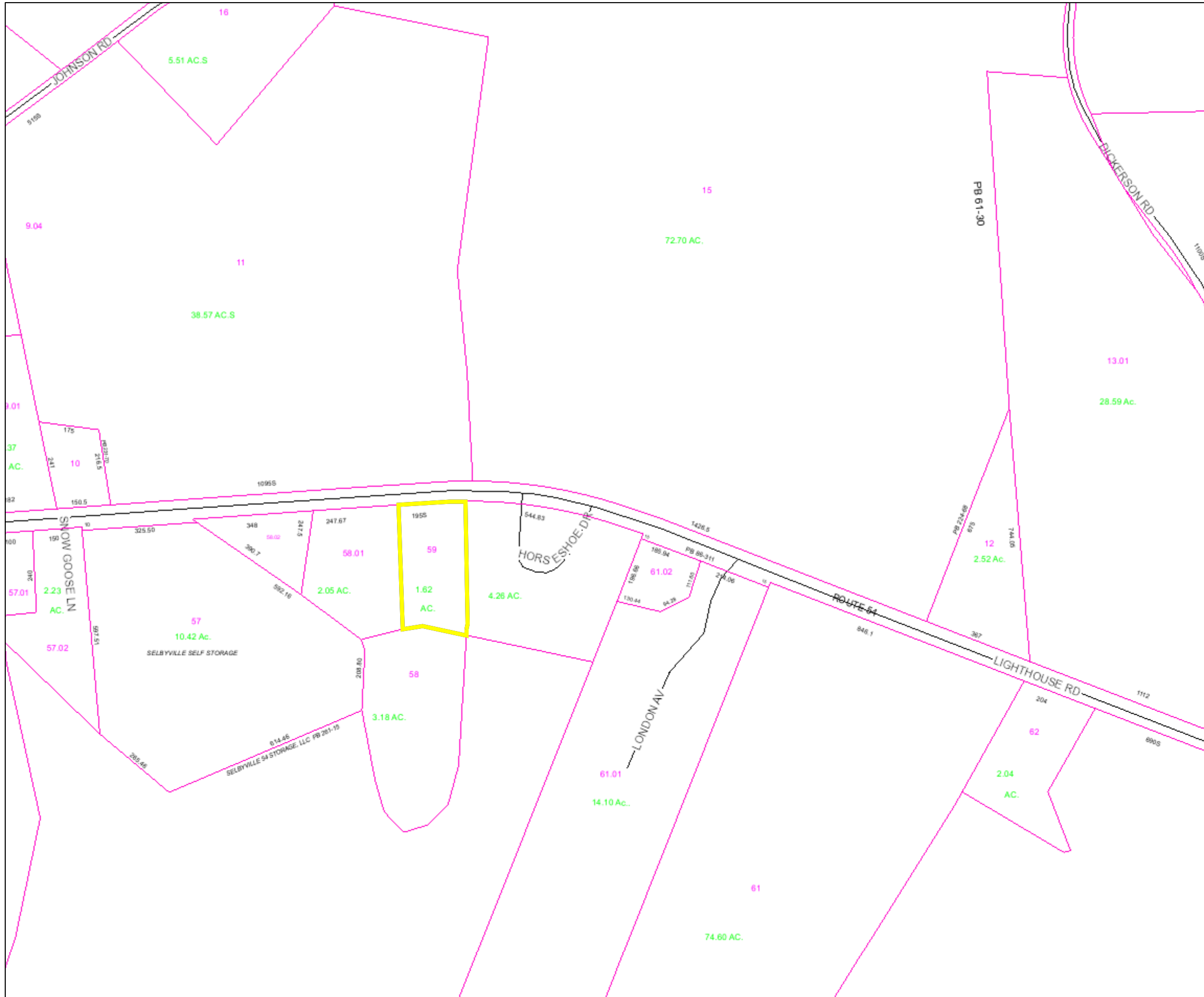
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| Owner Name | ROUTE 54 LP |
| Book | 4076 |
| Mailing Address | 32996 LIGHTHOUSE RD |
| City | SELBYVILLE |
| State | DE |
| Description | SLAG RD SELBYVILLE |
| Description 2 | WILLIAMSVILLE |
| Description 3 | |
| Land Code | |

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





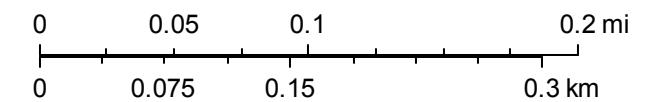
Sussex County



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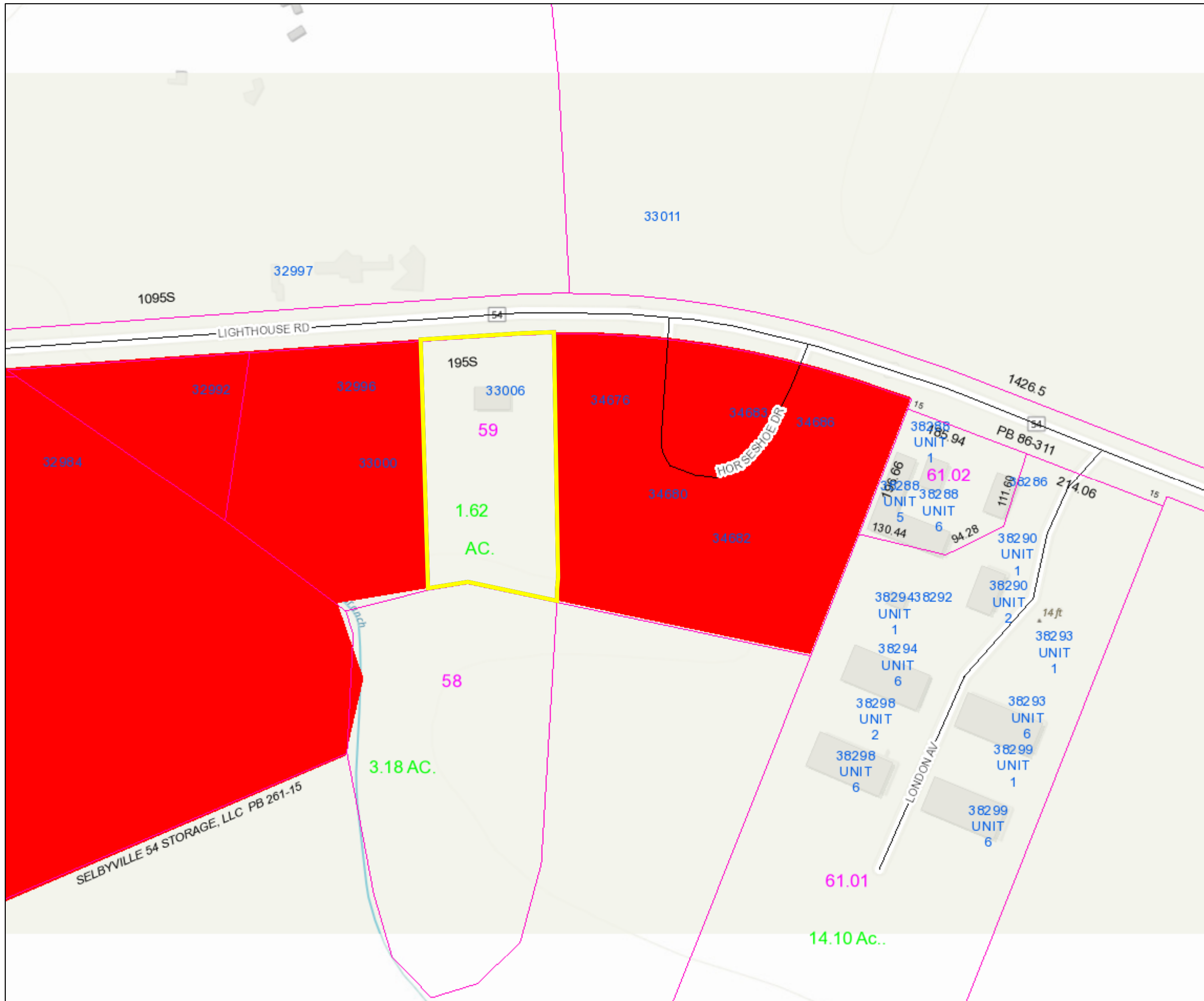
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- Tax Parcels
- Streets
- County Boundaries
- Municipal Boundaries

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Sussex County



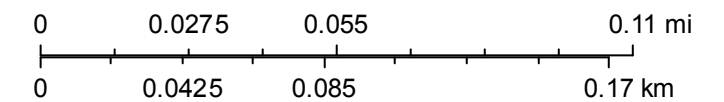
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| Description 3 | N/A |
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- polygonLayer**

Override 1
- polygonLayer**

Override 1
- Tax Parcels
- 911 Address
- Streets

1:2,257



Introduced 10/27/20

**Council District 5 - Rieley
Tax I.D. No. 533-18.00-59.00
911 Address: 33006 Lighthouse Road, Selbyville**

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.62 ACRES, MORE OR LESS

WHEREAS, on the 22nd day of September 2020, a zoning application, denominated Change of Zone No. 1933 was filed on behalf of Route 54 Limited Partnership; and

WHEREAS, on the ____ day of _____ 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1933 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the south side of Lighthouse Road (Route 54) approximately 0.39 mile east of Johnson Road (S.C.R 390) and being more particularly described in the attached legal description prepared by Sergovic, Carmean, Weidman, McCartney & Owens, P.A, said parcel containing 1.62 acres, more or less.

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

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



Sussex County

DELAWARE
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Memorandum

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

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

CC: Everett Moore, County Attorney

Date: June 3, 2022

RE: County Council Report for C/Z 1934 filed on behalf of Bunting Holdings, LLC

The Planning and Zoning Department received an application (C/Z 1934 filed on behalf of Bunting Holdings, LLC) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District. The property is located on the south side of Lighthouse Road (Rt. 54) approximately 0.39 mile east of Johnson Road (S.C.R 390). The change of zone is for 3.18 Acres, more or less.

The Planning and Zoning Commission held a public hearing on April 28, 2022. At the meeting of May 12, 2022, the Commission recommended approval of the application for the 9 reasons as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meetings of April 28, 2022 and May 12, 2022.

Approved Minutes of the April 28, 2022 Planning & Zoning Commission Meeting

Ms. Wingate recused herself from the Applications and left Council Chambers.

C/Z 1934 Bunting Holdings, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.18 ACRES, MORE OR LESS. The property is a landlocked parcel of land lying on the south side of Lighthouse Road (Route 54), approximately 0.39 mile east of Johnson Road (S.C.R. 390). 911 Address: N/A. Tax



Parcel: 533-18.00-58.00.

Mr. Whitehouse advised the Commission, that submitted into the record for both Applications was the staff analysis, PLUS comments, property survey, DelDOT Service Level Evaluation Response, a letter from Sussex County Engineering Department Utility Planning Division; the Site Plan, one mail return for both Applications and zero comments.

The Commission found that Mr. Daniel Bunting spoke on behalf of the Applications, C/Z 1933 Route 54 Limited Partnership and C/Z 1934 Bunting Holdings, LLC; that he will be consolidating both presentations into one; that both parcels are contiguous and lying within the Coastal Area; that the Applicant's seek a C-2 (Medium Commercial) rezoning of the properties; that the proposed Applications are considered an infill rezoning; that currently there is C-1 (General Commercial) to the east and west of the property; that the property to the left is the location for the Bunting Construction office; that the subject property, owned by Route 54 Limited Partnership currently has a 1970's single-family home located on site; that the three acre property owned by Bunting Holdings, LLC is a landlocked agricultural parcel; that both properties have been placed through the PLUS process; that both Applications have received no objection from DelDOT or DNREC; that the C-2 Zoning is an applicable zone within the Coastal Area according to the Comprehensive Plan; that they feel both Application rezoning requests are proper rezoning considering the surrounding areas, as well as what the proposed rezoning could provide for the area in regards to the property location near residential subdivisions; that the proposal for commercial zoning will support future and existing residential homes in the area; that both Applicants have no immediate plans for the site; that due to this, there was no Site Plan submitted with the Application and their rezoning requests are simply to plan ahead.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to C/Z 1933 Route 54 Limited Partnership or C/Z 1934 Bunting Holdings, LLC.

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

At the conclusion of the public hearings, the Commission discussed both Applications.

In relation to Application C/Z 1934 Bunting Holdings, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 4-0. Ms. Wingate abstained.

Draft Minutes of the May 12, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since April 28, 2022.

Mr. Mears moved that the Commission recommend approval of C/Z 1934 Bunting Holdings, LLC for a Change in Zone from AR-1 Agricultural-Residential zoning to C-2 "Medium Commercial" zoning based on 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 landlocked immediately west of the property fronting on Lighthouse Road (Route 54). With the exception of the property that is the subject of C/Z 1933 for C-2 Zoning, all of the property in this area along Lighthouse Road is zoned Commercial. This rezoning is consistent with the existing zoning in this area.
3. This property's only access is via the property this is the subject of C/Z 1933, which is under the same ownership or control as this property. As a result, it is appropriate for both properties to be uniformly zoned as C-2.
4. C-2 Zoning at this location along Lighthouse Road will benefit nearby residents of Sussex County by providing a convenient location for retail uses or consumer services.
5. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
6. This 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.
7. No parties appeared in opposition to this rezoning application.
8. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/Z 1934 Bunting Holdings, LLC for the reasons stated in the motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson – yea, Mr. Hopkins – yea, Mr. Mears – yea, Chairman Wheatley – yea

PLANNING & ZONING COMMISSION

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



Sussex County

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302-854-5079 F
JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: April 28th, 2022

Application: CZ 1934 Bunting Holdings LLC

Applicant: Bunting Holdings LLC (c/o Mr. Daniel Bunting)
7000 NE 8th Dr
Boca Raton, FL 33487

Owner: Bunting Holdings LLC
7000 NE 8th Dr
Boca Raton, FL 33487

Site Location: The property is a landlocked parcel of land lying on the south side of Lighthouse Road (Route 54) approximately 0.39 mile east of Johnson Road (S.C.R 390).

Current Zoning: AR-1 – Agricultural Residential District

Proposed Zoning: C-2 – Medium Commercial District

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Roxana Volunteer Fire Company

Sewer: N/A

Water: Artesian

Site Area: 3.18 acres +/-

Tax Map ID.: 533-18.00-58.00



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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Ms. Lauren DeVore, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and applicant
Date: March 28th, 2022
RE: Staff Analysis for CZ 1934 Bunting Holdings LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1934 Bunting Holdings LLC to be reviewed during the April 28, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcel 533-18.00-58.00 to allow for a change of zone from an Agricultural Residential (AR-1) District to a Medium Commercial (C-2) District. The parcel is a landlocked parcel of land lying on the south side of Lighthouse Road (Route 54) approximately 0.39 mile east of Johnson Road (S.C.R 390). The parcel to be rezoned contains 3.18 acres +/-.

Further Site Considerations

Although formerly thought to be landlocked, it should be noted that the property has the slightest semblance of an access point by way of a dirt road (likely an agricultural access) along the eastern portion of the subject property.

The western side of the property lies within the 100-Year Floodplain (Flood Zone AE). Any improvements within this location shall require an Elevation Certificate to be issued by FEMA with the lowest floor construction to be elevated to or above Base Flood Elevation (BFE) for the site.

Buntings Branch also runs through the western side of the property. With regard to any future improvements on the site, a fifty-foot (50-ft) buffer zone is required landward from the mean high water line of tidal waters, tidal tributary streams, and tidal wetlands and from the ordinary high water line of perennial nontidal rivers and nontidal streams in Sussex County (§115-193(B)).

There is a Tax Ditch (and associated Tax Ditch ROW,) which runs along the eastern and northern portion of the property. Both Tax Ditch ROWs are measured 50-ft from the top of bank (TOB) of the ditch and were reduced to this width through Court Order Change #29). No improvements may be located within these areas.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the subject property has a land use designation



of “Coastal Area.” The properties to the east, south, and northeast across Lighthouse Road (Route 54) also have the land use designation of “Coastal Area.” The properties to the west and northwest have a land use designation of “Developing Area”

As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided that special environmental concerns are addressed. A range of housing types should be permitted in Coastal Areas, including single-family homes, townhouses, and multi-family units. Retail and office uses are appropriate, but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-use development should all be allowed. In doing so, careful mixtures of homes with light commercial, office and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home. Major new industrial uses are not proposed in these areas. (Sussex County Comprehensive Plan, 4-15).

Conversely, Developing Areas are newer, emerging growth areas that demonstrate the characteristics of developmental pressures. Most of the proposed Developing Areas are adjacent to municipalities, within or adjacent to potential future annexation areas of a municipality, or adjacent to Town Centers. A range of housing types are appropriate in Developing Areas, including single family homes, townhouses, and multi-family units. In selected areas and at appropriate intersections, commercial uses should be allowed. A variety of office uses would be appropriate in many areas. Portions of the Developing Areas with good road access and few nearby homes should allow for business and industrial parks. Appropriate mixed-use development should also be allowed. In doing so, careful mixtures of homes with light commercial and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home (Sussex County Comprehensive Plan, 4-14).

Zoning Information

The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories”, the Medium Commercial (C-2) Zoning District is listed as an applicable Zoning District within the “Coastal Area” (Sussex County Comprehensive Plan, 4-25).

The property is zoned Agricultural Residential (AR-1) District. The adjacent parcels to the northeast and west of the subject property are zoned General Commercial (C-1) District. The properties located to the south and north across Lighthouse Road are zoned Agricultural Residential (AR-1).

It should be noted that the property directly to the north is also seeking a rezoning from Agricultural Residential (AR-1) District to a Medium Commercial (C-2) District under Change of Zone 1933 Route 54 Limited Partnership.

Existing Change of Zones within the Vicinity of the Subject Site

Since 2011, there have been three (3) Change of Zone applications within a 1-mile radius of the application site. The first application is for Change of Zone No. 1711 James Moses for a change of zone from an Agricultural Residential (AR-1) Zoning District and General Commercial (C-1)

Zoning District to a Commercial Residential (CR-1) Zoning District. The application was approved by the Sussex County Council on February 14th, 2012 and the change was adopted through Ordinance No. 2241. The second application is for Change of Zone No. 1896 Fenwick Commons, LLC for a change of zone from an Agricultural Residential (AR-1) Zoning District to Medium Density Residential (MR) Zoning District. The application was approved by the Sussex County Council on January 14, 2020 and adopted through Ordinance No. 2700. The last application is for Change of Zone No. 1917 Iacchetta Development Corporation for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Medium Commercial (C-2) Zoning District. The application was approved by the Sussex County Council on August 11, 2020 and adopted through Ordinance No. 2731.

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from an Agricultural Residential (AR-1) District to a Medium Commercial (C-2) District could be considered as being consistent with the land use, area zoning and surrounding uses.

| Change of Zone Applications (w/in a 1 mile radius of the subject site)* | | | | | | | | |
|--|-----------------------------------|-----------------------|------------------------|-------------------------|------------------------------|--------------------|-------------------------|-------------------------|
| Application Number | Application Name | Current Zoning | Proposed Zoning | P&Z Decision | P&Z Decision Date | CC Decision | CC Decision Date | Ordinance Number |
| CZ 1711 | James Moses | AR-1 & C-1 | CR-1 | Recommended Approval | 1/26/2012 | Approved | 2/14/2012 | 2241 |
| CZ 1896 | Fenwick Commons, LLC | AR-1 | MR | Recommended Approval | 12/12/2019 | Approved | 1/14/2020 | 2700 |
| CZ 1917 | Iacchetta Development Corporation | AR-1 | C-2 | Recommended Approval | 7/23/2020 | Approved | 8/11/2020 | 2731 |

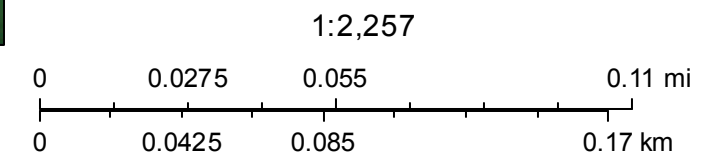


Sussex County



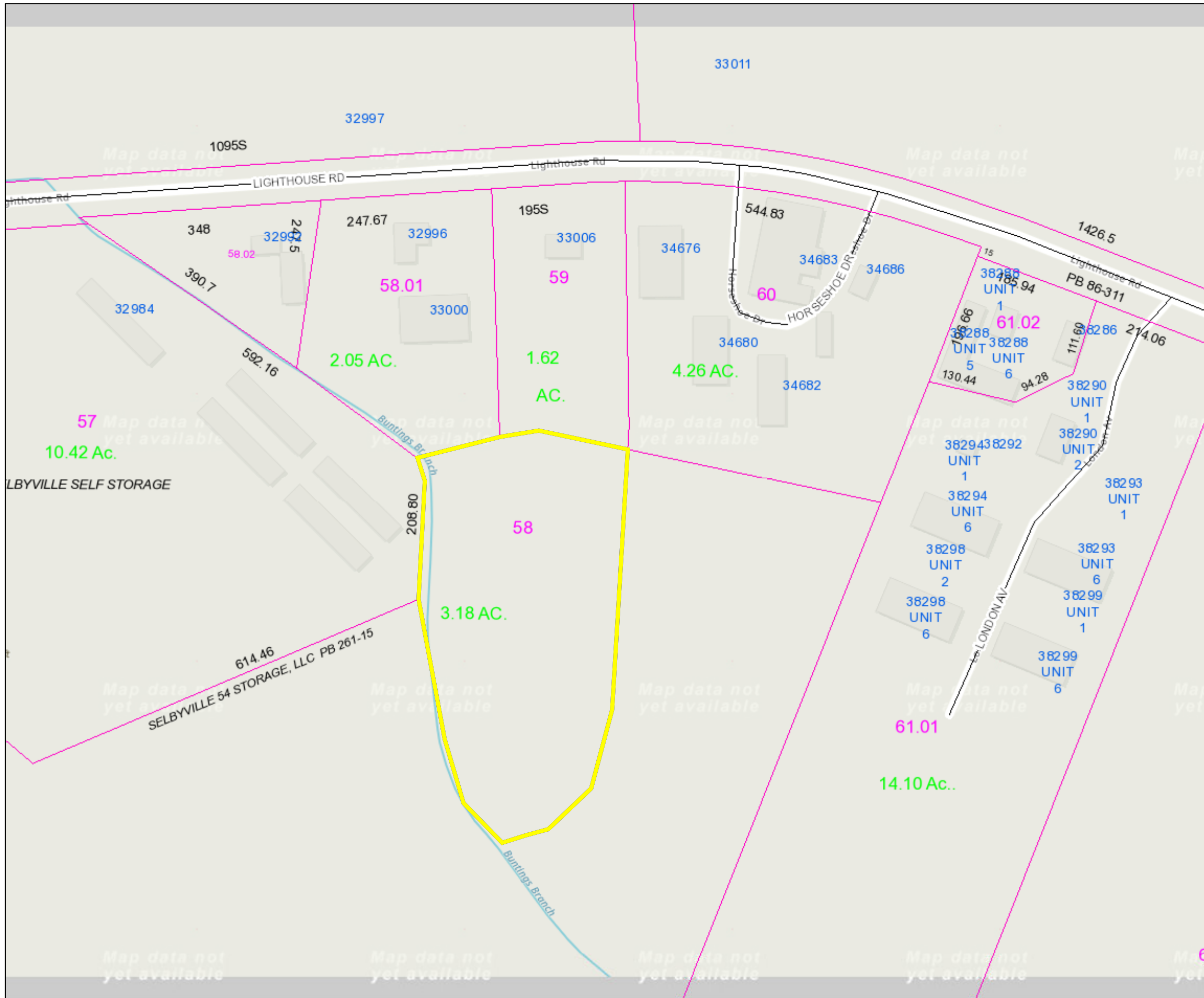
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| PIN: | 533-18.00-58.00 |
| Owner Name | BUNTING HOLDINGS LLC |
| Book | 4714 |
| Mailing Address | 7000 NE 8TH DR |
| City | BOCA RATON |
| State | FL |
| Description | N/RT 54 |
| Description 2 | S/RT 390 |
| Description 3 | |
| Land Code | |

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





Sussex County



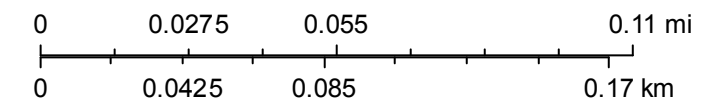
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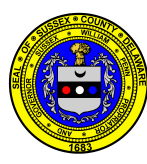
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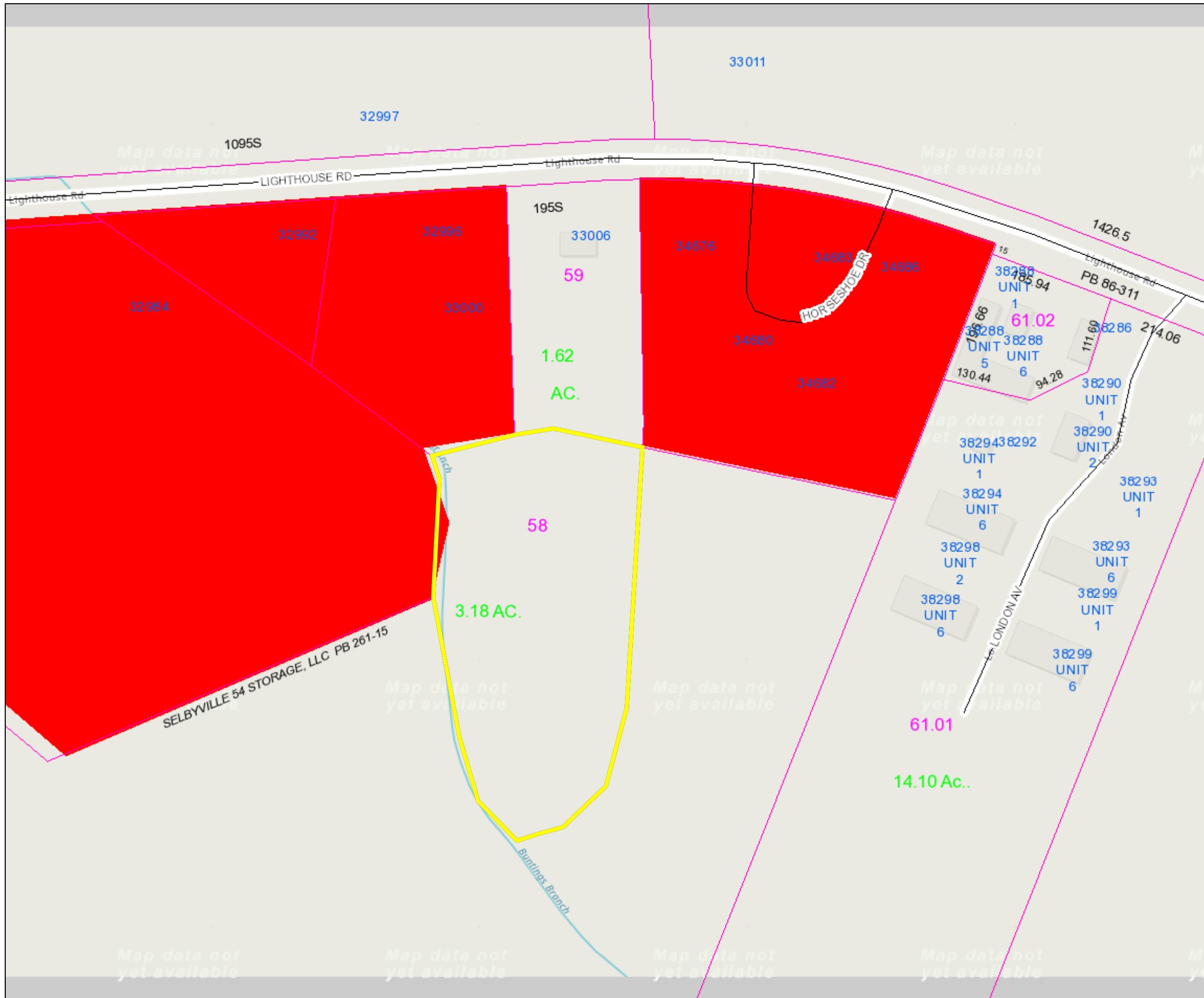
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- 911 Address
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- County Boundaries

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Sussex County



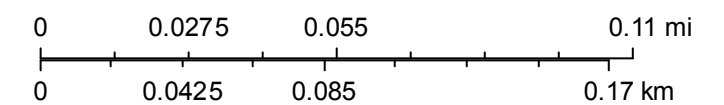
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| Description | N/RT 54 |
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| Description 3 | |
| Land Code | |

- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- Tax Parcels
- 911 Address
- Streets

1:2,257



Introduced 10/27/20

**Council District 5 - Rieley
Tax I.D. No. 533-18.00-58.00
911 Address: None Available**

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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.18 ACRES, MORE OR LESS

WHEREAS, on the 22nd day of September 2020, a zoning application, denominated Change of Zone No. 1934 was filed on behalf of Bunting Holdings LLC; and

WHEREAS, on the ____ day of _____ 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1934 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and being a landlocked parcel of land lying on the south side of Lighthouse Road (Route 54) approximately 0.39 mile east of Johnson Road (S.C.R. 390) and being more particularly described in the attached legal description prepared by Sergovic, Carmean, Weidman, McCartney & Owens, P.A, said parcel containing 3.18 acres, more or less.

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

JAMIE WHITEHOUSE, AICP
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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: June 3, 2022

RE: County Council Report for C/Z 1980 filed on behalf of MARS-RE, LLC

The Planning and Zoning Department received an application (C/Z 1980 filed on behalf of MARS-RE, LLC) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District. The property is located at 34464 Atlantic Avenue, Ocean View. The change of zone is for 3.91 Acres, more or less.

The Planning and Zoning Commission held a public hearing on April 28, 2022. At the meeting of May 12, 2022, the Commission recommended approval of the application for the 9 reasons as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meetings of April 28, 2022 and May 12, 2022.

Approved Minutes of the April 28, 2022 Planning & Zoning Commission Meeting

C/Z 1980 MARS-RE, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.91 ACRES, MORE OR LESS. The property is lying on the south side of Atlantic Avenue (Route 26), approximately 475 ft. east of Powell Farm Road (S.C.R 365). 911 Address: 34464 Atlantic Avenue, Ocean View. Tax Parcel: 134-11.00-191.00.



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

Mr. Whitehouse advised the Commission that submitted into the record is the staff analysis, Site Plan, Applicant Exhibits, the PLUS comments, the Applicant's response to the PLUS comments, the Applicant's proposed Findings of Fact; a letter from the Sussex County Engineering Department Utility Planning Division and zero written comments.

The Commission found that Ms. Mackenzie Peet, Esq, spoke on behalf of the Application; that she is an attorney with Baird Mandalas Brockstedt, LLC; that also present were members of MARS-RE, LLC, Mr. Roger Schwandtner and Mr. Maxwell Allen, as well as, Mr. John Murray, Senior Project Manager with Mott MacDonald Company; that Mr. Schwandtner has decades of experience in commercial development; that he has worked operations and business development in the food, retail and airport industries; that Mr. Allen is a United States Army veteran with an employment background in retail management; that Mr. Allen is currently employed as Delaware Relator with Long & Foster Real Estate; that there is a Long & Foster Sign located on the property; that the sign is only being used for advertisement purposes; that the property is not for sale; that Mr. Schwandtner and Mr. Allen are both full time residents of Dagsboro; that the Applicant requests a Change of Zone from AR-1 (Agricultural Residential) to C-3 (Heavy Commercial); that the property is 3.9-acres +/-; that the property is located within the Baltimore Hundred at 34464 Atlantic Ave. in Ocean View, Delaware; the Applicant submitted a supplemental exhibit packet on April 14, 2022; that the Exhibit Packet includes the Planning & Zoning Application; property and deed information within Exhibit A, which confirms MARS-RE, LLC ownership of the property, a Conceptual Site Plan which was prepared by The Kercher Group, Inc. which is now a Mott McDonald Company as Exhibit B, the PLUS Application and PLUS comments dated April 22, 2021, and the Applicant's response to the PLUS comments, dated April 30, 2021, as Exhibit C; that listed in Exhibit D are applicable sections of the Zoning Code; that the Future Land Use Map and Table 4.5-2 of Zoning Districts applicable to Future Land Use Categories as Exhibit E; that aerial maps of the site, referencing Zoning District, Conditional Use, Future Land Use and Sewer Tier overlays as Exhibit F; that renderings prepared by Method Architects, LLC are within Exhibit G; that the proposed Findings of Fact are within Exhibit H; that the site is located on the southwest side of Atlantic Ave., Rt. 26; that the site is located approximately 350-ft. of the four way intersection of Powell Farm Rd., Omar Rd., Vines Creek Rd. and Atlantic Ave.; that nearby commercial and residential developments, which include a property located on the opposite side of the property, which is zoned CR-1 (Commercial Residential); that the property operates as a Carquest Auto Parts and Marine store; that the next adjacent site is a Goodyear Tire Center; located east on Atlantic Ave. is Good Earth Market, which is zoned CR-1 (Commercial Residential); that at the intersection of Roxanna Rd. and Atlantic Ave. there are properties zoned as C-1 (General Commercial), B-2 (Business Community), and CR-1 (Commercial Residential); that at the intersection of Roxanna Rd. and Atlantic Ave. there are a number of commercial uses, which include the Creative Concepts furniture store, Liberty gas station, Hockers store and Walgreens; that in the opposite direction of the intersection of Roxanna Rd. and Atlantic Ave. is the location of St. George's Church, as well as properties zoned as MR (Medium-Density Residential) and GR (General Residential); that the site is currently vacant with trees bordering the rear yard perimeter of the site; that a small area of non-tidal wetlands, consisting of 0.45-acres; that within the Conceptual Site Plan it is shown the wetlands wrap around the rear yard and along the side yard; that open space has been prioritized near environmentally sensitive areas of the site; that the non-tidal wetlands will remain as an undisturbed area; that a 25-ft. wetland buffer area will be provided; that the project is located with the St. George's Tax Ditch Watershed, which is noted on the Site Plan; that the Applicant will submit the plan to DNREC's Tax Ditch Section, subject to the approval of the rezoning request, to address remarks made within the

PLUS comments; that the project is located within Tier I of the Sussex County Unified Sewer District; that central sewer is anticipated to be provided by Sussex County; that central water is anticipated to be provided by Tidewater Utilities, Inc.; that the stormwater management system will meet or exceed the requirements of the State and Sussex County; that the increase in traffic and its effect on surround area roadways will be reviewed and approved by DelDOT in the Applicant's pre-submittal meeting with DelDOT; that the PLUS comments indicate the proposed improvements will generate less than 2,000 daily vehicle trips daily and less than 200 peak hour vehicle trips; that this allows the Applicant to pay an Area Wide Study Fee in lieu of a Traffic Impact Study (TIS); that this fee is calculated at ten dollars per vehicle trip, which equals \$5,480.00 as noted within the PLUS comments; that the mandatory shared use path, required by DelDOT will be added to the Final Site Plan; that the Applicant will also address DelDOT's comments to add a walkway connecting the interior of the development to the shared use path located at the front of the site; that the project is located within Investment Level 2 and Investment Level 3 according to the Strategies for State Policies and Spending Map; that Investment Level 2 reflects areas where growth is anticipated in the near term; that Investment Level 3 reflects areas where growth is anticipated in the longer term; that the PLUS comments confirm the Office of State Planning and Coordination has no objection to the proposed rezoning and development, provided the project is in compliance with the Comprehensive Plan, applicable codes and Ordinances; that the intended future use is a mixed-use development which will consist of a commercial space and multi-family residential units or any other permitted use within C-3 (Heavy Commercial); that other permitted uses with C-3 (Heavy Commercial) are agricultural related uses, such as commercial greenhouses and wholesale nurseries, residential uses such as hotels and motels, and commercial uses including convenience stores, gas stations, restaurants, business parks and professional offices; that the C-3 (Heavy Commercial) District is generally intended for larger scale service businesses along major arterial roads; that the zoning district does permit mixed-use developmental, including residential within commercial and office space, which is the current proposed use; that the intended rezoning is consistent with the purposes of the C-3 (Heavy Commercial) District; that the Applicant acknowledges the need to go through site plan approval for any proposed development of the site; that the proposed rezoning from AR-1 (Agricultural Residential) to C-3 (Heavy Commercial) is also consistent with the Comprehensive Plan and Future Land Use Map; that the project is located within the Coastal Area; that the Coastal Area is a designated growth area which generally include the areas on the south eastern side of Sussex County; that this area was previously referred to as the Environmentally Sensitive Developing Area; that mixed-use development, like the proposed project, is permitted within the Coastal Area; that Section 2.3 of the Comprehensive Plan titled as Implications of Population Growth recognizes the benefits of mixed-use development in curving traffic and congestion implications of a growing population; that the Applicant's plan is consistent with the Comprehensive Plan as the Coastal Area is considered to be considered a compatible location for retail, office, large shopping centers and office parks located with access along arterial roads, much like Rt. 26; that the proposed C-3 rezoning is also consistent with the surrounding land uses, with other properties nearby being zoned for commercial; that noted within the Planning & Zoning Memorandum, since 2011 there have been six Change of Zone applications submitted within a mile radius of the site; that these application resulted in AR-1 (Agricultural Residential) properties being rezoned to CR-1 (Commercial Residential) or B—1 (Neighborhood Business); that there are other commercial uses within the vicinity of the site which area zoned C-1 (General Commercial); that it is the Applicant's position the intended use is consistent with, similar to and compatible with existing uses in the vicinity of the site, with some uses being more intensive than the Applicant's mixed-use development; that Table 4.5-2 titled Zoning Districts Applicable to Future Land Use Categories confirms C-3 (Heavy Commercial) District is an applicable zoning district within

the Coastal Area; that for all the reasons stated the proposed zoning meets the general purpose of the Zoning Ordinance by promoting the orderly growth, prosperity and welfare of Sussex County with the proposed rezoning and the intended future commercial use; that the proposed commercial use will provide needed commercial services to Sussex County residents living in the area; that in addition to the fact the proposed rezoning is compatible with the surrounding community because the site is located within an appropriate location on a commercialized, and increasingly commercialized Rt.26, which will support C-3 (Heavy Commercial) permitted uses to nearby residential and business uses and in addition to being consistent with the Comprehensive Plan and Future Land Use Map.

Mr. Mears questioned the height of the mixed-use building, as it is stated to be four stories high at 7,129 sq. ft.

Ms. Wingate stated the maximum height of 52-ft. was listed on the submitted plan.

Mr. Robertson stated should the Application be approved for rezoning the Applicant will be required to come back to the Commission for Site Plan approval.

Ms. Peet stated the height of the mixed-use building will be required to comply with the 42-ft. height requirements of the Sussex County Code; that the plan submitted is strictly a concept plan only; that when the Application was originally submitted, it was submitted for HR-2 (High-Density Residential); that HR-2 would have allowed for a higher building; that based off subsequent discussions an amendment was made to the Application; that the Applicant decided to request C-3 rather than HR-2; that C-3 is much more consistent with the surrounding area than HR-2; that any proposed structure would meet the height, area and bulk requirements of the C-3 Zoning District.

Chairman Wheatley stated he wanted to remind the Commission that the request before them is to change the zoning district; that once the property is rezoned, any permitted use within the district is allowed, regardless of what the Applicant has proposed, and their decision should be based on if the subject parcel of land is appropriate for the zoning being requested.

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

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

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

In relation to Application C/Z 1980 MARS-RE, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

Draft Minutes of the May 12, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since April 28, 2022.

Mr. Mears moved that the Commission recommend approval of C/Z 1980 MARS-RE, LLC for a Change in Zone from AR-1 to C-3 “Heavy Commercial” based on the record made during the public hearing and for the following reasons:

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. This property is located along Route 26, which is considered to be a Major Collector roadway according to DelDOT’s roadway classification. Major Collector roads are appropriate locations for C-3 Zoning.
3. The parcel is in a section of Route 26 where there are commercial zones and business and commercial uses that have developed. This includes 6 commercial rezonings in the area since 2011. This location along this part of Route 26 is appropriate for this type of zoning, and it will not adversely affect the neighboring properties.
4. The site is served by central water and sewer.
5. This property is located in the Coastal Area according to the current Sussex County Land Use Plan. This proposed commercial zoning is appropriate in this Area according to the Plan.
6. C-3 Zoning at this location along Route 26 will provide convenient commercial services to visitors and residents of Sussex County.
7. The proposed rezoning meets the general purpose of the Zoning Code by promoting orderly growth, convenience, order prosperity, and welfare of the County.
8. No parties appeared in opposition to this rezoning application.
9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/Z 1980 MARS-RE, LLC for the reasons stated in the motion. Motion carried 4-0.

The vote by roll call; Ms. Stevenson – yea, Mr. Hopkins – yea, Mr. Mears – yea, Chairman Wheatley – yea

PLANNING & ZONING COMMISSION

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



Sussex County

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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: April 28th, 2022

Application: CZ 1980 Mars-Re, LLC

Applicant: MARS-RE, LLC C/O Roger Schwandtner
35637 Central Park Circle
Dagsboro, DE 19939

Owner: MARS-RE, LLC C/O Roger Schwandtner
35637 Central Park Circle
Dagsboro, DE 19939

Site Location: Lying on southwest side of Atlantic Ave. (Rt. 26) approximately 350' east of the 4-way intersection of Powell Farm Road (S.C.R. 365), Omar Road (Rt. 54), Vines Creek Road (Rt. 26) and Atlantic Avenue.

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

Proposed Zoning: Heavy Commercial (C-3) Zoning District

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Millville Fire Department

Sewer: Sussex County

Water: Tidewater Utilities

Site Area: 3.826 acres +/-

Tax Map ID.: 134-11.00-191.00



JAMIE WHITEHOUSE, AICP MRTPI
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Sussex County

DELAWARE
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Memorandum

To: Sussex County Planning Commission Members
From: Christin Scott, Planner I
CC: Vince Robertson, Assistant County Attorney
Date: April 20th, 2022
RE: Staff Analysis for CZ 1980 Mars-Re, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1980 Mars-Re, LLC to be reviewed during the April 28th, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcel 134-11.00-191.00 to allow for a change of zone from an Agricultural Residential Zoning District (AR-1) to a Heavy commercial District (C-3). The property is lying on the south side of Atlantic Avenue (Rt. 26), approximately 475 feet east of Powell Farm Road (S.C.R. 365). The parcel to be rezoned contains 3.826 acres +/-.

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

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

The property is zoned Agricultural Residential (AR-1) Zoning District. The adjacent parcels to the east, south and west are all zoned Agricultural Residential (AR-1) Zoning District. Across Atlantic Avenue (Rt. 26) the property is zoned Commercial Residential (CR-1) Zoning District. Properties further east and west are zoned Medium Density Residential (MR) Zoning District, Neighborhood Business (B-1) Zoning District and General Commercial (C-1) Zoning District.

The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 "Zoning Districts Applicable to Future Land Use Categories," the Heavy Commercial District (C-3) is listed as an applicable zoning district in the "Coastal Area".

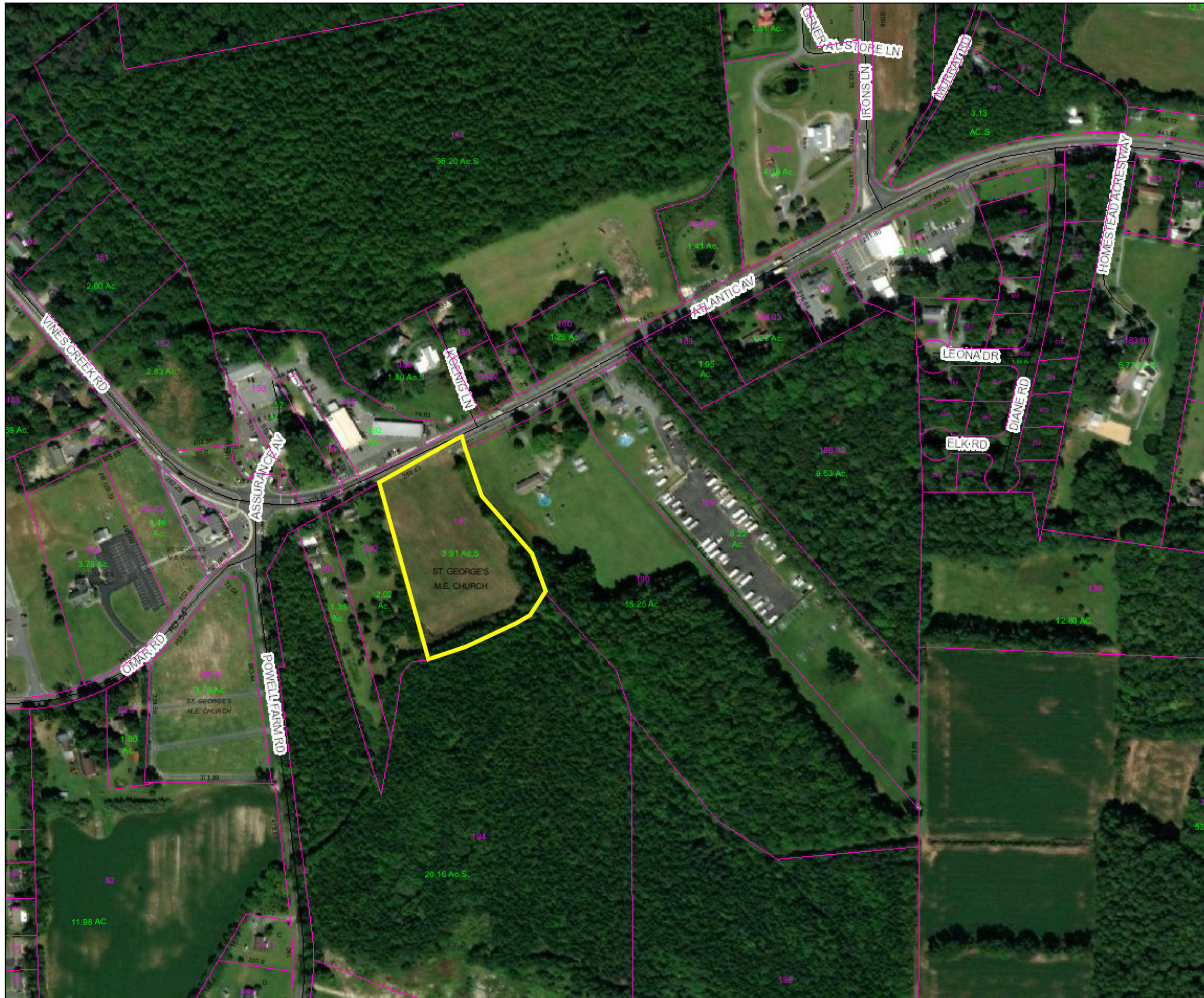


Since 2011, there have been six (6) Change of Zone applications within a 1-mile radius of the application site. Change of Zone 1735 for a change of zone from an Agricultural Residential Zoning District (AR-1) to a Commercial Residential Zoning District (CR-1) was approved by the Sussex County Council on Tuesday, September 24, 2013 through Ordinance No. 2321. Change of Zone 1738 for a change of zone from an Agricultural Residential Zoning District (AR-1) to a Neighborhood Business Zoning District (B-1) was approved by the Sussex County Council on Tuesday, December 3, 2013 through Ordinance No. 2331. Change of Zone 1789 for a change of zone from an Agricultural Residential Zoning District (AR-1) to a Commercial Residential Zoning District (CR-1) was approved by the Sussex County Council on Tuesday, April 5, 2016 through Ordinance No. 2439. Change of Zone 1798 for a change of zone from an Agricultural Residential Zoning District (AR-1) and General Commercial Zoning District to a Commercial Residential Zoning District (CR-1) was approved by the Sussex County Council on Tuesday, June 21, 2016, through Ordinance No. 2457. Change of Zone 1825 for a change of zone from an Agricultural Residential Zoning District (AR-1) to a Commercial Residential Zoning District (CR-1) was approved by the Sussex County Council on Tuesday, September 19, 2017, through Ordinance No. 2518. Change of Zone 1840 for a change of zone from an Agricultural Residential Zoning District (AR-1) to a Commercial Residential Zoning District (CR-1) was approved by the Sussex County Council on Tuesday, January 30, 2018 through Ordinance No. 2544.

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from an Agricultural Residential Zoning District (AR-1) to a Heavy Commercial Zoning District (C-3) could be considered as being consistent with the land use, based on size and scale, with area zoning and surrounding uses.



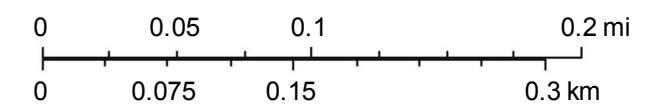
Sussex County



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|------------------------|------------------------|
| PIN: | 134-11.00-191.00 |
| Owner Name | MARS-RE LLC |
| Book | 5146 |
| Mailing Address | 35637 CENTRAL PARK CIR |
| City | DAGSBORO |
| State | DE |
| Description | SE/RT 26 |
| Description 2 | 330' NE/RD 365 |
| Description 3 | 12950 |
| Land Code | |

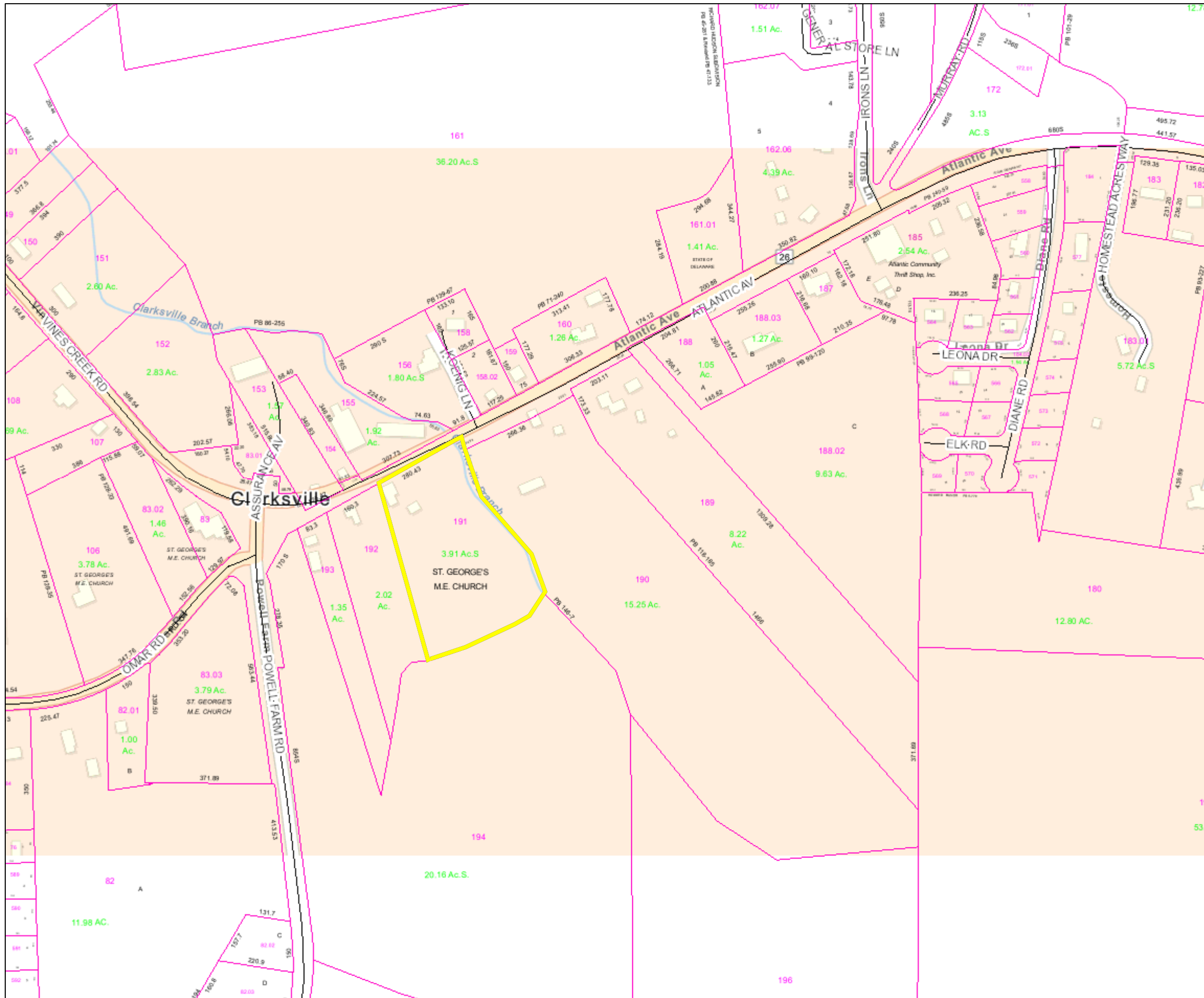
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- Override 1
- Tax Parcels
- Streets
- County Boundaries

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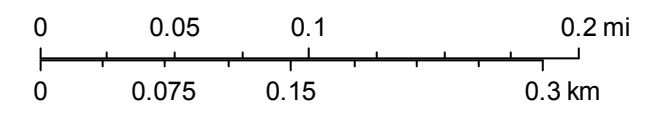
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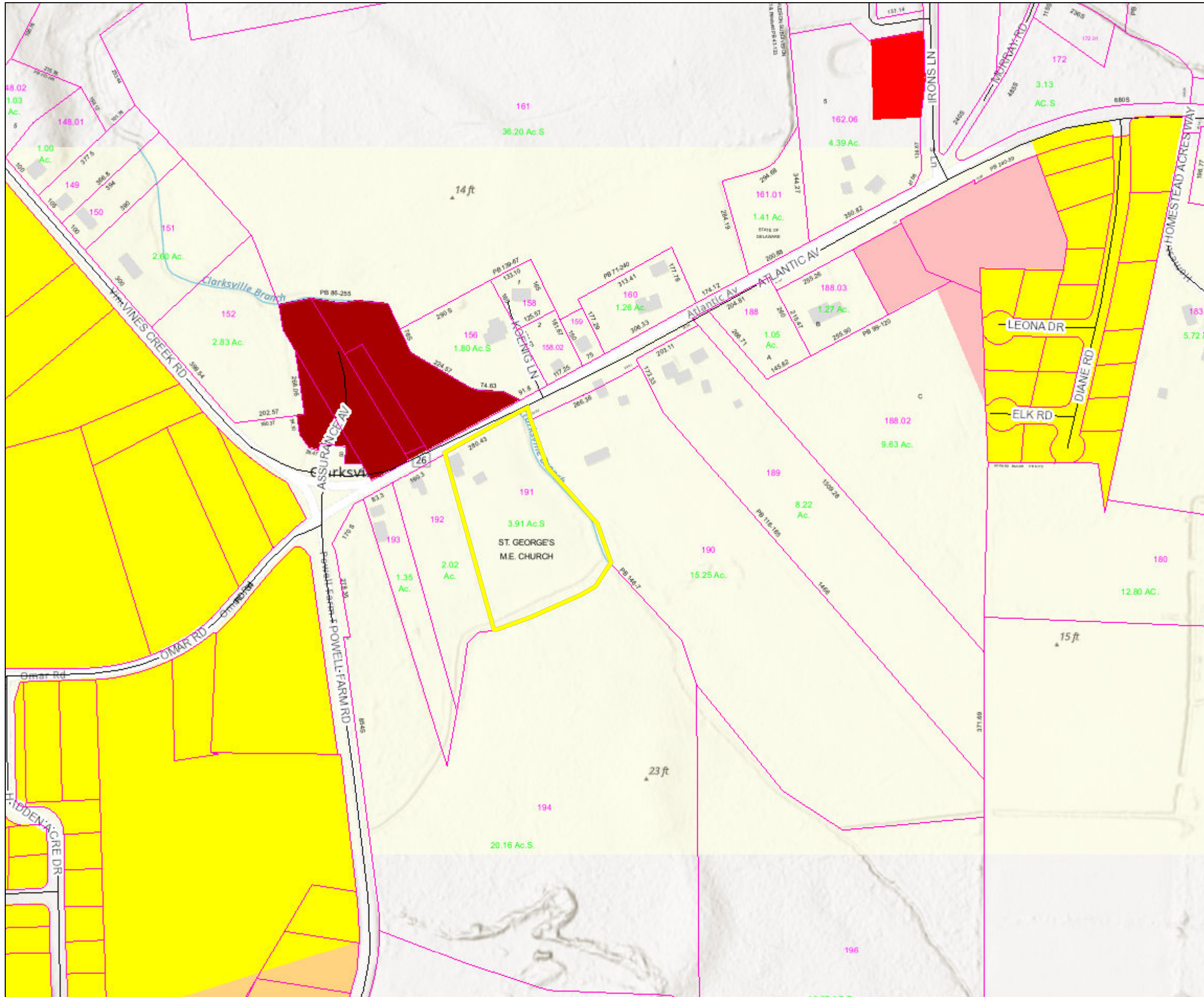
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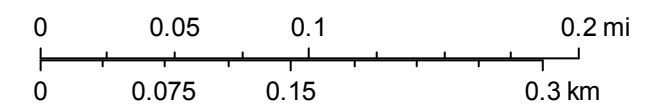
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Override 1
- Tax Parcels
- Streets

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To Be Introduced: 04/05/2022

Council District 4: Mr. Hudson
Tax I.D. No. 134-11.00-191.00
911 Address: 34464 Atlantic Ave, Ocean View

ORDINANCE NO. ____

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

WHEREAS, on the 22nd day of February 2022, a zoning application, denominated Change of Zone No. 1980 was filed on behalf of MARS-RE, 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. 1980 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-3 Heavy Commercial District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

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

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

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
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Sussex County

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Memorandum

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

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

CC: Everett Moore, County Attorney

Date: June 3, 2022

RE: County Council Report for C/Z 1956 filed on behalf of Jeffrey Behney

The Planning and Zoning Department received an application (C/Z 1956 filed on behalf of Jeffrey Behney) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District. The property is located at 38531 Parker Road. The change of zone is for 10.54 Acres, more or less.

The Planning and Zoning Commission held a public hearing on April 28, 2022. At the meeting of May 12, 2022, the Commission recommended denial of the application for the 9 reasons as outlined within the motion (included below).

Update: On June 2, 2022, the Planning and Zoning Department received a request from the Applicant to withdraw the application. A copy of the letter is included in Council's paperless packet.

Below are the minutes from the Planning & Zoning Commission meetings of April 28, 2022 and May 12, 2022.

Approved Minutes of the April 28, 2022 Planning & Zoning Commission Meeting

C/Z 1956 Jeffrey Behney

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 GUMBORO HUNDRED, SUSSEX COUNTY, CONTAINING 10.546 ACRES,



MORE OR LESS. The property is lying on the northeast of the intersection of E Line Road (S.C.R. 419) and Parker Road. 911 Address: 38531 Parker Road. Tax Parcel: 333-15.00-20.00.

Mr. Whitehouse advised the Commission that submitted into the record is the staff analysis, Site Plan, DelDOT Service Level Evaluation Response, Sussex County Engineering Department Utility Planning Division, and zero comments.

The Commission found Mr. Jeffrey Behney spoke on behalf of his Application; that he is representing Over the Hill Holdings, LLC and the Delmarva armory, Range Time; that Range Time is a 15,000 sq. ft. indoor shooting facility; that no shooting is performed outdoors; that he is requesting a Change in Zone to C-2 (Medium Commercial) to allow security in the investment made into the property and along with the 15 employees who have been hired; that the 15 employees are supplied with health insurance and offered nice wage compensation and he requested the rezoning to offer security for his staff and the investment made on the property.

Ms. Wingate questioned if all activity is performed inside and if any noise would be made outside of the building.

Mr. Robertson questioned if the use was currently permitted under a Conditional Use; that if the property is rezoned, any use within the requested zoning district will be permitted; that if a Site Plan has already been approved, the Applicant would not be required to come back to the Commission for Site Plan approval if there is no change and questioned if Mr. Behney's Application request is to rezone the whole property.

Mr. Whitehouse confirmed the current use was approved as a Special Use Exception; that the Site Plan was reviewed, and the structures were permitted before being built.

Ms. Stevenson questioned if Mr. Behney needed a rezoning of the whole parcel; that he has residential neighbors and once they rezone the property, any permitted use within the requesting zoning would be permitted.

Chairman Wheatley requested Mr. Whitehouse bring up the Zoning District overlay in maps to reference where other commercial properties are located relation to the subject property.

Mr. Whitehouse stated the nearest commercial property is located to the north, over a mile away, which was referenced in red for C-1 (General Commercial) Zoning.

Mr. Robertson mentioned the property is located on the State line, that the maps of Sussex County will not reference any commercial activity across the line, and he questioned if there were any know commercial businesses used located nearby on the Maryland side.

Mr. Behney stated no noise would be heard outside of the property; that all activity would take place inside the building; that the noise range is 62 decibels in the parking lot on the property; that the property was currently approved as a Special Use Exception; that he is requested to rezone the whole 10.56-acre property; that the back of the property is just a back yard they mow; that he does feel the whole property

is required to be rezoned; that they keep the property clean; that they are requesting to rezone the whole property the way it is currently structured; that there are a couple of nearby properties, located on the Maryland side, being used for commercial use and his property is located right on the line.

The Commission found that Ms. Librada Famiglietti presented questions to the Application; that she and her husband live adjacent to the subject property; that they currently have no opposition to the Application or the Applicant; that the Applicant has been a good neighbor; that the Applicant does keep the property very clean; that she questioned why the property suddenly is required to be zoned for commercial; that they purchased their home, located within a residential area, with a back yard for agricultural purposes; that once the property is rezoned for commercial use, any permitted use within the zoning would be permitted; that based off of her research, there are many different uses which could be constructed within commercial zoning; that she is concerned for potential future uses if rezoned for commercial; that she is concerned what types of uses would be permitted which could impact her residential well located at the rear of her property; that she is concerned of the potential permitted use, if the property were to change owners; that she is concerned of her privacy should the rezoning be approved and there are families with small children near the subject property.

Chairman Wheatley stated Change in Zone Applications are very important, as when a Zoning District is changed, and permitted use within the Zoning District is permitted; that the Commission's job to consider the Change of Zone very carefully for that reason; that the Applicant has testified the reasoning for the rezoning request in order to protect their investment in the property; that if there was any other reasoning, it had not been placed on record for consideration by the Commission and if the rezoning is approved, the commercial zoning would stay with the property, even if the property were sold to new owners.

Mr. Whitehouse stated the related Board of Adjustment for Special Use Exception is referenced as BOA Case No. 1283; that this Application was heard by the Board of Adjustment on January 8, 2018; that the request was for a five-year approval for a Special Use Exception for indoor shooting and archery range; that the Application was approved by the Board of Adjustment; that the meeting minutes and Findings of Fact are dated March 6, 2018; that the five-year expiration date for the Special Use Exception has already started counting down and he believes the temporary five-year approval is what led the Applicant to proceed with the Change of Zone process.

Ms. Stevenson questioned if the Applicant could request a Conditional Use for the use within AR-1 (Agricultural Residential).

Mr. Whitehouse stated once the current Special Use Exception approved five-year time frame expires, the Applicant may request a renewal of the Special Use Exception for another five years, proceed with a Conditional Use, or request a Change of Zone.

Chairman Wheatley questioned why Conditional Use was not requested for the use initially.

Mr. Whitehouse stated the County Code specifically states the use is permitted as a Special Use Exception; that the Special Use Exception request is a faster process; that a Special Use Exception application is a

hundred dollars cheaper to proceed through the Board of Adjustment and that the limitation to a Special Use Exception is the approval is limited to a maximum period of five years.

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

Ms. Stevenson questioned what portion of the property is actively being used for the current business. Mr. Behney stated the portion of the property actively being used for the current business is the main part of the parcel where the building is located; that they use the funnel area of the property to bring in equipment needed to clean the range; that they periodically perform cleanouts; that the cleanout process is a full recycling process of the lead; that was a major undertaking and a major expense to bring the range to Sussex County; that the funnel area of the property is where they bring in the recycling dozers to excavate the lead out of the indoor range; that the property looks completely different than what was represented on the map; that there is a commercial entrance located on the Maryland and Delaware side of the property; that the equipment come in around the back of the property; that there is black top that is located between the second building and the main building; that the black top area is where the excavators come in to recycle the lead; that the HEPA filter, which is the main infiltration unit, that cools and ventilates the indoor shooting range is also located in that area; that if the equipment requires servicing they must remove the 550,000-BTU unit; that to remove the unit a crane is required to pick up and move the unit; that all indoor ranges have a shelf life to the equipment; that this is the reasoning for the commercial rezoning request and the rezoning to commercial will allow the equipment to be brought on the property, which secures the investment made on the property.

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

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

In relation to Application C/Z 1956 Jeffrey Behney. Motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

Draft Minutes of the May 12, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since April 28, 2022.

Ms. Stevenson moved that the Commission recommend denial of C/Z 1956 Jeffrey Behney 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 currently operates a permitted indoor shooting range at this location and desires to convert the zoning of the property to C-2. The C-2 Zoning is not necessary to continue the existing use as an indoor shooting range.
3. There is no other commercial zoning in the area, and the property is surrounded on one side by residential lots and on the other sides by farmland. This would be an improper standalone commercially zoned site in an area where no other business or commercial zoning exists.

4. Because the rezoning to C-2 is not consistent with the neighboring and adjacent low-intensity land uses it would have an adverse impact on the area.
5. If this property is rezoned to C-2, any of the uses that are permitted within the C-2 District could occur on this site, in addition to the current use as an indoor shooting range. C-2 Zoning and many of the uses permitted in that Zone are not appropriate in this location.
6. The site is in the “Low-Density Area” according to the Sussex County Land Use Plan and Future Land Use Map. The Land Use Plan states that the “Low-Density Area” should be the location where the primary uses are agricultural activities and homes. The Applicant has not established that the proposed rezoning is consistent with the Comprehensive Plan’s “Low-Density Area” designation for this property.
7. The Application seeks to rezone the entire 10.546-acre property to C-2 when only the front area of the property is currently developed with the indoor shooting range. Rezoning the entire property to C-2 is speculative and there is no basis in the record for doing so. This is particularly the case when there is no other commercial zoning in the area.
8. The proposed rezoning does not meet the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
9. For all of these reasons, the rezoning from AR-1 to C-2 for this property should be denied.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to recommend denial of C/Z 1956 Jeffrey Behney for the reasons stated in the motion. Motion carried 4-0.

The vote by roll call; Ms. Stevenson – yea, Mr. Hopkins – yea, Mr. Mears – yea, Chairman Wheatley – yea,

THE SMITH FIRM, LLC

ATTORNEYS AT LAW

MICHAEL R. SMITH
smith@vslegal.net

CHAD R. LINGENFELDER*
lingenfelder@vslegal.net
*ADMITTED IN DE & MD

8866 RIVERSIDE DR.
P.O. Box 1587
SEAFORD, DELAWARE 19973
PHONE: (302) 875-5595
FAX: (302) 280-6592

BLAKE W. CAREY
carey@vslegal.net

DEREK G. GAY
dgay@vslegal.net

June 2, 2022

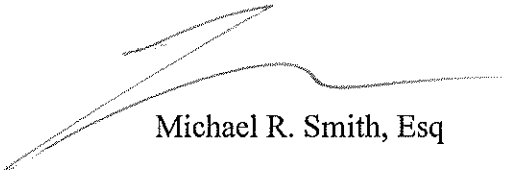
Transmitted via electronic mail to jamie.whitehouse@sussexcountyde.gov
Sussex County Planning and Zoning
Attn: Jamie Whitehouse
2 The Circle
Georgetown, DE 19947

RE: Jeffrey Behney; CZ 1956
TM: 333-15.00-20.00

Dear Jamie:

As you know, I represent Jeffrey Behney as well as the entities that own and operate a business from property identified as Sussex County tax district, map and parcel identification number 333-15.00-20.00 (the "Property"). As you are further aware, Mr. Behney submitted application for a change of zoning for the Property. The application has been heard by the Planning and Zoning Commission and is scheduled to be heard at the next meeting of Sussex County Council. I submit this letter as a formal request to withdraw Mr. Behney's pending application for change of zone (CZ 1956). Please let me know if you need anything more from me to withdraw the application.

Respectfully,
The Smith Firm, LLC



Michael R. Smith, Esq

Pc: Delmarva Armory, LLC c/o Jeffrey Behney

PLANNING & ZONING COMMISSION

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



Sussex County

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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: April 28th, 2022

Application: CZ 1956 Jeffrey Behney

Applicant: Jeffrey Behney
26179 Manor Way
Georgetown, DE 11947

Owner: Lloyd Behney
18 Ruth Street
Selbyville, DE 19975

Site Location: 38531 Parker Road (S.C.R. 415), Millsboro. Lying on the east side of Parker Road, approximately 200-feet north of the intersection of E Line Road (S.C.R. 419) and Parker Road.

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

Proposed Zoning: Heavy Commercial (C-2) Zoning District

Comprehensive Land Use Plan Reference: Low Density

Councilmanic District: Mr. Vincent

School District: Indian River School District

Fire District: Selbyville Fire Company

Sewer: Septic

Water: Well

Site Area: 10.8 Acres +/-

Tax Map ID.: 333-15.00-20.00



JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
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jamie.whitehouse@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Elliott Young, Planner I
CC: Vince Robertson, Assistant County Attorney, and applicant
Date: April 20, 2022
RE: Staff Analysis for CZ 1956 Jeffrey Behney

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1956 Jeffrey Behney to be reviewed during the April 28, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for part of Tax Parcel 333-15.00-20.00 to allow for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Medium Commercial (C-2) Zoning District. The property is lying on the east side of Parker Road (S.C.R. 415), approximately 200-feet north of the intersection of E Line Road (S.C.R. 419) and Parker Road.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the subject property has a land use designation of "Low Density". The parcels to the north, east, and west of the subject property also contain the Future Land Use Designation of "Low Density".

As outlined in the 2018 Sussex County Comprehensive Plan, Low Density areas are intended to support agricultural uses and low-density single-family housing. Specifically, the Comprehensive Plan states that single family homes have a density of up to two dwelling units to the acre. It is envisioned that the Low-Density Areas allow for businesses that support nearby residents and the agricultural economy. More intense commercial uses could be limited in scale and impact. While residential growth is expected, the Comprehensive Plan intends for the rural landscape to be maintained and for farmland to be preserved in select locations.

The parcel is zoned Agricultural Residential (AR-1). Adjacent parcels to the north, east, and west are also zoned Agricultural Residential (AR-1) Zoning District. The properties to the south on the other side of E Line Road are across the Delaware-Maryland border and are out of Sussex Counties jurisdiction.

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

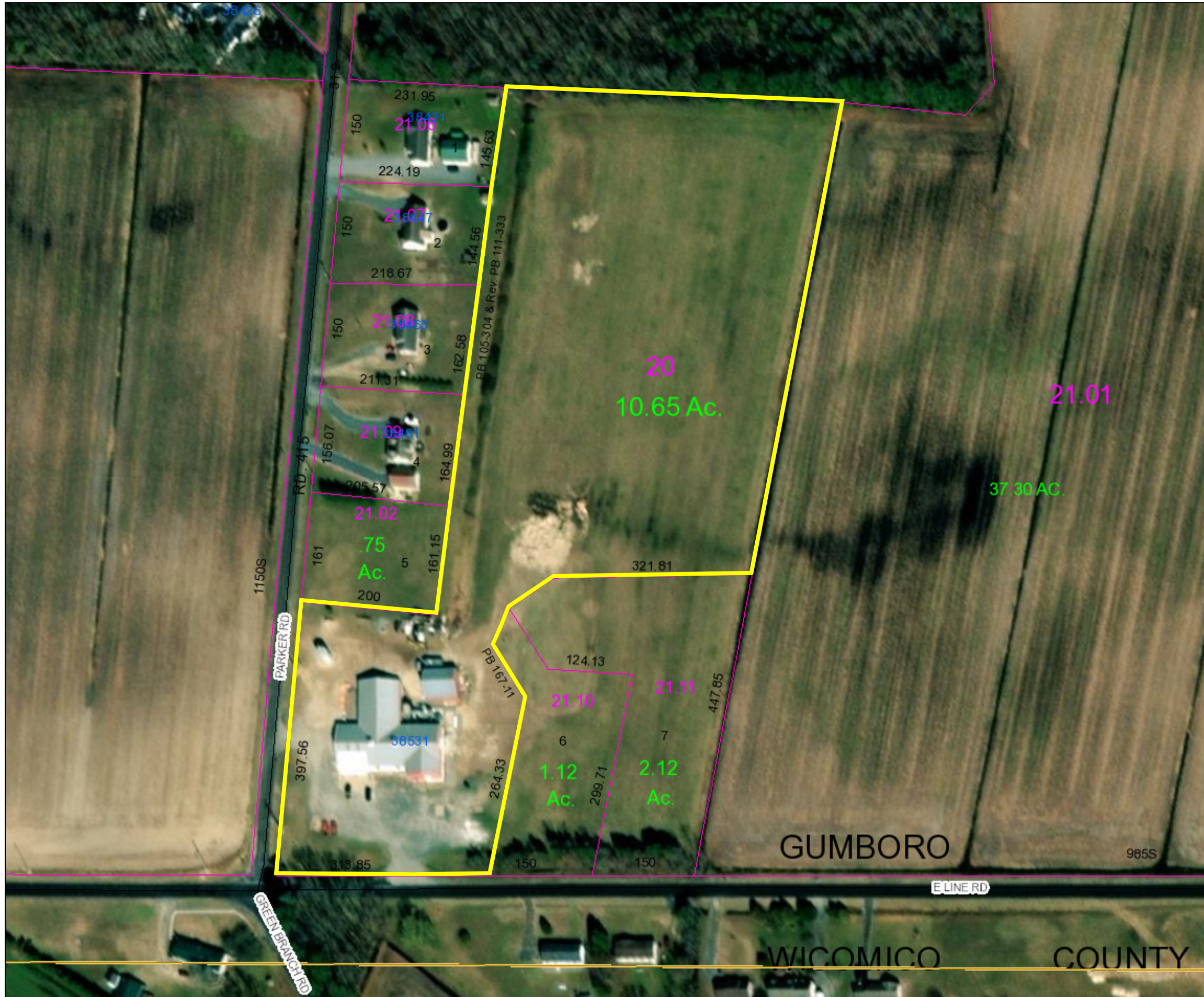


Since 2011, there have been zero (0) Change of Zone applications within a 1-mile radius of the application site.

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from an Agricultural Residential Zoning District (AR-1) to a Medium Commercial Zoning District (C-2) could be considered as being consistent with the land use, based on the size, scale, zoning and surrounding uses.



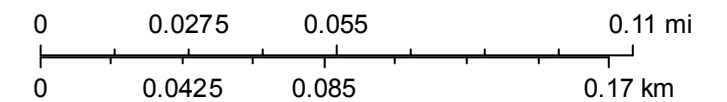
Sussex County



| | |
|------------------------|----------------------------|
| PIN: | 333-15.00-20.00 |
| Owner Name | OVER THE HILL HOLDINGS LLC |
| Book | 5076 |
| Mailing Address | 38531 PARKER RD |
| City | MILLSBORO |
| State | DE |
| Description | NE/RD 54 |
| Description 2 | RT 415 |
| Description 3 | N/A |
| Land Code | |

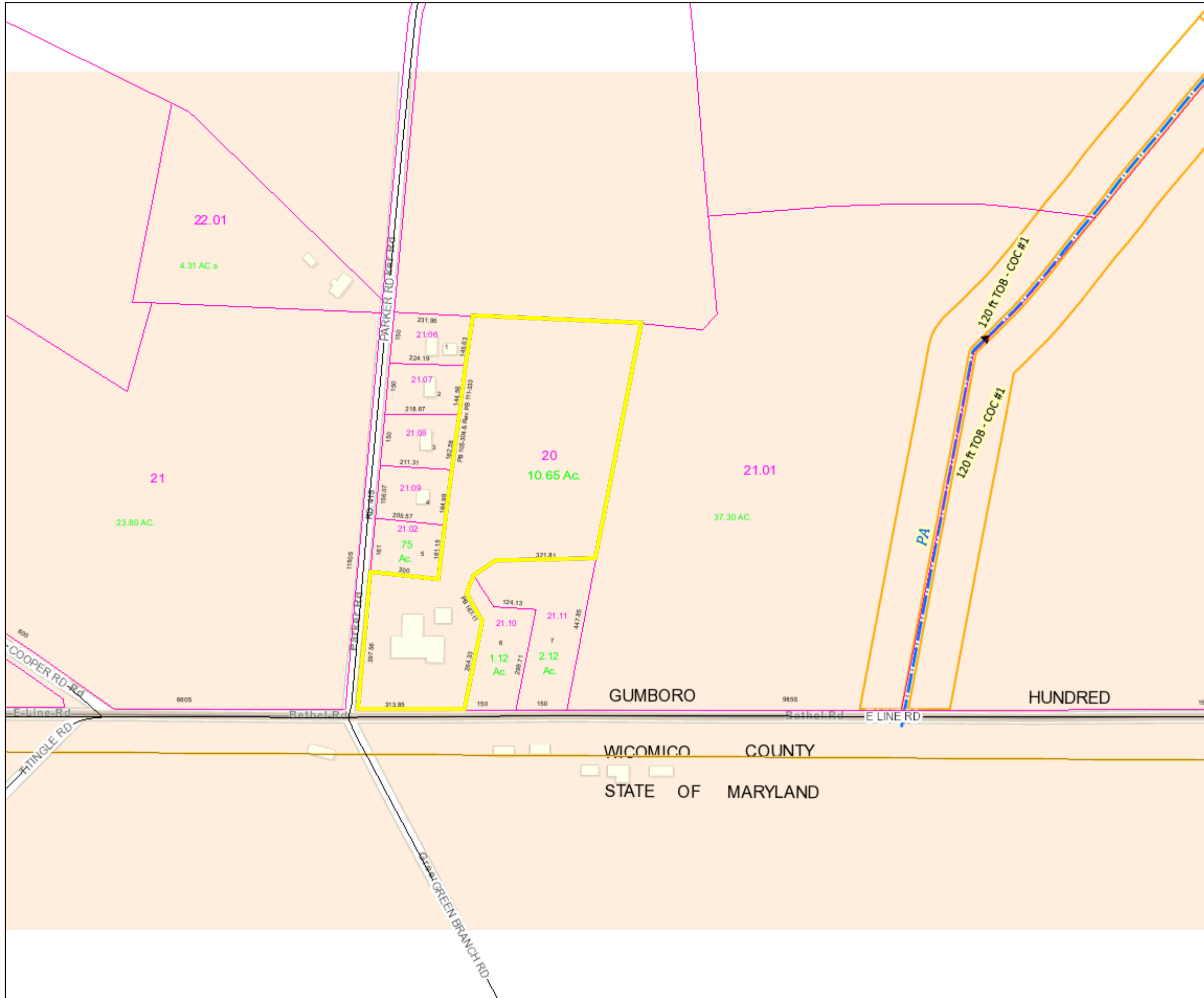
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- Tax Parcels
- 911 Address
- Streets

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Sussex County



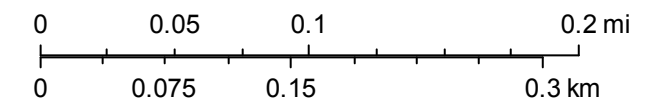
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| Description 3 | N/A |
| Land Code | |

- polygonLayer

 - Override 1
- polygonLayer

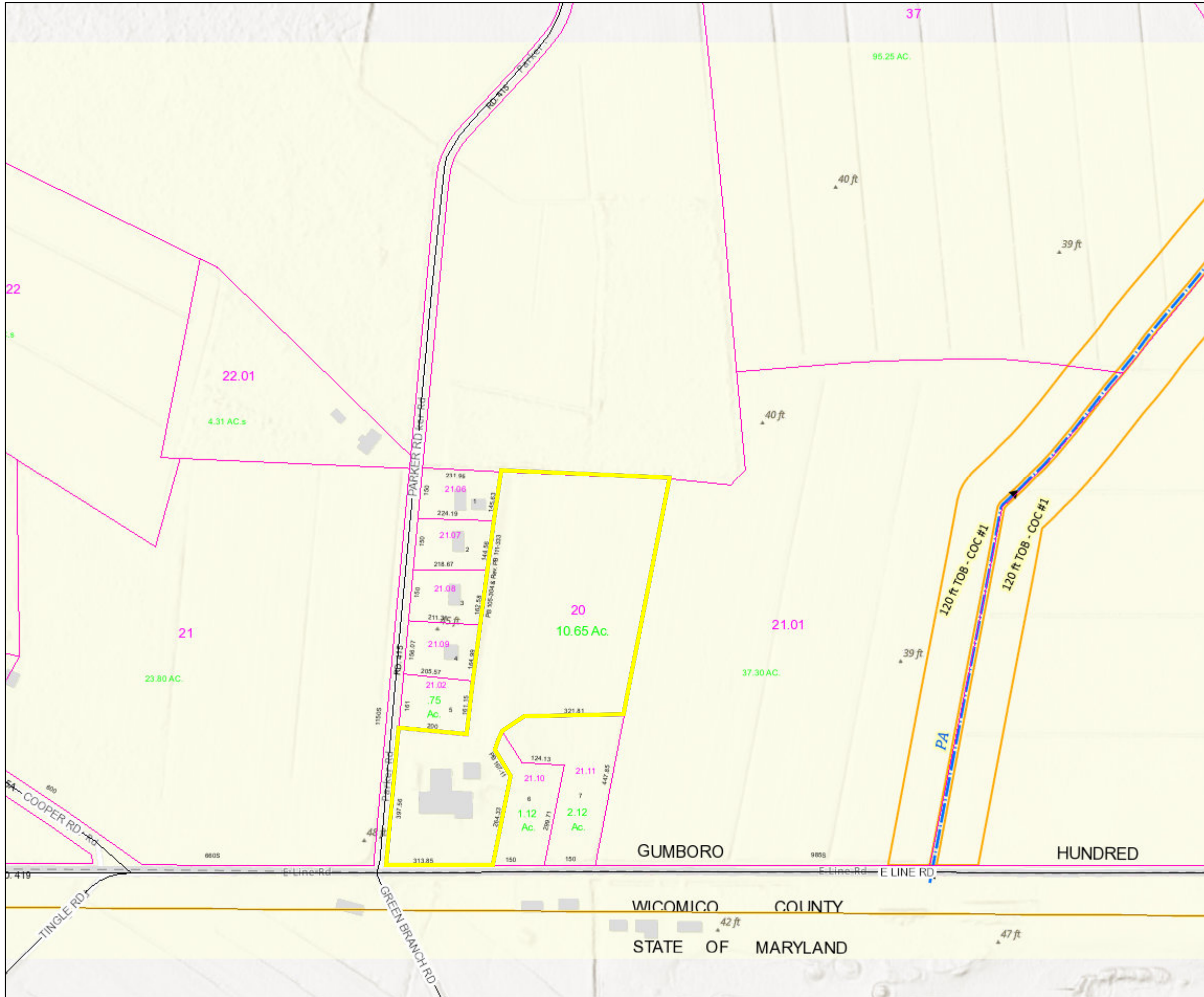
 - Override 1
- Tax Parcels
- Streets

1:4,514





Sussex County



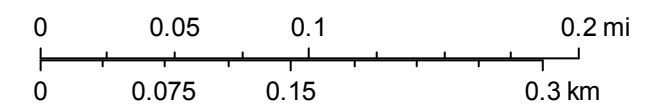
| | |
|------------------------|----------------------------|
| PIN: | 333-15.00-20.00 |
| Owner Name | OVER THE HILL HOLDINGS LLC |
| Book | 5076 |
| Mailing Address | 38531 PARKER RD |
| City | MILLSBORO |
| State | DE |
| Description | NE/RD 54 |
| Description 2 | RT 415 |
| Description 3 | N/A |
| Land Code | |

- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- Tax Parcels
- Streets

1:4,514



To Be Introduced 01/11/22

**Council District 5 - Rieley
Tax I.D. Nos: 333-15.00-20.00
911 Address: 38531 Parker Road, Millsboro**

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 GUMBORO HUNDRED, SUSSEX COUNTY, CONTAINING 10.546 ACRES, MORE OR LESS

WHEREAS, on the 20th day of September 2021, a zoning application, denominated Change of Zone No. 1956 was filed on behalf of Jeffrey Behney; 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. 1956 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of AR-1 Agricultural Residential District and adding in lieu thereof the designation of C-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 Gumboro Hundred, Sussex County, Delaware, and lying Northeast of the intersection of E. Line Road (S.C.R. 419), and Parker Road (S.C.R. 415), and being more particularly described in the attached legal description prepared by The Smith Firm, LLC, said parcel containing 10.546 acres, more or less.

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

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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: June 3, 2022

RE: County Council Report for C/U 2341 filed on behalf of Caden Oplinger

The Planning and Zoning Department received an application (C/U 2341 filed on behalf of Caden Oplinger) for a Conditional Use for parcel 130-6.00-22.00 for a farm tractor and truck repair shop. The property is located within the Agricultural Residential (AR-1) Zoning District and is located on the southeast side of Shawnee Road (Route 36) approximately 0.23 mile south of Abbots Road (SCR 620). The parcel size is 20 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on April 28, 2022. At the meeting of May 12, 2022, the Planning & Zoning Commission recommended approval of the application subject to 6 reasons stated and subject to 13 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of April 28, 2022 and May 12, 2022.

[Approved Minutes of the April 28, 2022 Planning & Zoning Commission Meeting](#)

C/U 2341 Caden Oplinger

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FARM TRACTOR AND TRUCK REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 20 ACRES, MORE OR LESS. The property is lying on the southeast side of Shawnee Road (Route 36), approximately 0.23 miles south of Abbots Pond Road (S.C.R. 620). 911 Address: N/A. Tax Parcel: 130-6.00-22.00.



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

Mr. Whitehouse advised the Commission that submitted into the record is the staff analysis, Site Plan, DelDOT Service Level Evaluation Response, a letter from Sussex County Engineering Department Utility Planning Division, and zero comments.

The Commission found that Mr. Caden Oplinger spoke on behalf of his Application; that his request is for a shop where he can repair farm tractors and trucks; that his Grandfather lives adjacent to his property; that the subject property is behind his Grandfather's property, which his Grandfather has owned since 1970; that he helps take care of his Grandfather who is considered disabled; that he has known his surrounding neighbors for decades; that he has friendly relationships with all of his adjacent neighbors; that he does not know of any adjacent neighbors who are opposed to his request;

Mr. Robertson questioned the location the repairs will take place.

Mr. Hopkins questioned the size of the building, the name of the business, what the definition of "fleet refinishing" is, the location the materials, supplies, and disassembled tractor parts would be stored on-site; that he questioned if it was trees located on both sides of the road located on the Site Plan; that he questioned if a sign is requested on the property, being lighted or not; how many employees are proposed and he questioned if Mr. Oplinger proposed to work full-time or part-time.

Ms. Stevenson questioned if the Conditional Use request was for the entire parcel, or only for the portion of the property being used.

Ms. Wingate questioned the location and storage of all chemicals on the site.

Chairman Wheatley questioned if there would be any noise associated with the work performed; that he mentioned concerns to the storage of vehicles, stating the Commission avoids the property having an appearance of a junk yard and requested a description of what outside storage is proposed to be.

Mr. Oplinger stated all repairs would be constructed inside of the building; that the building is 60'x 80' in size; that his proposed sign to advertise his business as "Fleet Refinishing"; that Fleet Refinishing a business in which he took over; that in high school, he began working for a gentleman, where they would restore and repair old farm tractors, as well as other equipment; that he has always loved the job; that the gentleman retired and he took over the business; that he decided to use the original business name moving forward; that all materials, supplies and parts will be stored within the building; that no material, parts or work will be performed outside; that he farms the area around the building, as a hobby; that the adjacent property to the right is owned by his Grandfather; that he currently lives behind his Grandfather's property; that he keeps his personal implements behind his personal home; that on the Site Plan, there are Evergreen trees proposed on both sides of the road; that he would request permission for an advertising sign with a light; that he believes he will need only one to two employees; that he plans to perform this work full-time; that he is requesting a Conditional Use be granted for the portion of the property currently being used; that he will have proper storage of all chemicals located on site; that any noise would be associated with typical farm equipment, such as a running tractor; that all work will be performed inside of the building; that he prefers to have a clean, nice looking property and he cannot recall anything necessary to store outside; that currently everything he uses is stored inside a building.

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

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

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

In relation to Application C/U 2341 Caden Oplinger. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

Draft Minutes of the May 12, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application, which had been deferred since April 28, 2022.

Mr. Hopkins moved that the Commission recommend approval of C/U 2341 Caden Oplinger for a farm tractor and repair business based on the record made during the public hearing and for the following reasons:

1. The proposed repair facility is small, and with the conditions and stipulations placed upon it, it will not have an adverse impact on the neighboring properties or community. It is also small enough that it will not negatively impact traffic or nearby roadways.
2. The location is mostly surrounded by farms and other large tracts of land. The Applicant lives behind the site and his grandfather lives next door. The Applicant stated that none of the neighbors oppose his plans.
3. The proposed use provides a service to Sussex County farmers and small businesses in the area by providing a convenient location for diesel repair services for trucks and agricultural equipment.
4. The Applicant proposes to use a 60-foot by 80-foot building for the business. This use, within the proposed workshop building, is very similar to the type of repair and maintenance work that a farmer would be permitted to do on his or her farm equipment under the existing AR-1 zoning.
5. No parties appeared in opposition to this Application.
6. The Applicant seeks a Conditional Use for the entire 20-acre parcel. The Applicant has stated that he only needs a Conditional Use for the front portion of the property where the proposed use will actually be located. As a result, this recommendation is to approve the Conditional Use for the entire front 350 feet of the property, which extends beyond the proposed workshop building with enough extra space for reasonable expansion and setbacks.
7. This recommendation for approval is subject to the following conditions and stipulations:
 - A. The use shall be limited to repairs on trucks and farm equipment. There shall not be any retail sales occurring on the property.
 - B. The use shall be limited to the front 350 feet of the property. The Final Site Plan shall clearly depict this reduced area of the Conditional Use.
 - C. One lighted sign shall be permitted. It shall not be larger than 32 square feet per side.
 - D. Security lighting shall be shielded and downward screened so that it is directed away from neighboring properties and roadways.

- E. Any dumpsters shall be screened from the view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.
- F. All repairs shall occur indoors within the proposed building. No outside storage of parts or other materials associated with the use shall be permitted.
- G. No junked, unregistered, or permanently inoperable vehicles, trucks or trailers shall be stored on the site.
- H. There shall not be any parking in the front yard setback.
- I. The parking areas shall be shown on the Final Site Plan and clearly marked on the site itself. Trucks and farm equipment shall only be parked within these designated areas.
- J. All oils and other fluids shall be properly stored indoors in appropriate containers. The applicant shall also comply with all state and federal requirements for the disposal of these fluids.
- K. The site shall be subject to DelDOT entrance and roadway requirements.
- L. Any violation of these conditions may be grounds for termination of this Conditional Use.
- M. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2341 Caden Oplinger for the reasons and conditions stated in the Motion. Motion carried 4-0.

The vote by roll call; Ms. Stevenson – yea, Mr. Hopkins – yea, Mr. Mears – yea, Chairman Wheatley – yea

PLANNING & ZONING COMMISSION

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



Sussex County

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JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: April 28th, 2022

Application: CU 2341 Caden Oplinger

Applicant: Caden Oplinger
7465 Shawnee Road
Milford, DE 19963

Owner: Caden Oplinger
7465 Shawnee Road
Milford, DE 19963

Site Location: Lying on the southeast side of Shawnee Road (Route 36),
approximately 0.23 mile south of Abbottts Pond Road (S.C.R. 620).

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

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

Comprehensive Land
Use Plan Reference: Low Density

Councilmanic
District: Ms. Green

School District: Milford School District

Fire District: Carlisle Fire Department

Sewer: N/A

Water: N/A

Site Area: 20.00 acres +/-

Tax Map IDs.: 130-6.00-22.00



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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Jamie Whitehouse, AICP, Director of Planning & Zoning
CC: Everett Moore, County Attorney
Date: June 3, 2022
RE: Staff Analysis for CU 2341 Caden Oplinger

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2341 Caden Oplinger to be reviewed during the April 28, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel 130-6.00-22.00 to allow for a conditional Use of land in an Agricultural Residential Zoning (AR-1) District for a farm tractor and truck repair shop. The property is lying on the southeast side of Shawnee Road (Rt. 36), 0.23 miles south of Abbotts Pond Road (S.C.R. 620). The size of the property is approximately 20.00 acres +/-.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the subject property has a land use designation of "Low Density". The properties to the north, south, east, and west also have the land use designation of "Low Density".

As outlined in the 2018 Sussex County Comprehensive Plan, Low Density areas are intended to support agricultural uses and low-density single-family housing. Specifically, the Comprehensive Plan states that single family homes have a density of up to two dwelling units to the acre. It is envisioned that the Low-Density Areas allow for businesses that support nearby residents and the agricultural economy. More intense commercial uses could be limited in scale and impact. While residential growth is expected, the Comprehensive Plan intends for the rural landscape to be maintained and for farmland to be preserved in select locations.

The property is zoned Agricultural Residential (AR-1) Zoning District. The adjacent parcels to the north, south, east, and west are all zoned Agricultural Residential (AR-1) Zoning District. Properties further north and east are zoned General Residential (GR) Zoning District.

Since 2011, there have been three (3) Conditional Use applications within a 1-mile radius of the application site. The first application is Conditional Use 1909 Thomas P. Collins to allow for a beauty salon. This application was approved by the Sussex County Council on Tuesday, September 20th, 2011, and this change was adopted through Ordinance No. 2220. The second application is Conditional Use 1935 John Herholdt to allow for a family electrical business and butcher shop. This application was approved by the Sussex County Council on Tuesday, August 21st, 2012, and this change was adopted through Ordinance No. 2274. The third application is Conditional Use



2081 Rafael Arias for a used car sales and computer repair business. This application was withdrawn.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use to allow for a farm tractor and truck repair shop subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.



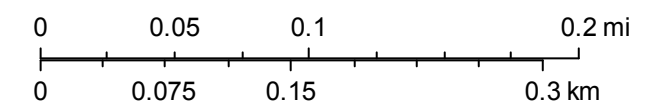
Sussex County



| | | |
|------------------------|---------------------|-------|
| PIN: | 130-6.00-22.00 | |
| Owner Name | OPLINGER LLC | ACRES |
| Book | 5538 | |
| Mailing Address | 20 ACRES SHAWNEE RD | |
| City | MILFORD | |
| State | DE | |
| Description | RD MILFORDSTAYTNVLE | |
| Description 2 | E/RT 36 1000' | |
| Description 3 | S/RT 620 | |
| Land Code | | |

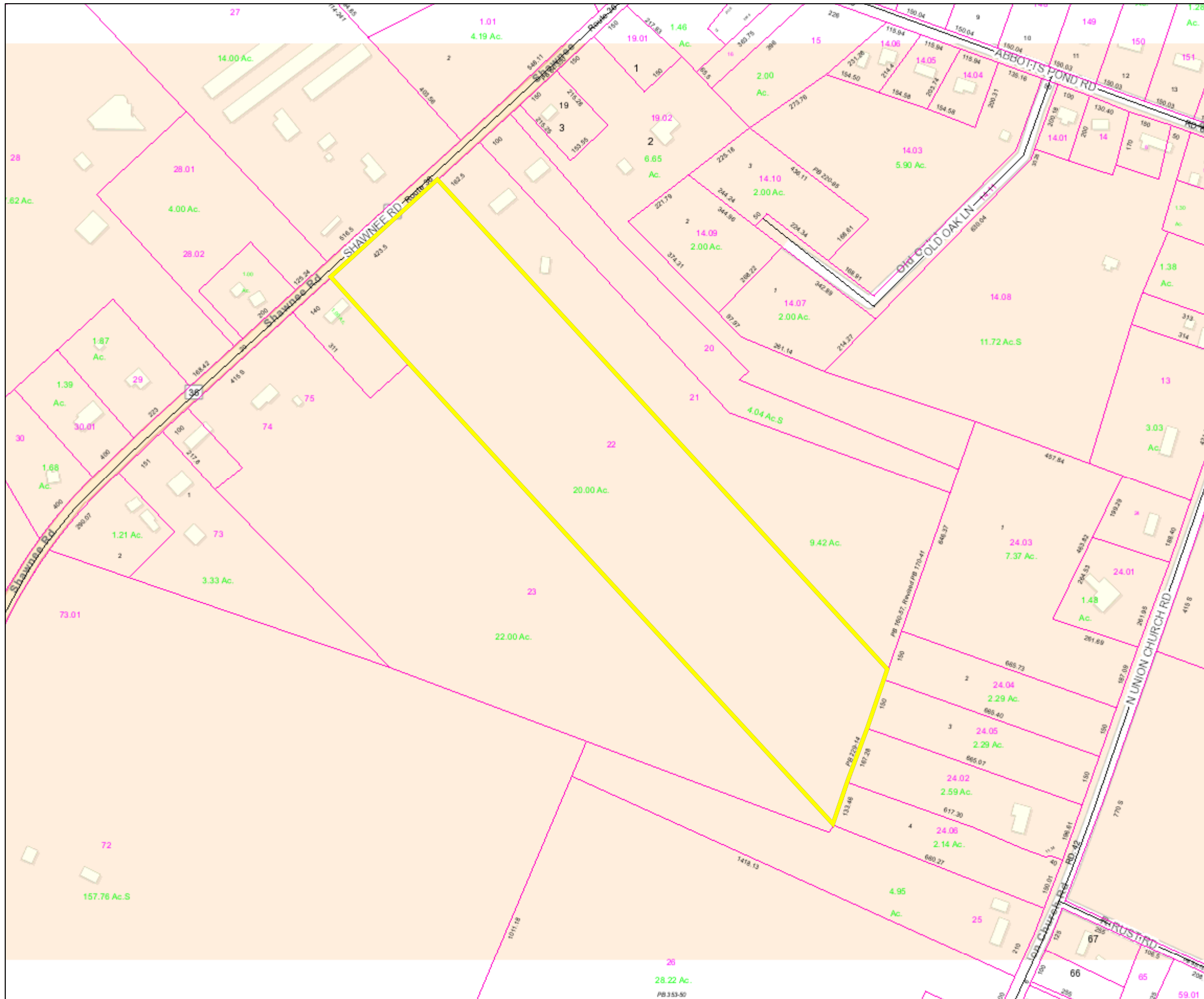
- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- Streets
- County Boundaries

1:4,514





Sussex County



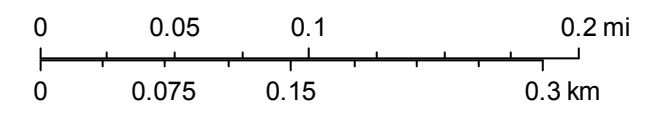
| | | |
|------------------------|---------------------|-------|
| PIN: | 130-6.00-22.00 | |
| Owner Name | OPLINGER | ACRES |
| | LLC | |
| Book | 5538 | |
| Mailing Address | 20 ACRES SHAWNEE RD | |
| City | MILFORD | |
| State | DE | |
| Description | RD MILFORDSTAYTNVLE | |
| Description 2 | E/RT 36 1000' | |
| Description 3 | S/RT 620 | |
| Land Code | | |

- polygonLayer**

 - Override 1
- polygonLayer**

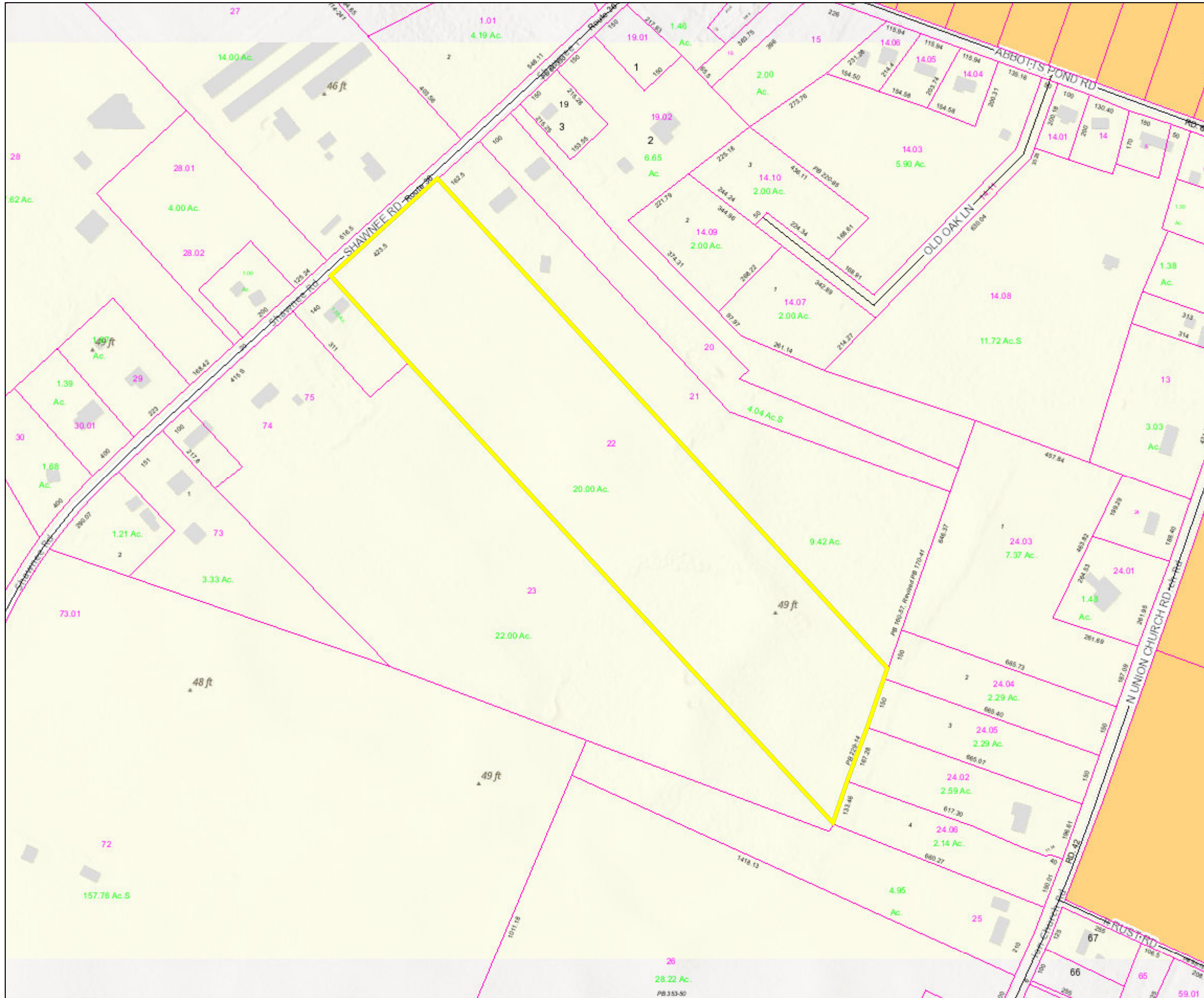
 - Override 1
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- Streets
- County Boundaries

1:4,514





Sussex County



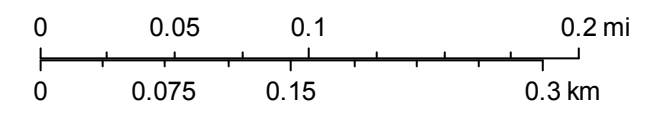
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- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- Tax Parcels
- Streets

1:4,514



To Be Introduced: 04/05/22

Council District 2: Mrs. Green
Tax I.D. No. 130-6.00-22.00
911 Address: N/A

ORDINANCE NO. ____

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

WHEREAS, on the 13th day of January 2022, a conditional use application, denominated Conditional Use No. 2341 was filed on behalf of Caden Oplinger; 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. 2341 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. 2341 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 southeast side of Shawnee Road (Route 36), approximately 0.23 mile south of Abbotts Pond Road (S.C.R. 620), and being more particularly described in the attached legal description prepared by Moore & Rutt, P.A., said parcel containing 20 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.