

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

**MEETING:  
June 15, 2021**

**\*\*DISCLAIMER\*\***

**This product is provided by Sussex County government as a courtesy to the general public. Items contained within are for background purposes only, and are presented 'as is'. Materials included are subject to additions, deletion or other changes prior to the County Council meeting for which the package is prepared.**

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

**COUNTY COUNCIL**

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



**Sussex County**

DELAWARE  
sussexcountyde.gov  
(302) 855-7743

**SUSSEX COUNTY COUNCIL**

**A G E N D A**

**JUNE 15, 2021**

**10:00 A.M.**

**PLEASE REVIEW MEETING INSTRUCTIONS AT THE BOTTOM OF THE AGENDA**

**Call to Order**

**Approval of Agenda**

**Approval of Minutes – June 8, 2021**

**Reading of Correspondence**

**Public Comments**

**Presentation – Dr. Lindsay Rhodenbaugh, President, Bayhealth Foundation and Chuck Desch, Director of Development, Bayhealth Foundation – Graduate Medical Education Program**

**Todd Lawson, County Administrator**

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

**10:30 a.m. Public Hearing**

**Proposed boundary of the North Georgetown Area and possible Resolution declaring the boundary**



**Chris Keeler, Director of Assessment**

1. Tyler Technologies presentation on the Reassessment Project

**Robert Bryant, Manager, Delaware Coastal Airport**

1. Automated Surface Observation System (ASOS)
  - A. Memorandum of Agreement/Contract
2. State Fire Prevention Center Building Lease Agreement

**John Ashman, Director of Utility Planning & Design**

1. Request to prepare and post notices for the Warrington Road Extension of the Sussex County Unified Sanitary Sewer District (Warrington Road Area)
2. Pintail Pointe referendum results and potential adoption of Resolution declaring the Area

**Hans Medlarz, County Engineer**

1. Lochwood Area Expansion of the Unified Sanitary Sewer District
  - A. Approval of USDA Loan Resolution
  - B. Approval of USDA Grant Agreement
  - C. Discussion and Possible Introduction of a Proposed Ordinance entitled “AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$4,723,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE CONSTRUCTION AND EQUIPPING OF AN EXTENSION OF SANITARY SEWER SERVICES TO LOCHWOOD AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH”
2. Western Sussex Sanitary Sewer District Area
  - A. Town of Greenwood Transition Agreement Approval
3. FEMA Mitigation Grant
  - A. Sponsorship consideration of 25867 Berry Street
4. Western Sussex Transmission Facilities
  - A. Contract 3, Project S19-27, Change Order No. 1 and Substantial Completion
  - B. Amendments to George Miles & Buhr and Davis Bowen & Friedel Engineering Agreements

**5. Inland Bays Regional Wastewater Facility – Regional Biosolids and Septage Facilities, Chesapeake Utilities Corporation**

**A. Minimum Use Agreement Amendment**

**6. Artesian Wastewater Management, Inc. and Artesian Water Company, Inc.**

**A. 2016 Bulk Wastewater Services Agreement – Addendum No. 5**

**Old Business**

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

**“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (200 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 50.62 ACRES, MORE OR LESS” (Tax I.D. No. 134-12.00-74.00) (911 Address: 31434 Railway Road, Ocean View)**

**Grant Request**

**1. True Blue Jazz for festival expenses**

**Introduction of Proposed Zoning Ordinances**

**Council Members’ Comments**

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

**Possible action on Executive Session items**

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

**Change of Zone No. 1929 filed on behalf of Ryan Lehmann (Manntino Realty Holdings, 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 BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 1.4653 ACRES, MORE OR LESS” (property lying on the south side of Lewes Georgetown Highway [Route 9] approximately 0.7 mile east of the intersection of Harbeson Road [Route 5] and Lewes Georgetown Highway [Route 9]) (Tax I.D. No. 235-30.00-58.02 [portion of]) (911 Address: 26822 Lewes Georgetown Highway, Harbeson)**

**“AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-30.00-58.02 (PORTION OF)**

**Conditional Use No. 2245 filed on behalf of Jonathan Plump**

**“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR OUTDOOR BOAT AND RV STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.5 ACRES, MORE OR LESS” (property lying on the northeast side of Milton Ellendale Highway [Route 16] approximately 0.55 mile southeast of Holly Tree Road (S.C.R 226) (Tax I.D. No. 235-13.00-2.02 & 2.03) (911 Address: 20723 and 20715 Milton Ellendale Highway, Ellendale)**

**Change of Zone No. 1926 filed on behalf of CP townhomes, LLC (Canal Point RPC)**

**“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL OF CZ 1538 (ORDINANCE 1700) IN RELATION TO PIERS, DOCKS, BOAT RAMPS AND OTHER WATER RELATED RECREATIONAL FACILITIES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 180.60 ACRES, MORE OR LESS” (property lying on the east side of Hebron Road approximately 0.19 miles south of the intersection of Hebron Road and Holland Glade Road [S.C.R. 271]) (Tax I.D. No. 334-13.00-334.00, 1448.00 through 1750.00) (911 Address: None Available)**

**Adjourn**

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on June 8, 2021 at 4:30 p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

Further meeting access instructions are listed below.

-MEETING INSTRUCTIONS-

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

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

Chambers seating capacity is limited and seating assignments will be enforced.

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

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

To join the meeting via telephone, please dial:

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

**Conference Code: 570176**

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

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

If any member of the public would like to submit comments electronically, please feel free to send them to [rgriffith@sussexcountyde.gov](mailto:rgriffith@sussexcountyde.gov). All comments shall be submitted by 4:30 P.M. on Monday, June 14, 2021.

# # # #

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 8, 2021**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 8, 2021, at 10:00 a.m., in Council Chambers, with the following present:**

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

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

**Call to  
Order**

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

**M 199 21  
Approve  
Agenda**

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

**Motion Adopted: 4 Yeas, 1 Absent.**

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

**Minutes**

**The minutes of May 25, 2021 were approved by consent.**

**Public  
Comments**

**Public comments were heard and the following spoke:**

**Joan Tracy commented on the County's tax collection policy and procedures.**

**Mr. Schaeffer joined the meeting.**

**Appoint-  
ments**

**Mr. Lawson reported on term expirations on the Planning and Zoning Commission and the Board of Adjustment.**

**M 200 21  
Approve  
Planning  
and Zoning  
Commission  
Appoint-  
ment**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that the Sussex County Council approves the reappointment of Holly Wingate to the Sussex County Planning and Zoning Commission, effective immediately, until such time as the term expires in June 2024.**

**Motion Adopted: 5 Yeas.**

**M 200 21  
(continued)**

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

**M 201 21  
Approve  
Board of  
Adjustment  
Appoint-  
ment**

**A Motion was made by Mrs. Green, seconded by Mr. Schaeffer, that the Sussex County Council approves the reappointment of Jordan Warfel to the Sussex County Board of Adjustment, effective immediately, until such time as the term expires in June 2024.**

**Motion Adopted: 5 Yeas.**

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

**County  
Collection  
Process**

**Mrs. Jennings and Katrina Mears, Manager of Business Services, explained the County's tax and utility services collection process and how it has improved in comparison to 2009. Sussex County utilizes a variety of tools to collect past due taxes including delinquent notices, phone calls and site visits. Efforts to collect taxes includes payment plans, the tax intercept program, Sheriff postings and sales, and the Clean Hands Ordinance. Currently, the total due for tax and sewer delinquency is approximately \$16.7 million. The County's collection rate average is 99.14%.**

**Reassess-  
ment  
Project  
RFP**

**Chris Keeler, Director of Assessment, presented the results of the Request for Proposals (RFP) for the Real Property Reassessment Project. Two proposals were received and reviewed: (1) Pearson's Appraisal Service with a project completion date of January 2025 and a base amount of \$13,973,000 and (2) Tyler Technologies with a project completion date of February 2024 and a base amount of \$9,070,818. Mr. Keeler reported that a Committee reviewed the proposals, participated in interviews, ranked the proposals and recommended awarding the project to Tyler Technologies. The cost of their contract, including Project Management, Public Relations, Data Collection, Valuation Analysis and Production, Value Review, Assessment Disclosure Notices and Informal Review Meetings will cost \$9,070,818 for 185,402 parcels with a \$44 per parcel overage rate. The proposed start date is July 1, 2021; the proposed completion date is February 15, 2024.**

**M 202 21  
Approve  
Contract  
for Re-  
assessment  
Project**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that the Sussex County Council enter into a contract with Tyler Technologies for the Real Property Reassessment Project in the base amount of \$9,070,818 with a \$44 per parcel overage rate.**

**Motion Adopted: 5 Yeas.**

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



**Comfort-Burton Tract Forest Maintenance RFP** Hans Medlarz, County Engineer, presented the results for the Comfort-Burton Tract Forest Maintenance Request for Proposals (RFP). One proposal was received and reviewed. The four-year aggregate cost is within the Engineering Department's budget estimate and, therefore; the Department is requesting the Council's concurrence to award the project to Egolf Forest Harvesting, Inc. in the aggregate amount of \$388,370.00.

**M 203 21 Approve Bid for Comfort-Burton Tract Forest Maintenance** A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based on the recommendation of the Sussex County Engineering Department, that the bid for the Comfort-Burton Tract Forest Maintenance RFP be awarded to Egolf Forest Harvesting, Inc. for a four-year forest maintenance contract in the amount of \$388,370.00.

**Motion Adopted:** 5 Yeas.

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

**Bulk Delivery of Magnesium Hydroxide/ Bid Results** Hans Medlarz, County Engineer, presented the bid results for the Bulk Delivery of Magnesium Hydroxide, Project No. M21-12. Two bids were received; the Engineering Department recommends awarding the bid to Premier Magnesia for their low bid of \$2.74 per gallon. If performance is satisfactorily, the contract allows for a one-year extension at the discretion of the Engineering Department.

**M 204 21 Award Bid/ Bulk Delivery of Magnesium Hydroxide** A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Bid Item 1 for Sussex County Project M21-12, Bulk Delivery of Magnesium Hydroxide, be awarded to Premier Magnesia at the bid amount of \$2.74 per gallon.

**Motion Adopted:** 5 Yeas.

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

**Bulk Delivery of Seed & Chemical/ Funding** Hans Medlarz, County Engineer, requested funding approval for a one-year extension (through FY 2022), of the Delivery of Seed and Chemicals Project. This Contract for bulk product accommodates farming activities at both of the County's facilities. Mr. Medlarz noted that the company, Growmark FS, LLC, honored the pricing from last year.

**M 205 21 Approve Funding/** A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Contract M19-31, Bulk Delivery of Seed & Chemical, be reauthorized to Growmark FS, LLC for FY 2022 in the amount of \$188,979.30.

**M 205 21  
Bulk  
Delivery of  
Seed &  
Chemical  
(continued)**

**Motion Adopted: 4 Yeas, 1 Nay.**

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

**Delaware  
Coastal  
Business  
Park  
Project**

**Hans Medlarz, County Engineer, presented Scope Amendment No. 3 to the Delaware Coastal Business Park Project. This Amendment is due to unforeseen conditions associated with unknown utilities within Baltimore Avenue and additional engineering efforts necessary to address these conditions.**

**M 206 21  
Approve  
Scope  
Amendment  
for  
Delaware  
Coastal  
Business  
Park  
Project**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Scope Amendment No. 3 with Becker Morgan Group, Inc. be approved in the amount not to exceed \$45,000.00 for the Delaware Coastal Business Park, Phase II, Design Services.**

**Motion Adopted: 5 Yeas.**

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

**M 207 21  
Go Into  
Executive  
Session**

**At 10:39 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess the Regular Session and go into Executive Session to discuss matters relating to pending litigation and land acquisition.**

**Motion Adopted: 5 Yeas.**

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

**Executive  
Session**

**At 10:45 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to pending litigation and land acquisition. The Executive Session concluded at 11:40 a.m.**

**M 208 21  
Reconvene**

**At 11:42 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to reconvene the Regular Session.**

**Motion Adopted: 3 Yeas, 2 Absent.**

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

**M 209 21**            **A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that the**  
**Negotiate**            **County Administrator is authorized to negotiate and enter into a contract**  
**Land**                    **and to proceed to closing on Land 2021-E.**

**Purchase/  
Land  
2021-E**

**Motion Adopted:     5 Yeas.**

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

**M 210 21**            **A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, that the**  
**Negotiate**            **County Administrator is authorized to negotiate and enter into a contract**  
**Land**                    **and proceed to closing on Land 2021-F.**

**Purchase/  
Land  
2021-F**

**Motion Adopted:     5 Yeas.**

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

**M 211 21**            **At 11:45 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson,**  
**Recess**                **to recess until 1:30 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**

**M 212 21**            **A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to reconvene**  
**Reconvene**            **at 1:31 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**

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

**Public**                **A Public Hearing was held on the Proposed Ordinance entitled “AN**  
**Hearing/  
CU 2235**                **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR**  
**GENERAL RESIDENTIAL DISTRICT AND AN AR-1 AGRICULTURAL**  
**RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITIONS**  
**OF APPROVAL FOR CONDITIONAL USE NO. 2129 (ORDINANCE**  
**2603) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING**  
**AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY,**  
**CONTAINING 10.76 ACRES, MORE OR LESS” (Conditional Use No.**  
**2235) filed on behalf of Brian P. Lessard, Lessard Builders, Inc. (Tax I.D.**

**Public  
Hearing/  
CU 2235  
(continued)**

**No. 230-7.00-95.00) (911 Address: 22754 Argos Corner Road, Lincoln).**

**The Planning and Zoning Commission held a Public Hearing on this application on April 8, 2021 at which time action was deferred. On April 22, 2021, the Commission recommended approval with the following amended condition (to Conditional Use No. 2129 / Ordinance No. 2603):**

**K. Two lighted on-premises signs shall be permitted. One of the signs shall have a maximum area of 32 square feet per side, and the other shall be permitted with a maximum area of 82.75 square feet per side. Neither sign shall include an Electronic Message Center.**

**(See the minutes of the Planning and Zoning Commission dated April 8 and 22, 2021.)**

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

**The Council found that Jim Fuqua, Attorney, was present on behalf of the Applicant. Mr. Fuqua stated that this application is a request for a modification of a condition of approval for Conditional Use No. 2129 (Ordinance No. 2603) which was approved in 2018; that Conditional Use No. 2129 was for a self-storage facility at Argos Corner, just south of Milford; that the facility has been constructed and is open for business; that this application involves Condition K which states that “One lighted sign, with a maximum area of 32 square feet per side shall be permitted.”; that the limitation of one sign on the site creates problems for both the business and for the public; that the Applicant is proposing a second sign – an on-premise sign with a maximum area of 82.75 square feet per side; that the property is shaped like a triangle and the longer sides border two roads (Argos Corner Road and Route One); that the entrance to the storage facility is on Argos Corner Road and that is where the permitted sign was placed; that the sign on Argos Corner Road, which is 500 feet from Route One, will identify the business and the entrance to the facility; that the sign on Argos Corner Road is blocked from view by two of the storage buildings on the site; that they are proposing a sign on Route One so they can advertise the business to people traveling on that road; that the Applicant would like to put an electronic message center sign on the property along Route One; that there will be no adverse impact on adjacent properties and it will not be out of character with the area; that the Applicant is working with Rogers Sign Company to design the electronic message center sign; and that the Applicant would like Condition K, as recommended by the Planning and Zoning Commission, to be amended by deleting the last sentence.**

**Lynn Rogers of Rogers Sign Company was present and responded to questions raised by Council members regarding specific provisions in County and State Codes regulating the operation of electronic message center signs.**

**Public  
Hearing  
(continued)**

**There were no public comments.**

**The Public Hearing and public record were closed.**

**M 213 21  
Amend  
Condition/  
CU 2129/  
Ordinance  
No. 2603**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to amend Condition 7-K as recommended by the Planning and Zoning Commission to read as follows: Two lighted on-premises signs shall be permitted. One of the signs shall have a maximum area of 32 square feet per side, and the other shall be permitted with a maximum area of 82.75 square feet per side.**

**Motion Adopted: 5 Yeas.**

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

**M 214 21  
Adopt  
Ordinance  
No. 2773/  
CU 2235**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to Adopt Ordinance No. 2773 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 2129 (ORDINANCE 2603) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 10.76 ACRES, MORE OR LESS" (Conditional Use No. 2235) filed on behalf of Brian P. Lessard, Lessard Builders, Inc., with the following condition, as amended:**

**K. Two lighted on-premises signs shall be permitted. One of the signs shall have a maximum area of 32 square feet per side, and the other shall be permitted with a maximum area of 82.75 square feet per side.**

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
CU 2244**

**A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GROCERY STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 1.39 ACRES, MORE OR LESS" (Conditional Use No. 2244) filed on behalf of Ramon A. Mendez and Alma Mendez (Tax I.D. No. 530-9.00-53.01) (911 Address: 8354 Hickman Road, Greenwood).**

**The Planning and Zoning Commission held a Public Hearing on this application on April 8, 2021 at which time action was deferred. On April 22, 2021, the Commission recommended approval with the following**

**Public  
Hearing/  
CU 2244  
(continued)**

**conditions:**

- a. The Applicant shall comply with any DeIDOT requirements associated with the use.
- b. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
- c. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
- d. The areas for parking shall be shown on the Final Site Plan and clearly marked on the site itself.
- e. No outside storage or sales of merchandise shall be permitted.
- f. Any dumpsters shall be screened from the view of neighboring properties and roadways.
- g. The failure to abide by these conditions shall result in the termination of this Conditional Use.
- h. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

(See the minutes of the Planning and Zoning Commission dated April 8 and 22, 2021.)

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

The Council found that Ramon Mendez was present and stated that he and his wife would like to improve a building on their property to have a small business (grocery store); that they reside on the property; and that adequate area is available for parking.

There were no public comments.

The Public Hearing and public record were closed.

**M 215 21  
Adopt  
Ordinance  
No. 2774/  
CU 2244**

A Motion was made by Mrs. Green, seconded by Mr. Rieley, to Adopt Ordinance No. 2774 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GROCERY STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 1.39 ACRES, MORE OR LESS" (Conditional Use No. 2244) filed on behalf of Ramon A. Mendez and Alma Mendez, with the following conditions:

- a. The Applicant shall comply with any DeIDOT requirements associated with the use.
- b. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
- c. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
- d. The areas for parking shall be shown on the Final Site Plan and

**M 215 21  
Adopt  
Ordinance  
No. 2774/  
CU 2244  
(continued)**

- clearly marked on the site itself.
- e. No outside storage or sales of merchandise shall be permitted.
  - f. Any dumpsters shall be screened from the view of neighboring properties and roadways.
  - g. The failure to abide by these conditions shall result in the termination of this Conditional Use.
  - h. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
CU 2246**

**A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A REAL ESTATE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.709 ACRE, MORE OR LESS” (Conditional Use No. 2246) filed on behalf of Bee Wise, LLC (Tax I.D. No. 334-12.00-24.00) (911 Address: 20028 John J. Williams Highway, Lewes).**

**The Planning and Zoning Commission held a Public Hearing on this application on April 8, 2021 at which time action was deferred. On April 22, 2021, the Commission recommended approval with the following conditions:**

- a. The use shall be limited to use as an office within the existing structure.
- b. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.
- c. The Applicant shall comply with any DeIDOT entrance and roadway improvement requirements.
- d. Parking shall be permitted in the front yard setback. In addition, sufficient space shall be set aside for parking elsewhere on the property when Route 24 is widened.
- e. Failure to comply with these conditions shall result in the revocation of the Conditional Use approval.
- f. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

**(See the minutes of the Planning and Zoning Commission dated April 8 and 22, 2021)**

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

**Public  
Hearing/  
CU 2246  
(continued)**

**Mr. Whitehouse noted that five letters of support have been received.**

**The Council found that Hal Dukes, Attorney, was present on behalf of the application with one of the Applicants, Craig Beebe. Mr. Dukes stated that the Principals of Bee Wise, LLC are Craig Beebe and his wife, Erin; that they recently purchased the subject property which has previously been occupied by a lamp shop and later, a contractors shop; that the property is improved with a dwelling, a shed and a parking lot; that no additional improvements are planned on-site; that the proposed use is for a real estate business which will not be a high use for the site; that realtors will be able to make use of the desks and equipment onsite but will not be in the office every day as the agents mostly work off-site; that there will be an occasional closing at the office; that the proposed use is compatible with the area; and that the real estate office's impact on traffic will be negligible.**

**There were no public comments and the Public Hearing was closed.**

**M 216 21  
Adopt  
Ordinance  
No. 2775/  
CU 2246**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to Adopt Ordinance No. 2775 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A REAL ESTATE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.709 ACRE, MORE OR LESS" (Conditional Use No. 2246) filed on behalf of Bee Wise, LLC, with the following conditions:**

- a. The use shall be limited to use as an office within the existing structure.**
- b. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.**
- c. The Applicant shall comply with any DeIDOT entrance and roadway improvement requirements.**
- d. Parking shall be permitted in the front yard setback. In addition, sufficient space shall be set aside for parking elsewhere on the property when Route 24 is widened.**
- e. Failure to comply with these conditions shall result in the revocation of the Conditional Use approval.**
- f. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**Motion Adopted: 5 Yeas.**

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

**M 217 21  
Adjourn**

**A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to adjourn at 2:18 p.m.**



**M 217 21  
(continued)**

**Motion Adopted: 5 Yeas.**

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

**Respectfully submitted,**

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

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


TODD F. LAWSON  
COUNTY ADMINISTRATOR  
(302) 855-7742 T  
(302) 855-7749 F  
tlawson@sussexcountyde.gov



**Sussex County**  
DELAWARE  
sussexcountyde.gov

**Memorandum**

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

FROM: Todd F. Lawson   
County Administrator

RE: **DISPOSITION OF COUNTY PROPERTY – GEORGETOWN  
PARKING LOTS**

DATE: June 11, 2021

---

During Tuesday's meeting, the Council is scheduled to discuss and consider the disposition of County owned property that consists of parking lots in Georgetown.

The respective tax parcel IDs are: 135-14.20-223.00; 135-14.20-232.00; 135-14.20-233.00; and 135-15.17-148.01. A map is also attached depicting the lots.

Per the County Property Disposition Policy, County Directors were asked if they had a need for the property and they do not.

The State of Delaware is prepared to purchase the property from the County for the purpose of constructing the new Family Courthouse complex and parking structure. The appraised value of the property and agreed upon sales price is \$550,000.

Council approval is required to enter into a purchase contract with the State. The purchase contract has been reviewed and approved by the State and County attorneys. Final settlement for the purchase is to take place subsequent to the due diligence period. The County may remain in possession of the property until the State provides 30-day notice of its intention to begin pre-construction activities.

Please let me know if you have any questions.



# County Parking Lots

Total number of spaces: 120

Spaces: 45

Spaces: 22

Spaces: 29

Spaces: 24



## ENGINEERING DEPARTMENT

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



# Sussex County

DELAWARE

[sussexcountype.gov](http://sussexcountype.gov)

HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

JOHN J. ASHMAN  
DIRECTOR OF UTILITY PLANNING

## **Proposed North Georgetown Area of the Sussex County Unified Sanitary Sewer District**

### **PUBLIC HEARING FACT SHEET**

- The Engineering Department has received a request from Beacon Engineering for their client Sussex Pain Relief Center. The Center desires to expand their existing facility with a surgery center. There are limitations associated with the formal variance permitted by DNREC and Secretary O'Mara that prohibits this economic expansion.
- The County has received interest in the past from this parcel and a few others in the area. DNREC has sent them a letter of no objection to them connecting to County sewer.
- The County does have a pressure line in front of the parcel coming from Ellendale to Georgetown where the waste is treated and disposed per our agreement with the town of Georgetown.
- The County and Beacon Engineering reached out to surrounding property owners.
- County Council granted permission to prepare and post notices for a Public Hearing to establish a boundary on April 27, 2021.
- The Engineering Department added to the County website, posted the notices on May 17, 2021 and advertised the weeks of June 2<sup>nd</sup> & 9<sup>th</sup>.
- To date we have had one inquiry as to what was being proposed on the parcels, we were able to explain the expansion of the Pain Relief Center, but we do not have proposals on the other parcels at this time.



# PUBLIC NOTICE

## PROPOSED NORTH GEORGETOWN AREA OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT

NOTICE IS HEREBY GIVEN that the Sussex County Council will hold a public hearing on the question of organizing a sanitary sewer district for the North Georgetown Area to be part of the Sussex County Unified Sanitary Sewer District. The description of the proposed Area, which includes several parcels which lie on both sides of DuPont Blvd., north of the Town of Georgetown in the Georgetown Hundred, Sussex County, Delaware is:

**Beginning** at a point, said point being on the northeasterly Right-of-Way (ROW) of DuPont Blvd (Rt. 113), said point also being the southernmost property corner of lands Now-or-Formerly (N/F) of Tier One Investments LLC, said point further being the westernmost property corner of lands N/F of Roblero Roblero Trust; thence proceeding by and with said ROW in a northwesterly direction a distance of 552.40 feet to a point, said point being the westernmost property corner of land N/F MDC Global LLC, said point also being the southernmost property corner of lands N/F of Kimley M. Thibault Trustee; thence leaving said ROW and proceeding by and with said Thibault lands in a northeasterly and northwesterly direction respectively a total distance of 486.7 feet to a point, said point being the northernmost property of Thibault lands, said point also being the easternmost property corner of lands N/F of Betty A. Warrington; thence leaving said Thibault lands and following said Warrington lands in a northwesterly and southwesterly direction respectively a total distance of 350 feet to a point, said point being on the northeasterly ROW of DuPont Blvd. (Rt. 113); thence leaving said Warrington lands and ROW and proceeding in a southwesterly direction crossing DuPont Blvd. (Rt 113), a distance of 200'± to a point, said point being on the southwesterly ROW of Dupont Blvd, (Rt. 113), said point also being on the northeasterly property line of lands N/F of Denard L. & Sally R. Griffith; thence proceeding by and with said ROW in a southeasterly direction a distance of 880'± to a point, said point being a property corner of lands N/F of Denard L. & Sally R. Griffith, said point also being the northeasternmost corner of lands N/F of Keonig, LLC; thence leaving said ROW and continuing by and with said Griffith lands in a southwesterly, southeasterly and southwesterly direction respectively a total distance of 423'± to a point, said point being on the northeasterly ROW of McColleys Chapel Road (SCR 213); thence continuing by and with said Griffith lands in a northwesterly, northeasterly, northwesterly, southwesterly, northwesterly & northeasterly direction respectively a total distance of 2675'± to a point, said point being on the southeasterly ROW of Deer Forest Road (SCR 565); thence leaving said Griffith lands and said ROW and proceeding in a northwesterly direction and crossing Deer Forest Rd., a distance of 50'± to a point, said point being on the northwesterly ROW of Deer Forest Road (SCR 565), said point also being the southernmost property corner of lands N/F of James G. Stryholuk TTE LIV TR & John J. Stryholuk IRR TR; thence leaving said ROW and proceeding by and with said Stryholuk lands in a northwesterly, southwesterly, northwesterly and northeasterly direction respectively a total distance of 1767'± to a point, said point being on the westerly ROW of Dupont Blvd. (Rt. 113); thence leaving said Stryholuk lands and said ROW and proceeding in a northeasterly direction crossing DuPont Blvd (Rt. 113) a distance of 200'± to a point, said point on the easterly ROW of Dupont Blvd. (Rt. 113); thence proceeding by and with said ROW in a southeasterly direction a distance of 760'± to a point, said point being the intersection of the easterly ROW of DuPont Blvd. (Rt. 113) and the northerly ROW of East Redden Road (SCR 565), thence leaving said DuPont Blvd. ROW and proceeding by and with said East Redden Road ROW a distance of 868'±; thence leaving said ROW and proceeding in a southeasterly direction crossing East Redden Road a distance of 50'± to a point, said point being on the southerly ROW of East Redden Road (SCR 565), said point also being the northernmost property corner of lands N/F of

ECO Properties, LLC; thence leaving said ROW and proceeding by and with said ECO lands in a southeasterly, northeasterly, southeasterly, southwesterly and southeasterly direction respectively a total distance of 1,926'± to a point, said point being the northernmost property corner of lands N/F of MDC Global, LLC, said point also being on the southerly property line of lands N/F of State of Delaware; thence leaving said ECO properties and continuing by and with said State lands in a southeasterly direction a distance of 684.35' to a point, said point being the easternmost property corner of lands N/F of Tier One Investments LLC; thence leaving said State land and proceeding by and with said Tier One lands in a southwesterly direction a distance of 684.83' to a point, said point being the place of **Beginning**.

The above description has been prepared using Sussex County Tax Map No. 135-5.00 & 135-6.00.

The proposed **North Georgetown Area** is within these approximate boundaries containing 59.82 acres more or less. A map outlining the proposed boundary is attached.

The public hearing is scheduled for **Tuesday, June 15, 2021 at 10:30 am at the regularly scheduled County Council Meeting**. Following the Governor's rules for public gatherings seating will be limited. If you wish to attend in person you must call 302-855-7706 and reserve a seat; please only one (1) person per parcel. See instructions to view the Live-stream broadcast There will be an opportunity for questions and answers. The Sussex County Council following the hearing, at one of their regularly scheduled meetings, will make the final decision on the boundary.

For further information, please call or write the Sussex County Engineering Department, 2 The Circle, Post Office Box 589, Georgetown, DE 19947 – (302) 855-1299.

Hans Medlarz P.E.  
County Engineer

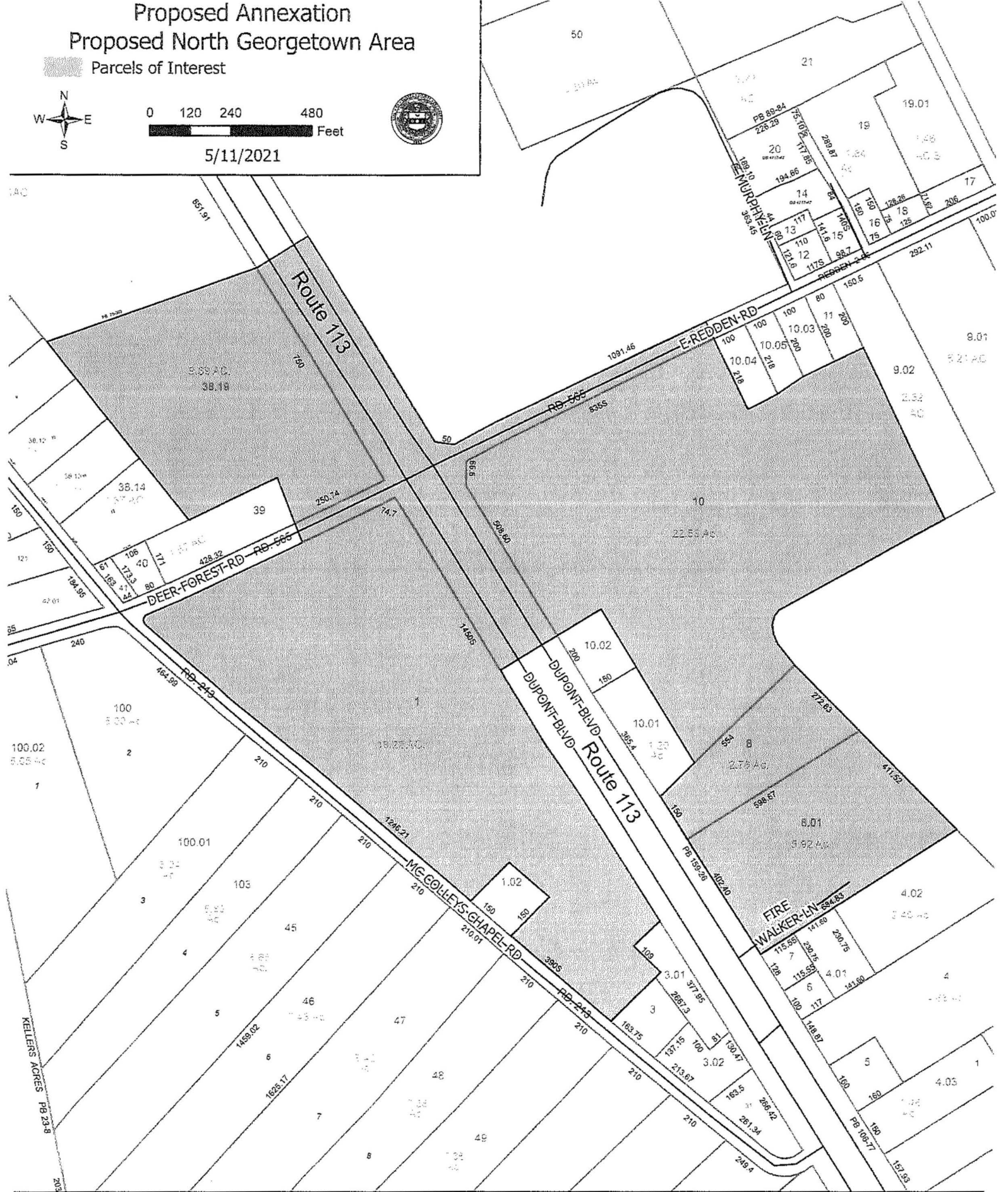
# Proposed Annexation Proposed North Georgetown Area

Parcels of Interest



0 120 240 480 Feet

5/11/2021



The proposed annexation is scheduled to be discussed June 15, 2021 at 10:30 AM  
at the regularly scheduled Sussex County Council meeting.  
For more information please visit: <https://www.sussexcountyde.gov/legal-notice/ sewer-water>  
Or call Sussex County Utility Planning at 302-855-1299

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION ESTABLISHING THE PROPOSED BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) NORTH GEORGETOWN AREA.**

**WHEREAS**, requests were received from a property owner with a DNREC supported environmental need as well as several other property owners of the proposed North Georgetown Area of the Sussex County Unified Sanitary Sewer District requesting the Sussex County Council to submit the question of organizing a sanitary sewer district to a vote of electors residing or owning property in that area; the description is below, and a map of the proposed boundary is attached as **Exhibit "A"**; and

**WHEREAS**, a public hearing was held on **June 15, 2021** on the question of organizing a sanitary sewer district dealing with the location of the boundaries of the proposed North Georgetown Area of the Sussex County Unified Sanitary Sewer District as shown in Exhibit "A"; and

**NOW, THEREFORE, BE IT RESOLVED** by the Sussex County Council that the establishment of a sanitary sewer district is deemed to be in the public interest and will be conducive to the preservation of the public health; and

**BE IT FURTHER RESOLVED** that the area shown as **Exhibit "A"** is hereby established as the "Proposed North Georgetown Area of the Sussex County Unified Sanitary Sewer District " and is more fully described as follows:

**Beginning** at a point, said point being on the northeasterly Right-of-Way (ROW) of DuPont Blvd (Rt. 113), said point also being the southernmost property corner of lands Now-or-Formerly (N/F) of Tier One Investments LLC, said point further being the westernmost property corner of lands N/F of Roblero Trust; thence proceeding by and with said ROW in a northwesterly direction a distance of 552.40 feet to a point, said point being the westernmost property corner of land N/F MDC Global LLC, said point also being the southernmost property corner of lands N/F of Kimley M. Thibault Trustee; thence leaving said ROW and proceeding by and with said Thibault lands in a northeasterly and northwesterly direction respectively a total distance of 486.7 feet to a point, said point being the northernmost property of Thibault lands, said point also being the easternmost property corner of lands N/F of Betty A. Warrington; thence leaving said Thibault lands and following said Warrington lands in a northwesterly and southwesterly direction respectively a total distance of 350 feet to a point, said point being on the northeasterly ROW of DuPont Blvd. (Rt. 113); thence leaving said Warrington lands and ROW and proceeding in a southwesterly direction crossing DuPont Blvd. (Rt 113), a distance of 200'± to a point, said point being on the southwesterly ROW of Dupont Blvd, (Rt. 113), said point also being on the northeasterly property line of lands N/F of Denard L. & Sally R. Griffith; thence proceeding by and with said ROW in a southeasterly direction a distance of 880'± to a point, said point being a property corner of lands N/F of Denard L. & Sally R. Griffith, said point also being the northeasternmost corner of lands N/F of Keonig, LLC; thence leaving said ROW and continuing by and with said Griffith lands in a southwesterly, southeasterly and southwesterly direction respectively a total distance of 423'± to a point, said point being on the northeasterly ROW of McColleys Chapel Road (SCR 213); thence continuing by and with said Griffith lands in a northwesterly, northeasterly, northwesterly, southwesterly, northwesterly & northeasterly direction respectively a total distance of 2675'± to a point, said point being on the southeasterly ROW of Deer Forest Road (SCR 565); thence leaving said Griffith lands and said ROW and proceeding in a northwesterly direction and crossing Deer Forest Rd., a distance of 50'± to a point, said point being on the northwesterly ROW of Deer Forest Road (SCR 565), said point also being the southernmost property corner of lands N/F of James G. Stryholuk TTE LIV TR & John J. Stryholuk IRR TR; thence leaving said ROW and proceeding by and with said Stryholuk lands in a northwesterly, southwesterly, northwesterly and northeasterly direction respectively a total distance of 1767'± to a point, said point being on the westerly ROW of Dupont Blvd. (Rt. 113); thence leaving said Stryholuk lands and said ROW and proceeding in a northeasterly direction crossing DuPont Blvd (Rt. 113) a distance of 200'± to a point, said point on the easterly ROW of Dupont Blvd. (Rt. 113); thence proceeding by and with said ROW in a southeasterly direction a distance of 760'± to a point, said point being the intersection of the easterly ROW of DuPont Blvd. (Rt. 113) and the northerly ROW of East Redden Road (SCR 565), thence leaving said DuPont Blvd. ROW and proceeding by and with said East Redden Road ROW a distance of 868'±; thence leaving said



ROW and proceeding in a southeasterly direction crossing East Redden Road a distance of 50'± to a point, said point being on the southerly ROW of East Redden Road (SCR 565), said point also being the northernmost property corner of lands N/F of ECO Properties, LLC; thence leaving said ROW and proceeding by and with said ECO lands in a southeasterly, northeasterly, southeasterly, southwesterly and southeasterly direction respectively a total distance of 1,926'± to a point, said point being the northernmost property corner of lands N/F of MDC Global, LLC, said point also being on the southerly property line of lands N/F of State of Delaware; thence leaving said ECO properties and continuing by and with said State lands in a southeasterly direction a distance of 684.35' to a point, said point being the easternmost property corner of lands N/F of Tier One Investments LLC; thence leaving said State land and proceeding by and with said Tier One lands in a southwesterly direction a distance of 684.83' to a point, said point being the place of **Beginning**.

NOTE: The above description has been prepared using Sussex County Tax Map No. **135-5.00 & 135-6.00**.

The proposed North Georgetown Area of the Sussex County Unified Sanitary Sewer District is within these approximate boundaries containing 59.82 acres more or less.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware

PROPOSED NORTH GEORGETOWN AREA  
AFFIDAVIT FOR PUBLIC HEARING

STATE OF DELAWARE )(

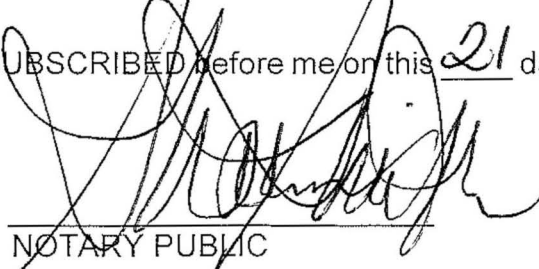
COUNTY OF SUSSEX )(

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

- A. On May 17, 2021 he was a Utility Planner for the Sussex County Engineering Department, Sussex County, State of Delaware; and
- B. On May 17, 2021 he did post the attached "Public Notice," prepared by the Sussex County Engineering Department, at the following locations:
  - 1. On a post in front of stop sign at the exit of Royal Farms in the northerly ROW of Beach Hwy (SR 16),
  - 2. On DP&L Pole 51819/09239 in front of New Hope Recreation & Development Center in the westerly ROW of N. Old State Road (Rd. 213),
  - 3. On a post in front of DEC Pole 111204 in front of Pilgrims Holiness Pentecostal Church, in the westerly ROW of S. Old State Road (Rd. 213),
  - 4. On a post in the westerly ROW of South Old State Road (SCR 213) in front of stop sign at the exit of DSWA Ellendale Collection Station,
  - 5. On a post in the easterly ROW of DuPont Blvd (Rt. 113) at the entrance to Sussex Pain Relief Center,
  - 6. On a post in the westerly ROW of DuPont Blvd (Rt 113) 8' north of signal box S-247,
  - 7. On a post in the northerly ROW of Deer Forest Road in front of DEC Pole 34434,
  - 8. On a post in the easterly ROW of McColleys Chapel Road in front of a stop sign at the intersection with Deer Forest Road

  
PHILLIP C. CALIO

SWORN TO AND SUBSCRIBED before me on this 21 day of May A.D., 2021

  
NOTARY PUBLIC

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

My Commission Expires 6/14/22

## ENGINEERING DEPARTMENT

ADMINISTRATION (302) 855-7718  
AIRPORT & BUSINESS PARK (302) 855-7774  
ENVIRONMENTAL SERVICES (302) 855-7730  
PUBLIC WORKS (302) 855-7703  
RECORDS MANAGEMENT (302) 854-5033  
UTILITY ENGINEERING (302) 855-7717  
UTILITY PERMITS (302) 855-7719  
UTILITY PLANNING (302) 855-1299  
FAX (302) 855-7773



# Sussex County

DELAWARE  
sussexcountye.gov  
HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER  
ROBERT L. BRYANT, A.A.E.  
AIRPORT MANAGER

## MEMORANDUM

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

FROM: Hans Medlarz, P.E., County Engineer &  
Robert L. Bryant, A.A.E., Airport Manager

RE: FAA Lease No. 69435Z-20-L-00095  
Delaware Coastal Airport (GED)  
Automated Surface Observation System (ASOS)

DATE:

The Federal Aviation Administration (FAA) has forwarded to GED airport management a revised FAA Memorandum of Agreement (FAA Contract No: 69435Z-20-L-00095) associated with the continued presence and operation of the ASOS (weather monitoring equipment) currently located on the Delaware Coastal Airport.

As explained to airport management, there is a mandatory requirement to add specific clauses into Section 6.9 of this MOA/Contract and must insert in all FAA contracts for compliance with law. Congress passed Section 889 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115-232) which contained prohibitions regarding certain telecommunications and video surveillance equipment and services. In order to fully implement this requirement, the FAA is requesting we execute this agreement inclusive of the new mandate.

The purpose is for public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes that there is prohibition on contracting with identified companies in the People's Republic of China. This covers certain telecommunications and video surveillance services or equipment provided by such entities with reporting requirements as defined in Clause 6.9.5. Based on reasonable inquiry and/or knowledge, the Representations in Clause 6.9.5-2(d) must be marked, along with signature requirements.



If this agreement is acceptable, the FAA is asking we please execute and return an original and two (2) copies. For our convenience, we can also email an executed copy to an FAA contact provided to airport management.

Signatures are required on the attached documents:

MOA/Contract, page-13 (with appropriate editing)  
Public Authorization Certificate  
Certificate of Acknowledgement

NOTE: FAA Airport Improvement Program Grant Assurance No. 28 - **Land for Federal Facilities** requires,

*“It (the airport sponsor) will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or **weather-reporting and communication** activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.”*

**ON-AIRPORT LAND**  
**MEMORANDUM OF AGREEMENT**  
**Between**  
**UNITED STATES OF AMERICA**  
**DEPARTMENT OF TRANSPORTATION**  
**FEDERAL AVIATION ADMINISTRATION**  
**And**  
**SUSSEX COUNTY COUNCIL**

**FAA CONTRACT NO: 69435Z20-I-00095**

**GED/DELTA COASTAL AIRPORT**

**GGEORGETOWN, DE**

**SECTION 6.1: OPENING**

**6.1.1-1 Agreement Preamble 09/2020**

This Agreement is made and entered into by the Sussex County Council hereinafter referred to as "Airport", for itself, its successors and assigns, and the Federal Aviation Administration, hereinafter referred to as the "FAA" or "the Government".

For purposes of this MOA, the terms "contractor," "airport," and "lessor" are interchangeable. Also, the terms "contract," "agreement, and "lease" are interchangeable.

**6.1.3-1 MOA Witnesseth 09/2020**

Whereas, the parties listed above have entered into an Airport Improvement Grant Agreement; and

Whereas, the parties listed above have entered into an agreement providing for the construction, operation, and maintenance of FAA owned navigation, communication and weather aids for the support of Air Traffic Operations; and

Whereas, the parties consider it desirable to work in cooperation with each other in the technical installation and operation of air navigational aids; and

Whereas, both parties agreed the establishment, operation, and maintenance of systems for air traffic control, navigation, communication, and weather reporting is in the primary interest of safety and direct support of the ongoing operation of the Delta Coastal Airport.

Whereas, this agreement supersedes or succeeds lease No. 69435Z-20-L-00095 and all other previous agreements between the parties for the property described in this document.

Now, therefore, the parties mutually agree as follows:

## **SECTION 6.2: TERMS**

### **6.2.1-1 MOA Purpose 09/2020**

It is understood and agreed that the use of the herein described premises, known as Delta Coastal Airport, shall be related to the FAA's activities in support of Air Traffic Operations.

### **6.2.5-4 Terms and Conditions 09/2020**

It is mutually understood and agreed that the Airport requires FAA navigation aid facilities in order to operate their business and that the FAA requires navigation, communication and weather aid facilities at the Airport in order to support Air Traffic Operations. Thus, in the interest of both parties it is hereby agreed that the Airport will allow the FAA to construct, operate, and maintain FAA owned navigation, communication and weather aid facilities in areas on the Airport that have been mutually determined and agreed upon for the term commencing on October 1, 2021 and continuing through September 30, 2041. The FAA can terminate this agreement, in whole or part at any time by giving at least thirty (30) days' notice in writing.

A. Together with a right-of-way for ingress to and egress from the premises; a right-of-way for establishing and maintaining pole lines or underground lines for extending electrical power and/or telecommunications lines to the premises; including a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over the area referred to as Delta Coastal Airport, to be routed reasonably determined to be the most convenient to the FAA and as not to interfere with Airport operations. The Airport shall have the right to review and comment on plans covering access and utility rights-of-way under this paragraph.

B. And the right to grading, conditioning, and installing drainage facilities, seeding the soil of the premises, and removing all obstructions from the premises that may constitute a hindrance to the establishment and maintenance of navigational aid systems. The Airport shall have the right to review and comment on plans covering work permitted under this paragraph.

C. And the rights to make alterations, attach fixtures, and erect additions, structures or signs, in direct support of the Airport. The Airport shall have the right to review and comment on plans covering work permitted under this paragraph.

D. And the right to park, without cost, all official and privately owned vehicles used for the maintenance and operation of the air navigational facilities. Parking shall be provided adjacent to the navigational aid facility or as near as possible without interfering with the operation of the Airport.

### **6.2.6-1 Consideration (No Cost) 09/2020**

The Government shall pay the Airport no monetary consideration in the form of rental. It is mutually agreed that the rights extended to the Government herein are in consideration of the obligations

assumed by the Government in its establishment, operation and maintenance of facilities upon the premises hereby leased.

### **6.2.9 FAA Facilities 09/2020**

The FAA facilities covered by this agreement are identified on the most current approved Airport Layout Plan (ALP) and/or other pertinent drawings that are made part of this Agreement by reference and shown on the attached FAA "List of Facilities".

## **SECTION 6.3: GENERAL CLAUSES**

### **3.2.5-1 Officials Not To Benefit 09/2020**

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

### **3.10.1-22 Contracting Officer's Representative 09/2020**

(a) The Contracting Officer may designate other Government personnel (known as the Contracting Officer's Representative) to act as his or her authorized representative for contract administration functions which do not involve changes to the scope, price, schedule, or terms and conditions of the contract. The designation will be in writing, signed by the Contracting Officer, and will set forth the authorities and limitations of the representative(s) under the contract. Such designation will not contain authority to sign contractual documents, order contract changes, modify contract terms, or create any commitment or liability on the part of the Government different from that set forth in the contract.

(b) The Contractor shall immediately contact the Contracting Officer if there is any question regarding the authority of an individual to act on behalf of the Contracting Officer under this contract.

### **6.3.5 Title To Improvements 09/2020**

Title to the improvements constructed for use by the FAA during the life of this Agreement shall be in the name of the FAA.

### **6.3.6 Funding Responsibility for FAA Facilities 09/2020**

The Airport agrees that any and all Airport requested relocation(s), replacement(s), or modification(s) of any existing or future FAA navigational aid or communication system(s) necessitated by Airport improvements or changes will be at the expense of the Airport. In the event that the Airport requested changes or improvements interferes with the technical and/or operational characteristics of the FAA's facility, the Airport will immediately correct the interference issues at the Airport's expense. Any FAA requested relocation, replacement, or modifications shall be at the FAA's expense. In the event such relocations, replacements, or modifications are necessary due to causes not attributable to either the Airport or the FAA, funding responsibility shall be determined by mutual agreement between the parties, and memorialized in a Supplemental Lease Agreement.

### **6.3.18 Non-Restoration 09/2020**

It is hereby agreed between the parties that, upon termination of its occupancy (due to termination or expiration of the Lease), the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property that is the subject of this Lease, including any holdover period. It is further agreed that the Government may abandon in place any or all of the structures and equipment installed in or located upon said property by the Government during its tenure. Such abandoned equipment shall become the property of the Lessor.

### **6.3.25 Quiet Enjoyment 09/2020**

The Lessor warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.

### **6.3.28-2 Interference with FAA Operations 09/2020**

The Airport agrees not to erect or allow to be erected any structure or obstruction of any kind or nature within the Airport's boundaries that the FAA determines may interfere with the proper operation of the facilities installed by the FAA. The FAA and the Airport agree that such action(s) would not be in the best interest of the Airport or the FAA.

### **6.3.33-2 Covenant Against Contingent Fees (MOA) 09/2020**

The Airport warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

### **6.3.34 RE Anti-Kickback 09/2020**

The Anti-Kickback Act of 1986 (41 U.S.C. 51-58), prohibits any person from (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting, accepting, or attempting to accept any kickback; or (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

### **6.3.36 Subordination, Nondisturbance and Attornment 09/2020**

**This clause is required in all real estate contracts except outgrants.**

A. The Government agrees, in consideration of the warranties and conditions set forth in this clause, that this contract is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this contract. Based on a written demand received by the RECO, the Government will review and, if acceptable, execute such instruments as the contractor may reasonably request to evidence further the



subordination of this contract to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by the contractor if such easement does not interfere with the full enjoyment of any right granted the Government under this contract.

B. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this contract so long as the Government is not in default under this contract. Contractor will include in any future mortgage, deed of trust or other security instrument to which this contract becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Contractor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the RECO promptly upon demand.

C. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the contractor under this contract, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the contract had initially been entered into between such purchasers or transferees and the Government; provided, further, that the RECO and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this contract, or other writings, as shall be necessary to document the foregoing relationship.

D. None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

#### **6.3.37-2 Notification of Change in Ownership or Control of Land (MOA) 09/2020**

If the Airport conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting the premises, the Government shall be notified in writing, of any such transfer or conveyance within 30 calendar days after completion of the change in property rights. Concurrent with the written notification, the Airport's representatives, assignees, or trustees shall provide the Government copies of the associated legal document(s) (acceptable to local authorities) for transferring and/or conveying the property rights.

#### **6.3.45-4 RE Contract Disputes (Agreement) 09/2020**

All contract disputes arising under or related to this Agreement will be resolved through the FAA dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and will be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and will apply only to final agency decisions. A contractor may seek review of a final Government decision only after its administrative remedies have been exhausted.

All contract disputes will be in writing and will be filed at the following address:

Office of Dispute Resolution for Acquisition, AGC-70

Federal Aviation Administration

800 Independence Avenue, S.W., Room 323

Washington, DC 20591

Telephone: (202) 267-3290

A contract dispute against the FAA will be filed with the ODR within two (2) years of the accrual of the lease claim involved. A contract dispute is considered to be filed on the date it is received by the ODR.

The full text of the Contract Disputes clause is incorporated by reference. Upon request the full text will be provided by the RECO.

#### **6.3.47-1 Clearing/Disposing of Debris 09/2020**

A. The Government shall notify the Airport in writing ten (10) days prior to the start of any clearing of trees and/or brush and tree cuttings.

B. The Airport grants the Government the right and privilege to enter upon the Airport's land in order to cut, trim, tip, shape and maintain to the maximum, height of 5'4" above ground level, any trees situated within the airport boundary and said cutting privilege granted to the Government shall include native grasses, scrub brush, and scrub to trees. Only those trees that are determined by the Government to interfere with the operation and proper function of the Government's facilities will be subject to the Government's granted privilege. Coordination with the Airport will be made prior to any cutting of any selected trees.

C. The Government agrees to dispose of all grass, brush, and tree cuttings by its contractor. All tree logs, limbs, or branches 2 or more inches in diameter and 5 feet in length, shall be stacked in an area selected by the Airport. The Government's disposal of debris, grass, branches, etc., shall comply with regulatory requirements.

#### **SECTION 6.4: FINANCIAL CLAUSES- Not Applicable**

#### **SECTION 6.5: DESIGN & CONSTRUCTION CLAUSES- Not Applicable**

#### **SECTION 6.6: GENERAL BUILDING REQUIREMENTS & SPECIFICATIONS CLAUSES- Not Applicable**

#### **SECTION 6.7: SERVICES, UTILITIES, & MAINTENANCE CLAUSES- Not Applicable**

#### **SECTION 6.8: ENVIRONMENTAL & OCCUPATIONAL SAFETY & HEALTH CLAUSES**

##### **6.8.1 Hazardous Substance Contamination 09/2020**

The FAA agrees to remediate, at its sole cost, all hazardous substance contamination on the FAA facility premises that is found to have occurred as a direct result of the installation, operation, relocation and/or maintenance of the FAA's facilities covered by this contract. The Airport agrees to remediate at its sole cost, all other hazardous substance contamination found on the FAA facility premises. The Federal Aviation Administration  
RE Contract- MOA 09/20

Airport also agrees to hold the FAA harmless for all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the FAA facility premises that are not directly attributable to the installation, operation and/or maintenance of the facilities.

## **SECTION 6.9: SECURITY CLAUSES**

### **6.9.5 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment 09/2020**

(a) Definitions. As used in this clause--

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People's Republic of China.

*Covered telecommunications equipment or services* means—

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—
  - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening.

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or 5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibitions.

(1) Section 889(a) (1) (A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4 A 16.e.

(2) Section 889(a) (1) (B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4A.16.e. This prohibition applies to an entity that uses covered telecommunications equipment or services, including use not in support of the Government.

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor must report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information. For indefinite delivery contracts, the Contractor must report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.

(2) The Contractor must report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor must describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor must insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

### **6.9.5-1 Covered Telecommunications Equipment or Services- Representation (09/2020)**

(a) *Definitions.* As used in this provision, “covered telecommunications equipment or services” has the meaning per the clause 6.9.5 “Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment”.

(b) *Procedures.* The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for covered telecommunications equipment or services.

(c) *Representation.* The offeror represents that it \_\_\_\_\_ does, \_\_\_\_\_ does not provide covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, to other contractual instrument.

### **6.9.5-2 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (OCT 2020)**

(a) *Definitions.* As used in this provision--

*Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component* have the meanings provided in the clause AMS clause 6.9.5, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibitions.*

Section 889(a) (1) (A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Nothing in this prohibition will be construed to—

(i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a) (1) (B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential part of any system or as critical technology as part of any system. This prohibition applies to any entity that uses covered telecommunications equipment or services, including uses not in support of the Government.

Nothing in this prohibition will be construed to-

(i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures: The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from Federal awards for covered telecommunications equipment or services.

**(d) Representations.**

**(1) The Offeror represents that it [ ] will, [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.**

**(2) After conducting a reasonable inquiry for purposes of this representation, the Offeror represents that it does [ ] does not [ ] USE covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror must provide the additional disclosure information required at paragraph (e) if the Offeror indicates “does”.**

(e) Disclosures. Disclosure for the representation in paragraph (d) (1) of this provision-

If the Offeror has responded “will” in the representation in paragraph (d) (1) of this provision, the Offeror must provide the following information as part of the offer—

(1) For covered equipment

(i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(ii) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(iii) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (1) of this provision;

(2) For covered services-

(i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant

to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

Disclosure for representation in paragraph (d) (2) of this provision. If the Offeror has responded “does” to paragraph (d)(2) of this provision, the offeror must provide the following information as part of the offer—

(3) For covered equipment

(i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(ii) A description of all covered telecommunications equipment offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(iii) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (2) of this provision.

(4) For covered services-

(i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

## **SECTION 6.10: CLOSING**

### **6.10.1-4 Notices for MOA: 09/2020**

All notices/correspondences must be in writing, reference the MOA number, and be addressed as follows:

TO THE AIRPORT:

Delta Coastal Airport  
21553 Rudder Lane  
Georgetown, DE 19947

TO THE GOVERNMENT:

Federal Aviation Administration  
Real Estate & Utilities Group, AAQ-910  
1701 Columbia Avenue  
College Park, GA 30337



**6.10.3-4 MOA Signature Block 09/2020**

The Airport and the FAA hereby agree to the provisions outlined in this agreement as indicated by the signatures herein below of their duly authorized representative(s). This agreement is effective upon the date of signature by the last party thereof.

SUSSEX COUNTY COUNCIL

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

Print Name: Todd Lawson

Title: County Administrator

Date: \_\_\_\_\_

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

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

Print Name: Eric Gadson

Title: Real Estate Contracting Officer

Date: \_\_\_\_\_

**SECTION 6.11- ATTACHMENTS/EXHIBITS/SPECIAL STIPULATIONS**

Number	Title	Date	Number of Pages
1	MOA List of Facilities		1
2	Notary Acknowledgement		2
3	Public Authorization Certificate		1
4	Special Stipulation		1
5			

**Date: 07/27/2020**

**List of Facilities**

MEMORANDUM OF AGREEMENT

**69435Z-20-L-00095**

DELAWARE COASTAL AIRPORT

<b><u>Number</u></b>	<b><u>Facility</u></b>	<b><u>R/W (ATID) Number</u></b>	<b><u>GSA Control Number</u></b>	<b><u>Comments</u></b>
1	ASOS	(GED) Support	10027	See Special Stipulations for Operation of ASOS

**SPECIAL STIPULATION**

**FOR OPERATION OF AUTOMATED SURFACE OBSERVING SYSTEM (ASOS)  
UNDER THE TERMS OF THIS MOA.**

- a. Lessor shall maintain vegetation to less than 10 inches in height within 100 feet of the FAA's ASOS site (s).
- b. Lessor shall notify FAA's airport operation maintenance office when construction or agricultural tilling, mowing, harvesting, etc.) activity is scheduled or occurs that produces abnormal amounts of dust at the FAA's ASOS sensor equipment site(s).
- c. Lessor shall not construct adjacent to FAA's ASOS sensor(s) site, major paved surfaces, irrigated or drainage areas, or test/run-up facilities that may significantly alter temperature, humidity, or wind measurement.
- d. Lessor shall not create topographical surface changes (excavation or mounding) within 500 feet of ASO, sensor(s). Smooth and gradual surface changes are essential to representative wind measurement.
- e. Lessor agrees not to degrade wind speed/direction or temperature/humidity measurements; electronically interfere with the UHF data-link line-of-sight between ASOS sensor site(s) and FAA's ASOS ACU processor located in ATCT; interrupt the steady supply of electrical power to the FAA ASOS sensor site(s) and ASOS processor, located in the ATCT.

## ENGINEERING DEPARTMENT

ADMINISTRATION (302) 855-7718  
AIRPORT & BUSINESS PARK (302) 855-7774  
ENVIRONMENTAL SERVICES (302) 855-7730  
PUBLIC WORKS (302) 855-7703  
RECORDS MANAGEMENT (302) 854-5033  
UTILITY ENGINEERING (302) 855-7717  
UTILITY PERMITS (302) 855-7719  
UTILITY PLANNING (302) 855-1299  
FAX (302) 855-7773



# Sussex County

DELAWARE  
sussexcountyde.gov  
HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER  
ROBERT L. BRYANT, A.A.E.  
AIRPORT MANAGER

## MEMORANDUM

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

**FROM:** Hans Medlarz, P.E., County Engineer &  
Robert L. Bryant, A.A.E., Airport Manager

**RE:** First Amendment to Lease Agreement  
State of Delaware, Office of Management and Budget  
State Fire Prevention Commission

**DATE:**

This "First Amendment to Lease Agreement", mutually agreed upon by the Landlord (Sussex County) and the Tenant, shall extend an original Lease Agreement entered into in October 1990 by the following:

1. The revised lease terms shall commence on June 1, 2021 and shall expire on May 31, 2051 (30-years).
2. Tenant shall pay the Landlord rent in the sum of five thousand dollars (\$5,000.00) per year.

The 30-years term required review and approval from the Federal Aviation Administration (FAA) and has responded saying the FAA has "found the lease to be reasonable and have no objections". FAA Airport Improvement Program Grant Assurance and the FAA Compliance Program require that any long-term leases that are not related to aeronautical activities or airport support services require the FAA's consent for the conversion of aeronautical airport property to revenue-producing nonaeronautical property. Long-term leases are normally those exceeding 25-years.

During their June 13, 2019, "Land Use Inspection of Properties on the Delaware Coastal Airport", the FAA identified, and determined, that the original Lease Agreement was an



“unapproved” nonaeronautical use of airport property. This “First Amendment to Lease Agreement” corrects that noncompliance issue.

## **FIRST AMENDMENT TO LEASE AGREEMENT**

**THIS FIRST AMENDMENT TO LEASE AGREEMENT** is made this \_\_\_ day of May 2021 by and between the State of Delaware, Office of Management and Budget, acting on behalf of the State Fire Prevention Commission ("Tenant"), and Sussex County, a political subdivision of the State of Delaware ("Landlord").

**WHEREAS**, Landlord and Tenant originally entered into a Lease Agreement in October 1990 ("Original Lease Agreement") for space located at 22705 Park Avenue, Georgetown, DE 19947 ("Premises") and comprising 5 acres. Parcel Survey attached hereto as Exhibit A.

**WHEREAS** Landlord and Tenant have now agreed to amend such Lease for the purpose of extending their lease term.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the Landlord and Tenant hereby agree that the Lease shall be amended further as follows:

1. The revised lease term shall commence on June 1, 2021 ("Lease Commencement") and shall expire on May 31, 2051.
2. Tenant shall pay the Landlord rent in the sum of five thousand dollars (\$5,000.00) per year.

Except as herein modified, all other terms and conditions of the Lease Agreement shall remain in full force and effect. The terms and conditions of the Lease Agreement, as extended, shall bind and inure to the benefit of the parties and their respective permitted successors, transferees, and assigns.

***SIGNATURES ON FOLLOWING PAGE***

**IN WITNESS WHEREOF**, the parties hereto have executed this First Amendment to Lease Agreement on the day and year first above written.

**LANDLORD  
SUSSEX COUNTY**

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

\_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**TENANT  
FIRE PREVENTION COMMISSION**

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

\_\_\_\_\_

Fire Prevention Commission

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**OFFICE OF MANAGEMENT AND BUDGET**

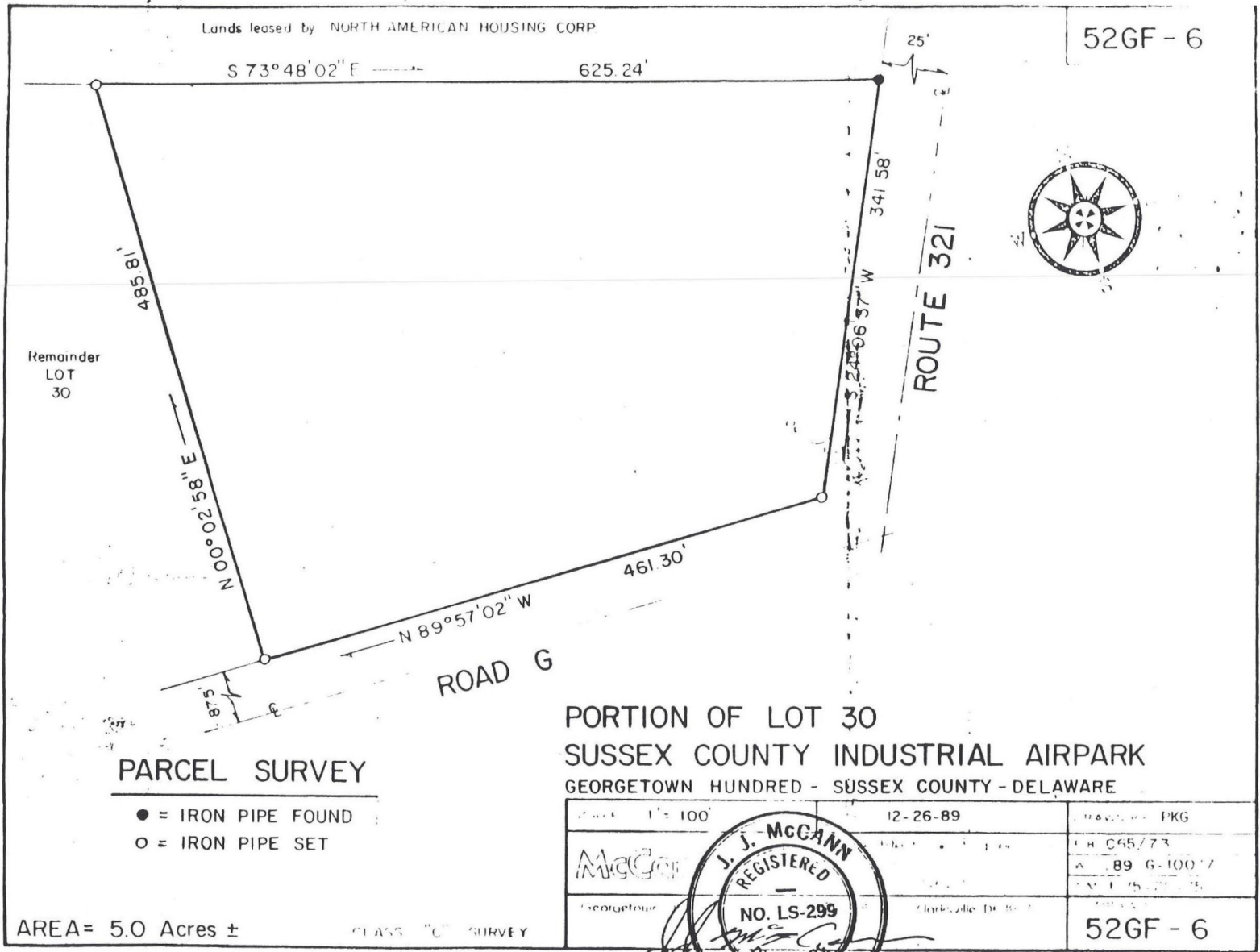
WITNESS: \_\_\_\_\_

\_\_\_\_\_

Cerron Cade, Director  
Office of Management and Budget

Date: \_\_\_\_\_

EXHIBIT A



PORTION OF LOT 30  
 SUSSEX COUNTY INDUSTRIAL AIRPARK  
 GEORGETOWN HUNDRED - SUSSEX COUNTY - DELAWARE

Scale 1" = 100'	12-26-89	PKG
McGowan		CH 045/73
Georgetown		W 89 6-100-7
		NO. LS-299
		52GF-6





LEASE AGREEMENT

THIS LEASE AGREEMENT, dated this 17<sup>th</sup> day of October, 1990 BY AND BETWEEN:

SUSSEX COUNTY COUNCIL, P.O. Box 589, Courthouse, Georgetown, Delaware 19947, hereinafter referred to as "Landlord",

AND

STATE OF DELAWARE, Department of Administrative Services, acting on behalf of the State Fire Prevention Commission, Georgetown, Delaware, 19947 hereinafter referred to as "Tenant",

WITNESSETH

The Landlord does hereby lease to the Tenant and the Tenant does hereby rent from the Landlord, the following described premises:

All that parcel of land more particularly described as set forth in Appendix A annexed hereto and made a part hereof. This lease shall be for a term of thirty (30) years, commencing on the 1st day of October, 1990, and ending on the 30th day of September, 2020, to be used and occupied only and for no other purpose than that more particularly described in Appendix B annexed hereto and made a part hereof.

UPON THE FOLLOWING CONDITIONS AND COVENANTS:

SECTION I: RENT. The Tenant covenants and agrees to pay to the Landlord, as rent for and during the term hereof, the sum of One Dollar (\$1.00) annually.

SECTION II: REPAIR AND CARE. The Tenant has examined the premises and has entered into this lease without any representation on the part of the Landlord as to the conditions thereof. The Tenant shall take good care of the premises at the Tenant's own cost and expense, and shall maintain the premises in good condition and state of repair and at the end of the term hereof or any extension thereof, shall deliver the rented premises in good order and condition, wear and tear from a reasonable use thereof, and damage by the elements not resulting from the neglect or fault of the Tenant, excepted. The Tenant shall neither encumber nor obstruct the sidewalks, driveways, yards or entrances, but shall keep and maintain the same in a clean condition, free from debris, trash, refuse, snow and ice.

SECTION III: RENEWAL OPTION. Tenant shall have two options to renew this lease for thirty (30) year terms under the same terms and conditions as set forth herein. The Tenant shall provide

written notice of its intent to renew at least sixty (60) days prior to the termination of the initial term of this lease or the first option thereof.

SECTION IV: PRELIMINARY CONDITIONS. Landlord agrees that Tenant has the right to conduct all appropriate topo surveys, soil test, borings, and other inspections as necessary. Upon determination that such use is unsuitable as a result of such investigations this Lease shall be rendered void provided Tenant notifies Landlord within sixty (60) days of its execution.

SECTION V: USE OF PREMISES. Tenants shall have the right to erect buildings upon the premises and to install thereon associated equipment appurtenant and necessary. Such improvements may be erected by Tenant in such style as it seems proper, all at its own cost and expense. Such improvements so erected shall comply with all laws, ordinances, orders, regulations and requirements of any governmental authority having jurisdiction. Improvements and the use of the demised lands and premises shall comply with Appendix B attached hereto and incorporated herein. Tenant shall furnish to Landlord a copy of its plans and specifications for such improvements. Tenant shall undertake to seek approvals of the appropriate governmental agencies and shall process its applications diligently. Tenant agrees to commence construction of such improvements by not later than one year (1 year) from the date of final approval required and secured from the last of such governmental agencies, weather permitting, or such additional time period as may be agreed upon by the parties. Upon Tenant's failure to commence construction by said date, then Landlord shall have the option, in its discretion, to terminate the Lease by written notice to Tenant. Upon the expiration of the term of this Lease, Tenant shall have the option of either negotiating a new Lease with the Landlord, during the term of which title to such improvements shall be retained by the Tenant, or conveying such improvements to a subsequent Tenant of the premises. Upon the expiration of the term of this Lease (or any subsequent Lease with the same Tenant) and the failure of the Tenant to enter into a new Lease agreement within 120 days of said termination, or upon the expiration of the term of this Lease (or any subsequent Lease with the same Tenant) and the failure of the Tenant to convey such improvements to a subsequent Tenant of the premises within 120 days of said termination, Tenant or its successors shall deliver up to the Landlord such improvements as may then be upon the demised premises, except removable trade fixtures as hereinafter provided.

(a) PERMISSIBLE USE. In addition to its contemplated use of the premises, Tenant shall have the right to use the premises for any lawful related business and industrial purpose, so long as the use does not conflict with the covenants contained in Exhibit B attached hereto and incorporated herein. During its occupancy, Tenant agrees to comply with all county and municipal ordinances, fire, building and other codes, all applicable state

and federal statutes in connection with the operations conducted by it upon the premises and in the use made of the premises. Tenant shall comply with all federal, state, and local regulations concerning dust and waste materials generated by operation of tenant.

(b) EASEMENTS, PERMITS. Landlord specifically agrees that Tenant shall have the right to grant such easement, permits and licenses on the demised premises as Tenant may deem advisable in its judgment for its use and occupancy of the premises and of the business operations conducted thereon.

SECTION VI: LIABILITY INSURANCE. It is hereby understood that Tenant is self-insured as an agency of the State of Delaware.

SECTION VII: SUBLETTING AND ASSIGNING. Tenant shall have the right to assign this Lease or sublet the demised premises with the written consent of the Landlord. Such assignment or subletting shall in no way relieve Tenant of any responsibility for the payment of rent or for the performance of any of the other covenants or conditions hereof. The prospective assignee shall be subject to inquiries concerning the nature of business and employment goals. Such assignee or Sub-Tenant shall in writing assume all of the obligations to be performed by Tenant hereunder.

SECTION VIII: NOTICE. All notices required to be given under this Lease either by Landlord to the Tenant or by the Tenant to the Landlord shall be in writing. The same shall be deemed given in the case of the Landlord when it shall have deposited such notice by certified mail in the post office addressed to the Tenant at Tenant's last known address or to such other address as Tenant shall from time to time furnish Landlord. Personal service of any such notice shall be deemed as a substitute for the mail notice.

SECTION IX: CONDEMNATION. If at any time during the term hereof the whole of the demised premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, then and in such event, when possession shall have been taken of the premises by the condemning authority, the lease hereby granted and all rights of the Tenant hereunder shall immediately cease and terminate and the rent shall be apportioned and paid to the time of such termination.

If, pursuant to the provisions of this article, this Lease shall have been terminated and if prior to such termination, Tenant shall have made any improvements upon the premises, Landlord shall be entitled to all of the condemnation proceeds which may be granted with respect to the land herein described as such land is distinguished from the improvements; and Tenant shall be entitled to the proceeds of any condemnation awarded on account of the value of any improvements made by Tenant.

SECTION X: PARTIAL CONDEMNATION. If after commencement of construction only a part of the demised premises shall be taken or condemned, the Landlord shall be entitled to any award made with respect to the land herein described as same is distinguished from any improvements made by Tenant; and Tenant shall be entitled to any award made for any improvements condemned. In the event such condemnation shall leave a portion of the demised premises which in Tenant's sole judgment is usable by Tenant, the Lease shall remain in full force and effect, but the rents herein reserved to the Landlord shall be adjusted so that Tenant shall be entitled to a reduction in rent in the proportion that the value of land taken bears to the value of the entire demised premises.

If a portion of the demised premises is taken or documented prior to commencement of construction hereunder, the proceeds shall belong solely to the Landlord and the rental hereunder shall not be abated. Provided however, that Tenant shall have the right to terminate this Lease if in its sole judgment the premises have been rendered unsuitable for its purposes.

SECTION XI: DEFAULT.

(a) Events of Default Defined. The following shall be "events of default" under this Lease and the terms "event of default" or "default" shall mean, whenever they are used in this Lease any one or more of the following events:

(1) failure by the Tenant to pay the rents required to be paid at the times specified therein and continuing for a period of thirty (30) days after notice by mail is given to the Tenant that the rental payment referred to in such notice has not been received;

(2) failure by the Tenant to observe and perform any covenant, condition or agreement of this Lease on its part to be observed or performed, other than as referred to in subsection (1) of this Section, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, given to the Tenant by Landlord, unless the Landlord shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Landlord will not unreasonably withhold its consent to an extension of such time if it is possible to correct such failure and corrective action is instituted by the Tenant within the applicable period and diligently pursued until the default is corrected; or

(b) Remedies of Default. Whenever any event or default referred to above shall have happened and be subsisting, Landlord may take any one or more of the following remedial steps:

(1) Apply any money or property of Tenant's in Landlord's possession to discharge in whole or in part any obligation or covenant to be observed or performed by Tenant hereunder.

(2) Perform any obligation or covenant to be performed by Tenant hereunder and charge Tenant therefore.

(3) Terminate this Lease.

(c) No remedy herein conferred upon or reserved to Landlord or Tenant shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SECTION XII: NON WAIVER OF SUBSEQUENT BREACH. Tenant agrees that any waiver by Landlord of the performance of any one of the conditions of this Lease shall not be deemed to constitute a waiver of the right of Landlord to proceed against Tenant upon any subsequent breach of the same or other conditions of this Lease.

SECTION XIII: SEVERABILITY. If any provisions of this Lease shall be held invalid or unenforceable by any Court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

SECTION XIV: SHORT FORM LEASE. Upon the written request of either of them, the parties shall execute and exchange copies of a short form lease outlining the pertinent terms herein contained, which short form lease may be recorded in lieu of recording this instrument, but the terms of this instrument shall control in all aspects in regard to matters omitted from such short form lease or in respect to conflicts therewith.

SECTION XV: COMPLIANCE WITH LAWS. Tenant shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and County Government and Public Authorities and of all their departments, bureaus and subdivisions, applicable to and affecting the said premises, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said premises, during the term hereof; and shall promptly comply with all orders, regulations and directives of the State Fire Marshall or similar authority at the Tenant's own cost and expense.

SECTION XVI: LANDLORD NOT LIABLE FOR DEBTS, ACTS OR OMISSIONS OF TENANT. Tenant shall not be the agent or partner of the Landlord; and Tenant shall have no authority to make any contract or do any act so as to bind the Landlord or as to render the Landlord or the Lease premises liable therefore. Tenant will save the Landlord harmless from any penalty, damages, neglect, or

negligence of Tenant, property damage, illegal act or otherwise. The improvements to be placed on said leased premises shall be constructed at the sole expense of the Tenant, and Landlord shall not be liable in any way for any amount of money arising out of said construction. Before starting construction, Tenant shall have recorded on the public records of Sussex County, Delaware, such legal notice as may be necessary wherein the public is advised that Landlord is not in any way liable for any claims or obligations for labor and materials on said job, and that the laborers, material men and subcontractors shall look solely to the Tenant for payment and shall not be entitled to place a lien against said demised property. If any mechanic's or materialmen's lien is filed or any claim made on account of labor or other material furnished, alleged to have been furnished or to be furnished to the Tenant at the leased premises or against Landlord as the owner thereof, the Tenant shall, within ninety (90) days after written notice from the Landlord thereof, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. The Tenant will indemnify Landlord for its costs, legal fees and expenses in defending any actions, suit or proceedings which may be brought thereon or for the enforcement of such lien, or liens and the Tenant shall pay any damages and any judgment entered thereon and save harmless and indemnify the Landlord from any claims or damages resulting therefrom. Failure to do so shall entitle the Landlord to resort to remedies as are provided herein in the case of any default of this Lease, in addition to such as are permitted by law.

SECTION XVII: SUCCESSORS AND ASSIGNS. All of the terms, covenants, conditions and agreements herein contained shall in every case be binding upon the successors and assigns of the parties hereto.

SECTION XVIII: NON-PERFORMANCE BY LANDLORD. This Lease and the obligation of the Tenant to pay the rent hereunder and to comply with the covenants and conditions hereof, shall not be affected, curtailed, impaired or excused because of the Landlord's inability to supply any service or material called for herein, by reason of any rule, order, regulation or preemption by any governmental entity, authority, department, agency or subdivision or for any delay which may arise by reason of negotiations for the adjustment of any fire or other casualty loss or because of strikes or other labor trouble or for any cause beyond the control of the Landlord.

SECTION XXIII; TITLE COVERAGE. This lease is expressly subject and contingent upon Tenant being able to obtain from any reputable title company satisfactory insurable interest with respect to such title and this Leasehold.

SECTION XIX: DAMAGE AND CASUALTY: If the leased premises are damaged by fire or other casualty to more than fifty percent (50%), Tenant may terminate this Lease, provided the Tenant first removes all structures on the land at its expense and restores

the surface of the land to its condition at the date of the initial term of this Lease. The rent is to be paid to the date of termination.

SECTION XX: QUIET ENJOYMENT. The Landlord covenants and represents that the Landlord is the owner of the premises herein leased and has the right and authority to enter into, execute and deliver this Lease; and does further covenant that the Tenant, on paying the rent and performing the conditions and covenants herein contained, shall and may peaceably and quietly have, hold and enjoy the leased premises for the term aforementioned.

SECTION XXI: ENTIRE CONTRACT. This Lease contains the entire contract between the parties. No representative, agent or employees of the Landlord has been authorized to make any representation or promises with reference to the within letting or to vary, alter or modify the terms hereof. No additions, changes or modifications, renewals or extensions hereof, shall be binding unless reduced to writing and signed by the Landlord and the Tenant.

SECTION XXII: IMPROVEMENTS. Tenant shall make all improvements on the leased premises at its own expense and shall be responsible for all maintenance and repair to any improvements. Tenant shall be responsible for all grass cutting and snow removal. Grass shall be mowed regularly so as to prevent grass from growing beyond 6" in height. Sussex County shall maintain access roads within the industrial park, such maintenance to include snow removal within twelve (12) hours of snowfall. However, responsibility for snow removal by Landlord shall be limited to snow removal from Road G. Snow removal from the premises shall be the responsibility of the Tenant. Tenant shall pay for all utilities of whatever kind which are furnished to the leased premises. Landlord represents, however, that electricity, sanitary services and water are available within the industrial park. Water shall be provided to Tenant at no charge. Landlord agrees that all charges for sanitary sewer services to Tenant shall be based upon pro rata standards for water used, based upon a common water usage rate. Meters shall determine the pro rata use schedule. Tenant agrees that the strength and characteristics of all waste water discharged into the sanitary sewer facilities of Landlord shall be within the limits stated on Sussex County Ordinance No. 545 which is attached hereto as Appendix D. Tenant agrees not to discharge more than 900 gallons per day into the waste water treatment system. If Tenant's water or sewer line is shared in the future with another tenant at the industrial park, Sussex County will assist in the tenant negotiating recoument of a share of installation costs.

SECTION XXIII: MISCELLANEOUS. In all references herein to any parties, persons, entities or corporations the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require. All the terms, covenants and

conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto and their heirs, executors, administrators, personal or legal representatives, successors and assigns.


SECTION XXIV: INDEMNIFICATION. Tenant shall indemnify, defend and hold Landlord harmless from any and all claims arising from Tenant's use of the premises or from the conduct of its business or from any activity, work or things which may be permitted or suffered by Tenant in or about the premises and shall further indemnify, defend and hold Landlord harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the provisions of this Lease or arising from any negligence of Tenant or any of its agents, contractors, employees or invitees and from any and all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Tenant hereby assumes all risk of damage to property or injury to persons in or about the premises from any cause, and Tenant hereby waives all claims in respect thereof against Landlord excepting where said damage arises out of negligence of Landlord. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the doors, wares, merchandise, or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the premises; nor, unless through its negligence, shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors and invitees, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water, rain or other elements, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliance, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the premises. Provisions of this section shall not apply to those losses which are proved by Tenant to be due directly to the sole negligence of the Landlord.


SECTION XXV: PROHIBITED WASTE LIABILITY. In the event prohibited wastes and/or illegally-dumped materials are discovered in, under or upon the leased premises, Landlord warrants that it will not require Tenant to remove or otherwise dispose of such prohibited wastes and/or illegally-dumped materials, or assume the cost of such removal or disposal to the extent that such prohibited wastes and/or illegally-dumped materials predated the effective date of this lease, it being the intent of the parties that the responsibility for the prompt removal or disposal of such materials lies with the Landlord and that the cost and expense of such removal or disposal shall be borne, by the Landlord, if removal is found to be necessary by State or Federal governing authorities.




IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal, or caused these presents to be signed by their proper officers and their proper seal to be affixed, the day and year first above written.

SUSSEX COUNTY COUNCIL, LANDLORD

By:  (SEAL)  
WILLIAM D. STEVENSON, SR.  
President


Attest:  (SEAL)  
DORIS E. ROGERS  
Clerk of County Council


APPROVED AS TO FORM:

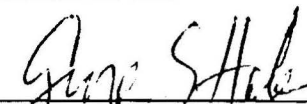
By:   
PETER B. JONES, ESQUIRE  
Sussex County Attorney

STATE OF DELAWARE, TENANT

  
Witness

  
C. B. Bennett, Chairman  
Delaware Fire Prevention  
Commission

  
Witness

  
George E. Hale, Secretary  
Department of Administrative  
Services

**APPENDIX A**

Description of the Land

**APPENDIX B**

Description of Allowable and Typical Activities of the Business:

Operation by State of Delaware of a fire personnel training facility and related administrative offices.

APPENDIX C

Schedule of Rental Payments

\$1.00 per year

Lands leased by: NORTH AMERICAN HOUSING CORP.

52GF-6

S 73°48'02" E

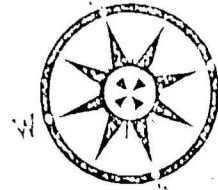
625.24'

25'

341.58'

S 24°06'37" W

ROUTE 321



Remainder  
LOT  
30

485.81'

N 00°02'58" E

461.30'

N 89°57'02" W

ROAD G

87.5'

### PARCEL SURVEY

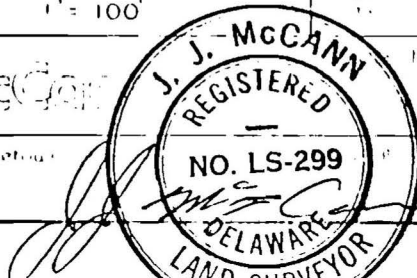
- = IRON PIPE FOUND
- = IRON PIPE SET

PORTION OF LOT 30  
 SUSSEX COUNTY INDUSTRIAL AIRPARK  
 GEORGETOWN HUNDRED - SUSSEX COUNTY - DELAWARE

AREA = 5.0 Acres ±

CLASS "C" SURVEY

Scale: 1" = 100'	Date: 12-26-89	Drawn: PKG
Surveyor: J. J. McCann	Project: Sussex County Industrial Airpark	Plan: C65-73
Section: 10	Location: Georgetown, Delaware	Map: 89-G-100-17
		52GF-6



APPENDIX D

Sussex County Ordinance No. 545, Approved on November 1, 1988, Addressing Wastewater Quantity and Quality Criteria.

## Robert Bryant

---

**From:** Chant, Dana (OMB) <dana.chant@delaware.gov>  
**Sent:** Friday, April 30, 2021 8:36 AM  
**To:** Robert Bryant  
**Cc:** Todd F. Lawson; Gina Jennings; William Pfaff  
**Subject:** RE: Delaware Coastal GED 30 Year Lease Concurrence  
**Attachments:** Fire Prevention Commission\_Sussex County Airport Amendment\_revised 043021.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**CAUTION:** This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Good morning, please see the attached. Thank you!

### DANA CHANT

*Real Property Administrator*



Office of Management and Budget  
Division of Facilities Management  
Thomas Collins Building  
540 S. DuPont Highway  
Dover, DE 19901  
(302) 744-1179  
[dana.chant@delaware.gov](mailto:dana.chant@delaware.gov)

---

**From:** Robert Bryant <robert.bryant@sussexcountyde.gov>  
**Sent:** Thursday, April 29, 2021 2:19 PM  
**To:** Chant, Dana (OMB) <dana.chant@delaware.gov>  
**Cc:** Todd F. Lawson <tlawson@sussexcountyde.gov>; Gina Jennings <gjennings@sussexcountyde.gov>; William Pfaff <william.pfaff@sussexcountyde.gov>  
**Subject:** FW: Delaware Coastal GED 30 Year Lease Concurrence

Dana,

Let's move ahead with the 30-year lease.

Can you forward me an updated version?

Bob

*Robert L. Bryant, A.A.E.  
Manager  
Delaware Coastal Airport  
21553 Rudder Lane  
P.O. Box 589  
Georgetown, DE 19947*

Direct Line: 302-855-7775

Main Line: 302-855-7774

Email: [robert.bryant@sussexcountyde.gov](mailto:robert.bryant@sussexcountyde.gov)

Website: [www.delawarecoastalairport.com](http://www.delawarecoastalairport.com)



**From:** Gearhart, Brian (FAA) <[redacted]@faa.gov>

**Sent:** Tuesday, April 27, 2021 4:01 PM


**To:** Robert Bryant <[redacted]@sussexcountyde.gov>; McDonald, Susan (FAA) <[redacted]@FAA.GOV>; Cohen, David M (FAA) <[redacted]@faa.gov>; DeWire, Timothy P (FAA) <[redacted]@faa.gov>

**Cc:** Todd F. Lawson <[redacted]@sussexcountyde.gov>; Gina Jennings <[redacted]@sussexcountyde.gov>; William Pfaff <[redacted]@sussexcountyde.gov>

**Subject:** RE: Delaware Coastal GED 30 Year Lease Concurrence

**CAUTION:** This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Bob,

I apologies for the delay. You may also move forward with shorter lease timeframe if desire.  As mentioned previously, we found the lease to be reasonable and have no objection. Our review of a lease is to evaluate whether it may violate compliance with any grant obligations. Note that the concern of the previous lease with this entity was that the airport did not appear to receive Fair Market Value. If you wish for us to provide an additional response, an analysis of the FAA Reauthorization Act of 2018, section 163 will need to be completed. Keep in mind, that the requirement to obtain FMV applies regardless of the outcome of that determination.

Thanks,  
Brian

**From:** Robert Bryant <[redacted]@sussexcountyde.gov>

**Sent:** Tuesday, April 27, 2021 9:07 AM

**To:** Gearhart, Brian (FAA) <[redacted]@faa.gov>; McDonald, Susan (FAA) <[redacted]@FAA.GOV>; Cohen, David M (FAA) <[redacted]@faa.gov>; DeWire, Timothy P (FAA) <[redacted]@faa.gov>

**Cc:** Todd F. Lawson <[redacted]@sussexcountyde.gov>; Gina Jennings <[redacted]@sussexcountyde.gov>; William Pfaff <[redacted]@sussexcountyde.gov>

**Subject:** RE: Delaware Coastal GED 30 Year Lease Concurrence

Good Morning Brian,

Can you tell me if there has been a determination by the Federal Aviation Administration (your office) for approval of the 30-year Lease with the Delaware State Fire Science Center?

Would it simply be easier for all involved if we just simply move forward with a 25 Year Lease?





U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Eastern Region, Airports Division

1 Aviation Plaza, Room 516  
Jamaica, NY 11434-4809

T: (718) 553-3347  
F: (718) 995-5694

**June 13, 2019**

Jim Hickin  
21553 Rudder Lane  
Georgetown, DE 19947  
[jhickin@sussexcountyde.gov](mailto:jhickin@sussexcountyde.gov)

**Re: Delaware Coastal Airport (GED), Georgetown, Delaware  
Airport Land Use Inspection (2019)**

Dear Mr. Hickin:

On Wednesday May 8, 2019, I conducted a land use inspection at Delaware Coastal Airport (GED), Georgetown, Delaware. I would like to thank you for the time and attention you committed to my visit.

The purpose of the inspection was to determine whether the airport sponsor, the County of Sussex, is in compliance with the terms of its Federal obligations dealing with airport property use, lease agreements and property releases. The inspection included a review of airport property use in accordance with the currently approved Airport Layout Plan (ALP).

We are providing you with a Land Use Inspection Report documenting our discussion and observations during the inspection. The section highlighted as "Airport Sponsor Response Required" needs your attention to take immediate corrective action by the due date.

Should you have any questions please contact me at (718) 553-3347.

Sincerely,

David M. Cohen  
Compliance Program Manager

Enclosures

cc: HAR ADO; ACO-100

## Airport Sponsor Response Required

The observations listed below require your response.

### 1. Unapproved non-aeronautical use of airport property

#### a) County non-aeronautical uses of airport property

During the inspection, it was discussed that the County of Sussex is using the following five different facilities on airport property for non-aeronautical Sussex business:

- i. The Emergency Operations Center (depicted as Bldg 33 on the ALP)
- ii. Solar Panels (depicted as Bldg 31 on the ALP)
- iii. The Records Center (depicted as Bldg 21 on the ALP)
- iv. The County Vehicle Storage (depicted as Bldg. 14 on the ALP)
- v. The Industrial Park Plant (depicted as Bldg. 113 on the ALP)



Nevertheless, at this time the FAA has not approved of the non-aeronautical use of this portion of airport property as required by Grant Assurance 29, *Airport Layout Plan*. Consistent with FAA Order 5190.6B, Chapter 22, in order to receive FAA approval of the non-aeronautical use of airport property sponsors must submit a land release request to the FAA seeking such approval. Additionally, during the inspection it was discussed that the County of Sussex is not paying the airport any rent for these facilities. Pursuant to FAA's *Policy and Procedures Concerning the Use of Airport Revenue* Section VI(B)(8) use of land by the sponsor for non-aeronautical purposes at less than fair market value is prohibited.

Within 45 days of the date of this letter, please submit:

1. A land release request, and/or a corrective action plan detailing when you will be submitting a land release request, seeking to change the use of the subject airport property to "nonaviation" on a permanent basis. Guidance as to the information that needs to be submitted to the FAA in a land release request is attached. Such land release request should be submitted to the Harrisburg Airports District Office (HAR ADO) with a copy of the cover letter provided to the undersigned. Otherwise, if you wish to terminate these non-aeronautical uses, please provide a corrective action plan detailing when such termination will occur. Such corrective action plan should be sent to the undersigned.
2. Information as to the period of time during which the County of Sussex has used the facilities described in paragraphs i-v above for the current, and/or previous, non-aeronautical purposes (e.g. the last 10 years). Such information should be sent to the undersigned;
3. An appraisal of the fair market value rent for each of the facilities described in paragraphs i-v above for the last 6 years and/or a corrective action plan detailing when you will be submitting such an appraisal. Please note if the County of Sussex paid for the construction of these facilities without using airport revenue then the appraisal of these facilities should just consider the value of the land as if it were unimproved. Such appraisal should be sent to the undersigned;
4. Documentation evidencing the airport's revenues and expenses for each of the last 6 years as well as documentation evidencing any funds provided by the County of Sussex over each of the last 6 years to cover the airport's expenses. The purpose of the request for this information is to determine

whether, and the extent to which the County of Sussex can claim that the investments it may have made into the airport offset the amount of money that the airport could have received from the fair market value rent of the five facilities discussed above. Such documentation should be sent to the undersigned.



b) The Delaware State Fire Science Center

During the inspection, it was discussed that this facility is located on airport property and is identified as Bldg. 111 on the ALP. Documentation was provided indicating that this facility is leased to the State of Delaware and is used as a firefighter training facility. Based on these facts, this facility appears to comprise a non-aeronautical use of airport property. The facility is located within an area that was approved for release by the FAA in 1972 so as to allow the area to be used non-aeronautical purposes. Nevertheless, the Airport is not receiving any remuneration for this tenancy. As stated above, consistent with FAA's *Policy and Procedures Concerning the use of Airport Revenue* the airport must receive fair market value rent for this tenancy.

Within 45 days of the date of this letter, please submit:

1. An appraisal of the fair market value rent for this facility and/or a corrective action plan detailing when you will be submitting such an appraisal. Please note if the construction of these facilities was not performed using airport revenue then the appraisal of these facilities should just consider the value of the land as if it were unimproved. Such appraisal should be sent to the undersigned.
2. The Sponsor's position as to whether it is feasible to renegotiate the lease with the State of Delaware so as to require the State to begin paying fair market value rent for its use of this airport property. In doing so please provide sufficient explanation, including discussion of the applicable lease terms, to support your conclusion.

c) Agricultural Lease

During the inspection, it was discussed that the Sponsor has entered into a lease for the use of 18 acres of airport property on Parcel 135-20.00-64, in the vicinity of Property Reference Number 27 as depicted on the Exhibit A Airport Property Map, for non-aeronautical agricultural purposes. Nevertheless, at this time, the FAA has not approved of the non-aeronautical use of this portion of airport property as required by Grant Assurance 29, *Airport Layout Plan*. Consistent with FAA Order 5190.6B, Chapter 22, in order to receive FAA approval of the non-aeronautical use of airport property sponsors must submit a land release request to the FAA seeking such approval. Given the agricultural use, however, the Sponsor may seek a concurrent use land release request for this parcel of property. For concurrent use land release requests it is unnecessary to provide a metes and bounds description of the subject property.

Within 45 days of the date of this letter, please submit a concurrent use land release request, and/or a corrective action plan detailing when you will be submitting a land release request, seeking to use the subject airport property for concurrent "nonaviation" uses on an interim basis (up to 5 years). Guidance as to the information that needs to be submitted to the FAA in a land release request is attached. As stated above, however, a metes and bounds description of the property will not be required. Such land release request should be submitted to the HAR ADO with a copy of the cover letter provided to the undersigned. Otherwise, if you wish to terminate the non-aeronautical use please advise in a corrective action plan detailing when such termination will occur. Please submit any corrective action plan to the undersigned.



**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION**

National Policy

**ORDER  
5190.6B**

Effective Date:  
September 30, 2009

**SUBJ:** FAA Airport Compliance Manual

---

The Airport Compliance Program ensures airport sponsors' compliance with their federal obligations in the form of grant assurances, surplus and nonsurplus obligations, or other applicable federal law. The Airport Compliance Program is administered by the FAA headquarters Airport Compliance Division (ACO-100) based in Washington, DC.

This handbook provides guidance to FAA personnel on interpreting and administering the various continuing commitments airport sponsors make to the U.S. Government when they accept grants of federal funds or federal property for airport purposes. The handbook (i) analyzes the various federal obligations set forth in legislatively mandated airport sponsor assurances, (ii) addresses the nature of the assurances and the application of the assurances in the operation of public use airports, and (iii) facilitates interpretation of the assurances by FAA personnel. This manual was designed to provide guidance to FAA personnel pertaining to the Federal Aviation Administration (FAA) Airport Compliance Program.

*Randall S. Fiertz*


Randall S. Fiertz  
Director  
Airport Compliance and Field Operations Division (ACO-1)

event the sponsor desires to sell the airport land. This action is normally categorically excluded, but may require an environmental assessment in accordance with the provisions of chapter 3, "Environmental Action Choices," of FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*.

In this case, the assessment shall address the known and immediately foreseeable environmental consequences of the release action. As with other federal actions regarding land, appropriate coordination with federal, state, or local agencies shall be completed for applicable areas of environmental consideration (i.e., historic and archeological site considerations, section 4(f) lands, wetlands, coastal zones, and endangered species).<sup>52</sup> In such cases, coordination with the State Historic Preservation Officer is required.

b. In making the final determination, the responsible federal official shall consider the effects of covenants that will encumber the title and the extent of federal ability to enforce these covenants subsequent to the release action. The standard conditions of release relative to the right of flight, including the right to make noise from such activity and the prohibition against erection of obstructions or other actions that would interfere with the flight of aircraft over the land released, may be considered as mitigating factors and may be included in environmental assessments when required. When the intended use of released land is consistent with uses described and covered in a prior environmental assessment, the prior data and analysis may be used as input to the present assessment. When the conditions set forth in the applicable sections of FAA Order 5050.4B *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects*, apply, a written reevaluation may be used to support the property release.

c. In some cases, another federal agency may be the lead agency responsible for preparing an environmental assessment and environmental impact statement, if required. In these circumstances, the FAA may be a cooperating agency. To support the release action, the FAA may then adopt the environmental document prepared by the other agency in accordance with the provisions of Council of Environmental Quality (CEQ) 1506.3.

 d. Long term leases that are not related to aeronautical activities or airport support services have the effect of a release for all practical purposes, and shall be treated the same as a release. Such leases include convenience concessions serving the public such as hotel, ground transportation, food and personal services, and leases that require the FAA's consent for the conversion of aeronautical airport property to revenue-producing nonaeronautical property. Long-term leases are normally those exceeding 25 years.

**22.34. through 22.37. reserved.**

<sup>52</sup> See FAA Order 5050.4A, *Airport Environmental Handbook*, for additional information.

## ENGINEERING DEPARTMENT

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



# Sussex County

DELAWARE  
sussexcountyde.gov

HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

JOHN J. ASHMAN  
DIRECTOR OF UTILITY PLANNING

## Proposed Warrington Road Expansion of the Sussex County Unified Sanitary Sewer District

### PERMISSION TO POST FACT SHEET

- Expansion of the Sussex County Unified Sanitary Sewer District (West Rehoboth Area)
- The Engineering Department has received a request from the property owners of parcels 334-12.00-117.00 & 118.00
- This annexation would include (2) adjacent parcels as well.
- All (4) parcels can receive sanitary sewer service with the installation of a low-pressure line installed along Warrington Road with the use of individual grinder pump system.
- The project will be responsible for System Connection Charges in place at the time of connection.
- The Engineering Department would like to request permission to prepare and post notices for a Public Hearing on the annexation of the area.
- A tentative Public Hearing is currently scheduled for July 27, 2021 at the regularly scheduled County Council meeting.



Permission to Prepare and Post Notices  
Warrington Road Area

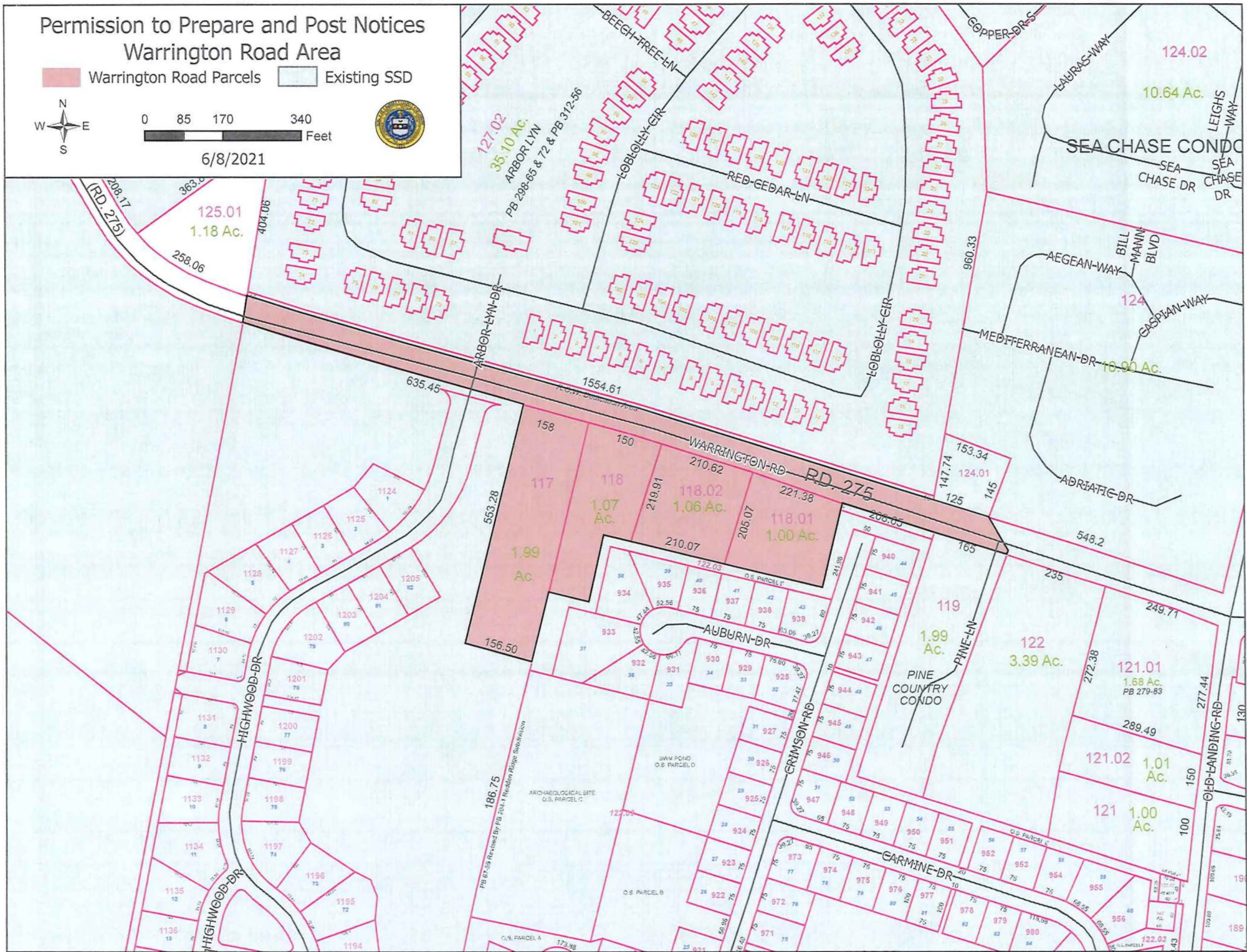
Warrington Road Parcels Existing SSD



0 85 170 340  
Feet



6/8/2021



Director of Utility Planning  
Sussex County Utility Planning Department  
2 The Circle, P.O. Box 589  
Georgetown, DE 19947

May 12, 2021,

RE: Warrington Road Sewer Extension

Dear Mr. Ashman,

Please accept this letter on behalf of the property owners located at 34930 & 34914 Warrington Road respectively as a formal request to extend the existing sewer to the front of our property so that our failing septic systems can be abandoned, and we can hook up to County Sewer. Enclosed is a check payable to Sussex County Council in the amount of \$750 for the application fee. Please feel free to contact us should you need further information.

Sincerely,



Michael Fannin  
Country Life Homes  
34930 Warrington Road  
Rehoboth Beach, DE. 19971  
Cell 302-218-2141  
Tax Map ID: 334-12.00-118.00  
1.07 Acres



Carlton J Bailey II  
34914 Warrington Road  
Rehoboth Beach, DE. 19971  
Cell 302-249-2532  
Tax Map ID: 334-12.00-117.00  
1.99 Acres



## **Pintail Pointe Area of the Sussex County Unified Sanitary Sewer District**

- The Engineering Department appeared before Council on March 23, 2021 to request Permission for the Sussex County Engineering Department to prepare and post notices for a Public Meeting to establish a proposed Boundary for the Pintail Pointe Sanitary Sewer District.
  - The Engineering Department held a Public Hearing on April 27, 2021 in council chambers and on livestream. At this time County Council approved the Final Boundary.
  - The Engineering Department held a referendum on June 4, 2021 from 3:00PM to 5:00PM in County Council Chambers.
  - The results of the Referendum are as follows:
    - 34 for
    - 0 against
    - 5 were Absentee votes
  - Questions?
  - Short title
-

**RESOLUTION NO. R \_\_\_\_\_**

**PINTAIL POINTE AREA OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT DECLARED UNDER THE PROVISIONS OF TITLE 9, CHAPTER 65 OF THE DELAWARE CODE**

WHEREAS, the eligible voters of the proposed Pintail Pointe Area approved the creation of the sewer area by a vote of **34 to 0** in an election held on June 4, 2021; and

WHEREAS, Title 9, Delaware Code, Section 6507 requires the County Council to issue a determination of the sewer district within thirty days of its approval by the eligible voters.

NOW, THEREFORE,

BE IT RESOLVED that the County Council of Sussex County, Delaware hereby determines that the eligible voters of the Pintail Pointe Area of the Sussex County Unified Sanitary Sewer District have approved the creation of said area, that the description of the Pintail Pointe Area is described in Exhibit "A"; and that the said district is hereby declared to be validly constituted under the provisions of Title 9, Chapter 65 of the Delaware Code.

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

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

BE IT FURTHER RESOLVED that the Sussex County Council directs the County Finance Director and County Engineer to apply for, accept, and receive grants, loans, and other funding necessary to provide adequate financing for the planning, design, construction, and all other phases of the sanitary sewer district.

**Exhibit "A"**

Description of the Pintail Pointe Area of the Sussex County Unified Sanitary Sewer District

**Beginning** at a point, said point being on the westerly Right-of-Way (ROW) of Hudson Road, said point also being the northeasternmost property corner of land Now-Or-Formerly (N/F) of Charles E. Jr., & Robin L. Clendaniel, said point further being the southeasternmost property corner of Pintail Pointe subdivision; thence proceeding by and with said subdivision property the following distances and directions, in a northwesterly direction a distance of 2,394'± to a point; thence proceeding and following a wetland line in a generally northeasterly direction a distance of 427'± to a point; thence in a northeasterly direction a distance of 1,975'± to a point, said point being on the westerly ROW of Hudson Road; thence proceeding by and with said ROW and subdivision boundary in a southeasterly direction a distance of 1,043'± to a point, said point being the place of **Beginning**.

NOTE: The above description has been prepared using Sussex County Tax Map Nos. 235-16.00

The Pintail Pointe Area of the Sussex County Unified Sanitary Sewer District is within these boundaries. A map drawn to scale indicating the boundaries of the area is attached.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.



## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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

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



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

### Memorandum

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

**FROM:** Hans Medlarz, P.E., County Engineer  
Gina A. Jennings, MPA, MBA, Finance Director  
John J. Ashman, Sr. Manager of Utility Planning & Design Review

**DATE:** June 15, 2021

**RE:** *Lochwood Community Area Expansion of the Unified Sanitary Sewer District Approval of USDA/RD Funding Offer*

On August 2, 2018 the Lochwood Property Owners Association requested a presentation from the engineering department on estimated costs for providing central County sewer service at their annual community meeting on October 27, 2018. At that meeting, the majority of the members present, requested the County distribute a polling letter to all property owners. The responses to the polling letter being favorable the Engineering Department conducted a public hearing on September 7, 2019. The results from the public hearing were presented to County Council on September 17, 2019 and Council voted to extend the Sussex County Unified Sanitary Sewer District to include the Lochwood Community.

In April of 2022 the Engineering Department finalized the Preliminary Engineering Report and the Environmental Information Documents required for submittal of the funding application to USDA – Rural Development. On May 14, 2020 these Documents were combined with the overall funding application prepared by the Finance Department and filed with USDA/Rural Development, Rural Utility Service for approximately \$8,440,000. On May 21, 2021, the County accepted the letter of conditions and on May 24, 2021 the obligating documents associated in the loan amount of \$4,723,000 and \$3,717,000 of grant funding. This paved the way for the funding to be obligated by the USDA.

The Finance and Engineering Departments now recommend Council's approval of the USDA Loan Resolution and introduction of the associated debt ordinance authorizing the issuance of up to \$4,287,000 of general obligation bonds of Sussex County in connection with the construction and equipping of the Lochwood Expansion of the Unified Sanitary Sewer District. In addition, the Departments request Council approval of the companion grant agreement.



**LOAN RESOLUTION**  
(Public Bodies)A RESOLUTION OF THE Sussex County CouncilOF THE Sussex County CouncilAUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS  
SEWER SERVICES

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the Sussex County Council*(Public Body)*

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

Four Million Seven Hundred Twenty-Three Thousand & 00 100pursuant to the provisions of Delaware State Code; and**WHEREAS**, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:**NOW THEREFORE**, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal ly permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0121. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

- 11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
- 12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
- 13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
- 14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities and replacement of short lived assets.
- 15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
- 16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
- 17. To accept a grant in an amount not to exceed \$ 3,717,000

under the terms offered by the Government; that the \_\_\_\_\_

and \_\_\_\_\_ of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

The vote was:                      Yeas \_\_\_\_\_                      Nays \_\_\_\_\_                      Absent \_\_\_\_\_

IN WITNESS WHEREOF, the Sussex County Council \_\_\_\_\_ of the

Sussex County Council \_\_\_\_\_ has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this \_\_\_\_\_, \_\_\_\_\_ day of \_\_\_\_\_

(SEAL)

By Gina Jennings \_\_\_\_\_

Attest:

Title \_\_\_\_\_

\_\_\_\_\_

Title \_\_\_\_\_

**CERTIFICATION TO BE EXECUTED AT LOAN CLOSING**

I, the undersigned, as \_\_\_\_\_ of the Sussex County Council  
 hereby certify that the Sussex County Council of such Association is composed of  
 \_\_\_\_\_ members, of whom, \_\_\_\_\_ constituting a quorum, were present at a meeting thereof duly called and  
 held on the \_\_\_\_\_ day of \_\_\_\_\_ ; and that the foregoing resolution was adopted at such meeting  
 by the vote shown above, I further certify that as of \_\_\_\_\_ ,  
 the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been  
 rescinded or amended in any way.

Dated, this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
 Title \_\_\_\_\_



**Water and Waste System Grant Agreement**

**United States Department of Agriculture**

**Rural Utilities Service**

THIS AGREEMENT dated \_\_\_\_\_, between

Sussex County Council

a public corporation organized and operating under

Delaware State Code

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (waste) system to serve the area under its jurisdiction at an estimated cost of \$ 8,440,000.00 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 4,723,000.00 of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 4,723,000.00 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 3,717,000.00 or 44.04 percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed 44.04 percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, adopted by resolution dated \_\_\_\_\_, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 per centum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

**[Revision 1, 04/17/1998]**

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

**This Grant Agreement covers the following described real property (use continuation sheets as necessary).**

Not applicable.

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

**[Revision 1, 04/17/1998]**

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the property for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than \$5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of \$5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

**This Grant Agreement covers the following described equipment(use continuation sheets as necessary).**

**All wastewater laterals, mains, and pumping stations to be added or improved by this project.**

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414 ) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:

**[Revision 1, 11/20/1997]**

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.

**[Revision 1, 11/20/1997]**

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$ 3,717,000.00 which it will advance to Grantee to meet not to exceed 44.04 percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

\_\_\_\_\_

attested and its corporate seal affixed by its duly authorized

\_\_\_\_\_

Attest:

\_\_\_\_\_

By \_\_\_\_\_

(Title) \_\_\_\_\_

By \_\_\_\_\_

**Gina Jennings**

(Title) **Finance Director**

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By \_\_\_\_\_

**Terry S. Fearins**

(Title)

**Community Program Director**

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$4,723,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE CONSTRUCTION AND EQUIPPING OF AN EXTENSION OF SANITARY SEWER SERVICES TO LOCHWOOD AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH**

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

WHEREAS, acting pursuant to its Home Rule Power, and pursuant to Title 9, Delaware Code, Chapters 65 and 67, the County has authorized the design, construction and equipping of an extension of sanitary sewer services to Lochwood (the "Project");

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

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

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

Section 1. Amount and Purpose of the Bonds. Acting pursuant to Title 9, Delaware Code, Chapters 65 and 67, Sussex County shall issue its negotiable general obligations in the maximum aggregate principal amount not to exceed \$4,723,000 (the "Bonds") to finance or reimburse the County for a portion of the cost of the design, construction and equipping of the Project.

The monies raised from the sale of the Bonds (including the investment earnings thereon) after the payment of the costs of issuance, shall be held in one or more Project accounts and shall be expended only for the purposes authorized herein or as may otherwise be authorized by subsequent action by County Council. Authorized purposes include the costs of planning, constructing, acquiring and equipping the Project or any portion thereof; interest on the Bonds and any interim financing during the construction period and for a period of up to one year following the estimated date of completion; the reasonable costs of issuance of the Bonds and any interim financing; the repayment of temporary loans incurred with respect to the Project; and the reimbursement of authorized costs previously expended by the County from other funds.

Section 2. Security for the Bonds. The principal, interest and premium, if any,



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

Section 3. Terms of the Bonds. The Bonds shall be sold at such prices and upon such other terms and conditions consistent with the provisions of this Ordinance and otherwise as the County Administrator shall determine to be in the best interests of the County. The Bonds shall bear interest at such rate or rates and shall mature in such amounts and at such times, but not exceeding 40 years from the date of issue of the Bonds, and shall be subject to redemption, as the County Administrator shall determine.

Section 4. Sale of the Bonds. The Bonds may be issued in one or more series and shall be sold in one or more public sales or private negotiated transactions upon such terms and conditions as the County Administrator shall determine shall be in the best interest of the County. It is anticipated that the Bonds will be sold to the United States of America, Rural Utilities Service (or any successor agency).

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

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

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

Section 8. Effective Date. This Ordinance shall become effective immediately

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

**SYNOPSIS:** This Ordinance provides for the issuance of up to \$4,723,000 of Sussex County General Obligation Bonds in order to finance or reimburse the County for a portion of the costs for the design, construction and equipping of an extension of sanitary sewer services to Lochwood (the "Project").

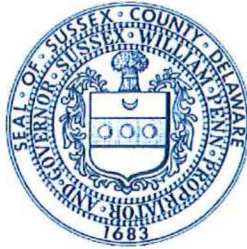
**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. \_\_\_\_ ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE \_\_\_\_\_ DAY OF JUNE, 2021.**

\_\_\_\_\_  
Robin A. Griffith  
Clerk of the Sussex County Council

(Lochwood Ordinance)

## ENGINEERING DEPARTMENT

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



# Sussex County

DELAWARE  
sussexcountyde.gov

HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

## Memorandum

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

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

RE: ***Western Sussex Area of Unified Sewer District  
A. Town of Greenwood Transition Agreement - Approval***

DATE: June 15, 2021

In February 2017, the Commissioners of Bridgeville and Greenwood requested investigation of a possible County Sewer District based wastewater approach. An alternate scenario for a Western Sussex County Sewer District connecting to the City of Seaford was evaluated and based on a more favorable cost scenario. Both municipal Councils requested formation of a County sewer district pursuant to Title 9 Del. Code § 6501.

On August 22, 2017, County Council adopted a resolution establishing the Western Sussex Area of the Unified Sewer District. Early in the transition the Town of Bridgeville and the County worked out transition arrangements pursuant to Delaware Code, Title 9, Chapter 6702. The associated agreement was approved by County Council on October 8, 2018.

The Town of Greenwood staff, with input from the County Engineer and in consultation with the Town Solicitor, have been drafting an agreement tailored to the needs of the Town. The Town Council is scheduled to approve said agreement on June 16, 2021. The proposed Greenwood agreement addresses the following objectives:

- Verification and transition of commercial accounts.
- Arrangements for municipal staff in the pump station building.
- Assumption of legacy commitments.
- Uniform Sewer District Extension conditioned upon future annexation in accordance with Town Charter.

The Engineering Department recommends approval of the Agreement in principle by County Council.



## SEWER OPERATIONS & TRANSITION AGREEMENT

This agreement, made and entered into this \_\_\_\_ day of June 2021, by and between the Town of Greenwood, a municipal corporation of the State of Delaware, (the "TOWN") and Sussex County, a political subdivision of the State of Delaware (the "COUNTY".)

WITNESSETH:

WHEREAS, the TOWN and COUNTY desire to enter into this sewer operation and transition agreement pursuant to Title 9 Del. Code 6702 (the "Agreement").

WHEREAS, the Town Council has requested formation of a County sewer district pursuant to Title 9 Del. Code 6501 and on August 22, 2017 the County Council adopted Resolution 022-17 creating the Western Sussex Sewer Area of the Unified Sussex County Sanitary Sewer District.

WHEREAS, the TOWN and COUNTY agree that it would be the most cost-effective alternative for the COUNTY to assume all responsibility for the operation and maintenance of the TOWN's municipal wastewater system ("SYSTEM") on the terms and conditions set forth in this agreement.

NOW, THEREFORE the parties hereto agree that the COUNTY will provide a full-time staff of appropriately licensed operators for the SYSTEM with 24 hour on call service. The COUNTY will assume all costs associated with the operations and maintenance of the SYSTEM and the TOWN will not be responsible for any costs or repairs relating to the SYSTEM incurred after July 1, 2021. The TOWN will also not be responsible for providing any licensed operators or other employees for the SYSTEM.

BE IT FURTHER AGREED that the TOWN will reasonably cooperate with the COUNTY on the transition of the billing system and at no expense to the COUNTY in the following manner:

1. Provide reasonable access for COUNTY staff to the customer data base in the TOWN'S municipal billing system.
2. Allow COUNTY employees to conduct site visits of all commercial accounts to establish EDU assessments.

BE IT FURTHER AGREED that the TOWN hereby transfers all responsibility for the operation and maintenance of the SYSTEM to the COUNTY and the COUNTY hereby accepts all responsibility for the operation and maintenance of the System as of July 1, 2021 on the following terms and conditions:

1. The TOWN will continue to maintain an office at the wastewater pump station until such time as the COUNTY and TOWN mutually agree that the TOWN should vacate the office. This will be at no cost to the TOWN.
2. The COUNTY will transfer all utilities for the wastewater pump station including electricity, telephone etc. to the COUNTY effective July 1, 2021.
3. Drawings/plans or documents that the COUNTY needs to obtain from any current or previous Town engineer, or otherwise, the COUNTY will obtain at no cost to the TOWN.
4. The COUNTY shall have unrestricted access rights to the wastewater pump station.
5. The COUNTY assumes responsibility for the SYSTEM and all equipment related thereto in its current condition as-is where-is at the time of transfer at no cost to the TOWN.

6. COUNTY shall assume the outstanding pre-paid sewer capacity commitments for impact fees collected prior to July 1, 2021 by with the following entities:
  - a. Bay to Beach Builders, on behalf of ERINBROOKS LLC, for thirty-eight (38) EDUs on Tax Parcel 530-10.00-53.01
  - b. Milford Housing Development Corporation for seventeen (17) EDUs on Tax Parcel 530-10.00-52.01
  - c. M&M Properties for three (3) individual building lots on North St.

BE IT FURTHER AGREED that except as expressly set forth herein, the TOWN is not assigning transferring or granting any rights to the COUNTY and the COUNTY shall not have any rights with respect to, any TOWN assets, including without limitation, any TOWN wastewater funds or any TOWN wastewater funds or any TOWN mobile assets.

BE IT FURTHER AGREED that the COUNTY hereby agrees to indemnify, defend and hold the TOWN harmless for any and all costs expenses, claims and damages incurred by the TOWN after July 1, 2021 in connection with the SYSTEM.

BE IT FURTHER AGREED that this AGREEMENT represents the final and entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, commitments, understandings, representations and proposals, written or oral, relating to such subject matter. This Agreement can be modified only by a written Amendment specifically referencing this Agreement and signed by each of the parties hereto.

BE IT FURTHER AGREED that any extensions of the COUNTY's Western Sussex Sewer district area located within the TOWN's annexation area as outlined in the COUNTY's Comprehensive Plan shall be contingent upon the following wording:

*"If the property seeking inclusion in the Western Sussex Area of the Unified Sussex County Sewer District becomes contiguous to and eligible for annexation into the Town of Greenwood, said property shall annex.*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper corporate officers and their respective corporate seals to be hereto affixed, the day and year first written above.

By Town Council of Greenwood \_\_\_\_\_ Mayor Donald Donovan

Attest: \_\_\_\_\_ Town Manager

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

Attest: \_\_\_\_\_ Clerk, Sussex County Council

## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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

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



# Sussex County

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

## Memorandum

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

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

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

DATE: June 15, 2021

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

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

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

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



The property is designated by FEMA as flood zone AE with a BFE of 6 feet. However, the property straddles the border of a 7-foot BFE. DEMA will seek clarification from FEMA and they will also engage in a project extension request since the FEMA approval will expire in 2021. In summary, the Engineering Department recommends County Council sponsor the FEMA Mitigation Grant Application: FMA-PJ-03-DE-2018-002 under the 100% Federal cost share arrangement.



P.O.Box 33003  
St. Petersburg, FL 33733-8003  
Customer Service: 1-800-820-3242  
Claims: 1-800-725-9472

FFL 99.0AL 0313  
2102839  
8/31/17

Policy Number  
07 1150757544 05  
2000 11523 FLD RGLR  
Flood

Date of Notice  
8/31/17  
Date of Mailing  
9/01/17

Agent (302) 934-1222  
JENNIFER CANNON #BC36  
30625 DUPONT BLVD  
DAGSBORO DE 19939-4451

DANIEL WIEN  
25867 BERRY ST  
LONG NECK DE 19966-6566

Property Address  
25867 BERRY ST, LONG NECK DE 19966-6566

Dear Policyholder,

The above referenced property has been identified as a Severe Repetitive Loss (SRL) property as defined in the attached letter from the Federal Emergency Management Agency. Please read the attached letter carefully since it contains important information regarding the property's designation as SRL and how this affects the Flood Insurance Policy. Upon renewal, the servicing of the policy must be transferred to the Special Direct Facility (SDF), a servicing agent operated by the National Flood Insurance Program (NFIP).

In a few weeks, a Notice of Nonrenewal will be sent indicating that the Flood Insurance will not be renewed with our Company. Shortly after receiving the Notice of Nonrenewal, the SDF should send a renewal bill. It is important to pay this bill to maintain Flood Insurance coverage on the property. Prior to policy renewal, the NFIP SDF will require a new application, photographs of the front and rear of the building, an elevation certificate, if applicable, and any additional supporting documents to ensure that policy information and rates are current and correct.

If the SDF does not send a renewal bill by 10/15/17 or, for questions about this change or why the property falls into the Severe Repetitive Loss Category, please contact the SDF at (866) 395-7496 for assistance.

Sincerely,

Flood Customer Service

*[Faint, illegible handwritten text]*

00735640711507575441724302

00008

Insured

0055E





8/31/17

National Flood Insurance Program  
 U.S. Department of Homeland Security  
 P.O. Box 2966  
 Shawnee Mission, KS 66201-1366

07 1150757544 05  
 2000 11523 FLD RGLR



FEMA

## IMPORTANT FLOOD INSURANCE POLICY INFORMATION

Insured's Name: DANIEL WIEN

Property Address: 25867 BERRY ST  
 LONG NECK DE 19966-6566

Policy Number: 07 1150757544 05

Dear Policyholder:

As you may be aware, your property, which is covered by flood insurance, has experienced repetitive flood losses under FEMA's National Flood Insurance Program (NFIP). This letter is to inform you that your property meets the criteria for a subset of repetitive loss structures: insured properties with a high frequency of losses or a high value of claims. These properties are designated as Severe Repetitive Loss (SRL) properties.

Congress recognized that SRL properties represent the greatest risk of sustaining repeated flood losses and, through the Flood Insurance Reform Act of 2004, made it a top priority to reduce the number of SRL properties nationwide. As of January 2013, FEMA has identified approximately 11,900 properties that meet the designation for SRL. The loss characteristics of an SRL property must meet one of the following criteria based on paid flood losses since 1978, regardless of ownership:

- (1) Four or more separate claim payments of more than \$5,000 each (building and/or contents payments); or
- (2) Two or more separate claim payments (building payments only) where the total of the payments exceeds the current value of the property.

In either case, two of the claim payments must have occurred within 10 years of each other. If there are multiple losses at the same location within 10 days of each other, they are counted as one loss, with the payment amounts added collectively.

The strategy for reducing the number of SRL properties is twofold. First, the NFIP has centralized the processing of all flood insurance policies for SRL properties in order for FEMA to obtain additional underwriting information, verify loss information, and collect information about the flood risk to the SRL properties. Second, FEMA implements the Flood Mitigation Assistance (FMA) grant program annually to mitigate SRL properties. You need to be aware of the following:

- The Write Your Own (WYO) Insurance Companies that sell and service flood insurance under the NFIP will assign flood insurance policies for SRL properties, upon renewal, to a centralized processing center operated by the NFIP Servicing Agent. This center is the Special Direct Facility (SDF).

00735640711507575441724301

00008

00556

Insured



07 1150757544 05

- As a result, your policy will not be processed by the chosen WYO Company or by the traditional NFIP Direct Program. Your agent, however, will continue to be the agent of record throughout the process.
- Approximately 45 days prior to the renewal date of your policy, you will receive a premium bill from the NFIP Servicing Agent. **This bill is the only bill that you should pay.**
- For the time being, the SDF will be the only source of NFIP flood insurance coverage for your property. As always, the full premium amount and any related fees should be paid by the date indicated. The policy sent to you will meet all the requirements of any mortgage company to the same extent as your current policy.
- You may continue to contact your agent directly for any service needs on the policy because he or she will remain the agent of record.
- The NFIP provides a procedure for you to follow if you believe that FEMA has incorrectly included your insured property on its list of SRL properties.

The FMA Program was authorized by the National Flood Insurance Reform Act of 1994 and amended by the Biggert-Waters Flood Insurance Reform Act of 2012. The FMA Program may provide Federal grant funds to pay for up to 100 percent of the cost of eligible mitigation activities, such as elevating your NFIP-insured structure. Mitigated properties may qualify for reduced flood insurance rates. To obtain additional information on the FMA Program and other mitigation grant programs for residential and non-residential properties, please contact your local floodplain manager or state hazard mitigation officer, or go to the FEMA Hazard Mitigation Assistance webpage at [www.fema.gov/hazard-mitigation-assistance](http://www.fema.gov/hazard-mitigation-assistance).

FEMA's goal is to reduce the devastating effects of repetitive flood losses. If you have questions about this letter and the SRL procedures, please contact the NFIP Help Center by telephone at the toll-free number 1-866-395-7496.

Sincerely,



David L. Miller  
Associate Administrator  
Federal Insurance and Mitigation Administration

00735640711507575441724301

00008

Insured



**Application for Federal Assistance SF-424**

<b>* 1. Type of Submission:</b> <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	<b>* 2. Type of Application:</b> <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision	<b>* If Revision, select appropriate letter(s):</b> <input type="text"/> <b>* Other (Specify):</b> <input type="text"/>
---	---	--

<b>* 3. Date Received:</b> <input type="text" value="01/24/2019"/>	<b>4. Applicant Identifier:</b> <input type="text"/>
---	---

<b>5a. Federal Entity Identifier:</b> <input type="text"/>	<b>5b. Federal Award Identifier:</b> <input type="text" value="FMA-PJ-03-DE-2018-02"/>
---	---

**State Use Only:**

<b>6. Date Received by State:</b> <input type="text"/>	<b>7. State Application Identifier:</b> <input type="text"/>
--	--

**8. APPLICANT INFORMATION:**

<b>* a. Legal Name:</b> <input type="text" value="Sussex County Community Development and Housing Department"/>		
<b>* b. Employer/Taxpayer Identification Number (EIN/TIN):</b> <input type="text" value="51-6000161"/>	<b>* c. Organizational DUNS:</b> <input type="text" value="1755325890000"/>	

**d. Address:**

<b>* Street1:</b>	<input type="text" value="22215 DuPont Blvd"/>
<b>Street2:</b>	<input type="text" value="PO Box 589"/>
<b>* City:</b>	<input type="text" value="Georgetown"/>
<b>County/Parish:</b>	<input type="text"/>
<b>* State:</b>	<input type="text" value="DE: Delaware"/>
<b>Province:</b>	<input type="text"/>
<b>* Country:</b>	<input type="text" value="USA: UNITED STATES"/>
<b>* Zip / Postal Code:</b>	<input type="text" value="19947-3165"/>

**e. Organizational Unit:**

<b>Department Name:</b> <input type="text"/>	<b>Division Name:</b> <input type="text"/>
---	---

**f. Name and contact information of person to be contacted on matters involving this application:**

<b>Prefix:</b> <input type="text" value="Mr."/>	<b>* First Name:</b> <input type="text" value="Brad"/>
<b>Middle Name:</b> <input type="text"/>	
<b>* Last Name:</b> <input type="text" value="Whaley"/>	
<b>Suffix:</b> <input type="text"/>	
<b>Title:</b> <input type="text" value="Director"/>	

<b>Organizational Affiliation:</b> <input type="text" value="Sussex County Community Development and Housing Department"/>
---

<b>* Telephone Number:</b> <input type="text" value="302-855-7777"/>	<b>Fax Number:</b> <input type="text"/>
--	---

<b>* Email:</b> <input type="text" value="bwhaley@sussexcountyde.gov"/>
---

**Application for Federal Assistance SF-424**

**\* 9. Type of Applicant 1: Select Applicant Type:**

B: County Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

\* Other (specify):

**\* 10. Name of Federal Agency:**

Federal Emergency Management Agency

**11. Catalog of Federal Domestic Assistance Number:**

CFDA Title:

**\* 12. Funding Opportunity Number:**

DHS-18-MT-029-000-99

\* Title:

FY2018 Flood Mitigation Assistance

**13. Competition Identification Number:**

Title:

**14. Areas Affected by Project (Cities, Counties, States, etc.):**

Add Attachment

Delete Attachment

View Attachment

**\* 15. Descriptive Title of Applicant's Project:**


Wein Elevation Project

Attach supporting documents as specified in agency instructions.

Add Attachments

Delete Attachments

View Attachments

<b>Application for Federal Assistance SF-424</b>	
<b>16. Congressional Districts Of:</b>	
* a. Applicant <input type="text" value="DE-001"/>	* b. Program/Project <input type="text" value="DE-001"/>
Attach an additional list of Program/Project Congressional Districts if needed.	
<input type="text"/>	<input type="button" value="Add Attachment"/> <input type="button" value="Delete Attachment"/> <input type="button" value="View Attachment"/>
<b>17. Proposed Project:</b>	
* a. Start Date: <input type="text"/>	* b. End Date: <input type="text"/>
<b>18. Estimated Funding (\$):</b>	
* a. Federal	<input type="text" value="165,000.00"/>
* b. Applicant	<input type="text"/>
* c. State	<input type="text"/>
* d. Local	<input type="text"/>
* e. Other	<input type="text"/>
* f. Program Income	<input type="text"/>
* g. TOTAL	<input type="text" value="165,000.00"/>
<b>* 19. Is Application Subject to Review By State Under Executive Order 12372 Process?</b>	
<input type="checkbox"/> a. This application was made available to the State under the Executive Order 12372 Process for review on <input type="text"/> .	
<input type="checkbox"/> b. Program is subject to E.O. 12372 but has not been selected by the State for review.	
<input checked="" type="checkbox"/> c. Program is not covered by E.O. 12372.	
<b>* 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)</b>	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If "Yes", provide explanation and attach	
<input type="text"/>	<input type="button" value="Add Attachment"/> <input type="button" value="Delete Attachment"/> <input type="button" value="View Attachment"/>
<b>21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)</b>	
<input checked="" type="checkbox"/> ** I AGREE	
** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.	
<b>Authorized Representative:</b>	
Prefix: <input type="text" value="Mr."/>	* First Name: <input type="text" value="Brad"/>
Middle Name: <input type="text"/>	
* Last Name: <input type="text" value="Whaley"/>	
Suffix: <input type="text"/>	
* Title: <input type="text" value="Director"/>	
* Telephone Number: <input type="text" value="302-855-7777"/>	Fax Number: <input type="text"/>
* Email: <input type="text" value="bwhaley@sussexcountyde.gov"/>	
* Signature of Authorized Representative: 	* Date Signed: <input type="text" value="1/31/19"/>

## Robin Griffith

---

**From:** Dan Wien <danwien@aol.com>  
**Sent:** Tuesday, May 18, 2021 8:31 AM  
**To:** Hans Medlarz  
**Cc:** phillip.cane@delaware.gov  
**Subject:** Letter of Agreement - modified scope specifications - FEMA Flood Mitigation Grant Application

Good morning Hans,

I thought I made my agreement of your modified scope of my FEMA Flood Mitigation Grant Application clear in my previous correspondence.

Since you require a separate document, please accept this letter as my agreement of your modified scope proposal to raise only the one-story section of my home above the FEMA/DEMA designated BFE as part of my FEMA Flood Mitigation Grant Application as you and Mr. Cane discussed on May 13, 2021.

If you need anything additional, let me know.

Dan Wien

## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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

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



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

## Memorandum

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

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

RE: ***Western Sussex Transmission Facilities,  
A. Contract 3, Project S19-27– Change Order No. 1 & Substantial Completion  
B. Amendments to GMB & DBF Engineering Agreements***

DATE: June 15, 2021

In February 2017, the municipal councils of Bridgeville and Greenwood requested investigation of an alternate County Sewer District based scenario. On August 22, 2017, County Council adopted a resolution establishing the Western Sussex Area of the Unified Sewer District pursuant to Title 9 Del. Code § 6501.

The County submitted the project to DNREC for funding consideration under the Clean Water State Revolving Fund and on August 14, 2018, the State issued a binding commitment offer in the overall amount of \$16,634,748 to be repaid within 30-years with 2.5% interest. On November 27, 2018, Council accepted the offer and approved the associated borrowing ordinance. After project completion, \$3,200,000 will be applied in principle forgiveness reducing the overall borrowing. On May 15, 2020 the County filed a supplemental CWSRF funding request in the amount of \$850,000 which was approved by the Water Infrastructure Advisory Council on July 21, 2020 in the form of “Loan Forgiveness”.

On December 5, 2017, Council approved the GMB, LLC base contract in conjunction with Amendment No.1 in the amount of \$ 1,302,178.00 for engineering planning, design and construction phase services for the transmission facilities to convey wastewater from the Towns of Bridgeville and Greenwood to Seaford for treatment and disposal. On the same day Council also approved the EJCDC format Amendment No. 2 to the base contract with DBF in the amount of \$266,000.00 for engineering planning, design and construction phase services in conjunction with the conversion of the Bridgeville wastewater treatment plant into a reginal pump station and the conversion of the Heritage Shores pump station.



As part of the design, the Engineering Department, in cooperation with GMB, reviewed potential system inflow and infiltration sources with the objective to remove some under the project, retaining as much treatment & transmission capacity as possible. Therefore, Council approved GMB's Amendment No. 2 for flow monitoring services on April 2, 2019 in the amount of \$25,000.00.

GMB's original fee estimate included 65 weeks of construction administration and inspection services. Due to the DelDOT required phasing of the project it has now an actual construction period of 80 weeks. On November 10, 2020 Council approved GMB's Amendment No. 3 in the amount of \$22,000.00 covering 15 more weeks of professional services.

The Engineering Department is now requesting approval of GMB's Amendment No. 4 in the not to exceed amount of \$18,000.00 and the EJCDC format Amendment No. 3 to the base contract with DBF in the not to exceed amount of \$12,500.00 for the extension of construction administration services in association with commissioning of pumping stations and close-out of construction contract Nos. 3, 4 & 6.

The construction project has three (3) components; (i) transmission, (ii) treatment plant demolition / maintenance garage construction and (iii) the "green" Bridgeville Branch restoration project.

The Western Sussex Transmission Facilities, Contract 6, Maintenance Garage/Office Building, Project S20-35 was awarded by Council on June 23, 2020 to GGI Builders, Inc. in the overall amount of \$410,525.00. On December 8, 2020 County Council approved Change Order No.1 in the total amount of \$9,393.99 for Office/Garage Building modifications. On March 9, 2021 Council issued the balancing Change Order No. 2 in the credit amount of (\$19, 389.00) bringing the final contract price to \$400,529.99 and granted final completion.

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

- Contract No.1 to A-Del Construction Co, Inc. in the amount of \$3,224,820.00, for the force main work in the RT-13 rights-of-way was awarded by Council on May 14, 2019. The balancing Change Order No. 2 was approved by County Council on June 28, 2020 together with granting of final project completion.
- Contract No.2 to Pact One LLC in the amount of \$2,063,255.00, for the gravity sewer upgrades was awarded by Council on May 14, 2019. The balancing Change Order No. 2 was approved by County Council on June 28, 2020 together with granting of final project completion.
- Contract No.3 to A-Del Construction Co, Inc. in the amount of \$2,980,602.00, for the force main work in the RT-13 Alternate and Herring Road rights-of-way was awarded by Council on January 7, 2020. The contract was substantially Complete as of November 19, 2020 and all remaining punch list items have now been resolved. Therefore, the Engineering Department requests approval of the balancing Change Order No. 1 in the credit amount of \$643,915.22 together with granting of final project completion as of April 7, 2021.



- Contract No.4 to Zack's Excavating, Inc. in the amount of \$3,236,939.00 for gravity sewer equalization chambers and two (2) pump stations was awarded by Council on November 12, 2019. Over the course of this challenging contract Council issued five (5) change orders totaling in the net amount of 24,132.54 and on May 25, 2021 County Council granted substantial project completion.
- Contract No.6, to GGI Builders, Inc. for the Maintenance Garage/Office Building in the overall amount of \$410,525.00. The balancing Change Order No. 2 was approved by County Council on March 9, 2021 together with granting of final project completion bringing the final contract price to \$400,529.99.



GEORGE, MILES & BUHR, LLC



ARCHITECTS  
ENGINEERS

400 HIGH STREET  
SEAFORD, DE 19973  
PH: 302.628.1421  
FAX: 302.628.8350

SALISBURY  
BALTIMORE  
SEAFORD

www.gmbnet.com



June 3, 2021

Sussex County Engineering Dept.  
2 The Circle  
Georgetown, DE 19958

Attn: Hans Medlarz  
County Engineer

Re: Western Sussex Transmission Facilities: Herring Run and Heritage Shores Force  
Main  
Sussex County Project 19-27: Contract 3  
Sussex County, Delaware  
GMB File No. R170219

Dear Mr. Medlarz:

Please be advised that the work on the Herring Run & Heritage Shores Force Main project, Contract 3 of the Western Sussex Transmission Facilities project was declared to be substantially complete as of November 19, 2020.

Attached to this letter are the following project closeout documents:

- O+M Manuals
- Consent of Surety
- Release of liens
- Evidence of payment to DelDOT for claim
- Acceptance by DelDOT
- Final Pay Application for release of retainage

Please note that the commencement of the applicable warranties required by the Contract Documents begins on the date of substantial completion. The 3-year DelDOT Maintenance Warranty began on April 7, 2021.

The pay application reflects the balancing change order amounts. We recommend final payment as requisitioned in the amount of \$79,277.29 once the balancing change order is processed.

If there are any questions, or if you require any additional information, please feel free to call.

Sincerely,

Benjamin Hearn, P.E.  
Project Engineer

BKH/jad

cc: Sussex County Engineering, Attn: Ed Leonhartt (w/o Encl.)  
City of Seaford, Attn: Berley Mears (w/o Encl.)  
A-del, Attn: Scott Whitt (w/o Encl.)  
George, Miles & Buhr, LLC, Attn: Chris Derbyshire, P.E. (w/o Encl.)

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

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

**CONSENT OF  
SURETY COMPANY  
TO FINAL PAYMENT**

OWNER   
ARCHITECT   
CONTRACTOR   
SURETY   
OTHER

AIA DOCUMENT G707

Bond No. 30079041

PROJECT: Western Sussex Transmission Facilities: Herring Run & Heritage Shores Force Mains; Sussex County Project No. 19-27  
(name, address)

TO (Owner)

Sussex County  
2 The Circle  
Georgetown, DE

ARCHITECT'S PROJECT NO:

CONTRACT FOR: Western Sussex Transmission Facilities:  
Herring Run & Heritage Shores Force Mains; Sussex County  
Project No. 19-27

CONTRACT DATE: January 9, 2020

CONTRACTOR: A-Del Construction Co., Inc.  
10 Adel Drive  
Newark, DE 19702

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the  
(here insert name and address of Surety Company)

Western Surety Company  
151 N. Franklin Street, Chicago, IL 60606

, SURETY COMPANY,

on bond of (here insert name and address of Contractor)

A-Del Construction Co., Inc.  
10 Adel Drive Newark, DE 19702

, CONTRACTOR,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not  
relieve the Surety Company of any of its obligations to (here insert name and address of Owner)

Sussex County  
2 The Circle Georgetown, DE

, OWNERS,

as set forth in the said Surety Company's bond.

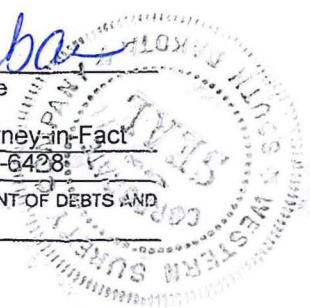
IN WITNESS WHEREOF,  
the Surety Company has hereunto set its hand this 23rd day of April, 2021

Western Surety Company  
Surety Company

*Michele Alban*  
Signature of Authorized Representative

Michele Alban Attorney-in-Fact  
Title Surety Phone No. 410-427-6428

Attest:  
(Seal): *Jill Bennett*  
Jill Bennett



NOTE: This form is to be used as a companion document to AIA DOCUMENT G706, CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS, Current Edition.

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Michele Alban , **Individually**

of Baltimore, MD its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

**- In Unlimited Amounts -**

Surety Bond No.: 30079041  
Principal: A-Del Construction Co., Inc.  
Obligee: Sussex County

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 27th day of February, 2018.



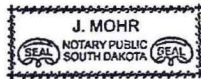
WESTERN SURETY COMPANY

Paul T. Bruflat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 27th day of February, 2018, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires  
June 23, 2021



J. Mohr, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 23rd day of April, 2021.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

**Authorizing By-Law**

**ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY**

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

**CHANGE ORDER NO. 1**

Owner:	Sussex County	Owner's Project No.:	19-27
Engineer:	George, Miles, & Buhr, LLC	Engineer's Project No.:	170219
Contractor:	A-Del Construction	Contractor's Project No.:	39R064
Project:	Western Sussex Transmission Facilities		
Contract Name:	Contract 3 – Herring Run and Heritage Shores Force Main		
Date Issued:	April 1, 2021	Effective Date of Change Order:	

The Contract is modified as follows upon execution of this Change Order:

**Description:**

<u>Traffic Loop Replacement:</u>	CONTRACT ADD = \$21,395.00
<u>Final Adjustment based on As-built Quantities:</u>	CONTRACT DEDUCT = \$663,310,22

**Attachments:**

Contractor Proposal Form – Traffic Loop Replacement (11/12/2020) + Email  
 Final Balancing Change Order Summary

Change in Contract Price	Change in Contract Times
Original Contract Price: \$ <u>2,980,602.00</u>	Original Contract Times: Substantial Completion: <u>270 days</u> Ready for final payment: _____
<del>{} Increase</del> <del>{} Decrease</del> from previously approved Change Orders: \$ <u>N/A</u>	<del>{} Increase</del> <del>{} Decrease</del> from previously approved Change Orders: Substantial Completion: <u>N/A</u> Ready for final payment: <u>N/A</u>
Contract Price prior to this Change Order: \$ <u>2,980,602.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>270 days</u> Ready for final payment: _____
<del>{} Increase</del> <del>{} Decrease</del> this Change Order: \$ <u>643,915.22</u>	<del>{} Increase</del> <del>{} Decrease</del> this Change Order: Substantial Completion: <u>N/A</u> Ready for final payment: <u>N/A</u>
Contract Price incorporating this Change Order: \$ <u>2,336,686.78</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>270 days</u> Ready for final payment: _____

Recommended by Engineer (if required)

By: *Bruce Hume*  
 Title: Project Engineer  
 Date: 5/3/2021

Accepted by Contractor

*Cynthia White, PM*  
A-DEL Construction  
5/3/2021

Authorized by Owner

By: *Paul Challos*  
 Title: County Engineer  
 Date: 6/3/2021

Approved by Funding Agency (if applicable)

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

Progress Estimate - Unit Price Work

Contractor's Application for Payment

Owner:	Sussex County, Delaware	Owner's Project No.:	19-27
Engineer:	George, Miles & Buhr, LLC	Engineer's Project No.:	
Contractor:	A-Del Construction	Contractor's Project No.:	39R054
Project:	Western Sussex Transmission Facilities Herring Run & Heritage Shores Force Mains		
Contract:	Sussex County Project No. 519-27 Contract No. 3		

Application No.:	10	Application Period:	From 01/30/21 to 04/16/21	Application Date:	04/16/21
------------------	----	---------------------	---------------------------	-------------------	----------

A	B	Contract Information				Work Completed				K	L	M	N
		C	D	E	F	G	H	I	J				
Bid Item No.	Description	Item Quantity	Units	Unit Price (\$)	Value of Bid Item (C X E) (\$)	Estimated Quantity Previously Installed	Value of Work Previously Installed (\$)	Estimated Quantity Incorporated in the Work	Value of Work Installed this Period (\$)	Materials Currently Stored (not in G) (\$)	Work Completed and Materials Stored to Date (H + J + K) (\$)	% of Value of Item (L / F) (%)	Balance to Finish (F - L) (\$)
Original Contract													
A-1	Mobilization	1.00	LS	110,000.00	110,000.00	1,000,000.00	110,000.00		-		110,000.00	100%	-
A-2	Furnish and Install C900 PVC Force Main 10"	9,720.00	LF	106.00	1,030,320.00	9,415.10	998,000.60	304.90	32,319.40		1,030,320.00	100%	-
A-3	Furnish and Install C900 PVC Force Main 8"	3,480.00	LF	77.00	267,960.00	3,294.00	253,638.00	186.00	14,322.00		267,960.00	100%	-
A-4	Furnish and Install C900 PVC Force Main 12"	1,036.00	LF	114.00	118,104.00	1,011.00	115,254.00	25.00	2,850.00		118,104.00	100%	-
A-5	Furnish and Install C900 PVC Force Main 16"	17.00	LF	340.00	5,780.00	14.00	4,760.00	3.00	1,020.00		5,780.00	100%	-
A-6	Furnish and Install C900 PVC Force Main in Steel Casing Pipe (Open Cut) 10" in 16"	60.00	LF	420.00	25,200.00	60.00	25,200.00		-		25,200.00	100%	-
A-7	Furnish and Install C900 PVC Force Main in Steel Casing Pipe (Jack & Bore) 10" in 16"	70.00	LF	930.00	65,100.00	70.00	65,100.00		-		65,100.00	100%	-
A-8	Furnish and Install Directionally Drilled HDPE DR-11 DIPS Force Main 8"	285.00	LF	210.00	59,850.00	285.00	59,850.00		-		59,850.00	100%	-
A-9	Furnish and Install Resilient Gate Valve 8"	3.00	EA	5,800.00	17,400.00	3.00	17,400.00		-		17,400.00	100%	-
A-10	Furnish and Install Resilient Gate Valve 10"	1.00	EA	6,000.00	6,000.00	1.00	6,000.00		-		6,000.00	100%	-
A-11	Furnish and Install SDR-35 Gravity Sewer 15"	54.00	LF	520.00	28,080.00	54.00	28,080.00		-		28,080.00	100%	-
A-12	Furnish and Install Force Main Discharge Manhole	1.00	LF	40,000.00	40,000.00	1.00	40,000.00		-		40,000.00	100%	-
A-13	Furnish and Install Combination Air/Vacuum Valves and Manholes	5.00	EA	14,500.00	72,500.00	5.00	72,500.00		-		72,500.00	100%	-
A-14	Furnish and Install Tapped Tee and 2" Corporation Stop	1.00	EA	2,600.00	2,600.00	1.00	2,600.00		-		2,600.00	100%	-
A-15	Private Property Transitions	1.00	LS	38,000.00	38,000.00	1.00	38,000.00		-		38,000.00	100%	-
B-1	Temp Paving 8" GABC and 2" Type C Superpave 10"	1,762.00	SY	49.00	86,338.00	563.92	27,632.08	1,198.08	58,705.92		86,338.00	100%	-
B-2	Perm Pavement Restoration - Type C Superpave Surface Course, Incl Full Width Mill & Overlay of Shoulder and Entrances 2"	6,240.00	SY	18.00	112,320.00	1,996.00	35,928.00	4,244.00	76,392.00		112,320.00	100%	-
B-3	Perm Pavement Restoration - BCBC within Shoulder and	2,360.00	SY	80.00	188,800.00	551.80	44,144.00	1,808.20	144,656.00		188,800.00	100%	-
B-4	Perm Paving - Concrete Patch 8"	45.00	SY	165.00	7,425.00	87.60	14,454.00	(42.60)	(7,029.00)		7,425.00	100%	-
B-5	Removal & Replacement of Concrete Curb at Entrances	20.00	LF	100.00	2,000.00		-	20.00	2,000.00		2,000.00	100%	-
C-1	Contingent Unclassified Excavation	500.00	CY	54.00	27,000.00	11.12	600.48	488.88	26,399.52		27,000.00	100%	-
C-2	Contingent Borrow Material, Borrow Type "C" (Backfill)	5,000.00	CY	37.00	185,000.00	1,037.06	38,371.22	3,962.94	146,628.78		185,000.00	100%	-
C-3	Contingent Aggregate Material, Graded Aggregate Type "B" (Crusher Run)	275.00	TN	66.00	18,150.00	25.90	1,709.40	249.10	16,440.60		18,150.00	100%	-
C-4	Contingent Porous Fill Material, Coarse Aggregate No. 57 Stone	275.00	TN	73.00	20,075.00		-	275.00	20,075.00		20,075.00	100%	-
C-5	Contractor Down Time (Main Line Crew)	50.00	HR	950.00	47,500.00		-	50.00	47,500.00		47,500.00	100%	-
C-6	Furnish and Place 4,000 psi Concrete	30.00	CY	750.00	22,500.00	9.00	6,750.00	21.00	15,750.00		22,500.00	100%	-
C-7	Furnish and Place Miscellaneous Hot Mix Asphalt - Type C Superpave Surface Course	100.00	TN	100.00	10,000.00		-	100.00	10,000.00		10,000.00	100%	-
C-8	Furnish and Place Miscellaneous Hot Mix Asphalt - BCBC	100.00	TN	125.00	12,500.00		-	100.00	12,500.00		12,500.00	100%	-
C-9	Replacement of Existing Storm Drain Pipes	150.00	LF	135.00	20,250.00	32.00	4,320.00	118.00	15,930.00		20,250.00	100%	-
C-10	Install Mobilization Matting	1,500.00	SF	1.50	2,250.00		-	1,500.00	2,250.00		2,250.00	100%	-
D-1	ADD - Furnish and Install C900 PVC Force Main	3,560.00	LF	80.00	284,800.00	3,195.00	255,600.00	365.00	29,200.00		284,800.00	100%	-
D-2	ADD - Install Combination Air/Vacuum Valves and Manholes	2.00	EA	14,500.00	29,000.00	2.00	29,000.00		-		29,000.00	100%	-
D-3	ADD - Furnish and Install Tapped Tee and 2" Corporation Stop	3.00	EA	2,600.00	7,800.00	4.00	10,400.00	(1.00)	(2,600.00)		7,800.00	100%	-
D-4	ADD - Furnish and Install 12' Fence Gate	4.00	EA	2,500.00	10,000.00	4.00	10,000.00		-		10,000.00	100%	-
Original Contract Totals					\$ 2,980,602.00		\$ 2,315,291.78		\$ 665,310.22	\$ -	\$ 2,980,602.00	100%	\$ -

Progress Estimate - Unit Price Work

Contractor's Application for Payment

Owner:	Sussex County, Delaware	Owner's Project No.:	19-27
Engineer:	George, Miles & Buhr, LLC	Engineer's Project No.:	
Contractor:	A-Del Construction	Contractor's Project No.:	39R064
Project:	Western Sussex Transmission Facilities Herring Run & Heritage Shores Force Mains		
Contract:	Sussex County Project No. S19-27 Contract No. 3		

Application No.:	10	Application Period:	From 01/30/21 to 04/16/21	Application Date:	04/16/21
------------------	----	---------------------	---------------------------	-------------------	----------

A Bid Item No.	B Description	C Item Quantity	D Units	E Unit Price (\$)	F Value of Bid Item (C X E) (\$)	G Work Completed				K Materials Currently Stored (not in G) (\$)	L Work Completed and Materials Stored to Date (H + J + K) (\$)	M % of Value of Item (L / F) (%)	N Balance to Finish (F - L) (\$)
						G Estimated Quantity Previously Installed	H Value of Work Previously Installed (\$)	I Estimated Quantity Incorporated in the Work	J Value of Work Installed this Period (\$)				
<b>Change Orders</b>													
CO #1	A-2: F&I C900 PVC Force Main 10"	(304.90)	LF	106.00	(32,319.40)		-	(304.90)	(32,319.40)		(32,319.40)	100%	-
CO #1	A-3: F&I C900 PVC Force Main 8"	(186.00)	LF	77.00	(14,322.00)		-	(186.00)	(14,322.00)		(14,322.00)	100%	-
CO #1	A-4: F&I C900 PVC Force Main 12"	(25.00)	LF	114.00	(2,850.00)		-	(25.00)	(2,850.00)		(2,850.00)	100%	-
CO #1	A-5: F&I C900 PVC Force Main 16"	(3.00)	LF	340.00	(1,020.00)		-	(3.00)	(1,020.00)		(1,020.00)	100%	-
CO #1	B-1: 10" Temp Paving - 8"GABC/2" Ty C Superpave	(1,198.08)	SY	49.00	(58,705.92)		-	(1,198.08)	(58,705.92)		(58,705.92)	100%	-
CO #1	B-2: Perm Pavement Restoration - Type C Superpave Surface Course, incl Full Width Mill & Overlay of Shoulder and Entrances 2"	(4,244.00)	SY	18.00	(76,392.00)		-	(4,244.00)	(76,392.00)		(76,392.00)	100%	-
CO #1	B-3: Perm Pavement Restoration - BCBC within Shoulder and Entrances 12"	(1,808.20)	SY	80.00	(144,656.00)		-	(1,808.20)	(144,656.00)		(144,656.00)	100%	-
CO #1	B-4: Perm Paving - Concrete Patch 8"	42.60	SY	165.00	7,029.00	42.60	7,029.00				7,029.00	100%	-
CO #1	B-5: Removal & Replacement of Concrete Curb at Entrances	(20.00)	LF	100.00	(2,000.00)		-	(20.00)	(2,000.00)		(2,000.00)	100%	-
CO #1	C-1: Contingent Unclassified Excavation	(488.88)	CY	54.00	(26,399.52)		-	(488.88)	(26,399.52)		(26,399.52)	100%	-
CO #1	C-2: Contingent Borrow Material, Borrow Type "C" (Backfill)	(3,962.94)	CY	37.00	(146,628.78)		-	(3,962.94)	(146,628.78)		(146,628.78)	100%	-
CO #1	C-3: Contingent Aggregate Material, Graded Aggregate Type "B" (Crusher Run)	(249.10)	TN	66.00	(16,440.60)		-	(249.10)	(16,440.60)		(16,440.60)	100%	-
CO #1	C-4: Contingent Porous Fill Material, Coarse Aggregate No. 57 Stone	(275.00)	TN	73.00	(20,075.00)		-	(275.00)	(20,075.00)		(20,075.00)	100%	-
CO #1	C-5: Contractor Down Time (Main Line Crew)	(50.00)	HR	950.00	(47,500.00)		-	(50.00)	(47,500.00)		(47,500.00)	100%	-
CO #1	C-6: Furnish and Place 4,000 psi Concrete	(21.00)	CY	750.00	(15,750.00)		-	(21.00)	(15,750.00)		(15,750.00)	100%	-
CO #1	C-7: Furnish and Place Miscellaneous Hot Mix Asphalt - Type C Superpave Surface Course	(100.00)	TN	100.00	(10,000.00)		-	(100.00)	(10,000.00)		(10,000.00)	100%	-
CO #1	C-8: Furnish and Place Miscellaneous Hot Mix Asphalt - BCBC	(100.00)	TN	125.00	(12,500.00)		-	(100.00)	(12,500.00)		(12,500.00)	100%	-
CO #1	C-9: Replacement of Existing Storm Drain Pipes	(118.00)	LF	135.00	(15,930.00)		-	(118.00)	(15,930.00)		(15,930.00)	100%	-
CO #1	C-10: Install Mobilization Matting	(1,500.00)	SF	1.50	(2,250.00)		-	(1,500.00)	(2,250.00)		(2,250.00)	100%	-
CO #1	D-1: ADD - Furnish and Install C900 PVC Force Main	(365.00)	LF	80.00	(29,200.00)		-	(365.00)	(29,200.00)		(29,200.00)	100%	-
CO #1	D-3: ADD - Furnish and Install Tapped Tee and 2" Corporation Stop	1.00	EA	2,600.00	2,600.00		-	1.00	2,600.00		2,600.00	100%	-
CO #1	CO #1: TRAFFIC LOOP REPLACEMENT	1.00	LS	21,395.00	21,395.00		-	1.00	21,395.00		21,395.00	100%	-
<b>Change Order Totals:</b>						\$ (643,915.22)		\$ 7,029.00	\$ (650,944.22)	\$ -	\$ (643,915.22)	100%	\$ -
<b>Original Contract and Change Orders</b>													
<b>Project Totals:</b>						\$ 2,336,686.78		\$ 2,322,320.78	\$ 14,366.00	\$ -	\$ 2,336,686.78	100%	\$ -



**CHANGE ORDER NO. 1**

Owner:	Sussex County	Owner's Project No.:	19-27
Engineer:	George, Miles, & Buhr, LLC	Engineer's Project No.:	170219
Contractor:	A-Del Construction	Contractor's Project No.:	39R064
Project:	Western Sussex Transmission Facilities		
Contract Name:	Contract 3 – Herring Run and Heritage Shores Force Main		
Date Issued:	April 1, 2021	Effective Date of Change Order:	

The Contract is modified as follows upon execution of this Change Order:

**Description:**

<u>Traffic Loop Replacement:</u>	CONTRACT ADD = \$21,395.00
<u>Final Adjustment based on As-built Quantities:</u>	CONTRACT DEDUCT = \$663,310.22

**Attachments:**

Contractor Proposal Form – Traffic Loop Replacement (11/12/2020) + Email  
 Final Balancing Change Order Summary

Change in Contract Price	Change in Contract Times
Original Contract Price: \$ 2,980,602.00	Original Contract Times: Substantial Completion: 270 days Ready for final payment: _____
{Increase} {Decrease} from previously approved Change Orders: \$ N/A	{Increase} {Decrease} from previously approved Change Orders: Substantial Completion: N/A Ready for final payment: N/A
Contract Price prior to this Change Order: \$ 2,980,602.00	Contract Times prior to this Change Order: Substantial Completion: 270 days Ready for final payment: _____
Decrease this Change Order: \$ 643,915.22	{Increase} {Decrease} this Change Order: Substantial Completion: N/A Ready for final payment: N/A
Contract Price incorporating this Change Order: \$ 2,336,686.78	Contract Times with all approved Change Orders: Substantial Completion: 270 days Ready for final payment: _____

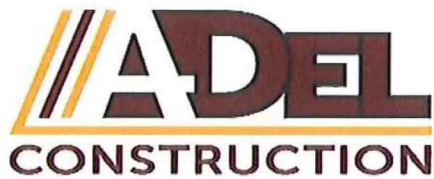
Recommended by Engineer (if required)

By: *Benjamin Ham*  
 Title: Project Engineer  
 Date: 5/3/2021  
 \_\_\_\_\_  
 Authorized by Owner

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Accepted by Contractor

*Cynthia White, PM*  
A-DEL Construction  
5/3/2021  
 \_\_\_\_\_  
 Approved by Funding Agency (if applicable)



November 12, 2020

Benjamin Hearn  
 GMB  
 400 High Street  
 Seaford, DE 19973

RE: Western Sussex Phase 3 - Traffic Loop Repairs - -Change Order Request  
 SCOPE OF WORK

- 1) Installation of new Traffic Loop Cable Sensor in RT13A south bound lane north of Herring Run Road intersection
- 2) Install Existing junction vault and adjust to grade
- 3) Install 2.5" steel conduit for supply wiring "by others"
- 4) Supply Traffic Control 2 – days for our work

PRICING

		Q	Unit	\$	Units	Extended	
Traffic Control	TCM/Set up and Signage	1	\$	1,200.00	ls	\$ 1,200.00	
	TC Police	20	\$	135.00	hr	\$ 2,700.00	
	Flaggers	80	\$	50.00	hr	\$ 4,000.00	
	Subtotal						\$ 7,900.00
Installation	2.5" Rigid Installed	225	\$	50.00	Inft	\$ 11,250.00	
	Junction Vault	1	\$	1,100.00	ea	\$ 1,100.00	
	Adjust to Grade	1	\$	550.00	ea	\$ 550.00	
	Loop Cable	100	\$	26.00	Inft	\$ 2,600.00	
	Subtotal						\$ 15,500.00
							Subtotal \$ 23,400.00
	MU 10%						\$ 2,340.00
							Total \$ 25,740.00

*Handwritten notes:*  
 - Red arrow pointing to Traffic Control subtotal: "Per reference agreement" (with a line through it)  
 - Red text next to Traffic Control subtotal: "\$ 3,950"  
 - Red text next to Installation subtotal: "\$ 15,500"  
 - Red text next to Installation subtotal: "\$ 19,450"  
 - Red text next to MU 10% row: "\$ 1,945"  
 - Red text next to Total row: "\$ 21,395"

Note: This work does not include work need to be done by DELDOT, any fees associated with their time is not included.

Thank you for the opportunity, if you have any questions, please feel free to contact me at swhitt@a-del.com or (302)513-0891, 443-880-3165.

Sincerely,  
**A-DEL CONSTRUCTION CO., INC.**

Scott Whitt  
 Project Manager

## Benjamin Hearn

---

**From:** Benjamin Hearn  
**Sent:** Tuesday, November 17, 2020 10:05 AM  
**To:** Scott Whitt  
**Cc:** Pat Kintz; Mitch Seitz; Nick Lloyd  
**Subject:** RE: Western Sussex Phase 3 - Traffic Loop Repairs [Filed 19 Mar 2021 10:26]

Scott,

Per our discussion, please proceed with scheduling the work. We will receive the pricing for the homerun wire as an add alternate cost from you via email soon, in the case that the wire to the 3<sup>rd</sup> traffic loop was damaged during the work.

**We will include the cost of work estimated to be \$21,395** as part of a balancing change order or closeout change order.

Please let us know the schedule for the work so we may let DelDOT know – I'll include you on the email.

Thanks,  
Ben

---

**From:** Scott Whitt <[swhitt@a-del.com](mailto:swhitt@a-del.com)>  
**Sent:** Tuesday, November 17, 2020 9:20 AM  
**To:** Benjamin Hearn <[BHearn@gmbnet.com](mailto:BHearn@gmbnet.com)>  
**Cc:** Pat Kintz <[pkintz@a-del.com](mailto:pkintz@a-del.com)>; Mitch Seitz <[mseitz@a-del.com](mailto:mseitz@a-del.com)>; Nick Lloyd <[nlloyd@gmbnet.com](mailto:nlloyd@gmbnet.com)>  
**Subject:** RE: Western Sussex Phase 3 - Traffic Loop Repairs

Ben,

Good morning, I was out till today, **yes we agree to split the cost of the traffic control** and do both loops within an allotted time.

Please send a formal change order and we will schedule the work.

I'll reach out to BW today to discuss the home run issue.

Tks.

---

**From:** Benjamin Hearn <[BHearn@gmbnet.com](mailto:BHearn@gmbnet.com)>  
**Sent:** Friday, November 13, 2020 1:59 PM  
**To:** Scott Whitt <[swhitt@a-del.com](mailto:swhitt@a-del.com)>  
**Cc:** Pat Kintz <[pkintz@a-del.com](mailto:pkintz@a-del.com)>; Mitch Seitz <[mseitz@a-del.com](mailto:mseitz@a-del.com)>; Nick Lloyd <[nlloyd@gmbnet.com](mailto:nlloyd@gmbnet.com)>  
**Subject:** RE: Western Sussex Phase 3 - Traffic Loop Repairs

Scott,

Thanks for getting this information. We are good with the proposed change order. As discussed in the meeting yesterday, we would still want the pricing of homerun cable as an optional cost in case it is damaged, however we don't want waiting on that to hold up the scheduling and approval of the traffic loop repair.

Please confirm that the County and Adel would split the cost of traffic control as I would assume that the work would occur at the same time. This would make the change order amount tentatively be \$21,395.00.

Please confirm the schedule of this work ASAP so that we can update DeIDOT.

We would like to include this work as part of the balancing change order since we are at that point in the contract. Is this acceptable?

Thanks,

---

**GMB** Benjamin Hearn  
Graduate Engineer  
400 High Street | Seaford, DE | 19973  
**60<sup>th</sup> ANNIVERSARY** 302.628.1421 | [www.gmbnet.com](http://www.gmbnet.com) | [Find us on facebook](#)

---

**From:** Scott Whitt <[swhitt@a-del.com](mailto:swhitt@a-del.com)>  
**Sent:** Thursday, November 12, 2020 6:19 AM  
**To:** Benjamin Hearn <[BHearn@gmbnet.com](mailto:BHearn@gmbnet.com)>  
**Cc:** Pat Kintz <[pkintz@a-del.com](mailto:pkintz@a-del.com)>; Mitch Seitz <[mseitz@a-del.com](mailto:mseitz@a-del.com)>; Nick Lloyd <[nlloyd@gmbnet.com](mailto:nlloyd@gmbnet.com)>  
**Subject:** Western Sussex Phase 3 - Traffic Loop Repairs

Ben,

Please see attached proposal for the upgraded conduit.

Thank you,

Scott Whitt  
[swhitt@a-del.com](mailto:swhitt@a-del.com)  
Cell:443-880-3165  
Work:302-513-0891



Western Sussex Transmission Facilities: Contract 3: Herring Run & Heritage Shores Force Main									
Final Balancing Change Order									
NO.	ITEM	SIZE OR DEPTH	UNIT	AS-BID QUANTITY	AS-BID UNIT PRICE	AS-BID TOTAL PRICE	AS-BUILT QUANTITY	AS-BUILT PRICE	ADJUSTMENT
<b>Schedule A: Force Main Installation</b>				<b>Schedule A: Force Main Installation</b>			<b>Schedule A: Force Main Installation</b>		
A-1	Mobilization	-	LS	1	\$ 110,000.00	\$ 110,000.00	1	\$ 110,000.00	\$ -
A-2	Furnish and Install C900 PVC Force Main	10"	LF	9,720	\$ 106.00	\$ 1,030,320.00	9415	\$ 998,000.60	\$ (32,319.40)
A-3	Furnish and Install C900 PVC Force Main	8"	LF	3,480	\$ 77.00	\$ 267,960.00	3294	\$ 253,638.00	\$ (14,322.00)
A-4	Furnish and Install C900 PVC Force Main	12"	LF	1,036	\$ 114.00	\$ 118,104.00	1011	\$ 115,254.00	\$ (2,850.00)
A-5	Furnish and Install C900 PVC Force Main	16"	LF	17	\$ 340.00	\$ 5,780.00	14	\$ 4,760.00	\$ (1,020.00)
A-6	Furnish and Install C900 PVC Force Main in Steel Casing Pipe (Open Cut)	10" in 16"	LF	60	\$ 420.00	\$ 25,200.00	60	\$ 25,200.00	\$ -
A-7	Furnish and Install C900 PVC Force Main in Steel Casing Pipe (Jack & Bore)	10" in 16"	LF	70	\$ 930.00	\$ 65,100.00	70	\$ 65,100.00	\$ -
A-8	Furnish and Install Directionally Drilled HDPE DR-11 DIPS Force Main	8"	LF	285	\$ 210.00	\$ 59,850.00	285	\$ 59,850.00	\$ -
A-9	Furnish and Install Resilient Gate Valve	8"	EA	3	\$ 5,800.00	\$ 17,400.00	3	\$ 17,400.00	\$ -
A-10	Furnish and Install Resilient Gate Valve	10"	EA	1	\$ 6,000.00	\$ 6,000.00	1	\$ 6,000.00	\$ -
A-11	Furnish and Install SDR-35 Gravity Sewer	15"	LF	54	\$ 520.00	\$ 28,080.00	54	\$ 28,080.00	\$ -
A-12	Furnish and Install Force Main Discharge Manhole	-	LS	1	\$ 40,000.00	\$ 40,000.00	1	\$ 40,000.00	\$ -
A-13	Furnish and Install Combination Air/Vacuum Valves and Manholes	-	EA	5	\$ 14,500.00	\$ 72,500.00	5	\$ 72,500.00	\$ -
A-14	Furnish and Install Tapped Tee and 2" Corporation Stop	-	EA	1	\$ 2,600.00	\$ 2,600.00	1	\$ 2,600.00	\$ -
A-15	Private Property Transitions	-	LS	1	\$ 38,000.00	\$ 38,000.00	1	\$ 38,000.00	\$ -
<b>Subtotal Schedule A: Force Main Installation</b>					<b>\$ 1,886,894.00</b>		<b>\$ 1,836,382.60</b>		<b>\$ (50,511.40)</b>
<b>Schedule B: Pavement Restoration</b>				<b>Schedule B: Pavement</b>			<b>Schedule B: Pavement Restoration</b>		
B-1	Temporary Paving – 8" GABC and 2" Type C Superpave	10"	SY	1,762	\$ 49.00	\$ 86,338.00	563.92	\$ 27,632.08	\$ (58,705.92)
B-2	Permanent Pavement Restoration - Type C Superpave Surface Course, incl Full Width Mill & Overlay of Shoulder and Entrances	2"	SY	6,240	\$ 18.00	\$ 112,320.00	1996	\$ 35,928.00	\$ (76,392.00)
B-3	Permanent Pavement Restoration - BCBC Course within Shoulder and Entrances	12"	SY	2,360	\$ 80.00	\$ 188,800.00	551.8	\$ 44,144.00	\$ (144,656.00)
B-4	Permanent Paving – PCC Pavement Patch	8"	SY	45	\$ 165.00	\$ 7,425.00	87.6	\$ 14,454.00	\$ 7,029.00
B-5	Removal & Replacement of Concrete Curb at Entrances	-	LF	20	\$ 100.00	\$ 2,000.00	0	\$ -	\$ (2,000.00)
<b>Subtotal Schedule B: Pavement Restoration</b>					<b>\$ 396,883.00</b>		<b>\$ 122,158.08</b>		<b>\$ (274,724.92)</b>
<b>Schedule C: Contingent Items</b>				<b>Schedule C: Contingent Items</b>			<b>Schedule C: Contingent Items</b>		
C-1	Contingent Unclassified Excavation	-	CY	500	\$ 54.00	\$ 27,000.00	11.12	\$ 600.48	\$ (26,399.52)
C-2	Contingent Borrow Material, Borrow Type "C" (Backfill)	-	CY	5000	\$ 37.00	\$ 185,000.00	1037.06	\$ 38,371.22	\$ (146,628.78)
C-3	Contingent Aggregate Material, Graded Aggregate Type "B" (Crusher Run)	-	TN	275	\$ 66.00	\$ 18,150.00	25.90	\$ 1,709.40	\$ (16,440.60)
C-4	Contingent Porous Fill Material, Coarse Aggregate No. 57 Stone	-	TN	275	\$ 73.00	\$ 20,075.00	0	\$ -	\$ (20,075.00)
C-5	Contractor Down Time (Main Line Crew)	-	HR	50	\$ 950.00	\$ 47,500.00	0	\$ -	\$ (47,500.00)
C-6	Furnish and Place 4,000 psi Concrete	-	CY	30	\$ 750.00	\$ 22,500.00	9	\$ 6,750.00	\$ (15,750.00)
C-7	Contingent Miscellaneous Hot Mix Asphalt – Type C Superpave Surface Course	-	TN	100	\$ 100.00	\$ 10,000.00	0	\$ -	\$ (10,000.00)
C-8	Contingent Miscellaneous Hot Mix Asphalt – BCBC	-	TN	100	\$ 125.00	\$ 12,500.00	0	\$ -	\$ (12,500.00)
C-9	Replacement of Existing Storm Drain Pipes	-	LF	150	\$ 135.00	\$ 20,250.00	32	\$ 4,320.00	\$ (15,930.00)
C-10	Install Stabilization Matting	-	SF	1,500	\$ 1.50	\$ 2,250.00	0	\$ -	\$ (2,250.00)
<b>Subtotal Schedule C: Contingent Items</b>					<b>\$ 365,225.00</b>		<b>\$ 51,751.10</b>		<b>\$ (313,473.90)</b>
<b>Total: (Schedules A + B + C)</b>					<b>\$ 2,649,002.00</b>		<b>\$ 2,010,291.78</b>		<b>\$ (638,710.22)</b>
<b>Schedule D: Alternate Bid Items</b>				<b>Schedule D: Alternate Bid Items</b>			<b>Schedule D: Alternate Bid Items</b>		
D-1	ADD - Furnish and Install C900 PVC Force Main	10"	LF	3,560	\$ 80.00	\$ 284,800.00	3195	\$ 255,600.00	\$ (29,200.00)
D-2	ADD - Install Combination Air/Vacuum Valves and Manholes	-	EA	2	\$ 14,500.00	\$ 29,000.00	2	\$ 29,000.00	\$ -
D-3	ADD - Furnish and Install 2" Service Saddle Tap and Corporation Stop	-	EA	3	\$ 2,600.00	\$ 7,800.00	4	\$ 10,400.00	\$ 2,600.00
D-4	ADD - Furnish and Install 12' Fence Gate	-	EA	4	\$ 2,500.00	\$ 10,000.00	4	\$ 10,000.00	\$ -
<b>Subtotal Schedule D: Alternate Bid Items</b>					<b>\$ 331,600.00</b>		<b>\$ 305,000.00</b>		<b>\$ (26,600.00)</b>
<b>Total: (Schedules A + B + C + D) - Asbuilt Unit Price Work Balancing Subtotal</b>					<b>\$ 2,980,602.00</b>		<b>\$ 2,315,291.78</b>		<b>\$ (665,310.22)</b>
<b>Change Orders</b>									
CO1	Traffic Loop Replacement	-	LS				1	\$ 21,395.00	\$ 21,395.00
<b>Total: Change Order No.1 / Balancing Change Order</b>									
									<b>\$ (643,915.22)</b>

Original Contract Amount: \$ 2,980,602.00  
Previously Approved Change Orders: \$ -  
Current Change Order Amount: \$ (643,915.22)  
Revised Contract Amount w/all Change Orders: \$ 2,336,686.78  
Previous Certificates for Payment (AFP #9): \$ 2,257,409.49  
Total Due (Final Payment): \$ 79,277.29

This is **EXHIBIT K**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated December 5, 2017.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**

**Amendment No.   4**

The Effective Date of this Amendment is: \_\_\_\_\_.

Background Data

Effective Date of Project Order:

Owner: Sussex County

Engineer: George, Miles & Buhr, LLC

Project: Transmission Facilities for Western Sussex Unified District

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- Additional Services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- Modifications of payment to Engineer
- Modifications to time(s) for rendering services
- Modifications to other terms and conditions of the Agreement

Description of Modifications:

***Extension of construction administration services in association with commissioning of pumping stations and close-out of construction contract Nos. 3, 4 & 6.***

Agreement Summary:

Original agreement amount:	\$ <u>1,302,178.00</u>
Net change for prior amendments:	\$ <u>1,349,178.00</u>
This amendment amount:	\$ <u>18,000.00</u>
Adjusted Agreement amount:	\$ <u>1,367,178.00</u>

Change in time for services (days or date, as applicable): \_\_\_\_\_

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

Sussex County Council

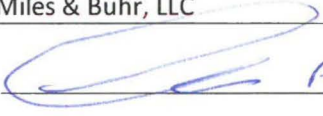
By: \_\_\_\_\_  
Print  
name: Michael H. Vincent

Title: President, Sussex County Council

Date Signed: \_\_\_\_\_

ENGINEER:

George, Miles & Buhr, LLC

By:  \_\_\_\_\_ P.E.  
Print  
name: Chris Derbyshire, P.E.

Title: Vice President

Date Signed: \_\_\_\_\_

PREVIOUSLY APPROVED FORM

ATTEST:

\_\_\_\_\_  
Ms. Robin Griffith  
Clerk of the County

June 8, 2021

Sussex County Engineering  
Sussex County Administration Office  
2 The Circle  
Georgetown, Delaware 19947

*Michael R. Wigley, AIA, LEED AP  
W. Zachary Crouch, P.E.  
Michael E. Wheedleton, AIA, LEED GA  
Jason P. Loar, P.E.  
Ring W. Lardner, P.E.  
Jamie L. Sechler, P.E.*

Attn: Mr. Hans Medlarz  
County Engineer

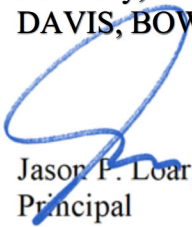
Re: Transmission Facilities for the  
Western Sussex Unified District  
Pump Stations - Bridgeville  
Additional Services Request  
DBF #1896B016.D01

Dear Mr. Medlarz:

Davis, Bowen & Friedel, Inc., (DBF) is presenting this request for additional professional engineering services associated with the Construction Administration services for the Transmission Facilities for the Western Sussex Unified District. DBF has attempted to keep our costs to a minimum to assist with the overall project budget however, due to the current construction schedule extending beyond the planned length we have reached our contract maximum. We are requesting a fee increase of **\$12,500** to continue to provide our services at the same hourly rates as indicated in the original agreement for the remainder of the project.

On behalf of Davis, Bowen & Friedel, Inc., we are fully committed to provide a product that will meet or exceed your expectations. We look forward to completing this project with you and appreciate the opportunity to be of continued service to Sussex County. Should you have any questions, comments, concerns, or would like to discuss this further please give me a call at your convenience.

Sincerely,  
DAVIS, BOWEN & FRIEDEL, INC.



Jason P. Loar, P.E.  
Principal

JPL  
\\mil0\Civil\Sussex County\1897B016-Western Sussex Bridgeville WWTP Conversion\Contract\Medlarz.2021-06-08.jpl.docx



## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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

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



# Sussex County

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

## Memorandum

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

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

RE: ***IBRWF – Regional Biosolids & Septage Facilities,  
Chesapeake Utilities Corporation  
A. Minimum Use Agreement Amendment***

DATE: June 15, 2021

On June 2, 2015, County Council initially considered a comprehensive biosolids approach at the Inland Bays Regional Wastewater Facility (IBRWF) by approving Whitman, Requardt & Associates' (WRA) Amendment 5 to the base contract for the evaluation of Class A sludge drying options. During the May 2, 2016 FY17 budget workshop, the Engineering Department presented drying alternatives and a list of potential municipal partners.

On August 30, 2016, County Council approved WRA's Amendment 7 for design of the IBRWF's Phase 2 Regional Biosolids Upgrades. Subsequently, improved facility design changes associated with the biosolids drying unit were developed and approved by Council via Amendment 7A on April 24, 2018. The project was awarded on June 26, 2018 to Bearing Construction, Inc.

The Cities of Rehoboth Beach and Seaford, the Lewes Board of Public Works, the Town of Georgetown as well as Artesian Wastewater Management, Inc. provide treatment services for various areas of the Unified Sanitary Sewer District. In a cooperative engineering effort, the County's biosolids drying unit design has anticipated transfer of Class B biosolids to IBRWF for final treatment. The County has executed biosolids agreements with all five jurisdictions the latest one was approved by Council on October 8, 2019 increasing the estimated annual drying unit runtimes by 11% with operations now anticipated during nine (9) months out of the year.

The annual natural gas usage for the unit is estimated at 31,635 Mcf. This number is reflected in the Minimum Use Agreement as the Minimum Annual Delivery ("MAD"). The Tariff requires the County to pay Chesapeake Utilities each month in accordance with the pricing provisions of said Tariff, regardless of actual usage. Should the County fail to take delivery of



the MAD, a deficiency charge is charged. However, we conservatively estimated the MAD to reduce this exposure.

The utility “balances” the gas as part of the Tariff but the County procures the gas at the NYMEX. Natural gas futures are purchased through an energy resource company in “strips” of at least 12-months delivered at the Henry Hub in Louisiana. The energy resource company charges a “basis” for delivery to Eastern Shore Natural Gas’s “City gate” in zone R2/D3. From there it is a fixed transportation cost reflected in the tariff to the pressure reducing station from which Chesapeake Utilities takes over. The County Engineer & Finance Director, with Council permission, purchased natural gas futures allowing significant hedging activity to manage risk in the highly volatile natural gas price driven by weather-related demand.

The County has explored several supply options and determined that the interruptible transportation service approach is the most cost effective since the seasonal business model accommodates the rare interruption. The main component of the Tariff is the Delivery Service Rate for the MAD, currently \$3.25 per Mcf, which allows the utility to recover the capital expense of extending the service to IBRWF without a capital contribution by the County. After the conclusion of the 5-year term of the agreement the County can either switch to a different tariff model or renegotiate the delivery service rate at a much lower cost.

On October 29, 2019, Council approved the Minimum Use Agreement with Chesapeake Utilities Corporation under the interruptible transportation service tariff and authorized the purchase of natural gas in the NYMEX through an energy resource company.

The drying unit’s full production start was scheduled on or before May 1, 2020. As a result of the COVID pandemic, the 2020 system start-up was delayed by three months due to travel restrictions and the 2021 spring restart was affected by supply chain issues. Section IV.C of the Minimum Use Agreement allows for an extension as a result of a force majeure event, in which the pandemic would qualify. Therefore, the Engineering Department is requesting approval of an amendment to the Minimum Use Agreement for a one (1) year extension of the service period.

## AMENDMENT TO MINIMUM USE AGREEMENT

This Amendment to the Minimum Use Agreement (the "Amendment") effective as of June \_\_\_\_, 2021, is hereby made by and between Chesapeake Utilities Corporation, a Delaware corporation (the "Company"), and Sussex County Council, Delaware ("Customer").

### Background Information

The parties to this Amendment (the "Parties") entered into a Minimum Use Agreement with an effective date of May 1, 2020 (the "Agreement"), regarding the delivery of gas on a firm basis to the Customer under a Negotiated Contract Rate (NCR). The Parties desire to amend the Agreement to memorialize an extension of the Service Period.

### Agreement

In consideration of the mutual promises and covenants contained herein, the Company and the Customer hereby agree that the Service Period of the Agreement shall be extended by one (1) year. The Customer's total gas requirement shall remain 158,175 MCF, to be consumed prior to May 1, 2026. All gas consumption between May 1, 2020 and April 30, 2021, shall be carried forward and counted toward the first Minimum Annual Delivery (MAD) requirement in the twelve-month period ending April 30, 2022. All other provisions of the Agreement shall remain unchanged.

Witness:

**CHESAPEAKE UTILITIES CORPORATION**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Witness:

**SUSSEX COUNTY, DELAWARE**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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

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



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

## Memorandum

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

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

**RE:** *Artesian Wastewater Management, Inc. & Artesian Water Company, Inc.  
A. 2016 Bulk Wastewater Services Agreement – Addendum No. 5*

**DATE:** June 15, 2021

In July of 2016, the Engineering Department presented a comprehensive proactive wastewater infrastructure planning approach for the North Coastal Planning Area with the stated goal of utility coordination between wastewater service providers. Hence, avoiding duplication of capital expenditures and utilization of existing sewer transmission and treatment capacity. County Council authorized agreement negotiations with other wastewater service providers for the utilization of seasonally 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 map, has since then been incorporated 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.

Early June Artesian Wastewater Management, Inc. submitted the attached 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 to interconnect the systems and better balancing of flows between the parties. The Engineering Department agrees with that assessment and requests Council’s approval of Addendum No.5 extending the true up until the end of fiscal year 2022.



OVER 100 YEARS OF SUPERIOR SERVICE

Artesian Water Company

▲ Artesian Wastewater Management

▲ Artesian Utility Development

▲ Artesian Water Pennsylvania

▲ Artesian Water Maryland

▲ Artesian Wastewater Maryland

June 2, 2021

Mr. Hans Medlarz  
Sussex County Engineer  
55 The Circle  
P.O. box 589  
Georgetown, DE 19947

Ref: Bulk Wastewater Service Agreement

Dear Mr. <sup>Hans</sup> Medlarz,

This past year has been a challenging year for everyone. State and Federal mandates to address Covid-19 requirements have resulted in delays of the construction of wastewater infrastructure, piping and treatment, necessary to balance flows between Artesian and the County. Permitting that normally takes 2-4 months has been delayed for over a year. Public hearings, County and State, have been delayed for over a year due to gathering limitations. All resulting in delays to interconnections of our join system and balancing of flows between parties.

This letter is to request the County's consideration of a waiver of the requirement outlined in section 2 (e) of the August 30, 2016 Bulk Wastewater Services Agreement between Artesian Wastewater Management, Inc. (AWMI) and Sussex County, as addended (Addendum No. 1, 2019). This section required that each party perform an annual "true-up" on June 30<sup>th</sup> of each year with payment at \$8 per thousand gallons of any flow difference over 500,000 gallons. AWMI request that the requirement above be waved this calendar year and flow amounts be rolled over until June 30<sup>th</sup>, 2022.

Thank you in advance for consideration of our request. If you have any questions, please do not hesitate to contact David Spacht, President of AWMI, or myself.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Rodney Wyatt", enclosed in a blue circular scribble.

Rodney Wyatt

V.P. of Artesian Wastewater

Cc: Dave Spacht, President, AWMI

**ADDENDUM NO. 5 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**, 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. The annual true up schedule to occur on June 30, 2021 pursuant to Section 2(e) of the Agreement shall be postponed until June 30, 2022, when a true up for the three-year period July 1, 2019 through June 30, 2022 shall be undertaken. The annual true up procedure set forth in Section 2(e) shall resume for subsequent years.

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

By: \_\_\_\_\_(SEAL)  
Dian C. Taylor, Chief Executive Officer

STATE OF DELAWARE :

: SS.

COUNTY OF NEW CASTLE :

BE IT REMEMBERED, that on the \_\_\_\_ day of \_\_\_\_\_, 2021, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Dian C. Taylor, known to me personally to be the Chief Executive Officer of Artesian Wastewater Management, Inc. and, in that capacity, he executed this Addendum No. 5 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 \_\_\_\_\_, 2021, 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. 5 To the Bulk Wastewater Services Agreement in his own hand for the corporation.

\_\_\_\_\_  
Notary



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 11, 2021

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

---

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

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

The County Council held a public hearing for the application at its meeting on April 20, 2021. At the conclusion of the public hearing, the Council deferred action on the application for further consideration.

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

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

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

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



(S.C.R. 349). 911 Address: 31434 Railway Road, Ocean View. Tax Parcel: 134-12.00-74.00.

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

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

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

Mr. Hutt stated that what he has said is not intended to be disrespectful to any member of the public involved in the process and anyone who wants to opine on an application will be given the opportunity in accordance with the rules and guidelines of the meeting; that there are things about an Application such as traffic and stormwater management that do require a level of expertise; that there are a number of misconceptions about this Application that such be addressed from the outset; that if these misperceptions are addressed from the outset it will help moving forward with the details of the Application; that many of the opposition comments address this Application as a Change of Zone application, the zoning classification will not change, this is a Conditional Use Application; that another misconception is that this Application is requesting high density or bonus density, there are other zoning designations for high density within the County but this Application is for medium density classification and there is no bonus density being sought; that the Applicant seeks to use the

base density in a medium density district of 4 units per acre with 10,000 sf lots in a General Residential Zoning District (GR) which is one of two medium density zoning districts in the County, the other is the Medium Residential Zoning District (MR); that this Application seeks 200 units on a little over 50 acres situated in 17 buildings; that the reason this is a Conditional Use Application before the Planning Commission is that it is a request for multi-family dwellings and will be addressed; that it was important to lay the groundwork of what is not being sought in this Application to help clear any misconceptions; that this property sits at the corner of Railway Avenue and Old Mill Road; that the property is bisected by Railway Avenue, on the east side that portion of the parcel contains a little over 2.25 acres containing an old farmhouse and some accessory buildings and an old chicken coop and on the west side the parcel contains 48.4 acres which is unimproved and currently used for agricultural purposes; that tonight's Application is for 17 buildings on the western portion of the property containing 200 units; that the entrance to Evans Farm would be off of Old Mill Road; that when you enter the property off Old Mill Road, there would be a looped parking lot that connects all of the buildings; that at the entrance would be the common facilities for Evans Farm which will include a swimming pool, a pool house, a sand volleyball court, tennis courts and a basketball court; that there will be a large area of open space at the center of the property and there will be a walkway that connects all of the interior buildings; that there will be an interior sidewalk for the residents of this Development; that there will be a sidewalk on the outside of the parking loop also; that there will be single story garage buildings for each unit on the exterior of the parking loop; that a 30 ft. landscaped buffer proposed for the entire perimeter of the site; that there are 3.6 acres of wooded wetlands on the northwestern portion of the property which will remain undisturbed; that this site generally slopes from Old Mill Road to the north eastern portion of the property; that stormwater management is proposed on the northern portion of the property adjacent to Railway Avenue; that Ephemeral Wet Ponds are proposed as part of best management practices for stormwater management; that there is a wide walkway from Railroad into the site; that this will serve as both an emergency access entrance for first responders in addition to being a connection to the shared use path that will be added as part of the improvements to Railway Avenue; that on the east side of Railway Avenue the existing farmhouse, outbuildings and chicken coop will be removed and it is intended that a maintenance building for the Development be placed on these two acres; that some of the letters of opposition noted that these buildings may have asbestos siding or shingles and that when being removed, it would be properly abated and removed from the property; that sewer services would be available to the property as noted by the Sussex County Engineering Department; that water will be provided by Tidewater Utilities; that many of the opposition are critical of there being apartments in this area which is surprising as almost every person has at some time in their life lived in an apartment; that sound land use planning lists that there should be a mixture of housing types within an area; that the Sussex County Comprehensive Plan lists in many places that Sussex County is primarily being developed with single-family homes and that further encouragement should be given to multi-family dwellings and structures throughout Sussex County; that based on the negative reaction to the term apartments, the Applicant has been investigating to see if it would be appropriate to change this to condominiums; that would just change this development from rentals to ownership and would not change the Conditional Use that is being sought; that in the Sussex County Code the term multi-family is defined as both apartments and condominiums and the request is for 200 multi-family units; that if they are apartments they would be market rate with annual leases required; that it is expected based on the number of bedrooms in the apartment that the monthly rental rates would be from \$1,300 - \$1,900; that the occupancy rate would be a maximum of two people per bedroom; that the target market is a full-range market for individuals seeking to lease instead of purchase and for people who work in the area; that this will not be Section 8 housing, the Applicant does not have any Section 8 housing within their portfolio; that this property is in the GR Zoning District; that the adjacent properties to the east

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

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

the code and one of those is that the County should consider the ability to establish other housing types or reduce the need for a Conditional Use for a multi-family development which is the nature of this Application; that strategy 8.2.3.3 repeats that the County should consider revisiting the Zoning Code to determine in districts where multi-family housing is currently a Conditional Use should be made a permitted use if water and sewer are already available and on the site; that this shows what the County's vision is with regard to multi-family structures within the housing options that are available throughout Sussex County; that another point that shows the need for multi-family housing is how quickly multi-family develops and fill; that there are three such projects in the County and by reputation almost instantaneously had a waiting list; that included in the packet is a letter from a certified commercial investment manager with Emory Hill describing the market for multi-family units and the positive impact they would have on the area; that at the beginning of the presentation the testimony of experts was compared to that of lay persons however, in the opposition's documents was a report from a laboratory that a shingle from the old buildings was tested and found to be asbestos; that the Applicant proposes to hire a professional asbestos abatement company to remove those structures from the property; that another email submitted by the opposition from Blair Venables, hydrogeologist with DNREC following a meeting with the residents of Banks Acres; that report has numerous items but one item states that "prior to approving new construction upgrading of the Banks Subdivision, the County must require the owners, investors or planners to demonstrate that stormwater of the project will have no net increase in the stormwater load passing through the Banks Acres subdivision"; that Mr. Venables described the site plan review process conducted at the outset of each Planning and Zoning Commission meeting; that part of that process is to make sure that an applicant who have received preliminary approval for a project gets the necessary approvals from the State agencies; that one of the baseline requirements when the Sussex Conservation District reviews an application is that a developer cannot increase the amount of stormwater leaving a property; that in the materials online there is an updated response from DelDOT and there may be additional upgrades required of the Applicant and discussions will continue with DelDOT as the project moves forward; that the Applicant was surprised at the amount of opposition to this project as it is essentially redoing a previously approved project; that there are some enhancements to the current project; that the first is the addition of the forested and landscaped buffer around the entire perimeter of the parcel; that the landscaping plan for this property will add an additional 570 deciduous and evergreen trees to the existing 3.6 acres on the northwestern portion of the property which will be left undisturbed; that these trees will provide additional screening from adjacent properties and roadways; that another enhancement from the previous plan is the minimalization of soil disturbance and grade changes because of the use of the Ephemeral wetlands; that one of the features of the Ephemeral wetlands is that they are shallow in depth; that the third enhancement is the creation of the Ephemeral wetlands as they will improve the water quality and remove pollutants and have some aesthetic appeal and provide for ground water recharge; that the fourth enhancement is that is greater preservation with the addition of these elements of scenic views and provide for natural resource protection where the wetlands remain undisturbed; that there will be ample opportunities for the residents of Evans Farm to enjoy the outdoors with an internal walkway and the more traditional exterior walkway and all the amenities at the entrance to the Community; that the Applicant requests recommendation of approval for this Conditional Use for the same reasons as it was previously approved and because the project has been enhanced; and that the Applicant has a proposed set of findings of fact and conditions which will be submitted as part of the record.

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

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

Mr. Mears asked Mr. Sammons that there was testimony given that if developed this community would have a minor impact on roads.

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

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

Mr. Sammons stated that this is typical.

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

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

Mr. Mears asked when the previous approval expired.

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

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

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

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

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

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

Mr. Decktor stated that ephemeral wetlands is a best management practice (BMP) which is outlined in the DNREC list of options for stormwater facilities; that the nature of why the ephemeral wetlands was chosen is the rear of the site is that the seasonal high groundwater is shallow in this location; that the great option is that water can sit in the bottom of the structure; that the bottom of the structure can be at the seasonal high water table or below and you apply the storage above; that this BMP would

be landscaped with a detailed landscaped plan for this structure; that due to the vegetation would be a natural pollutant remover with nitrogen, phosphorous and total suspended solids; that this BMP would have a forebay, so that water entering this structure would first enter the forebay at a lower elevation to collect any sediment that would be conveyed to this structure; that the runoff would overflow into the wetlands and conveyed through it and out to the outfall in the existing tax ditch; that in addition to the proposed BMPs the site itself had different soil types and different ability for infiltration with lower runoff; that DNREC has specific guidelines which outlines the design and the maintenance of the ephemeral wetlands.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

Mr. Hopkins asked the speaker if he would like the buildings to remain on the parcel because the Applicant stated that the buildings would be removed by a company certified in asbestos removal.

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

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

Recess 9:10 P.M. – 9:23 P.M.

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

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

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

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

The Commission found that Ms. Chris Falvello, Evans Farm Watch Group spoke in opposition to the Application. Ms. Falvello stated that she and her husband have had a house in South Bethany but because of the congestion moved to the Bay Forest Community; that this area has an intangible quality with a mix of water, sand, sun, bays, creeks, flat farmland and forests; that this area has been changing since 2009; that if this development is approved that the view from her backdoor will be a 15-car garage; that the original development showed that the buildings would be further away from the

property line; that the new site plan shows that the buildings are pushed out; that people live here because they choose to live here; that there will be a tipping point; that some neighbors have sold their home in Bay Forest and left after learning of the proposed development; and that the Commission's duty is to protect property values.

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

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

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

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

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

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

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

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

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

The Commission found that Mr. Daryl Wiles spoke in opposition to the Application. Mr. Wiles stated that the people who spoke tonight are not opposed to development, they are opposed to this type of

development, the quality of the development and the compatibility of the development with the surrounding communities; that there are no other 42-foot buildings in the area; that it will affect property values in the area; that the DelDOT dodged the questions and did not properly respond; and that it is foolish to approve this development without an up to date Traffic Impact Study.

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

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

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

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

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

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

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

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

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

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

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

1. This property was the subject of Conditional Use #1848, which was recommended for approval by this Commission and then approved by County Council as Ordinance #2176. Ordinance #2176 was also for 200 multifamily units and is very similar to the current application.
2. Ordinance #2176 was for condominium multifamily units and this application is for apartment multifamily units. Under the Sussex County Zoning Code there is no distinction between the type of ownership for purposes of a land use decision.

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

- c. Recreational Amenities shall be completed within the project as follows:
  1. Community Center/Clubhouse, pool, playground and courts on or before the issuance of the 50<sup>th</sup> Certificate of Occupancy.
  2. Multi-modal recreational facilities by the 100<sup>th</sup> Certificate of Occupancy.
- d. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
- e. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
- f. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- g. No wetlands shall be disturbed except as authorized by State and Federal permits.
- h. Interior street design shall comply with or exceed Sussex County standards and shall include sidewalks or multi-modal pathways on one side of all streets with street lighting.
- i. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- j. The applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.
- k. Construction, site work, excavation, grading and deliveries to or from the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays.
- l. The developer shall preserve as many existing trees as possible on the site. Clearing, disturbance or altering of existing vegetation shall be limited to what is necessary for construction and for the removal of dead and dying trees which pose a threat to public safety or harm to adjacent properties. These areas of non-disturbance shall be clearly shown on the Final Site Plan.
- m. The Final Site Plan shall include a landscape plan for the development, including all buffer areas. This shall also depict the landscaping and vegetation included in the bermed area at the entrance to the community along Old Mill Road. Landscape and lawn maintenance shall be the responsibility of the developer or its assigns.
- n. The Applicant or its assigns shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities and open space.
- o. There shall be an emergency entrance via Railway Road. This entrance shall be shown on the Final Site Plan.
- p. There was testimony in the record about the adverse impact of the proposed maintenance buildings across Railway Road from the rest of this development. As one person stated, these facilities impact other properties while having no adverse effect on the new units they will serve in the new development. The Applicant shall safely remove the existing dilapidated farmhouse, outbuildings and chicken house from this area but leave the area as open space. All maintenance facilities shall be located within the larger parcel where the residential units are planned. Any maintenance buildings shall be located and screened from view of adjacent properties to mitigate any impact on them.
- q. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.

- r. There shall not be any lighting at the rear of the proposed garages/storage buildings. There shall also be vegetation planted and maintained by the developer at the rear of each of these buildings to reduce the visual impact of them on neighboring and adjacent properties. The design and location of these vegetative screens shall be shown on the Final Site Plan.
- s. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

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

**PLANNING & ZONING COMMISSION**

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



**Sussex County**

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

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date March 25<sup>th</sup>, 2021.

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

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

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

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

Current Zoning: General Residential (GR)

Proposed Use: Multi-Family Residential (200 units)

Comprehensive Land Use Plan Reference: Coastal Area

Councilmatic District: Mr. Hudson

School District: Indian River School District

Fire District: Millville Fire District

Sewer: Sussex County

Water: Private, On-Site

Site Area: 50.62 acres +/-

Tax Map ID.: 134-12.00-74.00





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

---

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2206 Linder & Company Inc. (Evans Farm) to be reviewed during the Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel 134-12.00-74.00 to allow for multi-family (200 units). The parcel is located on the north corner of the intersection of Railway Road (S.C.R. 350) and Old Mill Road (S.C.R. 349) and also being on the south side of Railway Rd. (S.C.R. 350) approximately 696 feet northeast of Old Mill Rd. (S.C.R. 349). The parcel contains 50.62 acres +/-.

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

The Coastal Area land use designation recognizes that a range of housing types should be permitted in Coastal Area, including single-family homes, townhouses, and multifamily units. Retail and office uses are appropriate but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-use development should also be allowed. It also recognizes a careful mixture of homes with light commercial, office and institutional uses can be appropriate to provide convenient services and to allow people to work close to home.

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

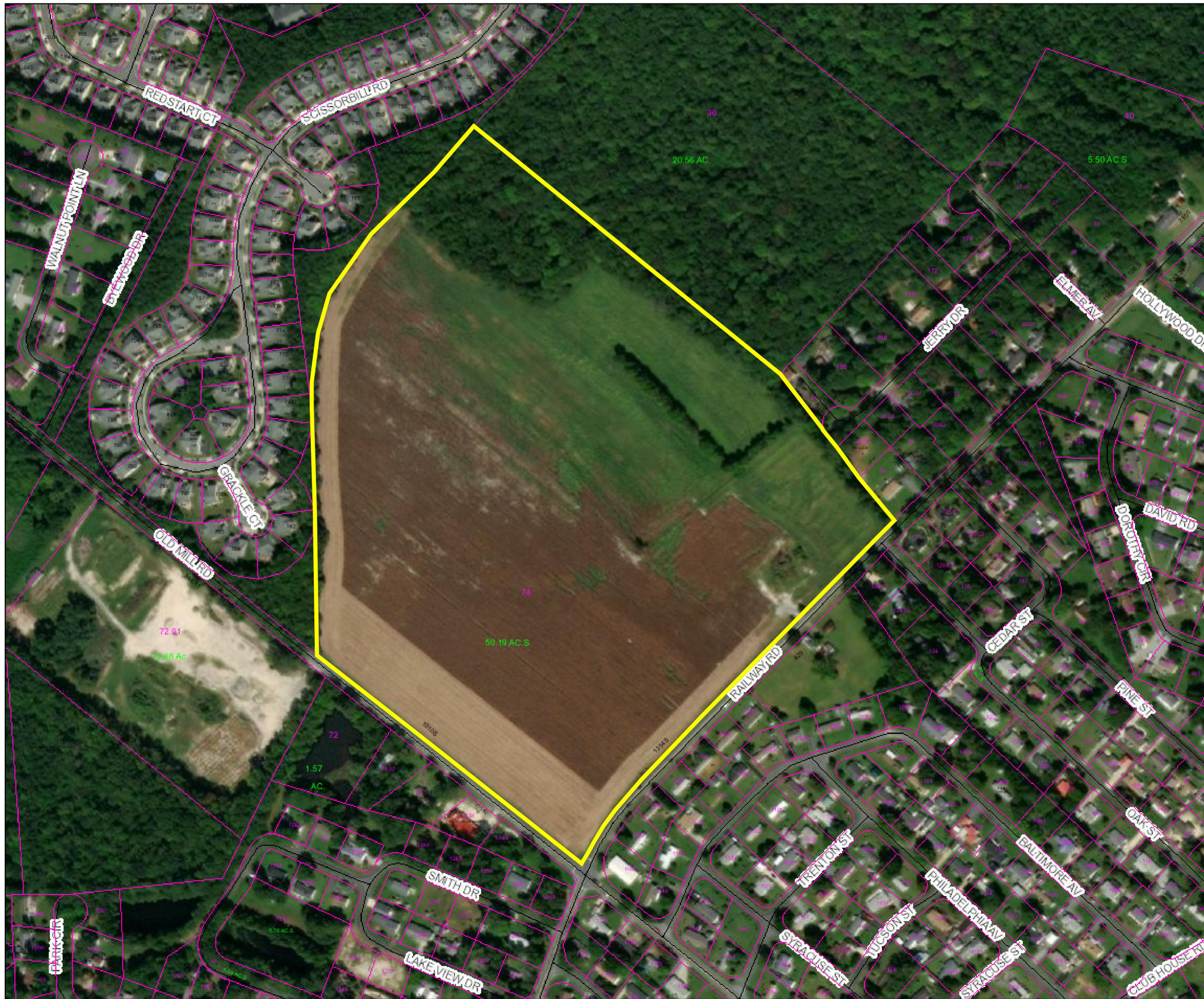
On March 1, 2011, County Council approved Ordinance No. 2176 for 200 multi-family dwelling units on Parcel 134-12.00-74.00 as part of application C/U 1849. This conditional use approval was not implemented following approval. Staff would note adjacent to this property there are approved major subdivisions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



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



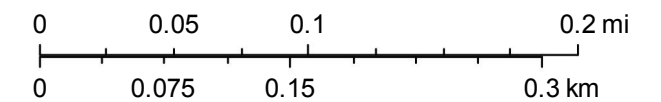
# Sussex County



<b>PIN:</b>	134-12.00-74.00
<b>Owner Name</b>	LINDER & COMPANY INC
<b>Book</b>	3171
<b>Mailing Address</b>	234 N JAMES ST
<b>City</b>	WILMINGTON
<b>State</b>	DE
<b>Description</b>	WHITES NECKRD
<b>Description 2</b>	MILLVILLE TO RAILWAY
<b>Description 3</b>	50.19 AC.S
<b>Land Code</b>	

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

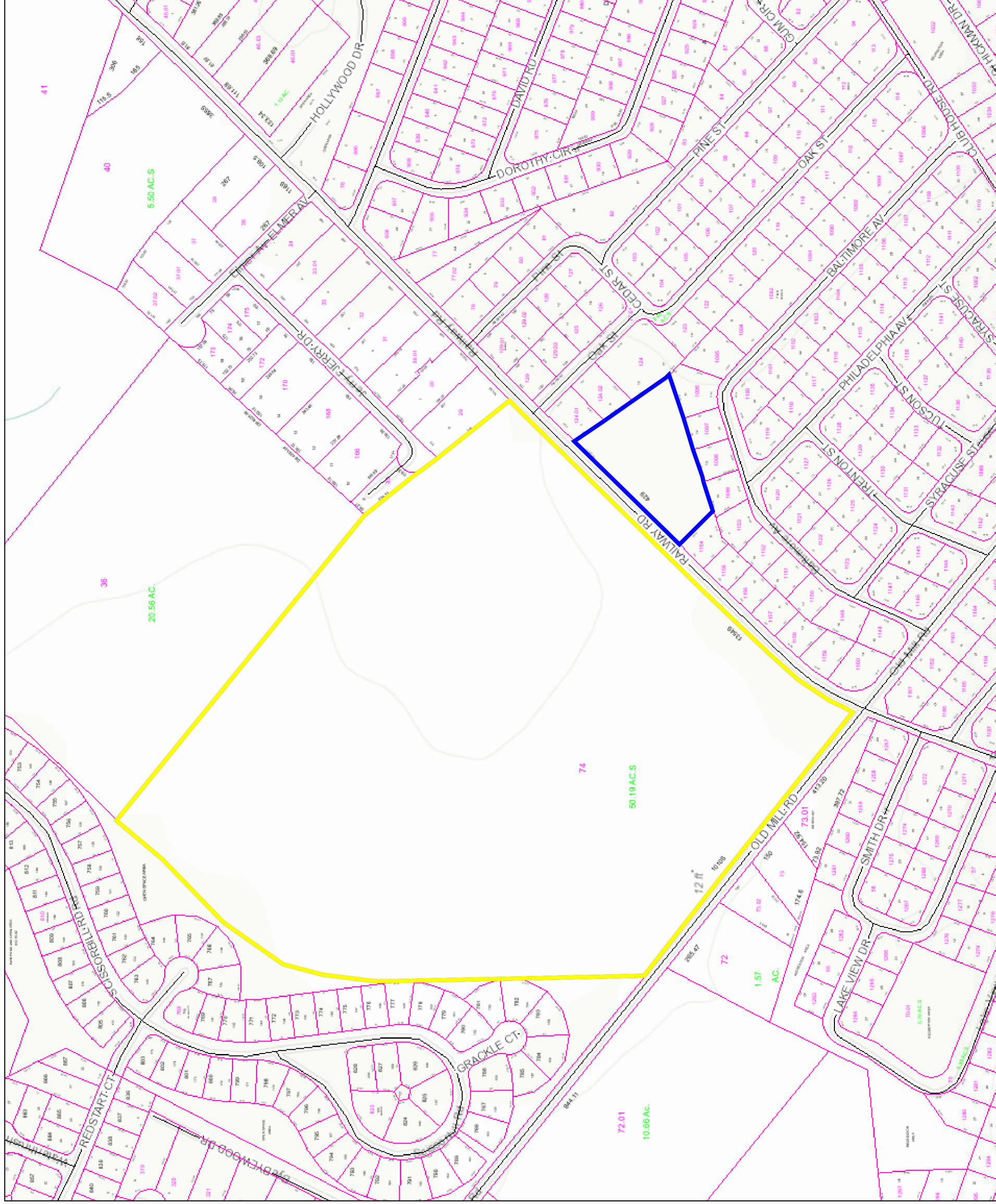
1:4,514





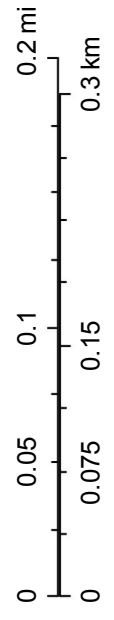
# Sussex County

<b>PIN:</b>	134-12.00-74.00
<b>Owner Name</b>	LINDER & COMPANY INC
<b>Book</b>	3171
<b>Mailing Address</b>	234 N JAMES ST
<b>City</b>	WILMINGTON
<b>State</b>	DE
<b>Description</b>	WHITES NECKRD
<b>Description 2</b>	MILLVILLE TO RAILWAY
<b>Description 3</b>	50.19 AC.S
<b>Land Code</b>	



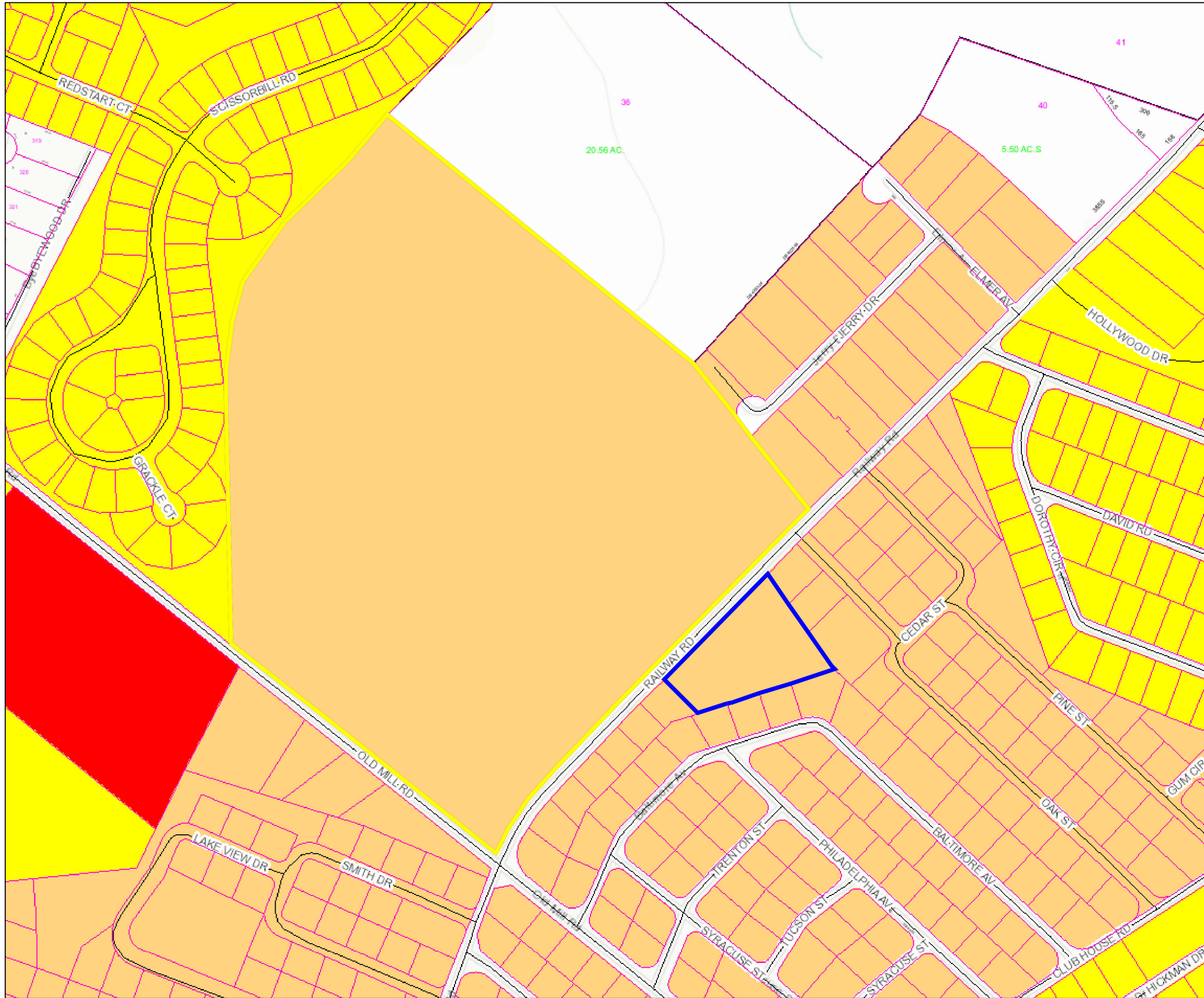
- polygonLayer**
  - Override 1
- polygonLayer**
  - Override 1
- Tax Parcels
- Streets
- County Boundaries

1:4,514





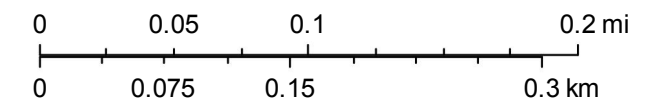
# Sussex County



<b>PIN:</b>	134-12.00-74.00
<b>Owner Name</b>	LINDER & COMPANY INC
<b>Book</b>	3171
<b>Mailing Address</b>	234 N JAMES ST
<b>City</b>	WILMINGTON
<b>State</b>	DE
<b>Description</b>	WHITES NECKRD
<b>Description 2</b>	MILLVILLE TO RAILWAY
<b>Description 3</b>	50.19 AC.S
<b>Land Code</b>	

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

1:4,514



**Re-Introduced 01/28/20**

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

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

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

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

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

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

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

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

**Section 2. The subject property is described as follows:**

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

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

Hudson OR

**Council Grant Form**

**Legal Name of Agency/Organization** True Blue Jazz Inc.

**Project Name** 9th Annual True Blue Jazz Festival 2021

**Federal Tax ID** 47-1429059 OR

**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 True Blue Jazz Mission Statement reads "Preservation through Performance". That goal is met by providing performance opportunities for our Music Students in Jazz Programs across Sussex County. But our educational approach goes far beyond just the straight forward "Live" Performance on True Blue Jazz Stages during Festival Week every October. We feature our Cape Henlopen Jazz Band as an 'Opening Act' in Live Concerts we produce, we host an Annual High School Jazz Band Festival organized by our Cape Music Director, we present our Jazz Students with a "One on One" Workshop with our Headlining Jazz Artists at no cost to their School Program, & we invite area Jazz Students to attend our Festival Headliner Concert at no cost to them or their Music Programs. And of course, we annually awards several Scholarships...& as often as opportunity presents itself...we donate instruments to students of need, or to band programs directly. Additionally, as a testament to the growth & strides towards our mission of "Preservation through

Performance"...True Blue Jazz was presented the Award of 'Top Jazz Presenter of the Year' by The Clifford Brown Jazz Festival Organization. This Festival, first held in June of 1989, was conceived in tribute to & in memory of Wilmington Delaware native son, & globally recognized Jazz Trumpet GREAT...Clifford Brown.

**Address** 31408 Heron Circle

**Address 2**

**City** Lewes

**State** DE

**Zip Code** 19958

**Contact Person** Peggy Raley

**Contact Title** VP, Artistic Director

**Contact Phone Number** 302-448-1766

**Contact Email Address** [info@truebluejazz.org](mailto:info@truebluejazz.org)

**Total Funding Request** \$7500.00

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



<b>If YES, how much was received in the last 12 months?</b>	<b>N/A</b>
<b>Are you seeking other sources of funding other than Sussex County Council?</b>	<b>Yes</b>
<b>If YES, approximately what percentage of the project's funding does the Council grant represent?</b>	<b>20</b>
<b>Program Category (choose all that apply)</b>	<b>Cultural, Educational, Other</b>
<b>Program Category Other</b>	<b>Tourism</b>
<b>Primary Beneficiary Category</b>	<b>Other</b>
<b>Beneficiary Category Other</b>	<b>Programs serve wide demographic from Youth to Seniors of all ethnicities &amp; socio-economic backgrounds</b>
<b>Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program</b>	<b>5000</b>
<b>Scope</b>	<b>Though "Live" Jazz Concert production is at the forefront of our True Blue Jazz Festival...the Music Education that</b>

drives our Youth Jazz Initiative & Programs is the focus of our Non-profit Festival efforts. The Masterclass Workshops conducted by our touring Headline Jazz Artists are educational, motivational, and above all, aspirational. To that end, beyond the Workshops, True Blue Jazz encourages our area Jazz Students to attend the Festival Headline Concerts, at no cost, where they are truly inspired by the performance, musicianship & interaction of the players on Stage. The Students hear this music performed but, are also witness to the "language of music" being silently spoken as the performers move musically through each song & arrangement.

All of these educational elements, opportunities & teaching moments that True Blue Jazz is able to provide for these many Music Student that we encounter the School Districts across Sussex County are turning points in the life of a student...of Elementary, Middle School or High School Age...we have see their reactions, the 'Light Bulb' turning on over their heads. It's a beautiful thing when the dots connect...whether from watching & hearing a professional Jazz Artist on their instrument...or, from listening to a Jazz Artist recount the arc of their career...how they started, their first 'Big Break', & tales of performing with some of the Jazz legends that our students know of & respect. Suddenly...they believe; "Maybe I could do that!"

We have great pride in the instruments or equipment we have donated to schools & students, as well as the growing number of Graduates who go on to University as a Music Major. Miraculously, our Cape Grads have fought & toiled through an unfathomably difficult 2020 School Year. Their Band Director fought hard through it as well. The payoff appears to be well worth it for these Cap Grads in June of 2021, as Seven of them go off to various Colleges, declaring Music as their Major. Congrats to all of them! We'd like to believe that True Blue Jazz has had a little influence on their lives, & their work ethic.

Discipline, collaboration, problem solving, respect for

your fellow Musicians, creativity, math skills, & recognition that to succeed...one must speak well & present themselves with understated style & confidence. These kids now go forward into their lives with all of that...& talent!

**Religious Components**

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

**32,398.91**

**Description                      Venue Rental / Catering / Support Staff**

**Amount                                      5,978.59**

**Description                      Equipment Rental**

**Amount                                      4,254.90**

**Description                      Artist/Performer Fess**

**Amount                                      21,700.00**

**Description                      Event Refunds/Loss**

**Amount                                      366.40**

**Description                      Office Supply / Shipping / Acctg Svc**

**Amount                                      1,736.31**

Description	Ads/Promotions
Amount	7,894.89
Description	Travel/Hotel
Amount	1,897.61
Description	Permits/Fees
Amount	557.53
TOTAL EXPENDITURES	44,386.23
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	-11,987.32
Name of Organization	True Blue Jazz Inc.
Applicant/Authorized Official	True Blue Jazz Inc.
Date	05/24/2021
Affidavit Acknowledgement	Yes

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

**To Be Introduced 06/15/21**

**Council District 3 - Schaeffer**

**Tax I.D. No. 235-30.00-6.20**

**911 Address: 25141 Lewes Georgetown Hwy, Georgetown**

**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 BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 3.68 ACRES, MORE OR LESS**

**WHEREAS, on the 19<sup>th</sup> day of May 2021, a zoning application, denominated Change of Zone No. 1944 was filed on behalf of Executive Lawn Property Management, LLC; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1944 be \_\_\_\_\_; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,**

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

**Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of AR-1 Agricultural Residential District and adding in lieu thereof the designation 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 Broadkill Hundred, Sussex County, Delaware, and lying on the north side of Lewes Georgetown Highway (Route 9) approximately 0.55 mile west of Prettyman Rd. (S.C.R 254) and being more particularly described in the attached legal description prepared by Baird Mandalas Brockstedt LLC, said parcel containing 3.68 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 06/15/21**

**Council District 1 - Vincent  
Tax I.D. No. 131-10.00-99.00  
911 Address: 17019, 17025, 17035 & 17041 Black Cherry Drive, Bridgeville**

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

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE EXPANSION OF CU 889 (ORDINANCE NO. 536) FOR PUBLIC UTILITIES OR PUBLIC SERVICES USES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 29.98 ACRES, MORE OR LESS**

**WHEREAS, on the 18th day of May 2021, a conditional use application, denominated Conditional Use No. 2284 was filed on behalf of Eastern Shore Natural Gas Company; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2284 be \_\_\_\_\_; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.**

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

**Section 1. That Chapter 115, Article 115, Subsections 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2284 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 Northwest Fork Hundred, Sussex County, Delaware, a landlocked parcel accessed off Emma Jane Lane approximately .33 mile south of E Newton Rd (S.C.R 584), and being more particularly described in the attached legal description prepared by Newton, Wilson, Halbrook and Bayard Professional Services, said parcel containing 29.98 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 Re-Introduced 06/15/21**

**Council District 4 - Hudson  
Tax I.D. No. 134-17.00-12.02  
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 MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY AND TO AMEND THE CONDITIONS OF APPROVAL OF CZ 1768 (ORDINANCE 2411) TO INCREASE THE GROSS SITE AREA BY 5.253 ACRES AND TO INCREASE THE NUMBER OF PERMITTED UNITS WITHIN THE RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 56.372 ACRES, MORE OR LESS**

**WHEREAS, on the 15th day of September 2020, a zoning application, denominated Change of Zone No. 1931 was filed on behalf of Lighthipe, 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. 1931 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 MR-RPC Medium Density Residential District Residential Planned Community as it applies to the property hereinafter described.**

**Section 2. The subject property is described as follows:**

**ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the north side of Muddy Neck Road (S.C.R 361) approximately 0.52 mile southeast of Parker House Road (S.C.R 362) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 56.372 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 11, 2021

RE: County Council Report for CZ 1929 filed on behalf of Ryan Lehmann (Mantino Realty Holdings, LLC)

---

The Planning and Zoning Department received an application (CZ 1929 filed on behalf of Mantino Realty Holdings, LLC) for a Change of Zone of a portion of parcel 235-30.00-58.01 from Agricultural Residential Zoning District (AR-1) to a Heavy Commercial Zoning District (C-3). The parcel is located at 26822 Lewes Georgetown Highway, Harbeson. The change of zone is for a 1.46 acre parcel, more or less.

The Planning and Zoning Commission held a public hearing on April 22, 2021. At the meeting of May 13, 2021, the Commission recommended approval of the application for the 8 reasons outlined within the motion (included below).

Below are the approved minutes from the Planning & Zoning Commission meeting of April 22, 2021 and the minutes of the Planning & Zoning Commission meeting of May 13, 2021.

### Minutes of the April 22, 2021 Planning & Zoning Commission Meeting

#### **C/Z 1929 – Ryan Lehmann (Mannino Realty Holdings, 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 Broadkill Hundred, Sussex County, containing 1.4653 acres, more or less.** The property is lying on the south side of Lewes Georgetown Hwy (Rt. 9) approximately 0.7 mile east of the intersection of Harbeson Rd (Rt. 5) and Lewes Georgetown Hwy (Rt. 9). 911 Address: 26822 Lewes Georgetown Hwy. Tax Parcel: 235-30.00-58.02 (Portion of)

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Staff Analysis,





a copy of the DelDOT Service Level Evaluation response, a copy of comments from the Sussex County Engineering Department Utility Planning Division, and a copy of the same PLUS response for Ordinance 20-08.

The Commission found that Ryan Lehmann was present on behalf of his Application. Mr. Lehmann stated that he purchased the property in 2018; that his company is Backyard Works; that he currently has two acres that are zoned Commercial which fronts on Route 9; that in 2020 he purchased two acres to the rear of the commercially zoned property which is zoned Agricultural Residential (AR-1); that he requests to change the property purchased in 2020 from AR-1 to Heavy Commercial (C-3); that this property is adjacent to the railroad line; that the property will be used to store inventory for his business.

Ms. Stevenson asked why C-3 zoning is being requested.

Mr. Torrance explained that outdoor storage is not permitted in other Commercial Zoning Districts and that C-3 is applicable.

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

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

At the conclusion of the Public Hearing, the Commission discussed the Ordinance.

In relation to Ordinance to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No. 235-30.00-58.02 (portion of). Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

At the conclusion of the Public Hearing, the Commission discussed the Application.

In relation to C/Z 1929 – Ryan Lehmann (Mantino Realty Holdings, LLC). Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

#### Minutes of the May 13, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since April 22, 2021.

Ms. Stevenson moved that the Commission recommend approval of CZ#1929 regarding Ryan Lehmann (Mantino Realty Holdings, LLC) for a change in zone from AR-1 to a C-3 based upon 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. The area of this rezoning is part of a larger parcel that already has commercially-zoned frontage. This rezoning will give the entire property a commercial zoning designation. It will

also permit the property owner to use the entire property for outdoor storage of materials associated with his existing business on the front section of the property.

3. The entire parcel is adjacent to Route 9 and the rear of the parcel has access to an active railroad. This is an appropriate location for commercial zoning.
4. The parcel is in a section of Route 9 where there are commercial districts and business and commercial uses that have developed. This location is appropriate for an extension of this type of zoning.
5. Upon the approval of the Future Land Use Map Amendment, this site will be in the Commercial Area according to the current Sussex County Land Use Plan. This proposed commercial zoning is appropriate in this Area according to the Plan.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
7. No parties appeared in opposition to this rezoning application.
8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/Z 1929 Ryan Lehmann (Mantino Realty Holdings, LLC) for the reasons and conditions stated in the motion. Motion carried 5 – 0.

**PLANNING & ZONING COMMISSION**

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



**Sussex County**

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

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date April 22<sup>nd</sup>, 2021

Application: CZ 1929 Ryan Lehmann

Applicant: Ryan Lehmann  
26822 Lewes Georgetown Hwy  
Harbeson, DE 19951

Owner: Manntino Realty Holdings, LLC  
26822 Lewes Georgetown Hwy  
Harbeson, DE 19951

Site Location: 26822 Lewes Georgetown Hwy. Located on the south side of Lewes Georgetown Hwy (Rt. 9) approximately 0.7 mile east of the intersection of Harbeson Rd (Rt. 5) and Lewes Georgetown Hwy (Rt. 9)

Current Zoning: Agricultural Residential (AR-1)

Proposed Zoning: Heavy Commercial District (C-3)

Comprehensive Land Use Plan Reference: Low Density

Councilmatic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Milton Fire Company

Sewer: Septic

Water: Private

Site Area: 1.4653 acres +/-

Tax Map ID.: 235-30.00-58.02 (portion of)





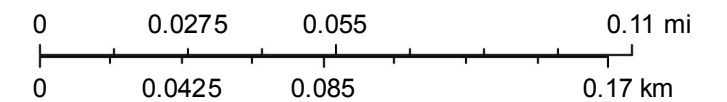
# Sussex County



<b>PIN:</b>	235-30.00-58.02
<b>Owner Name</b>	MANNTINO REALTY HOLDINGS LLC
<b>Book</b>	4928
<b>Mailing Address</b>	26822 LEWES GEORGETOWN HWY
<b>City</b>	HARBESON
<b>State</b>	DE
<b>Description</b>	S/RT 18
<b>Description 2</b>	3200'W/RT 258
<b>Description 3</b>	
<b>Land Code</b>	

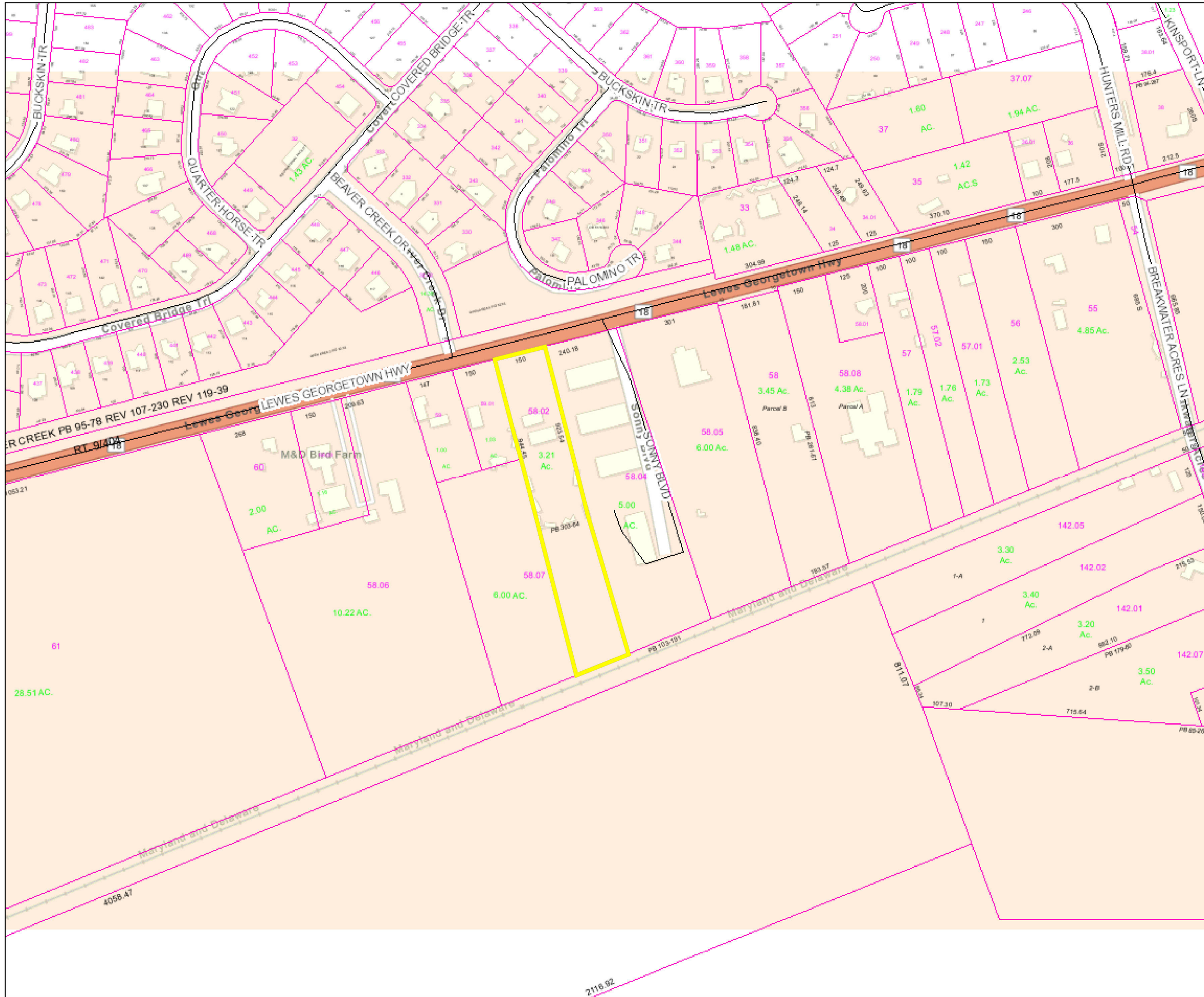
- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries
- Extent of Right-of-Way
- Municipal Boundaries

1:2,257





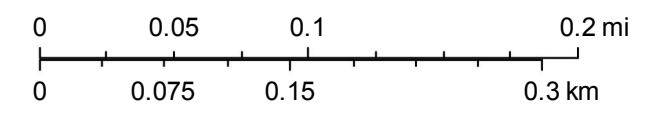
# Sussex County



<b>PIN:</b>	235-30.00-58.02
<b>Owner Name</b>	MANNTINO REALTY HOLDINGS LLC
<b>Book</b>	4928
<b>Mailing Address</b>	26822 LEWES GEORGETOWN HWY
<b>City</b>	HARBESON
<b>State</b>	DE
<b>Description</b>	S/RT 18
<b>Description 2</b>	3200'W/RT 258
<b>Description 3</b>	
<b>Land Code</b>	

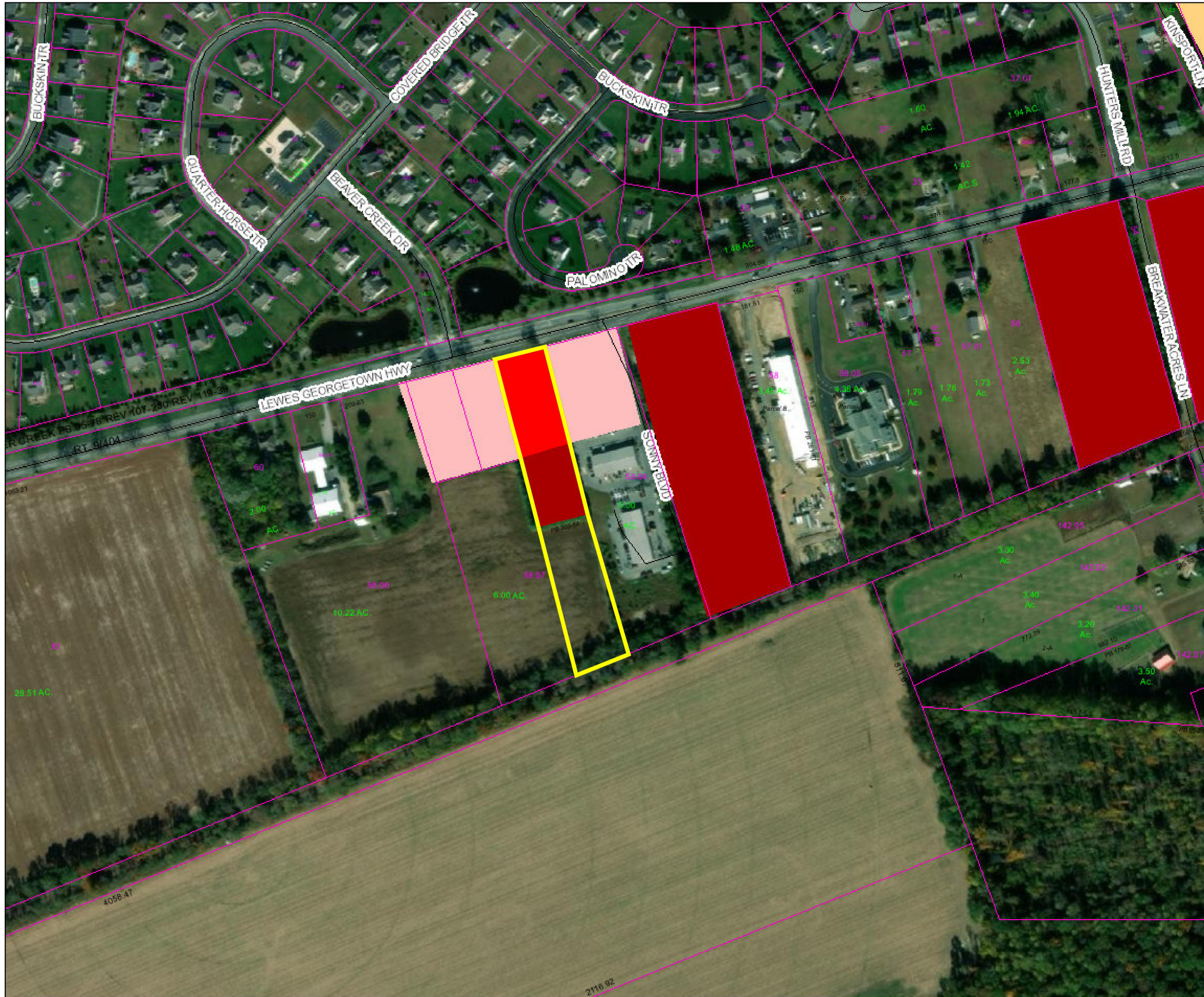
- |              |            |
|--------------|------------|
| polygonLayer | Override 1 |
| polygonLayer | Override 1 |
- Tax Parcels
- Streets
- County Boundaries
- Extent of Right-of-Way
- Municipal Boundaries

1:4,514





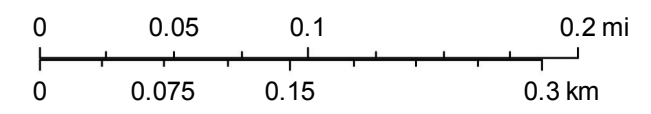
# Sussex County



<b>PIN:</b>	235-30.00-58.02
<b>Owner Name</b>	MANNTINO REALTY HOLDINGS LLC
<b>Book</b>	4928
<b>Mailing Address</b>	26822 LEWES GEORGETOWN HWY
<b>City</b>	HARBESON
<b>State</b>	DE
<b>Description</b>	S/RT 18
<b>Description 2</b>	3200'W/RT 258
<b>Description 3</b>	
<b>Land Code</b>	

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

1:4,514



**Introduced 12/01/20**

**Council District 3 - Burton**

**Tax I.D. No. 235-30.00-58.02 (portion of)**

**911 Address: 26822 Lewes Georgetown Highway, Harbeson**

**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 BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 1.4653 ACRES, MORE OR LESS**

**WHEREAS, on the 28th day of August 2020, a zoning application, denominated Change of Zone No. 1929 was filed on behalf of Ryan Lehmann; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1929 be \_\_\_\_\_; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,**

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

**Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of AR-1 Agricultural Residential District and adding in lieu thereof the designation 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 Broadkill Hundred, Sussex County, Delaware, and lying on the south side of Lewes Georgetown Highway (Route 9) approximately 0.7 mile east of the intersection of Harbeson Road (Route 5) and Lewes Georgetown Highway (Route 9) and being more particularly described in the attached legal description prepared by Merestone Consultants, said parcel containing 1.4653 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 11, 2021

RE: County Council Report for an Ordinance to Amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No. 235-30.00-58.02 (Portion of)

---

The Ordinance proposes to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No. 235-30.00-58.02 (Portion of). The location of the amendment is shown in Appendix A.

On August 28, 2020, the Planning & Zoning Department received an application for a change of zone of the parcel from AR-1 Agricultural Residential Zoning District to C-3 Heavy Commercial Zoning District. The Property is designated as being within the Low-Density Area as set forth in the Future Land Use Map identified as Figure 4.5-1 in the Plan, and the Low-density Area does not permit such C-3 Zoning.

The Ordinance proposes to amend the designation of a portion of the parcel from the Low-density Area to the Commercial Area. The parcel is located on the south side of Lewes Georgetown Hwy (Rt. 9) approximately 0.7 mile east of Harbeson Rd (Rt.5). The 911 address is 26822 Lewes Georgetown Hwy. The area of the portion of the parcel is 1.46 Acres, more or less.

The Planning and Zoning Commission held a public hearing on the Ordinance on April 22, 2021. At the meeting of May 13, 2021, the Commission recommended approval of the Ordinance for the 6 reasons outlined within the motion (included below).

Below are the approved minutes from the Planning & Zoning Commission meeting of April 22, 2021 and the minutes of the Planning & Zoning Commission meeting of May 13, 2021.



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



Minutes of the April 22, 2021 Planning & Zoning Commission Meeting

**AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-30.00-58.02 (PORTION OF)**

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the County's Exhibit Map, a copy of the PLUS submission made to the State Planning Office, a copy of PLUS response dated January 17, 2021, and the Ordinance seeks to change the Future Land Use Map of the County from a Low-Density Area to the Commercial Area.

Minutes of the May 13, 2021 Planning & Zoning Commission Meeting

The Commission discussed this ordinance which has been deferred since April 22, 2021.

Ms. Stevenson moved that the Commission recommend approval of the Ordinance to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for Parcel 235-30.00-58.02 from a Low-Density Area to a Commercial Area based on the record made during the public hearing and for the following reasons:

1. The parcel currently has two Area designations. The frontage of the parcel is designated as the Existing Development Area while the rear portion of the property is designated as Low-Density Area according to the Future Land Use Map in the Sussex County Comprehensive Plan. This application seeks to convert the rear portion of the property from Low-Density to Commercial Area.
2. The parcel has frontage on Route 9 and the rear of the Parcel is bounded by a railroad. This is an appropriate location for a Map Amendment designating the parcel as Commercial Area.
3. This revision to the Future Land Use Map will not adversely affect neighboring properties, area roadways or future land-use planning in the area.
4. With the adjacent railroad service, this Map amendment promotes the transportation goals in the Sussex County Comprehensive Plan, which states that one way of reducing truck impacts on area roadways is to shift more freight to rail. This site presents an opportunity to achieve this goal. This is also supported in the Comprehensive Plan by Goal 13.5, Objective 13.5.1 and the Strategies attached to them.
5. No parties appeared at the public hearing to object to this Map Amendment.
6. This revision of the Future Land Use Map is appropriate given the particular circumstances involved at this location. When several factors like these exist, the consideration and approval of an amendment to the Future Land Use Map is appropriate.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of the Ordinance to the Future Land Use Map of the Comprehensive Plan in relation to Parcel 235-30.00-58.02 (portion of) for the reasons and conditions stated in the motion. Motion carried 5 – 0.



# Sussex County

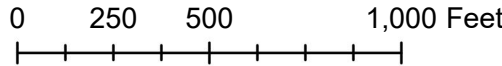


**Exhibit A**  
**Ryan Lehmann Future Land Use Map Amendment**  
**235-30.00-58.02**



**Legend**

- Subject Property
- Tax Parcels

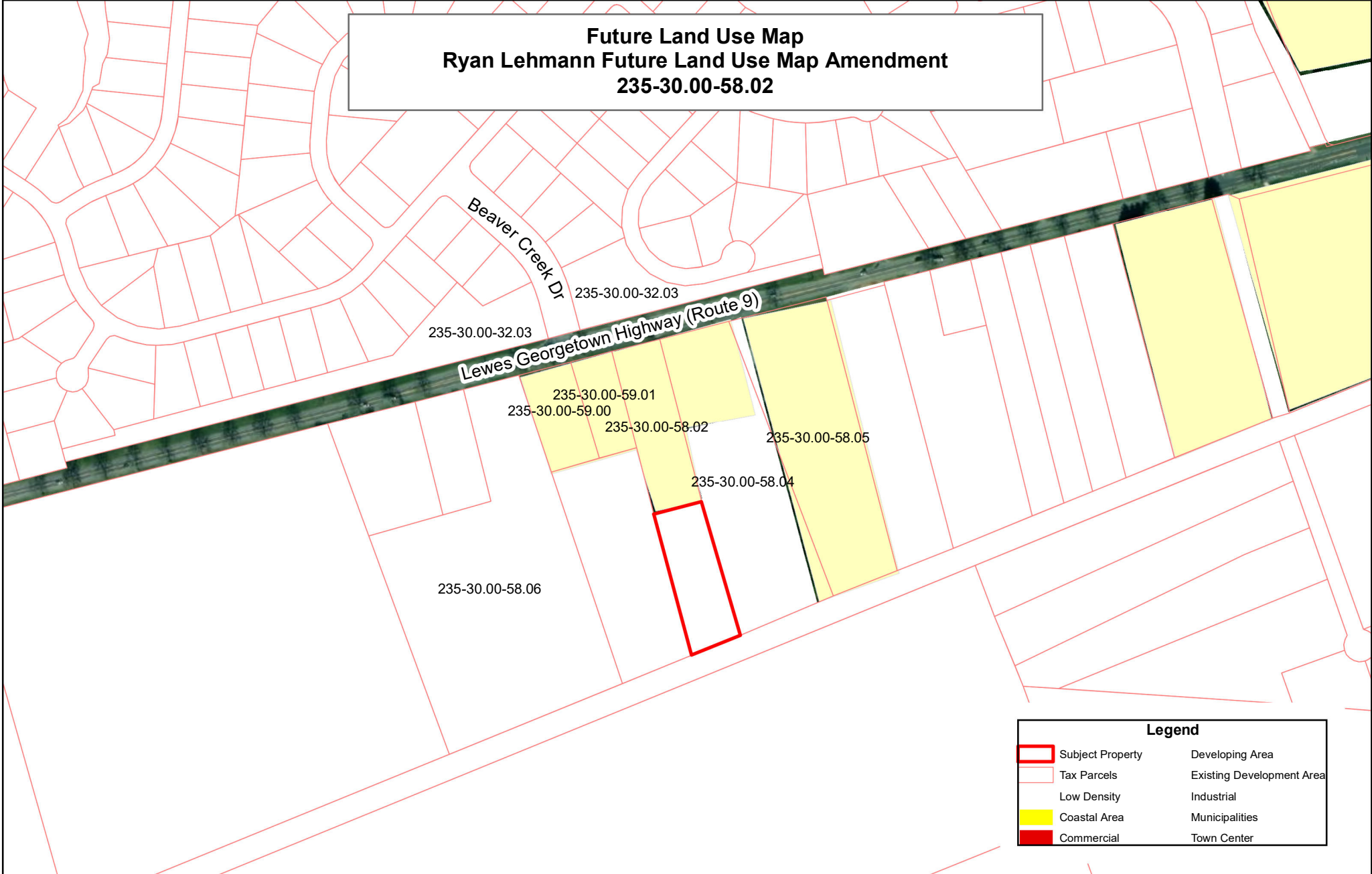




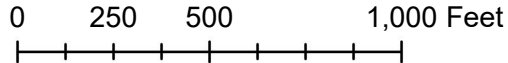
# Sussex County



**Future Land Use Map**  
**Ryan Lehmann Future Land Use Map Amendment**  
**235-30.00-58.02**



Legend	
	Subject Property
	Tax Parcels
	Low Density
	Coastal Area
	Commercial
	Developing Area
	Existing Development Area
	Industrial
	Municipalities
	Town Center

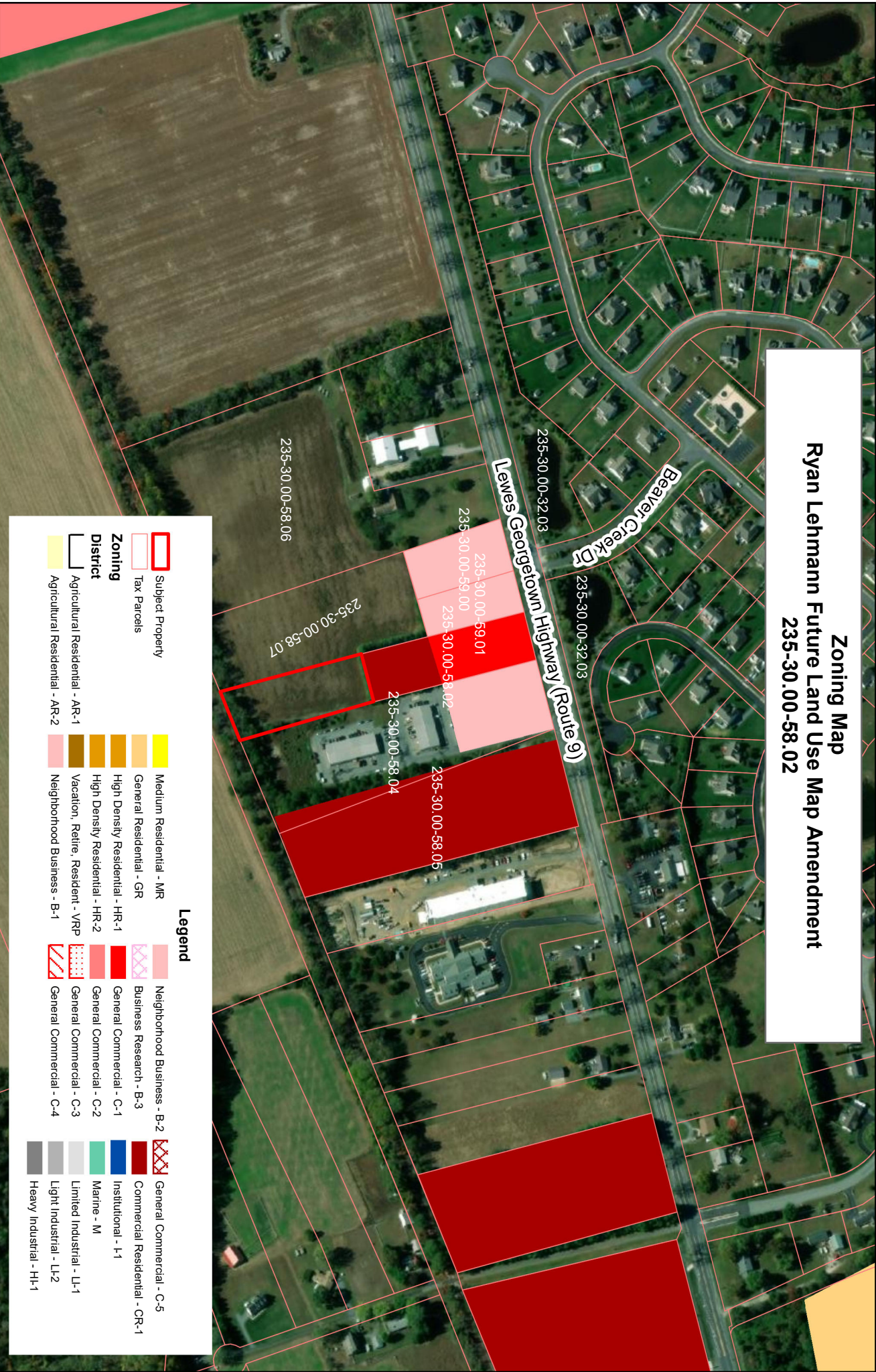




# Sussex County

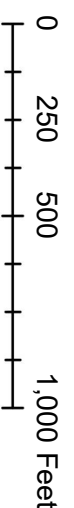


**Zoning Map**  
**Ryan Lehmann Future Land Use Map Amendment**  
**235-30.00-58.02**



**Legend**

	Subject Property		Medium Residential - MR		Neighborhood Business - B-2		General Commercial - C-5
	Tax Parcels		General Residential - GR		Business Research - B-3		Commercial Residential - CR-1
<b>Zoning District</b>			High Density Residential - HR-1		General Commercial - C-1		Institutional - I-1
	Agricultural Residential - AR-1		High Density Residential - HR-2		General Commercial - C-2		Marine - M
	Agricultural Residential - AR-2		Vacation, Retire, Resident - VRP		General Commercial - C-3		Limited Industrial - LI-1
			Neighborhood Business - B-1		General Commercial - C-4		Light Industrial - LI-2
							Heavy Industrial - HI-1



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

**AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-30.00-58.02 (PORTION OF)**

WHEREAS, on August 28<sup>th</sup>, 2020, the Sussex County Planning and Zoning Office received an application for Change of Zone No. 1929

WHEREAS, the Sussex County Council will consider Change of Zone No. 1929 from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Broad Kill Hundred, Sussex County, containing 1.4563 acre, more or less (A portion of Tax Parcel No. 235-30.00-58.02) (the "Property"); and

WHEREAS, the Property is designated as being within the Low Density Area as set forth in the Future Land Use Map identified as Figure 4.5-1 in the Plan, and the Low Density does not permit such C-3 Zoning; and

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

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

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

**Section 1.** The Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan is hereby amended to change the Area designation part of Sussex County Parcel. No. 235-30.00-58.02 from the Low Density Area to the Commercial Area. The portion of Sussex County Parcel. No. 235-30.00-58.02 so changed is identified in Exhibit A, attached hereto and incorporated herein.

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



# Sussex County

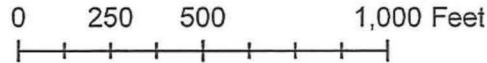


**Exhibit A**  
**Ryan Lehmann Future Land Use Map Amendment**  
**235-30.00-58.02**



**Legend**

- Subject Property
- Tax Parcels





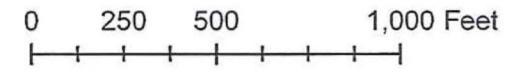
# Sussex County



**Zoning Map**  
**Ryan Lehmann Future Land Use Map Amendment**  
**235-30.00-58.02**



Legend			
	Subject Property		Medium Residential - MR
	Tax Parcels		General Residential - GR
<b>Zoning</b>			High Density Residential - HR-1
<b>District</b>			High Density Residential - HR-2
	Agricultural Residential - AR-1		Vacation, Retire, Resident - VRP
	Agricultural Residential - AR-2		Neighborhood Business - B-1
			Neighborhood Business - B-2
			Business Research - B-3
			General Commercial - C-1
			General Commercial - C-2
			General Commercial - C-3
			General Commercial - C-4
			General Commercial - C-5
			Commercial Residential - CR-1
			Institutional - I-1
			Marine - M
			Limited Industrial - LI-1
			Light Industrial - LI-2
			Heavy Industrial - HI-1

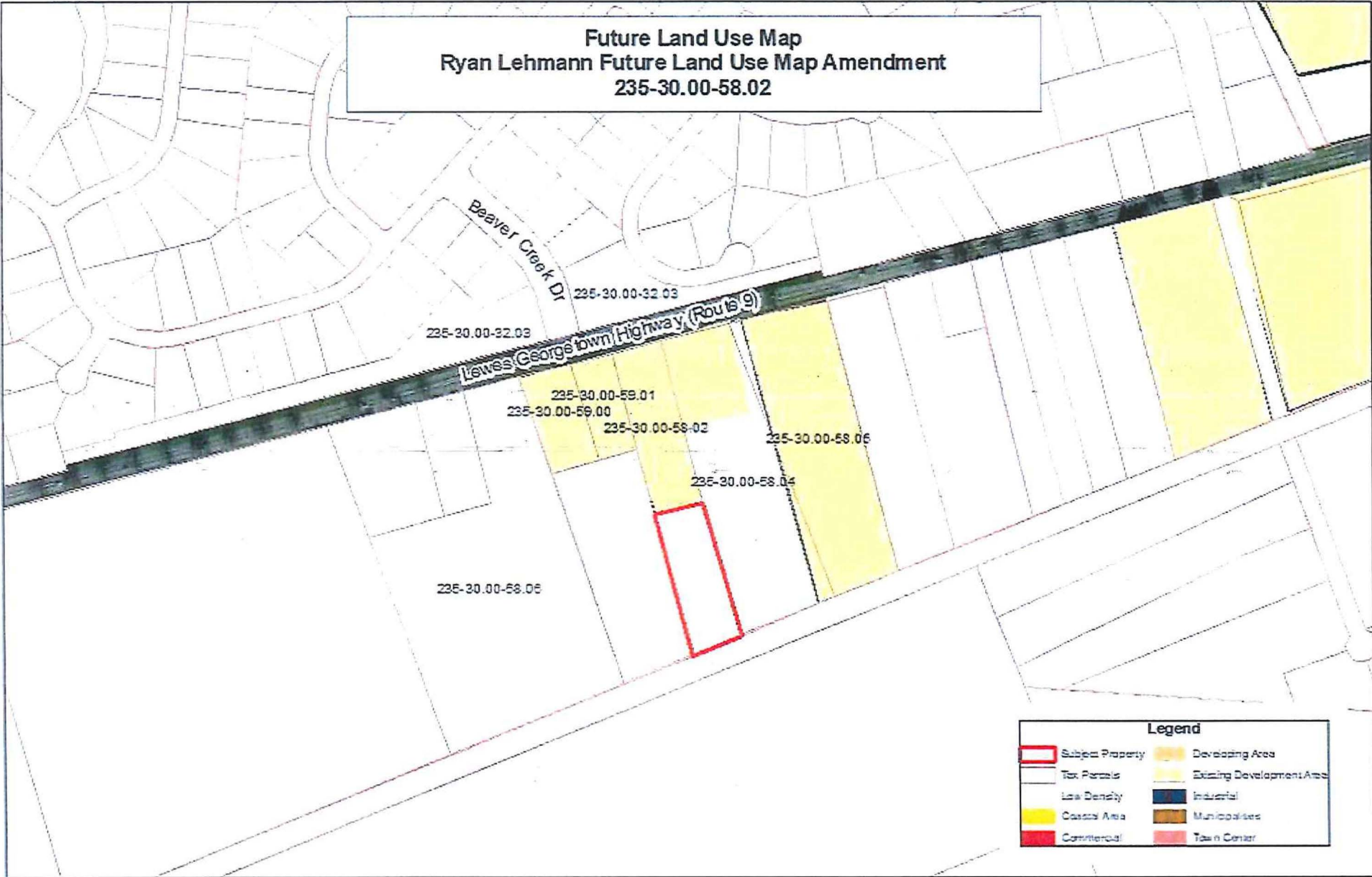




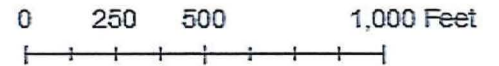
# Sussex County



**Future Land Use Map**  
**Ryan Lehmann Future Land Use Map Amendment**  
**235-30.00-58.02**



Legend	
	Subject Property
	Tax Parcels
	Low Density
	Coastal Area
	Commercial
	Developing Area
	Existing Development Area
	Industrial
	Municipalities
	Town Center





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 11, 2021

RE: County Council Report for CU 2245 filed on behalf of Jonathan Plump

---

The Planning and Zoning Department received an application (CU 2245 filed on behalf of Jonathan Plump) for a Conditional Use for outdoor boat and RV storage at 20723 and 20715 Milton Ellendale Highway, Ellendale. The property is within the Agricultural Residential (AR-1) Zoning District. The parcel size is 4.5 acres +/-.

The Planning and Zoning Commission held a public hearing on April 22, 2021. At the meeting of May 13, 2021, the Commission recommended approval of the application for the 7 reasons and subject to the 13 recommended conditions outlined within the motion (included below).

Below are the approved minutes from the Planning & Zoning Commission meetings of April 22, 2021 and May 13, 2021.

Approved Minutes of the April 22, 2021 Planning & Zoning Commission Meeting

### C/U 2245 – Jonathan Plump

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for outdoor boat and RV storage to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 4.5 acres, more or less.** The property is lying on the northeast side of Milton Ellendale Highway (Rt. 16) approximately 0.55 mile southeast of Holly Tree Road (S.C.R. 226). 911 Address: 20723 and 20715 Milton Ellendale Highway, Ellendale. Tax Parcels: 235-13.00-2.02 & 235-13.00-2.03

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's letter and exhibits from the Applicant, a copy of the Staff Analysis, and a copy of comments from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse noted there were



zero responses.

The Commission found that Mr. Chad Lingenfelder, Esq. was present on behalf of the Applicant, Jonathan Plump; that the property consists of 4.5 acres and the request is for a 90-space storage facility for boats and recreational vehicles; that the storage area would be on 1.44 acres towards the rear of the property; that it would be secured with a locked gate and fencing around the entire lot; that the lighting would be inward facing; that the Captains Way subdivision adjacent to the subject property will have a buffer; that the Applicant intends to keep the trees on the north and west of the subject property as an additional buffer; that no maintenance of RV's and boats will be allowed on the site; that there will be no retailing of boats or RV's on the site; that no inoperable or junked boats or RV's will be allowed on the property; that all RV's and boats stored on the property must have current registration; that there will be a mobile office on site; that the Applicant is requesting a lighted sign no greater than 32 square feet per side; that there will be no impervious surfaces on the property; that the only digging on the site will be for the poles for lighting; that this is a low-impact request; that DelDOT has submitted a letter of no objection and will not affect traffic; and that there is a commercial property approximately 0.25 mile from the subject property and a church in the area.

The Commission found that Mr. Jonathan Plump was present by teleconference to speak about his Application.

Ms. Stevenson asked what the hours of operation will be and how would it be regulated.

Mr. Plump stated that the hours of operation will be 8:00 am – 8:00 pm with an automated gate access.

Ms. Stevenson asked if the Applicant would consider lowering the lighting by 50% after dark.

Mr. Plump stated that he would lower lighting after dark.

Chairman Wheatley stated that if approved the Applicant would have to provide a site plan and stormwater management plan.

Mr. Mears asked what the height and type of the proposed fencing is.

Mr. Lingenfelder stated that the fence would be a chain link fence.

Mr. Plump stated that the height of the fencing would be 6 ft.

Mr. Robinson stated that the Commission could stipulate hours of operation or in more remote locations and if the access is monitored hours of operation are not stipulated.

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

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

At the conclusion of the Public Hearing, the Commission discussed the Application.

In relation to C/U 2245 – Jonathan Plump. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

Approved Minutes of the May 13, 2021, Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since April 22, 2021.

Ms. Stevenson moved that the Commission recommend approval of Conditional Use #2245 for Jonathan Plum for outdoor RV and boat storage based on the record made during the public hearing and for the following reasons:

1. The Applicant seeks approval for an RV and boat storage facility on approximately 4.5 acres.
2. The proposed Conditional Use is located along Route 16, which is an appropriate location for this type of use.
3. There is a need for the use proposed by the Applicant in this area of Sussex County.
4. This use is limited in nature and will not involve any new buildings.
5. The project, with the conditions and stipulations imposed upon it, will not have an adverse impact upon the neighboring properties or community.
6. The use as a boat and RV storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of residents in this area of Sussex County.
7. No parties appeared in opposition to this Application.
8. This recommendation for approval is subject to the following conditions:
  - a. The use shall be limited to the storage of boats and RVs. No other storage of vehicles or equipment shall occur on the site.
  - b. The facility shall only be accessible from 5:00 am until dusk and the access gate shall be locked to prevent after-hours access to the site.
  - c. The perimeter of the site shall be fenced with a 6-foot-high fence that screens the property from neighboring and adjacent properties and roadways.
  - d. There shall be a landscaping buffer between the outside of the fence and the adjacent residential properties to screen the use and the fence from those adjacent homes. The Final Site Plan for this use shall include a landscaping plan for this buffer area.
  - e. No sales or maintenance of boats or RVs shall occur on the site.
  - f. All security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
  - g. No more than 90 boats and RVs shall be permitted on the site.
  - h. The storage area shall be covered with a pervious stabilizing material. The location and type of this material shall be shown on the final site plan.
  - i. The use shall be subject to all DelDOT requirements regarding the entrance and roadway improvements necessary to provide access to the site.
  - j. No hazardous materials or fuel shall be stored on the property other than what may be in the tanks of boats and RVs located on the site.
  - k. One lighted sign shall be permitted on the site. It shall not exceed 32 square feet in size.
  - l. No junked or unregistered boats, boat trailers or RVs shall be stored on the site.
  - m. The final site plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/U 2245 Jonathan Plump for the reasons and conditions stated in the motion. Motion carried 5 – 0.

**PLANNING & ZONING COMMISSION**

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



**Sussex County**

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: January 7th, 2021

Application: CU 2245 Johnathan Plump

Applicant: Johnathan Plump  
20723 Milton Ellendale Highway  
Ellendale, DE 19941

Owner: Johnathan Plump  
20723 Milton Ellendale Highway  
Ellendale, DE 19941

Site Location: 20723 Milton Ellendale Highway  
Ellendale, DE 19941

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

Proposed Use: Outdoor Boat and RV Storage

Comprehensive Land  
Use Plan Reference: Low Density

Councilmanic  
District: Mr. Schaffer

School District: Cape Henlopen School District

Fire District: Ellendale Fire Department

Sewer: Private (septic system)

Water: Private (well)

Site Area: 4.5 acres +/-

Tax Map ID.: 235-13.00-2.02 & 2.03



JAMIE WHITEHOUSE, AICP, MRTPI  
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 Planning Commission Members  
From: Chase Phillips, Planner I  
CC: Vince Robertson, Assistant County Attorney and applicant  
Date: December 03, 2020  
RE: Staff Analysis for CU 2245 (Johnathan Plump)

---

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2245 to be reviewed during the January 07, 2021 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcels 235-13.00-2.02 and 235-13.00-2.03 to allow for a Conditional Use of land in an Agricultural Residential (AR-1) Zoning District for outdoor boat and RV storage. The parcel is located on the north side of Milton Ellendale Highway (Rt. 16) in Ellendale, Delaware. The area of the site (i.e. both parcels) is approximately 4.5 acres +/-.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework for 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 property has the land use designation of the "Low-Density Area." The Low Density Area classification is designed to support the preservation of farmland, sustain agriculture, maintain the rural landscape, and accommodate mostly low-density single-family residential development.

The surrounding parcels to the east, southeast, and south are also in a "Low Density Area." The parcel that makes up the north and northwestern boundary of the subject property is within the "Existing Development Area." This parcel is a residential development known as Captain's Way.

The property is within an Agricultural Residential (AR-1) Zoning District. The parcels to the east, southeast, and south are also within an AR-1 Zoning District. The parcel to the north and northwest is within a General Residential – Residential Planned Community (GR-RPC) Zoning District.

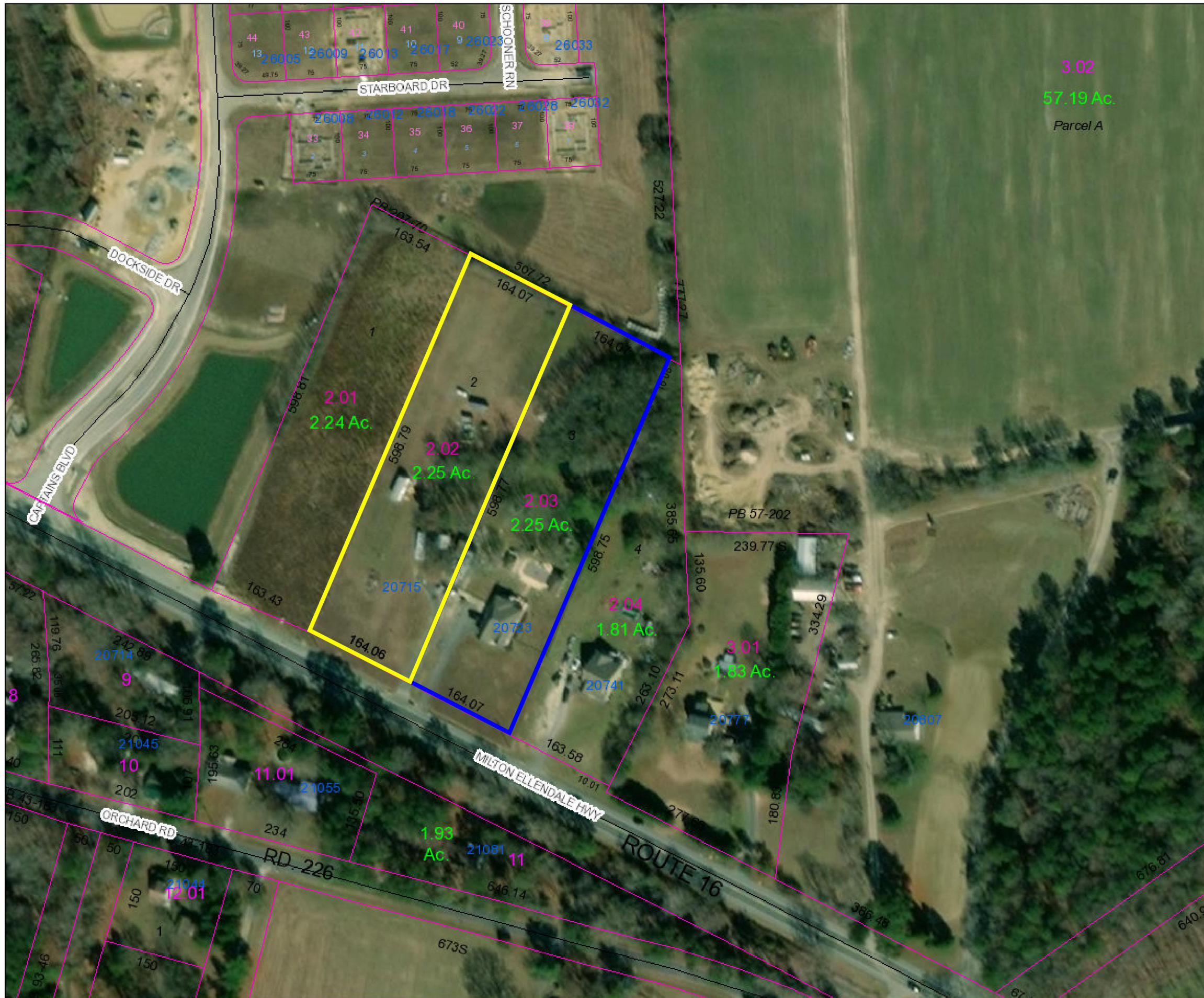
Since 2011, there have been no Conditional Use applications within a one-mile radius of the application site.

Based on the analysis above, the Conditional Use to allow for outdoor boat and RV storage could be considered as consistent with the surrounding zoning and land uses given proposals of scale and impact.





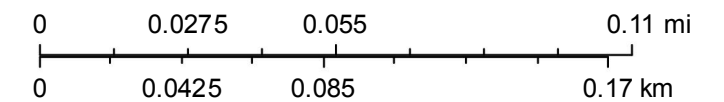
# Sussex County



<b>PIN:</b>	235-13.00-2.02
<b>Owner Name</b>	PLUMP JONATHAN J
<b>Book</b>	4915
<b>Mailing Address</b>	20723 MILTON ELLENDALE
<b>City</b>	ELLENDALE
<b>State</b>	DE
<b>Description</b>	NE/RT 16
<b>Description 2</b>	NW/ RD 226
<b>Description 3</b>	LOT #2
<b>Land Code</b>	

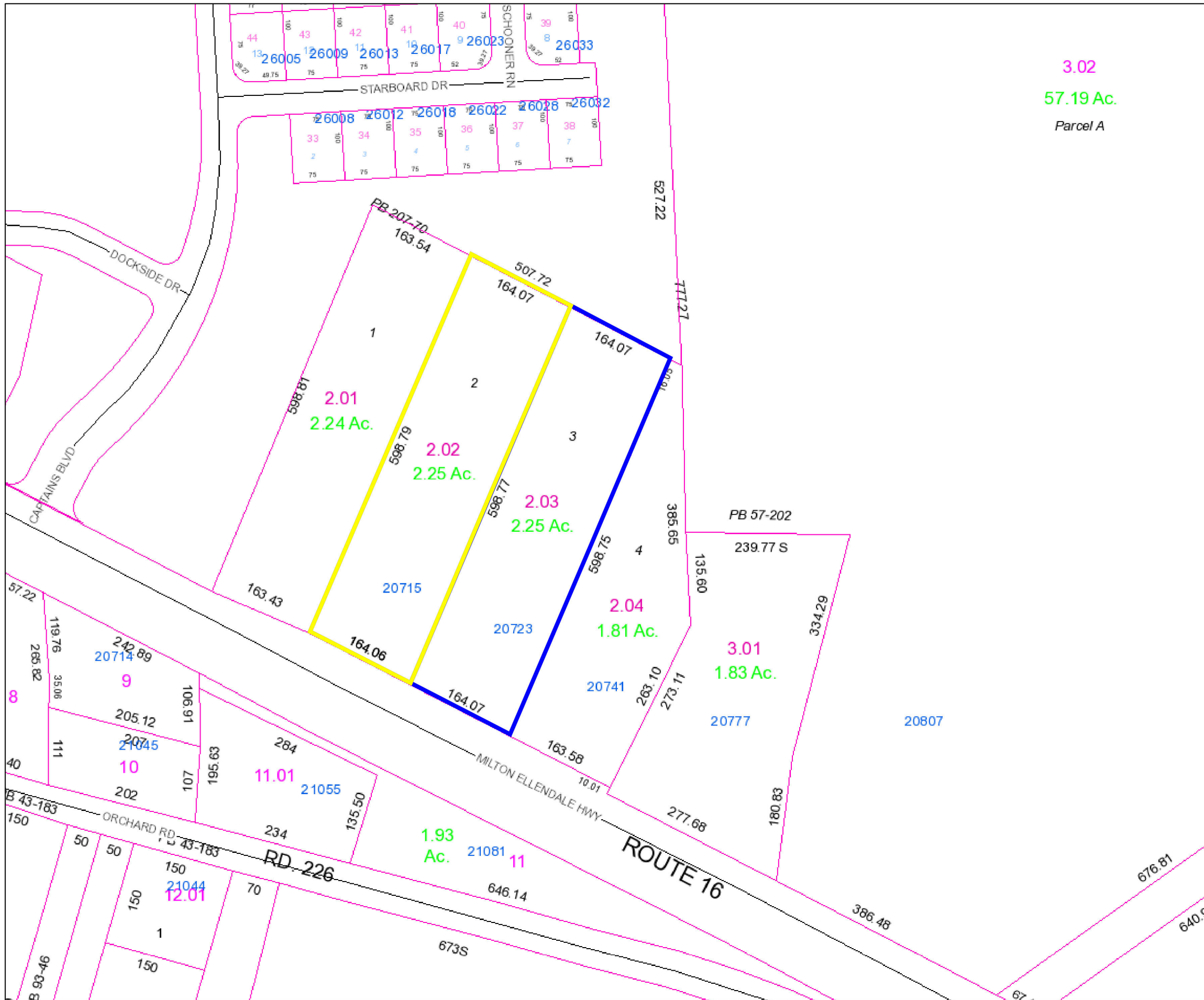
- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
  - Tax Parcels
  - 911 Address
  - Streets
  - Fire Districts
  - County Boundaries
  - Municipal Boundaries

1:2,257





# Sussex County



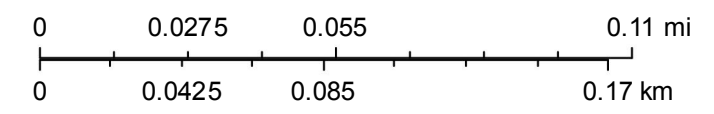
<b>PIN:</b>	235-13.00-2.02
<b>Owner Name</b>	PLUMP JONATHAN J
<b>Book</b>	4915
<b>Mailing Address</b>	20723 MILTON ELLENDALE
<b>City</b>	ELLENDALE
<b>State</b>	DE
<b>Description</b>	NE/RT 16
<b>Description 2</b>	NW/ RD 226
<b>Description 3</b>	LOT #2
<b>Land Code</b>	

- polygonLayer**

  - Override 1
- polygonLayer**

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

1:2,257







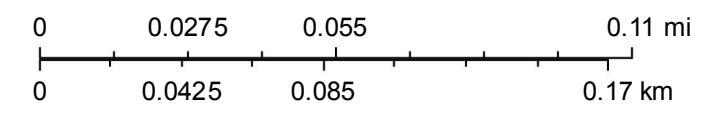
# Sussex County



<b>PIN:</b>	235-13.00-2.02
<b>Owner Name</b>	PLUMP JONATHAN J
<b>Book</b>	4915
<b>Mailing Address</b>	20723 MILTON ELLENDALE
<b>City</b>	ELLENDALE
<b>State</b>	DE
<b>Description</b>	NE/RT 16
<b>Description 2</b>	NW/ RD 226
<b>Description 3</b>	LOT #2
<b>Land Code</b>	

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

1:2,257



**To Be Introduced 10/27/20**

**Council District 3 - Burton**

**Tax I.D. No. 235-13.00-2.02 & 2.03**

**911 Address: 20723 & 20715 Milton Ellendale Highway, Ellendale**

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

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR OUTDOOR BOAT AND RV STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.5 ACRES, MORE OR LESS**

**WHEREAS, on the 15<sup>th</sup> day of September 2020, a conditional use application, denominated Conditional Use No. 2245 was filed on behalf of Jonathan Plump; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2245 be \_\_\_\_\_; and**

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

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

**Section 1. That Chapter 115, Article 115, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2245 as it applies to the property hereinafter described.**

**Section 2. The subject property is described as follows:**

**ALL that certain tract, piece or parcel of land, lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying on the northeast side of Milton Ellendale Highway (Route 16), approximately 0.55 southeast of Holly Tree Road (S.C.R. 226), and being more particularly described in the attached legal description prepared by The Smith Firm, LLC, said parcel containing 4.5 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 11, 2021

RE: County Council Report for CZ 1926 filed on behalf of CP Townhomes, LLC (Canal Point Residential Planned Community)

---

The Planning and Zoning Department received an application (CZ 1926 filed on behalf of CP Townhomes, LLC (Canal Point RPC)) to amend the Comprehensive Zoning Map of Sussex County from a MR-RPC Medium-Density Residential District, Residential Planned Community to a MR-RPC Medium-Density Residential District, Residential Planned Community to amend conditions of approval of CZ 1538 (Ordinance 1700) in relation to piers, docks, boat ramps and other water related recreational facilities. The parcel is located on the east side of Hebron Road, approximately 0.19 mile south of the intersection of Hebron Road and Holland Glade Road. The change of zone is for 180.60 acres, more or less.

The Planning and Zoning Commission held a public hearing on April 22, 2021. At the meeting of May 13, 2021, the Commission recommended approval of the application for the 5 reasons and subject to the recommended condition as outlined within the motion (included below).

Below are the approved minutes from the Planning & Zoning Commission meeting of April 22, 2021 and the minutes of the Planning & Zoning Commission meeting of May 13, 2021.

Minutes of the April 22, 2021 Planning & Zoning Commission Meeting

### **C/Z 1926 – CP Townhomes, LLC (Canal Point RPC)**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an MR-RPC Medium-Density Residential District-Residential Planned Community to an MR-RPC Medium-Density Residential District - Residential Planned Community to amend conditions of approval of CZ 1538 (Ordinance 1700) in relation to piers, docks, boat ramps and other water-related recreational facilities for a certain parcel of land lying and being in Lewes & Rehoboth**



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

**Hundred, Sussex County, containing 180.60 acres, more or less.** The property is lying on the east side of Hebron Road approximately 0.19 miles south of the intersection of Hebron Road and Holland Glade Road (S.C. R. 271). 911 Address: N/A Tax Parcels: 334-13.00-334.00, 1448.00 through 1750.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant’s legal description for the site; a copy of a letter from the Applicant; a copy of comments from the Sussex County Engineering Department Utility Planning Division, a copy of the minutes from CZ 1538 from the P&Z and County Council meetings in 2004. Mr. Whitehouse noted that staff has received 51 responses in support and 8 in opposition.

The Commission found that Kent Larson was present on behalf of the Board of Directors of Grande Point Maintenance Corporation which represents the single-family homeowners at Canal Point; that the request is by CP Townhomes, LLC to amend Ordinance 1700 to remove condition 15 which states “no piers, docks, boat ramps and other water related recreational facilities shall be provided”; that in 2020 the majority of homeowners at Canal Point voted to remove Condition 15 with 90% of those submitting a ballot; that voting results were included with the Application; that the Grande at Canal Point is located on the west side of the Rehoboth Lewes Canal north of Canal Point and across from Henlopen Acres; that numerous docks line both sides of the Rehoboth Lewes Canal; that the location of the dock would be in an area known as Canal Park which is owned by the HOA; that the park abuts a marsh area and the canal; that off-street parking is available and there is a sidewalk that leads to the dedicated launch area; that in 2017 the Developer transferred control of the HOA to the homeowners, they began to plan for a dock and acquiring the necessary permits from DNREC and the US Army Corps of Engineers (USACE); that the HOA was unaware of Condition 15; that DNREC and USACE issued permits for the dock; that the permits expired in December 2020; that if approved, the HOA plans for a recreational dock to launch kayaks, canoes, paddleboards and for fishing; that no motorized watercraft will be permitted to use this dock; that the HOA is not aware of other restrictions against building docks on the canal and there are docks on both sides of the canal; that the lack of a dock creates safety issues for Canal Point residents as the land is muddy and unstable; that the HOA believes that providing safe access to the canal will not only help the residents but also preserve this portion of the bank from further erosion; that Henlopen Acres has docks for individual homes and a large marina area which has a much greater environmental impact than a small dock for kayaks and canoes; that there have been no complaints about Canal Park from residents or from neighbors; that the park is monitored with cameras; that this is private property and owned by the HOA; that no individual lots have canal frontage; and that the HOA requests the removal of Condition 15 from Ordinance 1700.

The Commission found that Mr. Todd Moyer, LC Management Company spoke in support of the Application. Mr. Moyer stated that the path through the park was constructed many years ago and was on the site plan from 2007; that the single-family homes have been requesting this for some time; and that the Developer supports this request.

The Commission found that Ms. Melissa Donnelly, President of the HOA, spoke in support of the Application; that the community values the protection of environmentally sensitive areas for its residents and those in adjacent communities; that there will be no motorized vessels; that many of those who are opposed to this dock have individual docks and access to a 58-slip marina that welcome motorized vessels; that the opposition talked about the destruction of wildlife and that is not so; that there have been no complaints about excessive noise at Canal Park; and that the Community is interested in working with all stakeholders to ensure that if the facility is approved that it will create

enjoyment for residents and will not adversely impact the surrounding communities.

Mr. Robertson asked Ms. Donnelly to confirm that there are 288 single-family homes and 180 submitted ballots, that 163 were in favor of removing Condition 15 with 17 opposed as stated in her email dated January 14, 2020.

Ms. Donnelly stated that this information is correct.

Mr. Mears asked if people are using this area to launch their kayaks and walking through the marsh currently.

Ms. Donnelly stated that yes, people are launching their kayaks and canoes and walking through muddy areas and it is a safety issue.

Mr. Robertson stated that Staff looked at the minutes from the previous hearings to learn if there was any reference as to why this condition was placed on the property; that the minutes are silent regarding this condition; and that it may have been a condition proffered by the Applicant.

The Commission found that Ms. Mackenzie Peet, Esq. spoke in opposition to the Application. Ms. Peet stated that she represents Bob Reed, Martin and Eileen Clark, Connie Malmberg, Mike Stakias, Joseph Coates, Payam Hairi, Barry Rosenthal, Sally Fogarty and, Jan O'Malley who are residents of Henlopen Acres; that these Property Owners oppose CZ 1926 to remove Condition 15; that the proposed

amendment would have an adverse impact on the character of the neighborhood, property values, traffic and the environment; that if this amendment to remove Condition 15 is approved it would create considerable safety and noise concerns; that the designated area for the proposed dock is located between two environmentally sensitive areas consisting of land in the flood zone and/or Federal and State protected wetlands; that if Condition 15 is removed, it will be an invitation for all manner of activities at the canal front and the eventual destruction of wildlife, aquatic habitat, and flora and fauna in and near the canal and the adjacent wetlands; that the proposed dock is an offsite, geographically distant amenity inconsistent with the amenities plan for the community and exceeds the scope of what County Council considered appropriate legislative action for the approved change of zone; that the Property Owners are reasonably concerned that permanent or semi-permanent structures will begin to appear within a year to support kayak and paddle storage because there is no parking closer than 400 feet away from the proposed communal dock and recreation site; that the residents of this development have other options for recreational water activities including the option to launch their kayaks, canoes, and paddle boards at the numerous public water access locations in Rehoboth, Dewey and Lewes; that it is true that some of the objectors have docks on the other side of the canal; that private existing docks are different from the communal dock and recreational area proposed by the Application because no private dock would allow hundreds of people through their property; that for public safety and all the stated reasons the Property Owners request that the Commission recommend denial of the request to remove Condition 15 from Ordinance 1700.

The Commission found that Ms. Lynn Dubin spoke by Teleconference in support of the Application. Ms. Dubin stated that the canal is a public waterway and should be enjoyed by everyone; that this proposal is for non-motorized vehicles and will not have an environmental impact unlike the motorized vehicles which use the canal now; and that no one will be walking in the wetlands.

The Commission found that Mr. Earl Warwas spoke by Teleconference in support of the Application. Mr. Warwas stated that he uses the park regularly; that he does not want to walk through the mud to put his kayak in the water; that the dock would make it safe; and it would be a great asset for the community.

The Commission found that Mr. Sandor Szabo spoke by Teleconference in support of the Application. Mr. Szabo stated that the original dock was planned to be a floating dock which makes it easy to launch a kayak and that having a dock on site will help avoid the traffic of driving to Dewey Beach or Rehoboth Beach to launch.

The Commission found that Ms. Beatriz Szabo spoke by Teleconference in support of the Application. Ms. Szabo stated that this dock will allow residents to safely launch and removed kayaks from the water and allows kayakers to enjoy the calm and beauty of the canal.

The Commission found that Ms. Morgan Bush spoke by Teleconference in support of the Application.

Ms. Bush stated that there are deed restrictions for the canal that all people must obey and that Canal Landing has a dock for launching kayaks so this would not be out of character for the area.

The Commission found that Mr. Martin Clark spoke in opposition of the Application. Mr. Clark stated that today is Earth Day; that one of the main points of Earth Day is to preserve animal habitats; that since he moved to Henlopen Acres six years ago he has seen the depletion of wildlife in the area and that he is opposed to the proposed dock.

The Commission found that Mr. Rex Donnelly spoke in support of the Application.

Mr. Donnelly stated that he lives in Canal Point and that he has seen lots of wildlife in Canal Park including deer, fox and, redwing blackbirds; that no one will be kayaking into the wetlands; and that the dock will be on higher ground and will not impact the wetlands.

Mr. Robertson asked if the residents of the townhomes had a position in this requested change to the conditions of approval for this RPC.

Ms. Melissa Donnelly stated that the Application was filed on behalf of the Grande of Canal Point Maintenance Corporation which owns that area of land adjacent to the canal and that only the single-family homes would have access at this time.

Mr. Robertson stated that if this were to be approved by County Council; that there is still a lot more involved; that a new master plan would have to be filed showing either the removal of a condition or the modification of a condition.

The Commission found that Mr. Rick Dressel spoke in support of the Application. Mr. Dressel stated that he is a retired State Trooper and that this is one of the quietest neighborhoods he has lived in; that there are no after-hour activities; that the sidewalk was installed many years previously and was advertised as a launching area; and that when considering this project, Envirotech was consulted to help with this project.

Mr. Larson stated that currently, all the residents of the townhomes have access to Canal Park but access to the dock for the residents of the townhomes has not yet been decided.

The Commission found that Mr. Mike Searson spoke by Teleconference in support of the Application. Mr. Searson stated that the condition does not restrict the activity; that the activity continues under less than optimal conditions; that if you look across the canal you see many docks with motorized vessels; that he monitors the cameras in the park; that the cameras are motion activated and many times activated by deer; that the people of Canal Point are very sensitive to the environment; and that the residents will continue to support the flora and fauna that live and grow in the area.

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

At the conclusion of the Public Hearing, the Commission discussed the Application.

Mr. Mears stated that this activity will continue even if this Application is not approved; that is it better to have a dock instead of having residents walking through the mud; that DNREC will not approve it if it is a danger to the environment.

Chairman Wheatley stated that there might be an appropriate compromise to allow a dock but limit other activities.

In relation to Application C/Z 1926 – CP Townhomes, LLC (Canal Point RPC). Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

#### Minutes of the May 13, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since April 22, 2021.

Mr. Mears moved that the Commission recommend approval of an amendment to Condition #15 of Change of Zone # 1926 and Ordinance #1700 regarding docks within the Canal Pointe RPC based upon the record made during the public hearing and for the following reasons:

1. Condition #15 of CZ # 1926 and Ordinance #1700 currently states that “No piers, docks, boat ramps or other water-related facilities shall be permitted” within the Canal Pointe RPC.
2. The Canal Pointe RPC is adjacent to the Lewes-Rehoboth Canal, which is a source of water-related activities for many Sussex County residents and visitors.
3. It was shown during the public hearing that this area of the Lewes-Rehoboth Canal has developed with many personal docks attached to individual lots as well as a large marina associated with the Town of Henlopen Acres.
4. The revised condition #15, which will be limited to non-motorized boats, will have less of an impact on the waterway and the environment than many of these existing docks and the motorized boats that they serve.
5. With one point of access to the Lewes-Rehoboth Canal, there will be a well-designed and permitted dock available to the residents of Canal Pointe instead of multiple undefined points of access that could cause more damage to the Canal and the environment.

6. Condition #15 of CZ # 1926 and Ordinance # 1700 should be amended to state as follows:  
“15. Subject to the receipt of all applicable permits from the U.S Army Corps of Engineers, DNREC and any other agencies having jurisdiction, this RPC shall be permitted to have only one dock for the use of residents. This dock shall only be utilized for kayaks and paddleboards. No motorized boats shall be launched or docked at this location. No storage of kayaks, paddleboards, boats or other marine equipment shall be permitted along the dock or landward of it within the RPC. There shall be an amendment to the Canal Pointe Master Plan and a subsequent final site plan showing the dock and its point of access from the RPC. No other piers, docks, boat ramps or other water-related facilities shall be permitted.”

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1926 for CP Townhomes, LLC (Canal Point RPC) for the reasons and conditions stated in the motion. Motion carried 5 – 0.



**PLANNING & ZONING COMMISSION**

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



**Sussex County**

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 22<sup>nd</sup>, 2021

Application: CZ 1926 CP Townhomes, LLC

Applicant: CP Townhomes, LLC  
105 Foulk Road  
Wilmington, DE 19803

Owner: Canal Pointe Maintenance Corporation  
P.O. Box 594  
Bethany Beach, DE 19930

Site Location: The community lies on the east side of Hebron Road approximately 0.19 mile southeast of Holland Glade Road (S.C.R 271)

Current Zoning: MR/RPC – Medium Density Residential, Residential Planned Community

Proposed Zoning: MR/RPC – Medium Density Residential, Residential Planned Community (Remove condition 15 of Ordinance 1700 (C/Z 1538))

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Rehoboth Beach Fire Department

Sewer: Sussex County

Water: Tidewater Utilities

Site Area: 180.60 acres +/-

Tax Map ID.: 334-13.00-334.00, 1448.00 through 1750.00



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: Nicholas Torrance, Planner I  
CC: Vince Robertson, Assistant County Attorney and applicant  
Date: April 15<sup>th</sup>, 2021  
RE: Staff Analysis for CZ 1926 CP Townhomes, LLC

---

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1926 CP Townhomes, LLC to be reviewed during the April 22, 2021, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for an Amendment to the Conditions of Approval for the existing Change of Zone (CZ 1538) for Rebay, LLC for a change of zone from AR-1 to MR/RPC on Tax Parcel 334-13.00-334.00. Specifically, the applicant is requesting an amendment to Condition "15" which requires the provision of "No piers, docks, boat ramps, or other water-related facilities shall be permitted" on the site. The applicant has suggested that this condition be struck from the Conditions of Approval and all other conditions would remain. The previous Change of Zone application was recommended for approval by the Planning and Zoning Commission at their meeting of Thursday, June 10<sup>th</sup>, 2004 and approved by the Sussex County Council at their meeting of Tuesday, June 29<sup>th</sup>, 2004 and the change of zone was adopted through Ordinance No. 1700. Copies of the Meeting Minutes from both of these meetings have been attached to this memo for circulation to members of the Commission and Council.

The community lies on the east side of Hebron Road approximately 0.19 mile southeast of Holland Glade Road (S.C.R 271). The property consists of 180.60 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 Coastal Area land use designation recognizes that a range of housing types should be permitted in Coastal Area, including single-family homes, townhouses, and multifamily units. Retail and office uses are appropriate but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-use development should also be allowed. It also recognizes a careful mixture of homes with light commercial, office and institutional uses can be appropriate to provide convenient services and to allow people to work close to home.

Based on the analysis of the land use, surrounding zoning, and uses, an Amendment to Condition "15" of the previously approved Change of Zone (CZ 1538) could be considered as being consistent with the land use, area zoning, and surrounding uses.



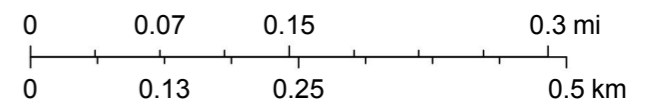
# Sussex County



February 18, 2021

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

1:9,028



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, DNREC, Division of Watershed Stewardship, Drainage Program, john.inkster@state.de.us, Sussex County Government

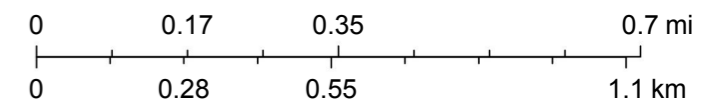
# Sussex County



February 18, 2021

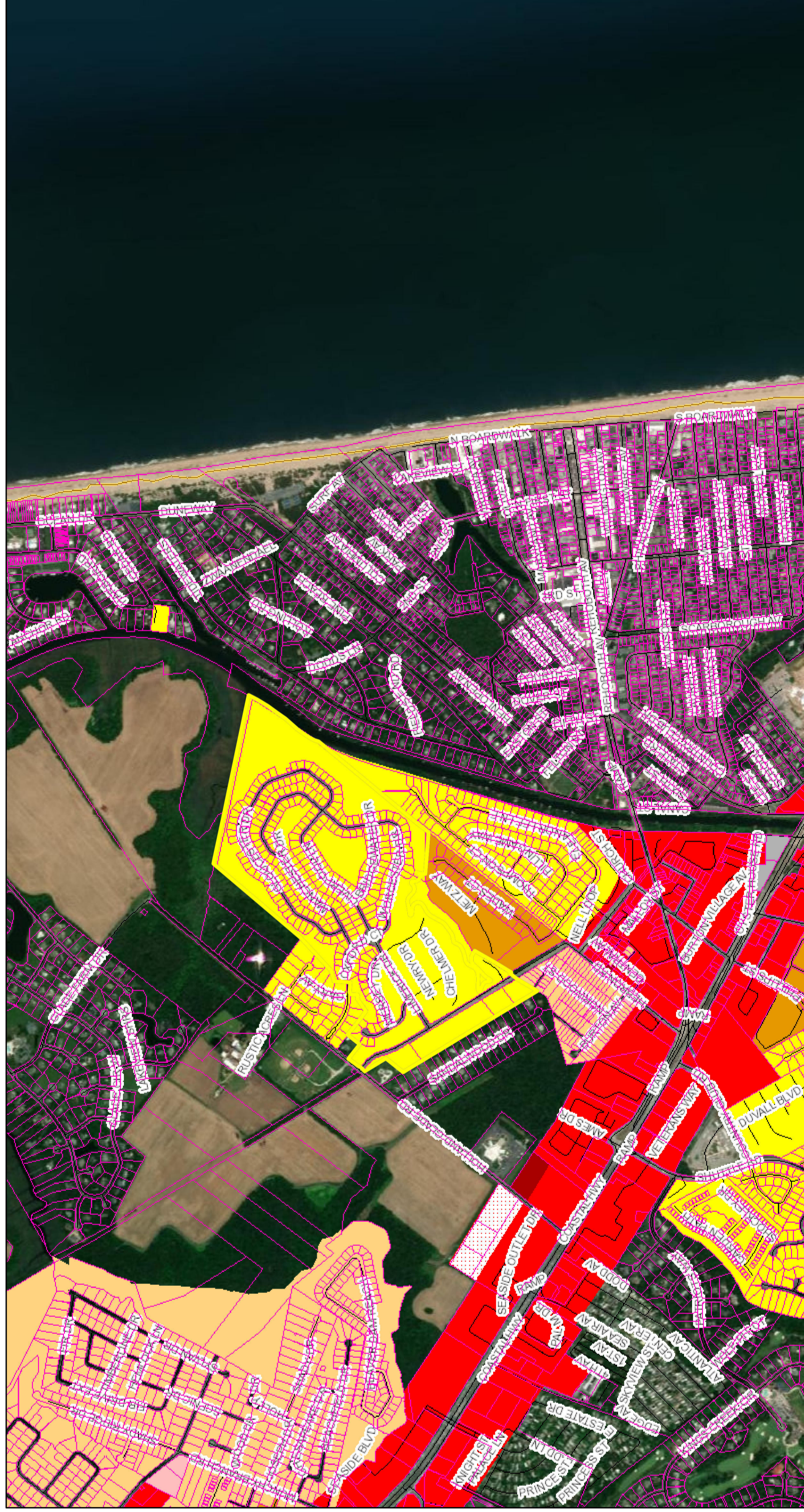
1:18,056

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



DNREC, Division of Watershed Stewardship, Drainage Program, john.inkster@state.de.us, Sussex County Government, Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

# Sussex County



February 18, 2021

- Override 1
- Override 1
- Tax Parcels
- Streets
- Zoning
- Agricultural Residential - AR-1
- Agricultural Residential - AR-2
- Medium Residential - MR
- General Residential - GR
- High Density Residential - HR-1
- High Density Residential - HR-2
- Agricultural Residential - VRP
- Neighborhood Business - B-1
- Neighborhood Business - B-2
- Business Research - B-3
- General Commercial - C-1
- General Commercial - C-2
- General Commercial - C-3
- General Commercial - C-4
- General Commercial - C-5
- Commercial Residential - CR-1
- Institutional - I-1
- Marine - M
- Limited Industrial - LI-1
- Light Industrial - LI-2
- Heavy Industrial - HI-1
- County Boundaries
- Extent of Right-of-Way

1:18,056



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, DNREC, Division of Watershed Stewardship, Drainage Program, john.inkster@state.de.us, Sussex County, Sussex County Government

Introduced 09/22/2020

Council District 5 - Rieley

Tax I.D. No. 334-13.00-334.00, 1448.00 through 1750.00

911 Address: None Available

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL OF CZ 1538 (ORDINANCE 1700) IN RELATION TO PIERS, DOCKS, BOAT RAMPS AND OTHER WATER RELATED RECREATIONAL FACILITIES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 180.60 ACRES, MORE OR LESS**

WHEREAS, on the 20th day of July 2020, a zoning application, denominated Change of Zone No. 1926 was filed on behalf of CP Townhomes, 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. 1926 be \_\_\_\_\_; and

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

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

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

**Section 2. The subject property is described as follows:**

**ALL that certain tract, piece or parcel of land lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the east side of Hebron Road approximately 0.19 miles south of the intersection of Hebron Road and Holland Glade Road (S.C. R. 271), and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc, said parcel containing 180.60 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.**